

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE  
IN RE: Airan2, Airan-Pace, Cross & Fernandez, P.A.

<p>STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION</p>	
<p>In re: Airan2, Airan-Pace, Cross &amp; Fernandez, P.A. Respondent: Airan2, Airan-Pace, Cross &amp; Fernandez, P.A., a Florida Corporation.</p>	
<p>JOHN W. SUTHERS, Attorney General ANDREW P. McCALLIN, First Assistant Attorney General</p> <p>1525 Sherman Street, 7<sup>th</sup> Floor Denver, CO 80203 Phone: (303) 866-5134 Fax: (303) 866-4916 Email: Andrew.McCallin@state.co.us</p>	
<p><b>ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE WITH AIRAN2, AIRAN-PACE, CROSS &amp; FERNANDEZ, P.A.</b></p>	

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into between the State of Colorado, ex rel. John W. Suthers, Attorney General and Respondent Airan2, Airan-Pace, Cross & Fernandez, P.A. This Assurance is entered into pursuant to the Attorney General's powers under § 6-1-110(2), C.R.S. (2008), and is being agreed to by the parties in lieu of the Attorney General filing a complaint against Respondent for the conduct described below.

**I. PARTIES**

1. John W. Suthers is the duly elected Attorney General for the State of Colorado ("Attorney General") and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act ("CCPA"), §§ 6-1-101, *et seq.*, C.R.S. (2008).

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2. Respondent Airan2, Airan-Pace, Cross & Fernandez, P.A., a Florida Corporation (“Respondent” or “Airan”) has its principal place of business at 6705 SW 67 Avenue (Red Road) Suite 310, Coral Gables, FL 33143. The Registered agent is Airan, D.S. (DAR), 9310 SW 71<sup>st</sup> Ave., Miami, Florida, 33156. Airan is not registered with the Colorado Secretary of State as a foreign entity, authorized to do business in the State of Colorado.

**II. FACTUAL BACKGROUND**

3. Pursuant to the CCPA, Colorado Attorney General John W. Suthers has conducted an investigation into the advertising and business practices of Respondent.

4. On March 3, 2009, a Colorado Springs, Colorado consumer had a Notice of Election and Demand recorded against her home. The Colorado law firm handling the foreclosure process for Countrywide was sent a letter dated April 17, 2009 stating Airan, thru the assistance of Truman Foreclosure Assistance, was negotiating with the consumer’s lender to obtain a mortgage modification.

**A. Respondent’s Agents Acted as Mortgage Brokers Without Proper Licenses.**

5. The Director of the Division of Real Estate has determined that “persons who directly or indirectly negotiate, originate *or offer or attempt to* negotiate or originate loan modifications for a borrower and for a commission or other thing of value are required to be licensed as mortgage brokers.” (Ex. B, Division of Real Estate, Position Statement MB 1.5 – Loan Modifications, Nov. 19, 2008.) (Emphasis added.) Additionally, “persons who directly supervise individuals who negotiate, originate, *or offer or attempt to* negotiate or

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originate loan modifications for a commission or other thing of value are required to be licensed as mortgage brokers.” (*Id.*) (Emphasis added.) As set forth in section 12-61-904(1)(d), C.R.S., an attorney who renders services in the course of practice, who is licensed in Colorado, and who is not primarily engaged in the business of negotiating residential mortgage loans or loan modifications is not required to be licensed as a mortgage broker, but is required to comply with all non-licensing provisions of current mortgage broker law set forth in sections 12-61-901 through 12-61-915, C.R.S.

6. Respondent, including but not limited to employees, independent contractors, brokers, salespersons and/or agents of Airan have offered to negotiate or originate loan modifications for Colorado consumers.

7. Respondent, however, does not have employees or independent contractors who are licensed as mortgage brokers by the Colorado Division of Real Estate nor licensed Colorado Attorneys.

8. As such, the Attorney General contends that Respondent and their agents offered to negotiate or originate loan modifications without mortgage broker licenses in violation of §§ 6-1-105(1) (u), (z) and 12-61-903(1)(a), C.R.S. (2008).

**III. CONSIDERATION**

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9. Respondent enters this Assurance as a compromise and settlement of the Attorney General's allegations herein. This Assurance shall not be considered an admission of violation for any purpose. Respondent expressly denies liability under the CCPA and is entering into this Assurance to avoid further costs and litigation.

10. The Attorney General intends that this Assurance will finally and fully resolve all of the disputes between the Attorney General and Respondent arising out of the conduct alleged in Section II, Factual Background, of this Assurance.

**IV. ASSURANCES**

11. Respondent will not target advertisements directly to Colorado consumers.

12. The term "advertisements" includes all advertisements, marketing or promotional materials issued by Respondent, including but not limited to, newspaper and magazine advertisements, direct mail solicitations, flyers, brochures, emails, faxes, telemarketing, billboards, envelopes, and banner or pop-up advertising that is disseminated electronically.

13. Respondent shall comply with the CCPA as now constituted or as may be amended in conducting business in the State of Colorado; the federal Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* ("TILA"); the Uniform Consumer Credit Code, §§ 5-1-101 through 5-13-105, C.R.S. (2008) ("UCCC"); and the Colorado Mortgage Broker Licensing Act, §§ 12-61-101, *et seq.*

14. Respondent shall comply with all applicable rules and regulations implementing the laws set forth in the preceding paragraph.

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15. Respondent will continue to use their best efforts to obtain a modification for the Colorado consumers shown in Exhibit A, by December 31, 2009. If a modification is not in place for these consumers, or they have not entered into the Trial Period for the H.A.M.P. program by the required time period or Respondent has not been able to get an extension from Attorney General's office, Respondent will refund the fees paid to Airan by the consumer minus four hundred dollars which may be retained by Respondent for the work they have completed.

16. Respondent will send a letter to Colorado consumers shown in Exhibit B offering them the option to receive a refund of the fees they paid for mortgage modification or they may continue to have Airan represent them in obtaining a loan modification. The letter is to be drafted within 10 days of signing this Assurance then reviewed and approved by the Colorado Attorney General prior to mailing. The consumer's who chose to continue with Respondent will be added to Exhibit A and the requirement per paragraph 15 will apply to those consumers. Respondent will fully refund the consumers who chose to not continue with Airan within ten days from date of notice. The parties agree that exhibits A & B will remain confidential pursuant to § 6-1-110(2), CRS and that the identities or other information related to these consumers will not be disclosed to anyone.

17. Respondent shall provide monthly status reports by the 25<sup>th</sup> day of October, November, and December to the Colorado Attorney General as to the status of modifications or when refunds have been issued of each consumer identified in exhibits A & B.

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18. Respondent will provide a final status report due on Jan 15<sup>th</sup>, 2010 or 30 days from an extension period, if any, to show final disposition on all Colorado consumers to show date modified or refund issued.

**V. ENFORCEMENT**

1. The obligations set forth in this Assurance are continuing under this Assurance.
2. A violation of any of the terms of this Assurance, unless an extension is granted for due cause by Attorney General, shall constitute a prima facie violation of the CCPA in accordance with § 6-1-110(2), C.R.S. (2008). Upon a violation of any of the terms of this Assurance by Respondent, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.
3. In addition to any remedies provided under the CCPA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against Respondent as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General of a violation by a Respondent of this Assurance. In such event, Respondent would be entitled to raise any and all defenses and counterclaims they may have had to such an action, and as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

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4. This Assurance shall not be construed to affect the rights of any private party to pursue remedies pursuant to § 6-1-113, C.R.S. (2008), or under any other statutes through claims or actions in common law.

5. Nothing in this Assurance shall be construed to release claims held by any other governmental authority.

6. Pursuant to § 6-1-110(2), C.R.S. (2008), this Assurance shall be a matter of public record.

7. This Assurance may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute the Assurance.

8. The person who signs this Assurance in a representative capacity for Airan warrants that he or she is duly authorized to do so. Respondent acknowledge that they have had a full opportunity to review this Assurance and consult with legal counsel regarding same. Respondent agrees and represents that they have read and understand this Assurance, that they accept the legal consequences involved in signing it, and that there are no other representations, agreements or understandings between Respondent and the Attorney General that are not stated in writing herein.

9. Respondent and their principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, contractors, and any person acting on behalf of any Respondent agrees to cooperate with all investigations and other proceedings that the Attorney General may bring to enforce the terms of this Assurance or to

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enforce the CCPA against any other entity. Included within this cooperation agreement are the obligations to:

- a) Appear for hearings, depositions or provide testimony in any form, including affidavits. All such testimony shall be truthful;
- b) Produce documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the Attorney General; and
- c) Accept a subpoena from the Attorney General without the need for service of process.

10. Any notices, complaints or other documents required by this Assurance (including any request or subpoena) shall be sent to the following individuals at the address, email or fax set forth below:

To Respondent Airan2, Airan-Pace, Cross & Fernandez, P.A  
Lalita D. Airan  
6705 SW 57<sup>th</sup> Ave., Suite 310  
Miami, FL 33143  
Email: lalitaairan@gmail.com  
Phone: \_\_\_305-666-9311  
Fax: \_\_\_305-665-6373

To The Attorney General at:

Andrew McCallin  
First Assistant Attorney General

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Antitrust, Tobacco, and Consumer Protection Unit  
Consumer Protection Section  
1525 Sherman Street – 7<sup>th</sup> Floor  
Denver, CO 80203  
Email: Andrew.McCallin@state.co.us  
Phone: (303) 866-5134  
Fax: (303) 866-4916

Dated: 10/26/09

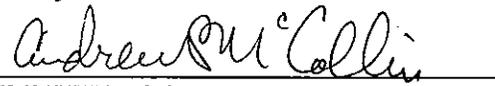
RESPONDENT: Airan2, Airan-Pace, Cross & Fernandez, P.A.

By: 

Lalita D. Airan, Esq, Partner  
Airan2, Airan-Pace, Crosa & Fernandez, P.A.  
Print Name and Title

Dated: 11/9/09

JOHN W. SUTHERS  
Attorney General

  
ANDREW MCCALLIN  
First Assistant Attorney General  
Consumer Protection Section