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| <p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>STATE OF COLORADO, ex rel. 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>CYNTHIA H. COFFMAN, Attorney General JENNIFER MINER DETHMERS, #32519* LAUREN M. DICKEY, #45773* Assistant Attorneys General COLORADO DEPARTMENT OF LAW Consumer Protection Section Ralph L. Carr Colorado Judicial Center 1300 Broadway, 7th Floor Denver, CO 80203 Telephone: 720-508-6228 Facsimile: 720-508-6040 Email: jennifer.dethmers@state.co.us lauren.dickey@state.co.us *Counsel of Record</p> | <p>Case Number: 2015CV33330 Courtroom: 209</p> |
| <p>FIRST AMENDED COMPLAINT</p> | |

Plaintiff, State of Colorado, upon relation of Cynthia H. Coffman, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges as follows:

INTRODUCTION

1. The Colorado Attorney General brings this action on behalf of the State of Colorado (the “State”) pursuant to the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101, *et seq.* (2015) (“CCPA”), and the Colorado Foreclosure Protection Act, C.R.S. §§ 6-1-1101, *et seq.* (2015) (“CFPA”), to enjoin and restrain Defendants from engaging in unlawful deceptive trade practices, to recover statutorily-mandated civil penalties, to completely compensate or restore to their original position any persons injured by Defendants’ deceptive trade practices, to disgorge unjust enrichment, to recover attorney fees and costs, and to obtain other relief as this Court deems just and proper.

PARTIES

2. Cynthia H. Coffman is the duly elected Attorney General of the State of Colorado and is authorized under C.R.S. § 6-1-103 to enforce the CCPA and to bring an action against any person for engaging in deceptive trade practices.

3. Defendant Austin Home Ventures, LLC (“Austin Home Ventures”) dba Capital Asset Recovery dba Capital Realty is a Colorado limited liability company with a principal office street address of 660 Southpointe Ct., Ste. 316-D, Colorado Springs, Colorado 80906, and a principal office mailing address of 1670 E. Cheyenne Mountain Blvd., Ste. F276, Colorado Springs, Colorado 80906.

4. On or about April 13, 2013, Austin Home Ventures registered the trade name of Capital Asset Recovery to “[r]etrieve unclaimed funds.” The State will refer to Austin Home Ventures as “Capital Asset Recovery” in connection with its overbid fund recovery and foreclosure consulting businesses. Capital Asset Recovery represents that it is a foreclosure consultant.

5. On or about October 3, 2014, Austin Home Ventures registered the trade name of Capital Realty, describing its activities as “Real Estate Acquisition and Disposition.”

6. Defendant Bryan Jensen is an individual with a principal business address of 660 Southpointe Ct., Ste. 316-D, Colorado Springs, Colorado 80906. Jensen is the Partner/Founder of Capital Asset Recovery. He is also the Partner/Founder and Managing Representative of Capital Realty and represents himself to be a “Real Estate Consultant.” Jensen is currently the registered agent of Austin Home Ventures. Jensen’s contact information, including his cell phone number and email address, is listed on Capital Realty’s and Capital Asset Recovery’s websites.

7. Jensen is foreclosure consultant, equity purchaser, and/or associate under the CFPA. C.R.S. § 6-1-1103(1), (2), & (4).

8. Defendant Ethan Eaton aka Ethan Graham (“Eaton”) is an individual with a principal business address of 660 Southpointe Ct., Ste. 316-D, Colorado Springs, Colorado 80906. Eaton is an Associate at Capital Asset Recovery as well as a Partner and Representative of Capital Realty. Eaton’s contact information, including his cell phone number and email address, is listed on Capital Realty and Capital Asset Recovery’s websites.

9. Eaton is a foreclosure consultant, equity purchaser, and/or associate under the CFPA. C.R.S. § 6-1-1103(1), (2), & (4).

10. Defendant Billy M. Fuston is or was an agent of Capital Asset Recovery. Upon information and belief, Fuston resides at 228 Falling Leaf Way, Mascoutah, IL 62258. Fuston is or was a foreclosure consultant and/or associate under the CFPA. C.R.S. § 6-1-1103(1) & (4).

11. Defendant Bailey C. Perez is or was an agent of Capital Asset Recovery. Upon information and belief, Perez formerly resided at 3606 Parkmoor Village Dr. A, Colorado Springs, CO 80917. Perez is or was a foreclosure consultant and/or associate under the CFPA. C.R.S. § 6-1-1103(1) & (4).

JURISDICTION AND VENUE

12. This Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability pursuant to C.R.S. §§ 6-1-103 & 6-1-110(1).

13. As Defendants employed and engaged in deceptive trade practices and transactions in the City and County of Denver, venue is proper in this district pursuant to C.R.S. § 6-1-103.

RELEVANT TIMES

14. The conduct that gives rise to the claims for relief began no later than May 2014 and continues through the present.

PERSONAL LIABILITY

15. This action is brought against Defendants Jensen, Eaton, Fuston, and Perez in their individual capacities. At all relevant times, Defendants conceived of, directed, participated in, authorized, and controlled the deceptive business practices alleged herein, and are personally liable for all such practices.

STATUTORY BACKGROUND

A. The Colorado Consumer Protection Act

16. The CCPA prohibits deceptive trade practices, which includes the dissemination of misleading information. *See, e.g.*, C.R.S. § 6-1-105(1); *May Dep't Stores Co. v. State*, 863 P.2d 967, 977 n.18 (Colo. 1993).

17. The CCPA was enacted to control deceptive trade practices. *People ex rel. Dunbar v. Gym of Am., Inc.*, 493 P.2d 660, 665 (Colo. 1972). The CCPA is a remedial and deterrent statute with the broad legislative purpose of providing “prompt, economical, and readily available remedies against consumer fraud.” *May Dep't Stores*, 863 P.2d at 972 (quoting *Western Food Plan, Inc. v. Dist. Ct.*, 598 P.2d 1038, 1041 (Colo. 1979)); *see, e.g.*, *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47, 50-51 (Colo. 2001). The mandatory civil penalty requirement of the CCPA is intended to both punish and deter. *May Dep't Stores*, 863 P.2d at 972.

18. A person engages in deceptive trade practices when, in the course of that person's business, vocation, or occupation, such person:

(e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;

...

(i) Advertises goods, services, or property with intent not to sell them as advertised;

...

(l) Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions;

...

(u) Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction;

...

(z) Refuses or fails to obtain all governmental licenses or permits required to perform the services or to sell the goods, food, services, or property as agreed to or contracted for with a consumer;

...

(xx) Violates any provision of part 11 of this article [the CFPA].

C.R.S. § 6-1-105(1)(e), -(i), -(l), -(u), -(z), & -(xx).

B. The Colorado Foreclosure Protection Act

19. In 2006 the Colorado General Assembly enacted the CFPA to “curtail and to prevent” deceptive and unconscionable practices against homeowners in financial distress and to

provide each homeowner with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers, to provide certain minimum requirements for contracts between such parties, including statutory rights to cancel such contracts, and to ensure and foster fair dealing in the sale and purchase of homes in foreclosure.

C.R.S. § 6-1-1102.

20. A violation of the CFPA is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

PUBLIC INTEREST

21. Through the unlawful practices of their business, vocation, or occupation, Defendants have deceived, misled, and injured citizens in Colorado and elsewhere. Additionally, Defendants have been unjustly enriched through their use and employment of these deceptive trade practices.

22. The Colorado Supreme Court has recognized: “[I]t is in the public interest to invoke the state’s police power to prevent the use of *methods* that have a

tendency or capacity to attract customers through deceptive trade practices. . . . The Colorado Consumer Protection Act is an outgrowth of this conclusion.” *May Dep’t Stores*, 863 P.2d at 973 (quoting *Gym of Am.*, 493 P.2d at 668).

23. The Colorado General Assembly has determined that violations of the CFPA “have a significant public impact and that the terms of [the CFPA shall] be liberally construed to achieve these purposes.” C.R.S. § 6-1-1102.

24. Therefore, these legal proceedings are in the public interest and necessary to safeguard citizens in Colorado.

GENERAL ALLEGATIONS

A. **Defendants Engaged in Deceptive Trade Practices in Connection with Obtaining Overbid Funds Resulting From Foreclosure Sales of Consumers’ Homes.**

1. **Statutory background: foreclosure consultants**

25. The CFPA governs the activities of foreclosure consultants and equity purchasers. A “foreclosure consultant” means

a person who does not, directly or through an associate, take or acquire any interest in or title to a homeowner’s property and who, in the course of such person’s business, vocation, or occupation, makes a solicitation, representation, or offer to a homeowner to perform, in exchange for compensation from the homeowner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:

...

(IX) Assist the homeowner in obtaining from the beneficiary, mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee, or grantee, the remaining or excess proceeds from the foreclosure sale of the residence in foreclosure.

C.R.S. § 6-1-1103(4)(a).

26. Defendants are all foreclosures consultants or associates, because they represent that they will assist homeowners in obtaining excess proceeds from

foreclosure sales. *See id.*; *see* C.R.S. § 6-1-1103(1) (the term “associate” includes a partner, agent, or any other person “working in association with a foreclosure consultant or equity purchaser”).

27. A “[f]oreclosure consulting contract” means “any agreement between a foreclosure consultant and a homeowner.” C.R.S. § 6-1-1103(5).

28. The CFPA requires that foreclosure consulting contracts contain certain disclosures and comply with various consumer protection provisions. *See* C.R.S. §§ 6-1-1104, 6-1-1105, 6-1-1107, & 6-1-1109. The CFPA also prohibits foreclosure consultants and associates from engaging in any unconscionable transaction. C.R.S. § 6-1-1109(1).

2. The overbid process in Colorado

29. Colorado is the only state in the country where public trustees oversee the foreclosure process. The powers and duties of the public trustees are defined in Title 38 of the Colorado Revised Statutes. Among other things, public trustees handle releases of deeds of trust and foreclosures of deeds of trust.

30. Public trustees conduct foreclosure auction sales on a periodic basis, usually one day per week.

31. If a property goes to a foreclosure auction sale and is sold for more than the total amount owed to the lender, the property owner may be entitled to overbid funds. Overbid funds may be reduced by amounts due to junior lienors.

32. If overbid funds remain after all redemption periods expire, the public trustees must attempt to notify the owner whose property was sold at the foreclosure sale pursuant to C.R.S. § 38-38-111(2.5)(b). If the amount of the overbid is equal to or greater than \$25, the public trustee “shall make reasonable efforts to identify the owner’s current address.” *Id.* The public trustees must mail the owner a notice regarding the remaining overbid no later than 30 days after the expiration of all redemption periods. *Id.*

33. In addition to the statutory requirements, many public trustees engage in additional attempts to notify owners of potential overbid funds, including but not limited to, contacting the owner the day of or soon after the foreclosure sale via email, telephone, and/or letter. The public trustees often make significant efforts to locate owners, including but not limited to, accessing social media websites, searching Lexis/Nexis, and conducting internet searches.

34. Pursuant to C.R.S. § 38-38-111(3)(b), if any overbid exceeding \$500 has not been claimed by any person so entitled within 60 calendar days from the

expiration of all redemption periods, the public trustees shall, within 90 calendar days from the expiration of all redemption periods, publish a notice for four weeks in a newspaper of general circulation.

35. The public trustees hold any unclaimed overbid funds from sales occurring on or after September 1, 2012, in escrow for a period of five years from the date of the foreclosure sale. C.R.S. § 38-38-111(3)(a). Any unclaimed overbid funds that exceed \$25 and are not claimed within five years of the sale are presumed to be unclaimed property pursuant to the Unclaimed Property Act, C.R.S. §§ 38-13-101, *et seq.*, and must be transferred in accordance with that Act. C.R.S. § 38-38-111(3)(a).

36. In order to obtain overbid funds resulting from a foreclosure sale, an owner or other person entitled to collect funds, such as the personal representative of a deceased owner, simply needs to go to the public trustee's office with appropriate identification and complete any required paperwork. Although each public trustee's office has its own policies and procedures for claiming overbid funds, the processes are similar and straightforward. Regardless of the county, the owner is never required to pay any fee to the public trustee or a third party in order to obtain overbid funds that are due to him or her.

3. Defendants preempt the public trustee process and deceive homeowners into using their overbid fund recovery services at an unconscionable cost.

37. Rather than wait for the public trustees to notify homeowners of overbid funds resulting from a foreclosure sale, Defendants intentionally preempt this process by encouraging homeowners to sign up for their services as quickly as possible.

38. Defendants typically contact owners whose properties have received an overbid on the day of, or within a few days after, the foreclosure sale. In cases where the property owner is deceased, Defendants contact the owner's family members. The individuals that Defendants contact are hereinafter referred to as the property "owners" and include persons who are acting on behalf of such owners.

39. Defendants explain that the owners are entitled to money because their homes received an overbid at a foreclosure sale. Defendants tout their expertise in recovering overbid funds by representing that they are "familiar with the legalities and obstacles of recovering unclaimed assets and employ[] proven strategies to get money in [consumers'] hands as quickly as possible." Ex. 1, Capital Asset Recovery Website at 1.

40. Defendants do not disclose that consumers can obtain the overbid funds on their own – without Capital Asset Recovery's assistance – for free by

working directly with the public trustees. In fact, Defendants attempt to impede public trustees from contacting owners directly by requesting that public trustees only contact Capital Asset Recovery or its representatives.

41. Defendants encourage owners to act quickly by creating a false sense of urgency, saying that they do not want consumers to “miss out on [their] opportunity to claim [their] money. Time is of the essence!” *Id.* at 7; *see also id.* at 1.

42. There is no real sense of urgency, however, because public trustees must hold any unclaimed overbid funds for a period of five years from the date of the foreclosure sale. Only overbid funds that still remain unclaimed for five years after the sale are presumed to be unclaimed property pursuant to the Unclaimed Property Act. *See* C.R.S. § 38-38-111(3)(a). Defendants intentionally fail to disclose this information.

43. Further, Defendants represent directly to owners and on the Capital Asset Recovery website that the government wants to keep overbid funds:

There is a conflict of interest in many jurisdictions in which the agency holding your money will eventually keep it. They make little or minimal effort in notifying you. . . . [T]hey wait until the statute of limitation has expired and consider your claim and money to be abandoned and forfeited. Then your money becomes their money or legally property the government or the agency responsible for holding your money [sic].

Ex. 1, Capital Asset Recovery Website at 5; *see also id.* at 1 (claiming that Capital Asset Recovery can “bridge the conflict of interest gap”). These representations are contrary to the public trustee’s practices and Colorado law.

44. In the vast majority of instances, Defendants do not inform the owner of the total amount of overbid or disclose that this amount may be reduced by amounts redeemed by junior lienors. Rather, Defendants only tell the owners that they are entitled to an amount that often equals half of the total overbid funds, omitting the fact that owners are entitled to the other half.

45. For instance, Defendants told one owner that he was due approximately \$20,000 as a result of the overbid his property received at a foreclosure sale when they contacted him. Defendants did not disclose that this owner’s property received an overbid of \$50,413.26, which was reduced to \$42,306.73 after the junior lienor redeemed. This owner signed an agreement with Capital Asset Recovery prior to receiving the public trustee’s notification, and Defendants and their vendors received \$21,200.86 for doing nothing more than

executing an agreement with the owner and sending an email to the public trustee. The owner, on the other hand, only received \$21,105.87, which is less than half the amount to which he was entitled.

46. Defendants, therefore, persuade owners to sign up for their services before the public trustees notify them of the available amount of any overbid and without explaining the process or total amount of overbid funds that may be available to the owner.

47. Defendants require owners to complete and execute various documents as a condition of providing their overbid recovery services. As described below, these documents are replete with misrepresentations, omissions, and violations of the CCPA.

a. Cover Letter

48. Capital Asset Recovery sends owners a cover letter, email, or verbal instructions explaining how to complete and execute the documents. A copy of one of the cover letters is attached hereto as Exhibit 2.

49. The letter states that Capital Asset Recovery “pay[s] for all expenses related to the process and . . . fight[s] to reduce or eliminate unfair bank fees, liens, attorney’s fees and HOA fees.” Ex. 2, Cover Letter at 1. These statements are reinforced on Capital Asset Recovery’s website, which states that it “pay[s] for all expenses and fees, including but not limited to, title report fees, courier fees, filing fees, liens and any other costs related to the recovery process.” Ex. 1, Capital Asset Recovery Website at 6; *see also id.* at 3.

50. The letter represents that returning the documents to Capital Asset Recovery will cost the owner nothing. Ex. 2, Cover Letter at 2. Defendants even include a prepaid FedEx Shipping Return Label. As will be discussed later, Defendants charge the owners for mailing and other expenses. *See infra* ¶¶ 56-57.

51. Nowhere in the cover letter, email, or verbal representations do Defendants notify the owner that he or she may be able to obtain any overbid funds for free by working with the public trustee, and they do not describe the overbid fund recovery process.

b. Assignment Agreement

52. Defendants also require owners to execute an Assignment Agreement (“Agreement”), a copy of which is attached hereto as Exhibit 3. The owner is designated as the “Assignor.” The Agreement defines the “Assignee” as Capital

Asset Recovery c/o Fuston, Perez, and/or Jensen. The Agreement has changed slightly over time.

53. The Agreement represents that the Assignee “wishes to pursue the recovery of any Unclaimed Funds, if any, only resulting from the forced public foreclosure sale of the Property on behalf of and in the place of the Assignor.” Ex. 3, Agreement at 1.

54. The Agreement further states that the Assignor has engaged Capital Asset Recovery “as agent to recover all of Assignor’s right, title, and interest in and to the Unclaimed Funds.” *Id.* ¶ 1.

55. The Agreement provides that the Assignee will receive a percentage of the Assignor’s anticipated net allocated amount (“Assignor’s ANAA”). *Id.* ¶ 2. The Assignor’s ANAA ranges from 50% to 80% of the total overbid funds. In most instances, the Agreement is drafted prior to the expiration of the redemption periods, so it is unknown whether junior lienors will redeem and reduce the amount of available overbid funds. In the vast majority of instances, the Agreements do not disclose the total amount to which the owner is entitled.

56. The Agreement states that Capital Asset Recovery “shall be responsible for any expenses incurred in connection with its efforts to collect any Unclaimed Funds.” *Id.* However, the Agreement also states:

Upon the recovery of any Unclaimed Funds, [Capital Asset Recovery] shall first be reimbursed for any expenses incurred, and then the remaining funds shall be split between Assignor(s) (50.00 %) and or Assignee [Capital Asset Recovery].

Id. This conflicts with prior statements made in the Agreement, in the cover letter, and on Capital Asset Recovery’s website, all of which emphasize that Capital Asset Recovery will pay for costs and expenses, and that it will cost the owner nothing to use its services. *See supra* ¶¶ 49-50.

57. Consumers have paid hundreds of dollars in unnecessary fees and expenses. In one instance, an owner paid \$415.00 in notary fees to notarize documents required by Defendants (not by the public trustees) and in courier fees incurred from transmitting documents to and from Defendants. Although this owner was entitled to receive \$22,000 as a result of the overbid, he only received \$10,792.50 after paying \$415 in unnecessary expenses and \$10,792.50 to Capital Asset Recovery.

58. The Agreement further represents that Capital Asset Recovery has

conducted a diligent title search concerning the above referenced property on behalf of Assignor to discover[] any and all recordable instruments that may be attached to and reduce Assignor's ANAA. However the appointed entity holding said Unclaimed Funds will demand an independent title search from a local title company who will produce an official title search/report whom may find recordable instruments not found by Assignee that may be attached to and reduce Assignor's ANAA.

Ex. 3, Agreement ¶ 2.

59. Even though the Agreement states that the public trustee "will demand an independent title search," *id.*, the public trustees do not demand an independent title search or report to release overbid funds. Moreover, Defendants never performed a formal title search or procured a title report from a title company in connection with its overbid fund recovery business.

60. The Agreement represents that each party has had at least 24 hours to review prior to execution. *Id.* ¶ 5(j). Many owners saw the documents for the first time when they executed the documents, which is a violation of C.R.S. § 6-1-1104(1).

61. In many instances, Defendants never provided owners with an executed copy of the Agreement, which is a violation of C.R.S. § 6-1-1104(7).

62. In most instances, Defendants did not date, personally sign, and initial each page of the Agreement, which is a violation of C.R.S. § 6-1-1104(4).

63. The Agreement contains a "**Notice Required by Colorado Law**," representing that Capital Asset Recovery is a foreclosure consultant. Ex. 3, Agreement at 3. The "Notice" is the same notice as the one set forth in the CFPA. *See* C.R.S. § 6-1-1104(5).

64. Some of the more recent Agreements, but not all, contain a "Client Acknowledgment," where the owner "acknowledges" that "s/he could potentially recover Unclaimed Funds independently" and that Defendants "possess[] certain professional skills and abilities in recovering Unclaimed Funds."

65. Because the public trustees distribute any overbid funds, there are no professional skills or expertise needed to obtain the money. All owners need to do to obtain their overbid funds is present identification at the public trustee's office and

sign a document or two, such as a receipt and statement that he or she is entitled to receive the funds.

c. Power of Attorney

66. Defendants also require owners to execute a “Special Durable Power of Attorney for Financial and Real Estate Transactions” (“Power of Attorney”), an example of which is attached as Exhibit 4.

67. Defendants request that owners provide their social security numbers, dates of birth, and driver license numbers along with photocopies of social security cards and driver licenses. Ex. 4, Power of Attorney at 1.

68. By signing the Power of Attorney, the owner gives various powers to two “agents”: one being Jensen and the other being Fuston, Perez, or Eaton. *Id.* Among other things, this Power of Attorney grants Defendants the powers to:

- a. Execute and deliver legal instruments relating to the property and the loan documents, such as affidavits;
- b. Request and accept all loan information from the owner’s lender, including payment histories, pay-off amounts, and account balances;
- c. Make insurance claims on behalf of the owner and *receive the owner’s net insurance proceeds by check payable to Jensen or other agents*;
- d. Purchase insurance on the property in the name of the owner;
- e. *Receive the proceeds of any check from the owner’s lender or the lender’s representative made payable to Jensen or the other agents, including but not limited to payments resulting from refunds or reimbursements for overages of tax and insurance escrow amounts, double payments to the lender, and from “sales proceeds of the Property pursuant to any forced sale by Lender”*;
- f. *“Endorse to the Agent, any and all payments made payable to [the owner], whether jointly or individually, from the Lender”*;
- g. Allow agents to retain outside counsel, including executing an attorney/client agreement;
- h. Temporarily modify the owner’s mailing address; and

- i. “Initiate and complete outbound wire transfers or automated clearing house transfers from [owner’s] bank/financial institution account for the sole purpose of compensating Agent pursuant to the agreed upon percent split in accordance with the related Assignment Agreement.”

Id. ¶¶ 1-6, 8, 12, 14 (emphases added).

69. The Power of Attorney states that the owner may not revoke the Power of Attorney, that it is not impacted by the subsequent disability or incapacity, and that it will not lapse. *Id.* ¶¶ 9-10.

70. This Power of Attorney violates the CCPA as the CFPA prohibits a foreclosure consultant or associate from “[o]btain[ing] a power of attorney from a homeowner for any purpose other than to inspect documents as provided by law” and from engaging in any unconscionable transaction. C.R.S. §§ 6-1-1107(1)(f) & 6-1-1109(1). Moreover, there is no need for the broad scope of the Power of Attorney, such as allowing Defendants to initiate transfers from an owner’s bank account.

d. Notarized Copy of Photo Identification

71. The Notarized Copy of Photo Identification instructs the owner to provide a copy of his or her photo identification that must be notarized. Ex. 5, Notarized Copy of Photo Identification.

4. Defendants’ Communications with Public Trustees

72. After the owner executes the required documents, Jensen sends an email to the public trustee of the county where the owner’s property is located. In some instances, Jensen also sends the documents to the public trustees via facsimile or mail. A sample of one of these communications is attached as Exhibit 6.

73. Jensen represents to the public trustee that the owner has granted “Bryan Jensen the power to act on his behalf in an attempt to claim and recover any and all overbid funds/excess proceeds surplus funds resulting from a forced foreclosure sale.” Ex. 6, Email from Jensen to Public Trustee at 1.

74. Jensen requests that the public trustee submit “any and all documentation and the excess proceeds/surplus funds” directly to Capital Asset Recovery, ATTN: Bryan Jensen. *Id.* Jensen instructs the public trustee to refrain from contacting the owner by requesting that the public trustee “ONLY contact us regarding the recovery of any and all excess proceeds/surplus funds” thereby attempting to prevent or impede direct communication between the owner and the public trustee. *Id.*

75. Jensen attaches a copy of the executed Power of Attorney, Notarized Copy of Photo Identification (including copies of social security cards, driver licenses, and other documents), Notice of Election and Demand, and/or Certificate of Purchase. *See id.* In some instances, Jensen also forwards a Collection of Personal Property by Affidavit and an Affidavit of Fact/Affidavit of Demand (Demand Statement) and other documents.

76. Defendants do nothing else to assist the owner in obtaining the overbid funds, except, perhaps, check on the status of the funds and make sure the homeowner signs documents (such as a receipt) to ensure that Defendants receive their money.

77. In some instances, one of the Defendants accompanies the owner to the public trustee's office to obtain the overbid funds. Then, Jensen, Perez, Fuston, or Eaton drives the owner to a bank so that he or she can cash the check. At that time, Defendants demand that the owner turn over cash in an amount equal to that set forth in the Agreement plus costs and expenses.

78. In those instances where the trustee releases the funds to the owner, Defendants require the owner to forward them the check. Defendants then cash the check (likely by using their power of attorney) and cut a check to the owner. In those cases, Defendants deduct their costs and expenses before splitting the funds with the owner.

79. In yet other instances, although the check is made payable to the owner, the public trustee gives the check to the Defendants. Defendants cash the check (likely by using their power of attorney), deduct their costs and expenses, and forward a percentage of the overbid funds to the owner.

80. Even though Defendants claim to have professional skills and expertise in obtaining overbid funds, they are unfamiliar and refuse to comply with the process in various counties.

81. With respect to one property in Denver County, Jensen made claims on behalf of six purported successors of the deceased owner. Despite multiple requests from the Denver County Public Trustee, Jensen refused to provide letters of testamentary intent or letters of administration issued by a probate court to show which of these six persons, if any, had been appointed as the personal representative of the estate. Rather than providing the required documents, Jensen indicated that he would require the Denver County Public Trustee to pay attorney fees and costs if she did not honor his requests.

82. In another instance, Jensen harassed and threatened to sue a public trustee, because the public trustee's office gave the overbid funds directly to the owner instead of giving the funds to Jensen.

83. Through its investigation thus far, the State has determined that Defendants contacted at least 26 owners whose properties received overbid funds ranging up to \$59,061.44. At least five of these consumers contacted by Defendants are 60 years of age or older.

84. While Defendants did not obtain money from all of these owners, the State has determined that Defendants received at least \$101,897.26 from 12 separate owners less costs and expenses. It is likely that Defendants obtained money from additional owners as well.

85. Defendants, therefore, misrepresent the nature of their expertise and the overbid fund recovery process. Defendants preempt the public trustee notification process in the hopes that they will be able to contract with owners and obtain large amounts of money for doing nothing more than sending an email or two to the public trustee.

B. While Defendants Represented That They Would Negotiate Short Sales, Sell, or Buy Consumers' Distressed Homes, They Rented the Homes To Third Parties and Collected Rental Payments Without the Knowledge or Permission of the Homeowners.

1. Statutory Background: Equity Purchasers

86. An "equity purchaser" means "a person, other than a person who acquires a property for the purpose of using such property as his or her personal residence, who acquires title to a residence in foreclosure . . ." C.R.S. § 6-1-1103(2).

87. With respect to the Equity Purchaser subpart of the CFPA, a "residence in foreclosure" means

a residence or dwelling . . . that is occupied as the homeowner's principal place of residence, is encumbered by a residential mortgage loan, and against which a foreclosure action has been commenced or as to which an equity purchaser otherwise has actual or constructive knowledge that the loan is at least thirty days delinquent or in default.

C.R.S. § 6-1-1104(8)(b).

88. Among other things, contracts between homeowners and equity purchasers must be fully completed, signed, and dated by the homeowner and the equity purchaser “prior to the execution of any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.” C.R.S. § 6-1-1111; *see also* C.R.S. § 6-1-1117(2)(a) (prohibiting equity purchaser from accepting instrument of conveyance or any interest in residence in foreclosure until the time within which homeowner may cancel the transaction has fully elapsed).

89. Moreover, the CFPA requires that an equity purchase contract contain a clear and conspicuous disclosure of any financial or legal obligations of the homeowner that will be assumed by the equity purchaser; the total consideration to be paid by the equity purchaser; the terms of any rental agreement or lease; a notice of cancellation as set forth in C.R.S. § 6-1-1114; and a notice that, until the right to cancel has ended, the equity purchaser “**CANNOT ask you to sign or have you sign any deed or any other document.**” C.R.S. § 6-1-1112(1)(c), (d), (g), (i), & (j); *see also* C.R.S. § 6-1-1117(2)(a) (prohibiting equity purchaser from inducing homeowner to execute instrument of conveyance or any interest in residence in foreclosure until the time within which homeowner may cancel the transaction has fully elapsed).

90. If the equity purchaser will be assuming any financial or legal obligations of the homeowner, the contract must clearly and conspicuously disclose as such. C.R.S. § 6-1-1112(1)(c). If the equity purchaser will not be assuming any financial or legal obligations, then the equity purchaser must provide the homeowner with a separate written disclosure that substantially complies with C.R.S. § 18-5-802(6). C.R.S. § 6-1-1112(1)(c). The disclosure set forth in C.R.S. § 18-5-802(6) explains that the equity purchaser will not assume or pay any mortgage, deeds of trust, or other liens or encumbrances against the property. The disclosure also makes clear that the homeowner will remain responsible for all payments due on his or her mortgage, deed of trust, and other liens. C.R.S. § 18-5-802(6).

91. The CFPA prohibits equity purchasers or associates from engaging in any unconscionable transaction. C.R.S. § 6-1-1119.

2. Defendants Austin Home Ventures, Jensen, and Eaton Misrepresent and Omit Information About their Equity Purchasing and Related Activities.

92. Austin Home Ventures claims on its Capital Realty website that it provides “hope and solutions for struggling homeowners” and proclaims: “WE ARE HERE TO HELP!” Ex. 7, Capital Realty Website at 1-2. Austin Home Ventures represents that it is interested in buying properties for cash or as a short sale, taking over mortgage payments, and/or turning consumers’ properties into

investments that generate cash over time. *Id.* at 1. Austin Home Ventures “acquires all types of properties.” *Id.*

93. Austin Home Ventures represents that it provides services for distressed homeowners, including those who are facing foreclosure, having trouble selling their homes, behind on their house payments, or have an expired realtor listing. *Id.* at 8.

94. Austin Home Ventures advocates three options for struggling homeowners:

- a. Buy and Renovate: Capital Realty or its associates will make a cash offer and close quickly. As neither Jensen nor Eaton is a real estate broker, there will be reduced commission costs.
- b. Little or No Equity: Capital Realty offers a solution for homeowners with little or no equity that will save a house from going into foreclosure and generate thousands of dollars to consumers. Capital Realty claims that this program is “unprecedented” and has been called “ingenious” by real estate professionals and business professors. However, Capital Realty does not explain this option on its website, because it is “reluctant to reveal the details . . . as competitors may steal our idea.”
- c. Break-Even Equity: Capital Realty offers to eliminate closing costs and “take over” the homeowner’s mortgage payments, even if the homeowner is behind in making the payments. Then, Capital Asset will refinance the property in three to five years to get the property out of the homeowner’s name.

Id. at 3-4. Austin Home Ventures advertises that it will “TURN YOUR HOUSE INTO A CASH MAKING MACHINE!!!” *Id.* at 9.

95. Austin Home Ventures claims that it has negotiated with Colorado homeowners’ lenders to postpone foreclosure sales and made “thousands in the meantime.” *Id.* at 12.

96. Upon information and belief, Jensen and Eaton identify homes that appear to be abandoned. Eaton then contacts the property owners to determine whether the owners are interested in their services.

97. At least some of the homeowners contacted by Eaton are active members of the military and vacated the homes because they received orders assigning them to a different location.

98. Eaton represents that he will assist homeowners in selling (including short-selling) their properties. Neither Jensen nor Eaton is a licensed real estate broker in Colorado.

99. Rather than assisting homeowners, Austin Home Ventures, Jensen, and Eaton rent the properties to third parties, acting as both leasing agents and property managers. Unbeknownst to the homeowners, at least some of whom are located out-of-state, these Defendants sign lease agreements with third parties and collect rental deposits and payments.

100. Austin Home Ventures, Jensen, and Eaton do not disclose to the homeowners that they are renting the properties, do not forward any portion of the lease payments to the homeowners, and do not pay any portion of the mortgage payments.

101. The agreements that the homeowners sign do not contain the provisions required by C.R.S. § 6-1-1112, including but not limited to, a disclosure about whether Austin Home Ventures, Jensen, or Eaton will assume any financial or legal obligations of the homeowner, the terms of any rental agreement or lease, a notice of cancellation required by C.R.S. § 6-1-1114, or the notice required by C.R.S. § 6-1-1112(1)(j). They are also unconscionable pursuant to C.R.S. § 6-1-1119.

102. Upon information and belief, Austin Home Ventures, Jensen, and Eaton act or have acted as leasing agents, property managers, or sellers for at least 14 properties in Colorado.

**3. Defendants Austin Home Ventures, Jensen, and Eaton
Misrepresent the Nature of Their Services to Homeowners.**

103. Eaton represented to at least one homeowner that he would attempt to negotiate a short sale with homeowner's lender. The homeowner, who is active duty military, received transfer orders that required him and his family to move out of Colorado.

104. Eaton presented this homeowner with a "Standard Purchase and Sale Agreement for Real Property," listing the buyer as Austin Home Ventures LLC and/or Assigns. Ex. 8, Standard Purchase and Sale Agreement for Real Property at 1. The purchase price listed in the agreement was less than half of what the homeowners owed on the property, which means that it would be a short sale. Jensen signed this document by and for Austin Home Ventures. *Id.* at 5. Neither Austin Home Ventures nor Jensen nor Eaton gave the homeowner any money.

105. Jensen and the homeowner also signed a document entitled, “Property Representations and Disclosures,” which stated that “[t]he Property IS in foreclosure.” Ex. 9, Property Representations and Disclosures at 1. Jensen, Eaton, and Austin Home Ventures therefore knew that the property was in foreclosure.

106. Upon information and belief, Austin Home Ventures, Jensen, and Eaton never contacted the homeowner’s lender to attempt to negotiate a short sale.

107. Instead of working with the homeowner’s lender, and unbeknownst to the homeowner, Austin Home Ventures, Jensen, and Eaton rented out this property to a third party and collected lease payments. Austin Home Ventures, Jensen, and Eaton did not forward any lease payments to the homeowners, did not pay any portion of the mortgage payments, and did not disclose to the homeowner that that they were leasing the property.

108. Eaton contacted another homeowner claiming that he worked for a company that sells houses to investors. The homeowner thought that Eaton was a real estate broker. Similar to the representations made on Austin Home Ventures’ website, Eaton told the homeowner that they could make money by selling the house. Eaton explained that his company would make any necessary repairs in order to sell the house.

109. This homeowner, who is active duty military, had moved out of state after he received orders to do so and had been unable to sell his house.

110. Thinking that it was a contract for Eaton to sell his home, this homeowner signed a General Warranty Deed whereby he granted the property to Austin Home Ventures for \$10 on March 24, 2014. Ex. 10, General Warranty Deed.

111. Eaton also presented a “Binding Agreement” to this homeowner. Ex. 11, Binding Agreement. The Binding Agreement identified Austin Home Ventures, LLC and/or its assigns as “Buyer” and the owner as “Seller.” *Id.* The Binding Agreement provided that, upon transfer of title through execution of the general warranty deed, Austin Home Ventures agreed to pay the owner \$300. *Id.* ¶ 1. The Binding Agreement gave Austin Home Ventures the “unrestricted right” to terminate the agreement at any time and for any reason. *Id.* ¶ 3. The homeowner purportedly signed this document on March 28, 2014, four days after he executed the warranty deed transferring an interest in his residence. This violates C.R.S. § 6-1-1111.

112. Unbeknownst to the homeowner, Austin Home Ventures, Jensen, and Eaton rented out this property to a third party and collected lease payments. Austin Home Ventures, Jensen, and Eaton did not forward any lease payments to

the homeowner and did not make any portion of the mortgage payment. The owner never agreed to allow these Defendants to lease his property.

113. Austin Home Ventures, Jensen, or Eaton filed the general warranty deed in the El Paso clerk and recorder's office on or about November 5, 2014. Ex. 10, General Warranty Deed.

114. Therefore, this homeowner is unable to sell his property, because his name is no longer on the deed, and the house is occupied by a renter who is presumably making rental payments to Defendants.

115. This "Binding Agreement" also does not contain the provisions required by C.R.S. § 6-1-1112. The agreement did not disclose whether Austin Home Ventures, Jensen, or Eaton would assume any of the homeowner's financial or legal obligations, the terms of any rental agreement or lease, a notice of cancellation, or the notice required by C.R.S. § 6-1-1112(1)(j).

116. However, over a year after the homeowner signed the "Binding Agreement" and several months after Defendants recorded the general warranty deed, Austin Home Ventures, Jensen, or Eaton requested via email that the homeowner sign additional documents. Ex. 12. The email stated that "we, the Seller, Austin Home Ventures, LLC will pay any encumbrances that are attached to the property." *Id.*

117. The Disclosure Required by Colorado State Law attached to the email directly contradicts this representation, stating:

PURCHASER, AUSTIN HOME VENTURES, LLC AND/OR ASSIGNS, WILL NOT ASSUME OR PAY ANY PRESENT MORTGAGE, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AGAINST THE PROPERTY. THE SELLER, KYLE ANDERSON[,] UNDERSTANDS THAT HE/SHE WILL REMAIN RESPONSIBLE FOR ALL PAYMENTS DUE ON SUCH MORTGAGES DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AND FOR ANY DEFICIENCY JUDGMENT UPON FORECLOSURE.

Id. This belated disclosure conflicts with the statements made by Jensen in the email. Moreover, the confusion over whether Austin Home Ventures is the seller or purchaser of the property further illustrates Defendants' misrepresentations and deception.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Making False or Misleading Statements of Fact Concerning the Price of Services –
All Defendants)

118. The State incorporates herein by reference all of the allegations contained in paragraphs 1-117 of this First Amended Complaint.

119. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants have made false or misleading statements of fact concerning the price of services in violation of C.R.S. § 6-1-105(1)(l).

120. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

SECOND CLAIM FOR RELIEF

(Failure to Disclose Material Information to Induce Consumers Into Transaction –
All Defendants)

121. The State incorporates herein by reference all of the allegations contained in paragraphs 1-120 of this First Amended Complaint.

122. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants failed to disclose material information concerning services and property which was known at the time of sale and with the intent to induce the consumer to enter into a transaction in violation of C.R.S. § 6-1-105(1)(u).

123. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

THIRD CLAIM FOR RELIEF

(Failure to Provide Homeowner At Least 24 Hours to Review the Foreclosure
Consulting Contract Prior to Signing – All Defendants)

124. The State incorporates herein by reference all of the allegations contained in paragraphs 1-123 of this First Amended Complaint.

125. Through the above-described conduct in the course of their business, occupation, or vocation, owners did not have at least 24 hours to review the Defendants' foreclosure consulting contracts prior to signing as required by C.R.S.

§ 6-1-1104(1). A violation of C.R.S. § 6-1-1104(1) is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

126. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

FOURTH CLAIM FOR RELIEF

(Failure to Disclose the Exact Nature of Foreclosure Consulting Services and Total Amount and Terms of Compensation to be Received by Foreclosure Consultant or Associate – All Defendants)

127. The State incorporates herein by reference all of the allegations contained in paragraphs 1-126 of this First Amended Complaint.

128. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants did not disclose the exact nature of the foreclosure consulting services they would provide or the total amount and terms of compensation to be received by the foreclosure consultant or associate as required by C.R.S. § 6-1-1104(3). A violation of C.R.S. § 6-1-1104(3) is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

129. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

FIFTH CLAIM FOR RELIEF

(Failure of Foreclosure Consultant to Date, Personally Sign, and Initial Each Page of Foreclosure Consulting Contract – All Defendants)

130. The State incorporates herein by reference all of the allegations contained in paragraphs 1-129 of this First Amended Complaint.

131. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants did not date, personally sign, and initial each page of the foreclosure consulting contract as required by C.R.S. § 6-1-1104(4). A violation of C.R.S. § 6-1-1104(4) is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

132. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

SIXTH CLAIM FOR RELIEF

(Failure to Provide Signed, Dated, and Acknowledged Copy of Foreclosure Consulting Contract and Notice of Cancellation to Homeowner Immediately Upon Execution – All Defendants)

133. The State incorporates herein by reference all of the allegations contained in paragraphs 1-132 of this First Amended Complaint.

134. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants failed to provide homeowners with signed, dated, and acknowledged copies of the foreclosure consulting contract and notices of cancellation immediately upon execution of the contract in violation of C.R.S. § 6-1-1104(7). A violation of C.R.S. § 6-1-1104(7) is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

135. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado

SEVENTH CLAIM FOR RELIEF

(Obtain Power of Attorney for Purposes Other Than to Inspect Documents – All Defendants)

136. The State incorporates herein by reference all of the allegations contained in paragraphs 1-135 of this First Amended Complaint.

137. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants obtained powers of attorney for purposes other than to inspect documents in violation of C.R.S. § 6-1-1107(1)(f). A violation of C.R.S. § 6-1-1107(1)(f) is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

138. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

EIGHTH CLAIM FOR RELIEF

(Facilitate and Engage in Unconscionable Transactions in Connection With Foreclosure Consulting – All Defendants)

139. The State incorporates herein by reference all of the allegations contained in paragraphs 1-138 of this First Amended Complaint.

140. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants facilitated or engaged in unconscionable acts in

connection with foreclosure consulting in violation of C.R.S. § 6-1-1109. A violation of C.R.S. § 6-1-1109 is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

141. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

NINTH CLAIM FOR RELIEF

(Failing or Refusing to Obtain Governmental Licenses Required to Perform Real Estate Broker Services- Defendants Jensen and Eaton)

142. The State incorporates herein by reference all of the allegations contained in paragraphs 1-141 of this First Amended Complaint.

143. Although neither Jensen nor Eaton is a real estate broker licensed in Colorado, they performed or represented that they would perform services, such as selling, leasing, and managing properties, that require a real estate broker license.

144. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants Jensen and Eaton refused or failed to obtain a real estate broker license in violation of C.R.S. § 6-1-105(1)(z).

145. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

TENTH CLAIM FOR RELIEF

(Knowingly Making False Representation as to Characteristics, Uses, or Benefits of Services - Defendants Austin Home Ventures, Jensen, and Eaton)

146. The State incorporates herein by reference all of the allegations contained in paragraphs 1-145 of this First Amended Complaint.

147. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants Austin Home Ventures, Jensen, and Eaton knowingly made a false representation as to the characteristics, uses, or benefits of their services in violation of C.R.S. § 6-1-105(1)(e).

148. By means of the above-described unlawful deceptive trade practices, Defendants Austin Home Ventures, Jensen, and Eaton have deceived, misled, and unlawfully acquired money from consumers in Colorado.

ELEVENTH CLAIM FOR RELIEF

(Advertising Services with Intent Not to Sell Them As Advertised – Defendants Austin Home Ventures, Jensen, and Eaton)

149. The State incorporates herein by reference all of the allegations contained in paragraphs 1-148 of this First Amended Complaint.

150. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants Austin Home Ventures, Jensen, and Eaton knowingly advertised their equity purchasing, real estate, and related services in violation of C.R.S. § 6-1-105(1)(i).

151. By means of the above-described unlawful deceptive trade practices, Defendants Austin Home Ventures, Jensen, and Eaton have deceived, misled, and unlawfully acquired money from consumers in Colorado.

TWELFTH CLAIM FOR RELIEF

(Executing Instruments Transferring Interest in Residence in Foreclosure Prior To Entering Into Equity Purchaser Contract – Defendants Austin Home Ventures, Jensen, and Eaton)

152. The State incorporates herein by reference all of the allegations contained in paragraphs 1-151 of this First Amended Complaint.

153. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants Austin Home Ventures, Jensen, and Eaton did not comply with C.R.S. § 6-1-1111, because the equity purchase contract was entered into after the execution of a document transferring an interest in the residence in foreclosure. A violation of C.R.S. § 6-1-1111 is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

154. By means of the above-described unlawful deceptive trade practices, Defendants Austin Home Ventures, Jensen, and Eaton have deceived, misled, and unlawfully acquired money from consumers in Colorado.

THIRTEENTH CLAIM FOR RELIEF

(Failing to Include Terms Required by C.R.S. § 6-1-1112(1) - Defendants Austin Home Ventures, Jensen, and Eaton)

155. The State incorporates herein by reference all of the allegations contained in paragraphs 1-154 of this First Amended Complaint.

156. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants Austin Home Ventures, Jensen, and Eaton did

not comply with C.R.S. § 6-1-1112(1), because their equity purchase contracts did not contain the required provisions, including but not limited to, a disclosure about whether these Defendants would assume any financial or legal obligations of the homeowner, the terms of any rental agreement or lease, the notice of cancellation required by C.R.S. § 6-1-1114, or the notice required by C.R.S. § 6-1-1112(1)(j). A violation of C.R.S. § 6-1-1112(1) is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

157. By means of the above-described unlawful deceptive trade practices, Defendants Austin Home Ventures, Jensen, and Eaton have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

FOURTEENTH CLAIM FOR RELIEF

(Failing to Provide Notice of Cancellation Required by C.R.S. § 6-1-1114 – Defendants Austin Home Ventures, Jensen, and Eaton)

158. The State incorporates herein by reference all of the allegations contained in paragraphs 1-157 of this First Amended Complaint.

159. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants Austin Home Ventures, Jensen, and Eaton did not comply with C.R.S. § 6-1-1114, because the equity purchase contracts failed to include a notice of cancellation. A violation of C.R.S. § 6-1-1114 is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

160. By means of the above-described unlawful deceptive trade practices, Defendants Austin Home Ventures, Jensen, and Eaton have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

FIFTEENTH CLAIM FOR RELIEF

(Engaging in Conduct Prohibited by C.R.S. § 6-1-1117 - Defendants Austin Home Ventures, Jensen, and Eaton)

161. The State incorporates herein by reference all of the allegations contained in paragraphs 1-160 of this First Amended Complaint.

162. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants Austin Home Ventures, Jensen, and Eaton engaged in conduct prohibited by C.R.S. § 6-1-1117(1), (2)(a), (2)(c), & (4). A violation of C.R.S. § 6-1-1117 is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

163. By means of the above-described unlawful deceptive trade practices, Defendants Austin Home Ventures, Jensen, and Eaton have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

SIXTEENTH CLAIM FOR RELIEF

(Facilitate and Engage in Unconscionable Transactions in Connection with Equity Purchasing – Defendants Austin Home Ventures, Jensen, and Eaton)

164. The State incorporates herein by reference all of the allegations contained in paragraphs 1-163 of this First Amended Complaint.

165. Through the above-described conduct in the course of their business, occupation, or vocation, Defendants Austin Home Ventures, Jensen, and Eaton facilitated or engaged in unconscionable acts in connection with equity purchasing in violation of C.R.S. § 6-1-1119. A violation of C.R.S. § 6-1-1119 is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

166. By means of the above-described unlawful deceptive trade practices, Defendants Austin Home Ventures, Jensen, and Eaton have deceived, misled, and unlawfully acquired money from numerous consumers in Colorado.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests that, pursuant to C.R.S. § 6-1-110(1), Defendants be permanently enjoined and restrained from engaging in or employing any of the deceptive trade practices referenced in this First Amended Complaint or any other act in violation of the CCPA or CFPA.

In addition, Plaintiff requests a judgment against Defendants, personally, jointly, and severally for the following relief:

- A. An order that Defendants' conduct described in this First Amended Complaint violates the CCPA, including C.R.S. §§ 6-1-105(1)(e), (i), (l), (u), (z), & (xx);
- B. An order that Defendants' conduct described in this First Amended Complaint violates the CFPA, including C.R.S. §§ 6-1-1104, -1107, -1109, -1111, -1112, -1114, -1117, & -1119;
- C. An order pursuant to C.R.S. § 6-1-110(1) to completely compensate or restore to the original position of any person injured by means of the Defendants' deceptive trade practices;
- D. An order pursuant to C.R.S. § 6-1-110(1) to prevent any unjust enrichment by Defendants through their use or employment of deceptive trade practices, including but not limited to, requiring Defendants to disgorge all unjust proceeds derived from their deceptive trade practices;

- E. An order pursuant to C.R.S. § 6-1-110(1) requiring Defendants to execute all documents necessary to quit-claim, assign, transfer, convey, or encumber any interest they obtained through their use or employment of deceptive trade practices back to the owner;
- F. An order pursuant to C.R.S. § 6-1-110(1) requiring Defendants to renounce and terminate all powers of attorney granted to them by consumers in connection with their overbid fund, equity purchasing, and other services described in this First Amended Complaint and permanently enjoining Defendants from using any such power of attorney for any purpose;
- G. An order pursuant to C.R.S. § 6-1-112(1)(a) against all Defendants for civil penalties of not more than \$2,000 for each such violation of any provision of the CCPA with respect to each consumer or transaction involved, not to exceed \$500,000 for any related series of violations;
- H. An order pursuant to C.R.S. § 6-1-112(1)(c) against all Defendants for civil penalties of not more than \$10,000 for each violation of any provision of the CCPA with respect to each elderly person;
- I. An order pursuant to C.R.S. § 6-1-113(4) requiring Defendants to pay the State's reasonable costs and fees;
- J. An order pursuant to C.R.S. § 6-1-1109(2)(a) finding the Defendants' foreclosure consulting contracts to be unconscionable and refusing to enforce such contracts entered into between Defendants and consumers;
- K. An order pursuant to C.R.S. § 6-1-1119(2)(a) finding the Defendants' equity purchaser contracts to be unconscionable and refusing to enforce the such contracts entered into between Defendants and consumers; and
- L. Any such further relief as this Court may deem just and proper to effectuate the purposes of the CCPA and prevent the use or employment of Defendants' deceptive trade practices.

Respectfully submitted this 8th day of October, 2015.

FOR THE ATTORNEY GENERAL
CYNTHIA H. COFFMAN

s/ Jennifer Miner Dethmers

JENNIFER MINER DETHMERS

LAUREN M. DICKEY

Assistant Attorney General

Consumer Protection Section

Attorney for Plaintiffs

*Counsel of Record

Plaintiff's Address:

Colorado Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203

CERTIFICATE OF SERVICE

The undersigned certifies that on this 8th day of October, 2015, a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT** was filed using the ICCES system and served on the following:

Daniel K. Calisher, Esq.
Foster Graham Milstein & Calisher, LLP
360 South Garfield Street, Sixth Floor
Denver, CO 80209

and via U.S. Mail on:

Chandler Kelly, Esq.
Foster Graham Milstein & Calisher, LLP
360 South Garfield Street, Sixth Floor
Denver, CO 80209

/s/ Melissa Ball