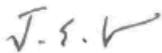


DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	DATE FILED: July 25, 2016 11:50 AM CASE NUMBER: 2015CV33330 <p style="text-align: center;">⚠ COURT USE ONLY ⚠</p>
Plaintiff(s) STATE OF CO EX REL CYNTHIA H COFFMAN v. Defendant(s) AUSTIN HOME VENTURES LLC et al.	
Order: FINAL CONSENT JUDGMENT	

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 7/25/2016



JAY SUTHERLAND GRANT
 District Court Judge

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</p> <hr/> <p>STATE OF COLORADO, <i>ex rel.</i> CYNTHIA H. COFFMAN, Attorney General,</p> <p>Plaintiff,</p> <p>v.</p> <p>AUSTIN HOME VENTURES, LLC, a Colorado limited liability company dba CAPITAL ASSET RECOVERY dba CAPITAL REALTY; BRYAN JENSEN, individually; ETHAN EATON aka ETHAN GRAHAM, individually; BILLY FUSTON, individually; and BAILEY PEREZ, individually,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	<p>Case No. 2015CV33330</p> <p>Courtroom 209</p>
<p>FINAL CONSENT JUDGMENT</p>	

Plaintiff the State of Colorado *ex rel.* Cynthia H. Coffman, Attorney General (the “State”), and Defendants Austin Home Ventures, LLC dba Capital Asset Recovery dba Capital Realty (“Austin Home Ventures”), Bryan Jensen, Ethan Eaton aka Ethan Graham, Billy Fuston, and Bailey Perez (collectively, “Defendants”) hereby agree and consent to entry of final judgment in this matter as embodied in this Final Consent Judgment to fully and finally resolve the claims and issues in the above-captioned case, without trial or hearing, and to avoid the additional time and expense associated with continuing litigation.

The Court, having considered this matter and being otherwise fully advised in the premises,

DOES HEREBY FIND, CONCLUDE, ORDER, and ADJUDGE, as follows:

I. GENERAL PROVISIONS

1.1 Scope of Final Consent Judgment. The State brought the above-captioned action pursuant to its authority under the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101, *et seq.* (2015) (“CCPA”), which includes the Colorado Foreclosure Protection Act, C.R.S. §§ 6-1-1101, *et seq.* (“CFPA”). Unless otherwise provided, this Final Consent Judgment shall apply to Defendants and their officers, directors, agents, servants, employees, affiliates, subsidiaries, successors, and assigns, together with the other parties described in C.R.C.P. 65(d).

1.2 The Injunctive Relief provisions of this Final Consent Judgment only apply to Defendants’ activities within the state of Colorado.

1.3 Release of Claims.

1.3.1 Subject to the conditions in paragraph 1.3.3, the State agrees and acknowledges that execution of this Final Consent Judgment is a complete settlement and release of all claims under the CCPA (including the CFPA) on behalf of the State against Defendants. The State hereby releases and forever discharges Defendants regarding all of its claims, causes of action, liabilities, obligations, restitution, fees, costs, penalties, disgorgement, and damages (of any kind or nature, whether pursuant to law, equity, statute, or otherwise, without regard to amount, known or unknown, accrued or unaccrued, mature or contingent) that arise under the CCPA and relate to or arise from the facts, events, or activities alleged in the State’s First Amended Complaint or which were encompassed by the State’s investigation into such facts, events, or activities (collectively, “Released Claims”).

1.3.2 Releases Valid Even if Additional or Different Facts. The parties acknowledge they may discover facts that are additional to or different from those they now know or believe to be true regarding the Released Claims. Nonetheless, it is the parties’ intent to fully and finally resolve such Released Claims. To effectuate that intention, the releases given herein shall remain full and complete releases notwithstanding the discovery of any additional or different facts regarding the Released Claims. Notwithstanding the foregoing, nothing herein shall preclude the State from enforcing this Final Consent Judgment, from pursuing non-released claims, or from pursuing actions based on future conduct as contemplated in paragraph 1.5 below.

1.3.3 The State will release all existing monetary claims against Defendants Bailey Perez, Billy Fuston, and Ethan Eaton 91 days after the full and timely completion of payments in accordance with paragraph 3.1.1 and against Defendants Austin Home Ventures and Bryan Jensen 91 days after the full and

timely completion of payments in accordance with paragraph 3.1.2, provided that none of the Defendants file a bankruptcy petition during the applicable period. If any Defendant commits an Irrevocable Default in connection with the payment required by paragraph 3.1.1 or files bankruptcy within 91 days after the full and timely completion of such payment, all Defendants shall remain liable for the full unpaid balance of the Stipulated Claim amount. If Defendants Austin Home Ventures or Bryan Jensen commit an Irrevocable Default in connection with any payment required by paragraph 3.1.2 or file bankruptcy within 91 days after the full and timely completion of any such payment, those Defendants alone shall remain liable for the unpaid balance of the Stipulated Claim amount. The State may assert the unpaid balance of the Stipulated Claim amount in any subsequent proceeding to enforce this Final Consent Judgment, whether through execution, garnishment, or other legal proceedings, or through a proof of claim in any bankruptcy proceeding filed by any Defendant.

1.4 No Admission of Liability. All parties are entering into this Final Consent Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further litigation. The State acknowledges Defendants have admitted no fault, wrongdoing, liability, or obligation by or in connection with this Final Consent Judgment. It is expressly understood that nothing contained in this Final Consent Judgment shall be construed as an admission by Defendants of any liability, wrongdoing, or factual or legal issue.

1.5 Preservation of Law Enforcement Action. Nothing herein precludes the State from enforcing the provisions of this Final Consent Judgment or from pursuing any non-released claims, including instituting any law enforcement action with respect to any acts or practices of Defendants not covered by this Final Consent Judgment or any acts or practices in which Defendants engage after entry of this Final Consent Judgment.

1.6 Compliance With and Application of State Law. Nothing herein relieves Defendants of their duty to comply with applicable laws of the state of Colorado nor constitutes authorization by the State for Defendants to engage in acts and practices prohibited by such laws. This Final Consent Judgment shall be governed by the laws of the state of Colorado.

1.7 Non-Approval of Conduct. Nothing herein constitutes approval by the State of any of the Defendants' past, present, or future business practices, and Defendants shall not make any representation to the contrary.

1.8 No Release/Waiver Regarding Private Claims. Nothing in this Final Consent Judgment shall be construed as a waiver or release of any kind, by the

State or Defendants, with respect to any private rights, causes of action, or remedies of any person against Defendants with respect to the acts and practices covered by this Final Consent Judgment.

1.9 No Third-Party Beneficiaries Intended. This Final Consent Judgment is not intended to confer upon any person any rights or remedies, including rights as a third-party beneficiary. This Final Consent Judgment is not intended to create a private right of action on the part of any person or entity, whether to enforce this Final Consent Judgment or otherwise, other than the parties hereto.

1.10 Jurisdiction. All parties to this Final Consent Judgment agree that this Court has jurisdiction over the parties and subject matter of this action for the purpose of entering this Final Consent Judgment. Furthermore, this Court shall retain jurisdiction over this matter to enable any party to this Final Consent Judgment to apply to the Court at any time for further orders that may be necessary or appropriate for the construction, modification, or execution of this Final Consent Judgment, and for enforcing compliance herewith and punishing violations hereof. Defendants consent to the jurisdiction, venue, and process of this Court if there is any claim, petition, cause of action, or proceeding arising out of or based upon this Final Consent Judgment.

1.11 Contempt. The parties understand and agree that a finding of any violation of any term or provision of this Final Consent Judgment shall give rise to all contempt remedies available to the Court. The parties agree to waive any requirement of personal service provided that they provide written notice in accordance with the terms of this Final Consent Judgment.

1.12 Execution in Counterparts. This Final Consent Judgment may be executed in counterparts.

1.13 Severability. If any provision of this Final Consent Judgment is held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

1.14 Amendment. This Final Consent Judgment may be amended solely by written agreement signed by the State and Defendants or their authorized representatives and with the approval of the Court.

1.15 Complete Agreement. This Final Consent Judgment represents the entire agreement between the parties hereto and a complete merger of prior negotiations and agreements.

1.16 Effective Date. On the date this Final Consent Judgment is entered by the Court, it shall be entered as and become a final judgment of the Court and such date shall be the effective date of this Final Consent Judgment for all purposes.

1.17 Attorneys' Fees and Costs. Except as otherwise provided herein, each party shall bear its own attorneys' fees and costs in connection with this matter.

1.18 Public Record. Pursuant to C.R.S. § 6-1-110(2) (2016), this Final Consent Judgment shall be a matter of public record.

1.19 Notice. All notices to the State shall be sent to the following:

Jennifer Miner Dethmers
Assistant Attorney General
Colorado Department of Law
Consumer Protection Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203
jennifer.dethmers@coag.gov

All notices to Defendants shall be sent to the following:

Bryan Jensen
1670 East Cheyenne Mountain Blvd.
Suite F276,
Colorado Springs, CO 80906
Bryan_Jensen@ymail.com

Chandler Kelley
Foster Graham Milstein & Calisher, LLP
360 South Garfield Street, Suite 600
Denver, CO 80209
ckelley@fostergraham.com

II. INJUNCTIVE RELIEF

2.1 Defendants are immediately and permanently enjoined from directly or indirectly violating any provision of the CCPA or CFPA.

2.2 All Defendants and their officers, directors, agents, servants, employees, independent contractors, successors, assigns, and any other person in active concert or participation with them, now or in the future, who receives notice of this Final Consent Judgment are immediately and permanently restrained and enjoined from directly or indirectly acting as a “foreclosure consultant” as defined by C.R.S. § 6-1-1103(4), as may be amended, or as an “associate” of a foreclosure consultant as defined in C.R.S. § 6-1-1103(1), as may be amended.

2.3 Defendants Austin Home Ventures, Bryan Jensen, and Ethan Eaton and their officers, directors, agents, servants, employees, independent contractors, successors, assigns, and any other person in active concert or participation with them, now or in the future, who receives notice of this Final Consent Judgment are immediately and permanently restrained and enjoined from directly or indirectly acting as an “equity purchaser” as defined in C.R.S. § 6-1-1103(2), as may be amended, or as an “associate” of an equity purchaser as defined in C.R.S. § 6-1-1103(1), as may be amended.

2.4 For the avoidance of doubt, nothing herein shall prevent any Defendant from engaging in lawful and proper activities as a duly licensed real estate broker or mortgage loan originator provided that such activities are otherwise authorized herein and that he or she obtains the appropriate license prior to engaging in services for which a real estate broker or mortgage loan originator license is required.

2.5 Defendants Austin Home Ventures, Bryan Jensen, and Ethan Eaton and their officers, directors, agents, servants, employees, independent contractors, successors, assigns, and any other person in active concert or participation with them, now or in the future, who receives notice of this Final Consent Judgment are immediately and permanently restrained and enjoined from directly or indirectly entering into any contracts or other agreements relating to real property against which a foreclosure action has been commenced or as to which the subject Defendants have actual or constructive knowledge, after reasonable inquiry, that the related residential mortgage loan is at least thirty days delinquent or in default, including but not limited to, purchase and sale agreements, lease or sublease agreements, charter agreements, powers of attorney, and agreements to transfer or encumber real property. Nothing in this paragraph shall preclude these Defendants from purchasing property at a foreclosure auction sale in an arm’s length transaction or from purchasing property as his or her primary or secondary place of residence. Further, nothing in this paragraph shall prevent any Defendant from acting strictly as a licensed real estate broker for a buyer or seller of a property as to which the related mortgage loan is delinquent or in default so long as the Defendant’s only interest or compensation in the transaction is a commission on the

sales price of the property pursuant to a listing agreement or similar contract and the Defendant obtains all necessary licenses prior to engaging in the aforementioned conduct.

2.6 All powers of attorney that Defendants obtained from consumers in connection with their businesses, including but not limited to powers of attorney obtained in connection with assisting or offering to assist any person in collecting, obtaining, or attempting to collect or obtain overbid funds or excess proceeds resulting from a foreclosure sale, are void. Defendants and their agents are permanently restrained and enjoined from using any powers set forth in all such powers of attorney.

2.7 Defendant Austin Home Ventures shall transfer title of the property commonly known as 4508 Bramble Lane, Colorado Springs, CO 80925 to Kyle L. Anderson within ten days of entry of this Final Consent Judgment for the consideration of \$10.00.

III. MONETARY PROVISIONS

3.1 Stipulated and Discounted Claim Amounts. Except as otherwise provided in this section III, Defendants shall pay a total of \$125,000 (“Stipulated Claim”) to the State, as follows:

3.1.1 Defendants, jointly and severally, shall pay \$32,500 to the State no later than 14 days after the date the Court enters this Final Consent Judgment. Upon payment of this amount, Defendants Bailey Perez, Billy Fuston, and Ethan Eaton shall have no further monetary obligations to the State, and the State will have no further right to any remaining amount of the Stipulated Claim from any of those Defendants.

3.1.2 Defendants Austin Home Ventures and Bryan Jensen, jointly and severally, shall pay an additional \$92,500 to the State; however, if Defendants Austin Home Ventures and Bryan Jensen make payments in accordance with the following payment schedule and the terms set forth in herein, then the State will waive the remaining \$50,000 of the Stipulated Claim:

- \$7,500 no later than December 31, 2016;
- \$20,000 no later than December 31, 2017; and
- \$15,000 no later than December 31, 2018.

3.2 Payment Default and Opportunity to Cure. If Defendants fail to make any payment required by the applicable deadline, the State may declare a “Payment

Default” under this Final Consent Judgment. The State must provide written notice of a Payment Default to Defendants via their mailing address by overnight delivery or courier service and via electronic notice to the e-mail addresses provided in paragraph 1.19 and state the payment(s) not timely made. Any failure by the State to take action following a default hereunder shall not constitute a waiver by the State of its rights and/or remedies.

3.2.1 Upon delivery of a notice of a Payment Default hereunder, the applicable Defendants shall have a cure period of three business days from the date such notice is delivered as set forth above. The applicable Defendants may cure this default within such three business day period by paying the State the amount specified in the notice, together with an additional \$300.00 notice fee to compensate the State for the time and expense of providing the notice. In the event the default is not cured within the three business day period (including payment of the \$300.00 notice fee), then the default shall no longer be curable (“Irrevocable Default”).

3.2.2 An Irrevocable Default is a violation of the Final Consent Judgment and will result in the entire balance of the \$125,000 Stipulated Claim amount (less payments received) being due and payable immediately and without the need for a hearing; provided, however, that if Defendants make the \$32,500 payment pursuant to paragraph 3.1.1, Defendants Bailey Perez, Billy Fuston, and Ethan Eaton shall have no further monetary obligations and only Defendants Austin Home Ventures and Bryan Jensen shall be liable for the balance of the Stipulated Claim amount in the event of an Irrevocable Default. Post-judgment interest will begin to run immediately on any remaining amounts owing at the maximum interest rate allowed by law. In the event of an Irrevocable Default, Defendants Austin Home Ventures and Bryan Jensen agree to pay the attorneys’ fees and costs of any legal action instituted to carry out successful recovery of all amounts owing.

3.2.3 Subject to the provisions set forth in paragraph 1.3.3, and upon payment of the amounts set forth in paragraphs 3.1.1 and 3.1.2 (totaling \$75,000) and any applicable notice fees, if no Irrevocable Default has occurred, Defendants Austin Home Ventures and Bryan Jensen shall have no further monetary obligations to the State, and the State will have no further right to the full amount of the Stipulated Claim.

3.3 Defendants may pay any part of the total amount in advance without penalty. All such payments shall be deemed paid upon the State’s receipt of the payment and only upon such receipt.

3.4 All payments shall be made by electronic funds transfer according to written payment processing instructions provided by the State with a reference to “*State v. Austin Home Ventures, LLC Settlement*.” Defendants shall provide written notice to the State at or around the time they initiate the electronic funds transfer, but failure to provide written notice will not be considered a Payment Default or breach of this Final Consent Judgment. All payments are to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General’s sole discretion for reimbursement of the State’s actual costs and attorneys’ fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.

IV. REPRESENTATIONS AND WARRANTIES

4.1 Defendants acknowledge that they have thoroughly reviewed this Final Consent Judgment with their counsel, that they understand and agree to its terms, and that they agree that it shall be entered as an Order of this Court. Defendants knowingly and voluntarily enter into this Final Consent Judgment and waive any right to a formal hearing on the matters forming the basis of this Final Consent Judgment and any right to appeal herefrom.

4.2 Each of the non-Court signatories to this Final Consent Judgment warrants and represents that he or she has the authority to agree to this Final Consent Judgment on behalf of the party for which he or she is signing.

V. VIOLATIONS OF INJUNCTIVE TERMS OF FINAL CONSENT JUDGMENT

5.1 In the event the State receives evidence that any of the Defendants have committed a material violation of any injunctive term of this Final Consent Judgment, the State shall provide the relevant Defendant(s) written notice of said violation and provide Defendant(s) ten days from the date of the written notice to cure the violation. If the State believes, in its sole discretion, that Defendant(s) failed to cure the violation, the State may, upon notice to the Defendants, petition the Court, present evidence of such violation, request a civil penalty in the amount of \$2,000 for each violation, and seek an order that Defendants have breached the Final Consent Judgment. Upon receipt of notice of any such petition by the State, Defendants shall have an opportunity to respond in accordance with the timeframes set forth in the Colorado Rules of Civil Procedure.

5.2 Following notice and hearing on the State’s petition and a finding by the Court that the Defendant(s) violated the Final Consent Judgment and did not cure the violation, the Court may impose penalties; accelerate payment due dates, if

any remain; make any order in accordance with paragraph 1.11 or pursuant to its powers to enforce its prior orders; and enjoin or make any other appropriate order to enforce the provisions of this Final Consent Judgment.

5.3 In any action or proceeding that alleges or asserts a violation of or failure to comply with this Final Consent Judgment, this Final Consent Judgment shall be admissible in full, and the Colorado Rules of Civil Procedure shall apply.

SO ORDERED, ADJUDGED, and DECREED this ___ day of _____, 2016.

By the Court:

Denver District Court Judge

Attachment to Order - 2015CV33330

For the Plaintiff
STATE OF COLORADO, *ex rel.*
CYNTHIA H. COFFMAN, Attorney General

/s/ Jennifer Miner Dethmers
JENNIFER H. HUNT, #29964*
First Assistant Attorney General
JENNIFER MINER DETHMERS, #32519*
LAUREN M. DICKEY, #45773*
Assistant Attorneys General
Colorado Department of Law
Consumer Protection Section

Dated: 7/14/2016

For the Defendants
Austin Home Ventures, LLC dba Capital Asset Recovery dba Capital Realty

/s/ Bryan Jensen
Print Name: Bryan Jensen
Title: Managing Member

Dated: 7/14/2016

Bryan Jensen, individually

/s/ Bryan Jensen

Dated: 7/14/2016

Ethan Eaton aka Ethan Graham, individually

/s/ Ethan Eaton

Dated: 7/07/2016

Billy Fuston, individually

/s/ Billy Fuston

Dated: 7/14/2016

Bailey Perez, individually

/s/ Bailey Perez

Dated: 7/19/2016

Attorneys for Defendants

FOSTER GRAHAM MILSTEIN & CALISHER, LLP

/s/ D. Chandler Kelley

Dated: 7/19/2016

DANIEL K. CALISHER, #28196

D. CHANDLER KELLEY, #41509

Attorneys for Defendants

Pursuant to C.R.C.P. 121, § 1-26(7), the original of this document with original signatures is maintained in the offices of the Colorado Department of Law, Consumer Protection Section, Ralph L. Carr Judicial Center, 1300 Broadway, 7th Fl., Denver, CO 80203, and will be made available for inspection upon request.

Attachment to Order - 2015-0003330