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DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
STATE OF COLORADO *ex rel*. JOHN W. SUTHERS, ATTORNEY GENERAL FOR THE STATE OF COLORADO; and JULIE ANN MEADE, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE, Plaintiffs, v. ROBERT J. HOPP & ASSOCIATES, LLC; THE HOPP LAW FIRM, LLC; NATIONAL TITLE, LLC, d/b/a HORIZON NATIONAL TITLE INSURANCE, LLC; FIRST NATIONAL TITLE RESIDENTIAL, LLC; SAFEHAUS HOLDINGS GROUP, LLC; LORI L. HOPP; and ROBERT J. HOPP, Defendants.	▲ **COURT USE ONLY** ▲
JOHN W. SUTHERS, Attorney General ALISSA GARDENSWARTZ, Reg. No. 36126* First Assistant Attorney General ERIK R. NEUSCH, Reg. No. 33146* Senior Assistant Attorney General JOHN FEENEY-COYLE, Reg. No. 44970* REBECCA M. TAYLOR, Reg. No. 40645* MARK L. BOEHMER, Reg. No. 40352* Assistant Attorneys General Colorado Attorney General's Office Ralph L. Carr Colorado Judicial Center 1300 Broadway Denver, Colorado 80203 Telephone: 720-508-6228 *Counsel of Record	Case No.: Courtroom:
COMPLAINT	

Plaintiffs, the State of Colorado, by and through John W. Suthers, Attorney General for the State of Colorado, and Julie Ann Meade, Administrator, Uniform

Consumer Credit Code (collectively the "State"), through their counsel of record, state and allege against Defendants the following:

INTRODUCTION

1. This action is the result of the State's extensive two-year civil law enforcement investigation of Colorado foreclosure law firms. This investigation revealed that these law firms, including Robert J. Hopp & Associates and The Hopp Law Firm (the "law firm") and its principal, Robert Hopp, (collectively the "Hopp Defendants"), unlawfully exploit the foreclosure process by misrepresenting and inflating the costs they incur for foreclosure-related services to fraudulently obtain millions of dollars in unlawful proceeds. Although the law firms agreed to perform these routine foreclosures for a flat attorney fee, they viewed this fee as insufficient and devised a scheme to generate additional millions by inflating foreclosure costs. Homeowners, purchasers, investors, and taxpayers paid for and continue to pay for these fraudulent charges.

2. In this case, Defendants systematically and intentionally misrepresent, inflate, and charge unreasonable, unauthorized, unlawful, and deceptive costs for foreclosure-related services—most notably title products such as title searches on Fannie Mae loans and title commitments on all other loan types.

3. The most lucrative fraudulent scheme involves Defendants' use of an affiliated title company to obtain a foreclosure title commitment and immediately collect an insurance policy premium averaging between $1,200 and $1,400 before obtaining an insurance policy. A commitment is not an insured product, but instead is a commitment to provide title insurance if certain requirements are met—namely, the completion of a foreclosure sale and issuance of a policy. As most foreclosure title commitments never become a policy because most foreclosures do not proceed to a sale, Defendants fraudulently collect an insurance premium for a product they never create or obtain. In most cases, this practice allows Defendants to obtain more than $1,000 per file in unjust enrichment, all of which is paid by homeowners, purchasers at auction, servicers, investors, and insurers.

4. Even if the foreclosure proceeds to sale, the title commitment obtained by Defendants and charged at the insurance policy rate frequently does not turn into an owner's policy and is not used to insure title because the mortgage servicer handling the foreclosure may not even know a title commitment was ordered, though it paid Defendants for it, and does not use it. Instead, the property goes into a post-foreclosure process where it is likely that another title commitment is used to provide a title insurance policy for the REO sale transaction.

5. This scheme works because Defendants are both the client ordering

the foreclosure title commitment (i.e., the law firm) and the company providing it (i.e., the affiliated title company). In most cases, the mortgage servicer client hiring the law firm to complete the foreclosure does not request or even know it is obtaining a title commitment, but instead relies upon the law firm to use its discretion to provide the necessary title product for the foreclosure. Defendants abused this discretion to order expensive title commitments from themselves, knowing that the servicers would pay it and assess it to homeowners trying to save their home, purchasers buying foreclosed properties, and investors and insurers of the loan. Most of the title commitments ordered by Defendants, for which Defendants charged an insurance premium, never became insured title policy.

6. Defendants' conduct is akin to an automobile insurance agent charging and collecting an entire year's policy premium for automobile insurance from a customer just for preparing an insurance quote but where no policy is issued.

7. This practice means that Defendants were making, on average, $1,200 to $1,400 per foreclosure for what amounts to a very expensive title search that is available for $100. While Fannie Mae stopped foreclosure law firms from obtaining foreclosure title commitments in 2007 on their loans and instead allowed only an uninsured title search, the other investors, insurers, and servicers did not follow suit and Defendants exploited this loophole to gouge homeowners and the public.

8. Even when Robert Hopp was winding down his law firms by transferring files to a new foreclosure law firm last year, he still ordered title commitments, on behalf of the new law firm, on hundreds of foreclosures from National Title in about a six-month period—most of which were in excess of $1,000. Thus, despite losing the law firm business of foreclosures, Defendants continued the fraudulent and lucrative title scheme, started in or around 2007, of ordering foreclosure title commitments and charging in excess of $1,000 per foreclosure.

9. Defendants get away with this conduct by taking advantage of the inherent lack of oversight in the foreclosure process. The mortgage servicers that hire the law firm on behalf of the investor rely upon the law firm to perform all the legal work in the foreclosure for an agreed-upon flat attorney fee (the "maximum allowable fee") and to pass through only its actual, necessary, and reasonable costs. Servicers do not conduct market analyses of these foreclosure costs or rarely look at them at all; rather, they rely on the law firm to comply with the law and investor guidelines by charging costs that are actual, reasonable, and the market rate. That servicers allow Defendants to charge on average $1,200 to $1,400 in insurance premiums for a non-existent insurance product illustrates this lack of oversight.

10. Defendants also get away with charging excessive, unauthorized, and unlawful costs because no homeowner, purchaser, or taxpayer can challenge the law

firm's claimed costs. Nor may the public trustees, which administer the foreclosure process, or the courts, which authorize the foreclosure sale, challenge these costs. As such, a homeowner seeking to save his home from foreclosure or a person purchasing a property at a foreclosure auction must pay whatever costs the law firm claims to have incurred in performing the foreclosure. If the property returns to the lender, the mortgage servicer assesses these costs to the investor or insurer whose losses are often borne by taxpayers.

11. On about 8,000 Colorado foreclosures since 2007, Robert J. Hopp & Associates and The Hopp Law Firm charged between $200 and $2,000 in unlawful costs per foreclosure by making false, misleading, and deceptive statements of costs to homeowners, servicers, investors/insurers, and the public on reinstatements, cures, bids, and invoices, as follows:

- $1,200 to $1,400 on average for a title policy insurance premium through their affiliated title company when the foreclosure stops and a policy cannot issue or after the sale and no policy issues; and

- $275 for title search reports on Fannie Mae files through their affiliated title company when the market rate for the same title search reports is $100, and their affiliated title company charges $100 or less on non-Fannie Mae files for a similar report.

12. Through their operation and ownership of the affiliated title agent, the individual and non-law firm Defendants, including Lori Hopp, actively participate in and benefit from this fraudulent scheme.

13. In addition, the law firm frequently charged a $15 "filing cost" on foreclosures, though there was no associated cost, and for certain Rule 120 actions, a filing cost of $257.54 when the actual filing cost was less than $20 because the client is exempt from court filing costs, thus obtaining more than $200 per file.

14. By fraudulently charging a policy premium averaging $1,200 to $1,400 for foreclosure commitments that could not or did not become an insurance policy, the homeowner seeking to save her home, or the investor or insurer of the loan, frequently has to pay more than $1,000 for an insurance product that does not exist.

15. Defendants' wrongful conduct not only harms desperate homeowners facing foreclosure and persons buying properties at auction, it reverberates to the public at large, as servicers hiring the law firm pass these costs to investors or insurers, many of which are taxpayer-backed entities. These inflated foreclosure costs also negatively impact housing and loan costs outside the foreclosure industry.

16. This conduct violates the Colorado Consumer Protection Act and the Colorado Fair Debt Collection Practices Act, and harms homeowners and the public.

LEGAL AUTHORITY AND PARTIES

17. The State, pursuant to its law enforcement authority under the Colorado Consumer Protection Act, §§ 6-1-101–115, C.R.S. (2014) (CCPA) and the Colorado Fair Debt Collection Practices Act, §§ 12-14-101–137, C.R.S. (2014) (CFDCPA), seeks to enjoin Defendants from engaging in deceptive and other unlawful practices, including charging inflated, deceptive, unauthorized, unlawful, and unreasonable costs in foreclosure proceedings in Colorado, to disgorge unjust proceeds, to completely compensate or restore to their original position any persons injured by Defendants' conduct, to recover statutory civil penalties, and to recover costs and attorney fees.

18. The CCPA is a remedial statute intended to deter and punish deceptive trade practices committed by businesses in dealing with the public. *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47, 50–51 (Colo. 2001). The statute's broad purpose is "to provide prompt, economical, and readily available remedies against consumer fraud." *Id.* (quoting *W. Food Plan, Inc. v. Dist. Court*, 598 P.2d 1038, 1041 (Colo. 1979)).

19. Under the CCPA, evidence that a person engaged in a deceptive trade practice shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

20. The CFDCPA is a remedial consumer protection statute that is liberally construed to protect consumers against deceptive, misleading, and unfair debt collection practices. *Flood v. Mercantile Adjustment Bureau*, 176 P.3d 769, 772–74 (Colo. 2008).

21. John W. Suthers 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 may bring an action against any person for engaging in deceptive trade practices. The State may seek injunctive relief to prohibit the person from violating the CCPA, obtain disgorgement of unjust proceeds, civil penalties, and restitution, and recover costs and attorney fees. C.R.S. §§ 6-1-110, 6-1-112, & 6-1-113.

22. Julie Ann Meade is the Administrator of the Uniform Consumer Credit Code and charged with enforcement of the CFDCPA. She is authorized to bring an action to restrain any person from any violation of the CFDCPA, obtain injunctive relief, restitution, disgorgement, civil penalties, costs, and attorney fees. C.R.S. §§ 12-14-103(1), 12-14-135.

23. Defendant The Hopp Law Firm, LLC is a Colorado limited liability company organized on September 28, 2006, with a principal place of business at 333 West Colfax Avenue, Suite 500, Denver, Colorado 80204 and a mailing address of P.O. Box 3792, Centennial, Colorado 80161. It is, and at all relevant times was, regularly engaged in collecting, or attempting to collect, directly or indirectly, from Colorado consumers, debts owed or asserted to be owed or due others.

24. Defendant Robert J. Hopp & Associates, LLC is a Colorado limited liability company organized on October 3, 2006, with a principal place of business at 333 West Colfax Avenue, Suite 500, Denver, Colorado 80204 and a mailing address of P.O. Box 3792, Centennial, Colorado 80161. It is, and at all relevant times was, regularly engaged in collecting, or attempting to collect, directly or indirectly, from Colorado consumers, debts owed or asserted to be owed or due others.

25. Defendant National Title, LLC, d/b/a Horizon National Title Insurance, LLC, ("National Title") is a Colorado limited liability company organized on May 23, 2009, with a principal place of business at 2616 West Alamo Avenue, Littleton, Colorado 80120. It provides foreclosure title services of title searches and title commitments for its affiliated law firms The Hopp Law Firm and Robert J. Hopp & Associates and for unrelated customers. Robert Hopp and his wife Lori Hopp, through SafeHaus Holdings Group, LLC, own and control National Title. Mr. Hopp is or was the manager or managing member of National Title.

26. Defendant First National Title Residential, LLC, is a Colorado limited liability company organized on March 9, 2007 with a principal place of business at 333 West Colfax Avenue, Suite 300, Denver, Colorado 80204. It has a delinquent status with the Colorado Secretary of State's office. It provided foreclosure title services for the affiliated law firms The Hopp Law Firm and Robert J. Hopp & Associates until Mr. Hopp formed National Title in 2009. Mr. Hopp controlled and directed First National Title Residential as its manager or managing member.

27. Defendant SafeHaus Holdings Group, LLC is a Colorado limited liability company organized on August 15, 2008 with a principal place of business at 333 West Colfax Avenue, Suite 500, Denver, Colorado 80204 and a mailing address of P.O. Box 3792, Centennial, Colorado 80161. SafeHaus Holdings Group is a family company, which is wholly owned by Robert J. Hopp and Lori L. Hopp, and owns National Title.

28. Defendant Lori L. Hopp is an individual with a principal business address at 2616 West Alamo Avenue, Littleton, Colorado 80120. She is the spouse of Robert Hopp and a part or majority owner of National Title through SafeHaus Holdings Group. She is personally liable under the CCPA for the conduct of National Title by approving, directing, participating, or cooperating in its conduct.

29. Defendant Robert J. Hopp is an individual with a principal business address at 2616 West Alamo Avenue, Littleton, Colorado 80120. He is or was the managing member and sole owner of The Hopp Law Firm and Robert J. Hopp & Associates. He is or was an owner, through SafeHaus Holdings Group, of National Title, at which he is or was the managing member or manager. Previously, Mr. Hopp used First National Title Residential as the law firm's affiliated title agent. He is or was responsible for the management decisions at National Title, First National Title Residential, and the law firms, including decisions regarding foreclosure costs charged to borrowers, investors/insurers, servicers, and the public.

30. Mr. Hopp is personally liable under the CCPA and the CFDCPA for the conduct of The Hopp Law Firm, Robert J. Hopp & Associates, First National Title Residential, and National Title by approving, directing, participating, or cooperating in their conduct. He is, and at all relevant times was, regularly engaged in collecting, or attempting to collect, directly or indirectly, from Colorado consumers, debts owed or asserted to be owed or due others. He has engaged in or caused another to engage in a deceptive trade practice.

31. Beginning in 2013, Robert J. Hopp & Associates and The Hopp Law Firm started closing their operations and Mr. Hopp entered into an employment agreement in or around April 2013 with a new foreclosure law firm that moved to Colorado, whereby Mr. Hopp would market for the new firm and generate foreclosure business from servicers.

32. Additionally, Mr. and Mrs. Hopp's title company, National Title, provided foreclosure title products to this new firm, including Fannie Mae title searches at $275 and approximately 400 to 500 title commitments between April 2013 and October 2013, usually at more than $1,000, resulting in even more unjust enrichment to Defendants.

JURISDICTION AND VENUE

33. This Court has jurisdiction to enforce the CCPA in actions by the Attorney General under §§ 6-1-103 and 6-1-110 and the CFDCPA under § 12-14-135.

34. Under CCPA § 6-1-103, venue is proper in the City and County of Denver because portions of the transactions involving the deceptive trade practices occurred in the City and County of Denver.

35. Under CFDCPA § 12-14-135, the Administrator may bring an action in the City and County of Denver.

PUBLIC INTEREST

36. Through the deceptive trade practices of their businesses, vocations, or occupations, Defendants, on about 8,000 Colorado foreclosures since 2007, have defrauded homeowners and the public by claiming false, misleading, deceptive, unauthorized, unlawful, and unreasonable foreclosure costs presented to and payable by homeowners in foreclosure, purchasers of foreclosed properties, mortgage servicers, and investors and insurers.

37. Accordingly, these legal proceedings are in the public interest.

GENERAL ALLEGATIONS

I. INDUSTRY OVERVIEW

A. Residential Foreclosure Process in Colorado

38. Foreclosures in Colorado are largely an administrative process conducted through the public trustee offices in each county. The servicer, on behalf of the lender or investor that owns the mortgage in default, hires the law firm to complete the foreclosure from initiation through transfer of the property to the successful bidder at auction or back to the investor.

39. Before the law firm files a foreclosure, the borrower may reinstate the default by paying what the lender is owed in late payments and what the law firm claims it incurred in fees and costs as set forth on a reinstatement notice. After the law firm files a foreclosure but before the auction, the homeowner may "cure" the foreclosure with the public trustee's office by paying what the lender is owed in late payments and whatever fees and costs the law firm claims to have incurred in processing the foreclosure as set forth on the cure statement. If the property proceeds to auction, the successful bidder must pay whatever fees and costs the law firm claims to have incurred as set forth on the bid statement.

40. A court's only involvement in a foreclosure is when the law firm files the required motion under Rule 120 of the Colorado rules of civil procedure to authorize the foreclosure sale by the public trustee. This action is often resolved without a hearing because it is generally limited to an inquiry of whether the borrower is in default or in the military, neither of which is typically in dispute.

41. Neither the public trustee's office that receives the cure and bid statements, nor the court that handles the Rule 120 action, has authority to question the law firm's claimed fees and costs, allowing the law firm to unilaterally, and without accountability, dictate the costs for any foreclosure-related services.

42. Many foreclosures never proceed to sale and are withdrawn due to a cure, bankruptcy, or loan modification, meaning that the law firm's claimed costs, however improper, are often assessed to homeowners. For foreclosures that proceed to sale, the costs are assessed to homeowners in a deficiency judgment, purchasers at the auction, or the owner or insurer of the loan.

B. Fee/Cost Structure in Foreclosures

43. The allowable costs and fees charged by a law firm conducting foreclosures are governed by the mortgage loan documents, servicer agreements, investor guidelines, and state law.

44. The law firm agreed to perform foreclosures for its servicer clients for a maximum allowable fee, and to seek reimbursement for only its actual, necessary, and reasonable (market rate) costs from the servicer, borrower, and investor. This maximum allowable fee is set by investors or servicers and is intended to compensate the law firm for all legal work required to complete a routine foreclosure. It includes, among other things, document preparation and review, title review, coordinating postings and filings, and overhead. In setting this maximum allowable fee, the investors and servicers take into account the work typically performed for a foreclosure in a given jurisdiction and endeavor to ensure that firms are fairly compensated and profitable.

45. These agreements and guidelines further distinguish between the maximum allowable *fee* for work performed on a foreclosure and *costs* incurred by the law firm in processing a foreclosure. The agreements make clear that costs incurred by the law firm and passed along to the servicer/investor must be actually incurred, necessary to complete the foreclosure, and reasonable, i.e., market rate.

46. This distinction between fees and costs is deliberate. To reduce overall foreclosure costs payable by homeowners and the public, investors capped the compensation that law firms could receive per foreclosure and placed limitations on pass-through costs. These cost-control efforts were designed to minimize the cost of foreclosures and the impact of taxpayer-funded credit losses.

C. Servicers' Reliance on Law Firm's Representations

47. While automated billing permits servicers to monitor whether the law firm claims a fee in excess of the maximum allowable fee, there is generally no such monitoring of costs. Instead, servicers rely upon the law firm's representations that it will comply with investor guidelines relating to fees and costs.

48. Servicers that hire the law firm for the investor do not absorb the law

firm's costs themselves. Rather, servicers obtain reimbursement from homeowners, investors, and insurers. Thus, the foreclosure law firm-servicer relationship differs from a typical attorney-client transaction in which any fraudulent or excessive charges are borne by the client alone. Here, the servicer has little incentive to scrutinize costs because it ultimately passes those costs to someone else.

49. Consequently, servicers rely on the law firm's representations as to what its vendors charge for foreclosure services without verifying whether these charges are actual, necessary, reasonable, or consistent with market rates.

II. DEFENDANTS EXPLOIT THE FORECLOSURE PROCESS TO COMMIT FRAUD

50. As set forth in detail below, the Hopp Defendants intentionally circumvent the maximum allowable fee by making false, misleading, and deceptive statements about the actual costs they incur in processing a foreclosure.

51. National Title participates in this conduct by invoicing the law firm for inflated amounts for title search costs on Fannie Mae files, and National Title and First National Title Residential before that, charges and collects a premium for insurance policies that do not exist because the foreclosure sale is withdrawn or the commitment never becomes a policy, and thus, as described below, exploit the foreclosure process to obtain unjust enrichment.

52. As owners of National Title, Defendants SafeHaus Holdings Group, LLC and Lori Hopp actively participate in, know about, or benefit from this fraudulent scheme.

53. Specifically, the Hopp Defendants obtain unjust enrichment (1) by using an affiliated vendor, National Title, to generate invoices containing inflated costs of $275 for title search reports on Fannie Mae loans, while providing the same reports on non-Fannie Mae loans at $100 or less; and (2) by using National Title, and First National Title Residential before that, to charge and collect an insurance premium averaging between $1,200 and $1,400 for files where the foreclosure is withdrawn, no policy is issued, and a premium cannot be charged.

54. As Mr. Hopp testified during the State's investigative hearing about the use of an affiliated vendor to create invoices: "Well, whatever the vendor charged us is what we charged the client. So it was the law firm's actual costs."

55. The longtime operations manager of National Title testified that while the servicers paid the law firm on average $1,200 to $1,400 charged by National Title to the law firm for the title commitment, the law firm would not always pay

National Title because "money moved around" Defendants' companies.

56. Accordingly, by using an affiliated title business to circumvent the maximum allowable fee, Defendants would obtain, on Fannie Mae title searches, roughly $175 above the market rate and what they charged on non-Fannie Mae clients, and for non-Fannie Mae foreclosures would obtain in many cases in excess of $1,000 for a title commitment that never became an insurance policy and where a title search report available for $100 would have been sufficient.

57. Again, because of servicer reliance on the law firm and the inability of homeowners, public trustees, or courts to challenge these costs, the law firm gets away with charges that are over and above the maximum allowable fee and inflated above the actual costs or market rate.

58. The Hopp Defendants' servicer clients do not verify whether the costs charged for foreclosure services are the actual cost or the market rate for such services. At most, some servicers check to see whether invoices from the vendors match costs invoiced to the servicer. This superficial inquiry allowed the law firm to continue its unlawful conduct undetected.

III. THE USE OF TITLE PRODUCTS TO OBTAIN UNJUST ENRICHMENT

A. Background

59. In Colorado, foreclosure law firms must provide notice of a foreclosure proceeding to parties with a recorded interest in the property that would be affected by the foreclosure. A foreclosure performed properly and with notice to all parties having a recorded interest conveys clear and marketable title to the person or lender receiving the property after foreclosure.

60. Law firms determine who is entitled to notice by purchasing a title product from a title search company or a title agent. Although law firms sometimes purchase expensive title products, like title commitments, the most cost-effective title product containing this information is a two-owner title search report, which is an examination and report by a title search company containing all applicable liens and encumbrances on the property. The law firm uses this title search report to prepare a mailing list that it delivers to the public trustee, who in turn provides notice of the foreclosure to the persons with recorded interests.

61. Many title search reports are straightforward and reveal only the deed of trust in foreclosure, the prior deed of trust, and possibly one or two liens.

62. The law firm first obtains the initial search report to commence the foreclosure and then typically obtains two updates: one after filing the foreclosure notice to ensure no new liens were recorded prior to the foreclosure notice filing, and one before sale to ensure no IRS tax liens were recorded.

63. Businesses not affiliated with foreclosure law firms offer two-owner title search reports for around $100. These searches typically include, among other things, a list and copy of all recorded documents going back two owners, a tax certificate, updates, and a legal description

B. Overcharges on Fannie Mae Files: Abuse of Fannie Mae's Maximum Allowable Title Search Cost

64. In 2007, Fannie Mae realized that foreclosure law firms were abusing the title process by obtaining expensive and unnecessary title products, such as title commitments, for a foreclosure. Fannie Mae terminated this practice by imposing a cap on the amount spent for title products and by requiring the firms to obtain an uninsured title search report when it was less expensive than an insured product.

65. The Fannie Mae Servicing Guide requires that "title costs to confirm title and identify parties entitled to notice of the foreclosure must be kept at a minimum." Fannie Mae explained that an uninsured title search report reduces title expenses, minimizes the costs to borrowers reinstating their loans, minimizes credit losses, and reduces the cost of home ownership.

66. Fannie Mae determined that because it was exceedingly rare to encounter post-foreclosure problems resulting from defective title searches, obtaining an insured title product during the foreclosure was largely unnecessary and simply resulted in additional revenue to the foreclosure law firms.

67. Fannie Mae knew that it was improper for law firms to use title fees to substitute for a perceived lack of compensation from the maximum allowable fee and attempted to curtail the practice.

68. Despite significant opposition from foreclosure law firms, Fannie Mae, in its July 2008 engagement letter with law firms, stated that Colorado law firms could charge up to a maximum cost of $250 for a title search report. In August 2009, Fannie Mae increased the maximum cost to $275, but notified the law firms that it expected the actual cost to be lower in many instances.

69. Despite the availability of the type of title search preferred by Fannie Mae—a two-owner title search report—from unaffiliated businesses for around $100, in 2009 Robert Hopp formed a title search company, National Title, to prepare

search reports for Fannie Mae files and to generate invoices at $275 per report.

70. When questioned about the practice of providing these reports from his own title company to his own law firm at $275 each, Mr. Hopp testified: "Well, whatever the vendor charged us is what we charged the client. So it was the law firm's actual costs." As the owner and manager of the vendor National Title, which was located in the same building as both of Mr. Hopp's law firms, he controls what he charges his own law firms, knowing that whatever his title company charges, the law firm will be reimbursed in a foreclosure by homeowners, purchasers at auction, servicers, investors, and insurers.

71. But when National Title has to sell its services on the free market to unaffiliated customers on non-Fannie Mae loans, National Title must charge a market rate price. Thus, National Title provides similar title search reports to parties unaffiliated with National Title for $75 for a two-owner search or $100 for a "full search," with updates at $10. A "full search" by National Title goes back for as many years as necessary to determine marketable title. The $100 "full search" also includes background information such as easements, restrictions, and agreements.

72. When asked during the State's investigative hearing about the difference between a "full search" provided for non-Fannie Mae loans of $100 and the search provided to the Hopp Defendants for $275, National Title's operations manager testified that the only difference is that the $275 price includes unlimited updates. Because National Title charges $10 per update and most foreclosures require only two updates, there is still a disparity of $155 on most files.

73. Accordingly, Defendants create invoices to charge an inflated amount of $275 per Fannie Mae title search report in a false and misleading representation that it actually cost $275, because they know that homeowners are forced to pay it and servicers do not question it and impose it on homeowners, third-party purchasers at auction, investors, and insurers.

C. Title Commitment Scheme

74. When servicers or investors do not specify which title product to obtain in a foreclosure, the Hopp Defendants acquire a foreclosure title commitment through their affiliated title agent National Title, and previously through First National Title Residential. A title commitment is an agreement to issue an insured owner's title policy once certain requirements are met.

75. Mr. Hopp testified at the State's investigative hearing that he recommends to his servicer clients that they obtain a title commitment during the foreclosure. He then immediately obtains this title commitment through his

affiliated title company at the beginning of the foreclosure in order to collect an average of $1,200 to $1,400 for an insurance premium for an insurance product that in most cases never exists because the foreclosure does not proceed to sale and cannot become a policy or because it never becomes a policy after the sale.

76. A title commitment cannot become an insured policy until after the foreclosure. A basic requirement of a foreclosure title commitment is the issuance of a public trustee deed upon completion of the foreclosure sale. Because more than half of the foreclosures do not result in a foreclosure sale, most title commitments cannot become insured policies for which a premium should be charged.

77. During the State's investigative hearing, Mr. Hopp admitted that a title policy does not issue until after the foreclosure sale. He testified that there is no insurance available prior to the commitment becoming a policy. According to Mr. Hopp, a title commitment is only, "a commitment to insure when the requirements are met." During the foreclosure, as Mr. Hopp admitted, "[t]here is no policy."

78. Yet Defendants routinely collect the policy premium immediately upon receipt of the foreclosure referral from the servicer and before the foreclosure sale as if the title commitment were already an insured title policy. When the foreclosure sale does not occur or when no policy is issued, Defendants keep this money.

79. A foreclosure title commitment is based entirely on the title search report available or obtained from an unaffiliated title search company for around $100, which represents the vast majority of the work involved for a commitment. The information from this title search report is transferred or merged into a template called "commitment for title insurance." Most of the commitment consists of form language and requires entry of a handful of exceptions and requirements.

80. Yet, in preparing a title commitment from this search report, Defendants immediately claim and collect a policy premium averaging $1,200 to $1,400 at the outset of the foreclosure and months before the foreclosure sale that, in many cases, does not occur. If a homeowner cures the foreclosure or the lender withdraws the foreclosure for any reason, Defendants collect a large policy premium for a title product—an insured policy—that does not exist.

81. National Title is an agent for the underwriter Fidelity National Title Insurance Company ("Fidelity"), and National Title writes its title commitments with the express authority of Fidelity as National Title's principal. Under Fidelity's schedule of rates and fees in Colorado, the agent may charge a cancellation fee between $300 and $750, based on the amount of work performed, for a foreclosure commitment that is cancelled before the foreclosure sale. For commitments that cancel in non-foreclosure transactions, Fidelity's schedule of rates and fees provide

for a cancellation fee of $100 in non-foreclosures and allows agents to waive it.

82. Under Colorado law and the agency agreement, the agent may file a different cancellation fee and thus the agent is not bound by Fidelity's guidelines for cancellation fees. Moreover, despite an allowable cancellation fee range by Fidelity for foreclosure commitments, the charge must still be reasonable and reflect the amount of work performed. Because the information necessary for a foreclosure commitment is contained in a search report available for $100, and that search represents most of the work for a commitment, it would be rare for a reasonable cancellation fee to extend much beyond this amount.

83. But Defendants collect not a cancellation fee but instead the policy premium plus another 10 percent for files that did not proceed to a foreclosure sale.

84. Upon information and belief, Mr. Hopp closed First National Title Residential in or around 2009 and formed a new title company National Title in response a different underwriter's investigation into this very practice. Accordingly, Mr. Hopp uses National Title to continue the series of deceptive conduct that started in 2007 with the predecessor title agent, First National Title Residential.

85. The State also discovered that National Title retained policy premiums averaging $1,200 to $1,400 for foreclosures that did proceed to a foreclosure sale but where the title commitment still did not become an owner's policy because no one requested that a policy be issued from National Title's commitment, vitiating its purpose. Upon information and belief, this results because the mortgage servicer did not request or know about the foreclosure law firm's obtaining a foreclosure title commitment. Thus, after the foreclosure sale, the property goes into REO and a new commitment is ordered for the owner's and lender's policy to be issued for the transaction where the bank sells the property to a third party.

86. While Fidelity's schedule of rates and fees apparently allows an agent to collect a cancellation fee of 110 percent of the insurance premium where the foreclosure commitment cancels after the foreclosure sale, National Title's practice of collecting this amount is unreasonable and is a false statement of the actual cost. That the underwriter's manual may allow such a practice does not shield National Title from deceptive and fraudulent conduct.

87. National Title's operations manager testified that the business practice at National Title implemented by Mr. Hopp when she arrived in 2009 was to charge and collect the premium, plus 10 percent, immediately upon preparing the commitment at the outset of the foreclosure, and she took orders from him. She testified that National Title does not charge a cancellation fee but rather charges a premium as if it were already an insurance policy, which it is not. She testified that

less than half of the title commitments for which National Title charged the premium became insurance policies. Moreover, no refunds or credits were given when the title commitment did not become an insurance policy.

88. To become a policy, she testified, National Title needed to order a policy jacket from Fidelity, thereby notifying Fidelity that a policy is being issued by its agent and Fidelity would collect its underwriter share of the premium. Thus, Fidelity would have a record of all policies issued by National Title.

89. Yet only a fraction of the title commitments prepared by National Title, and for which a policy premium was charged, resulted in insured title policies where a premium was remitted by National Title to Fidelity.

90. If a title agent issues an owner's policy after the foreclosure sale for a premium, the agent retains 85 to 90 percent of that premium and remits only 10 to 15 percent to the underwriter. However, if no policy issues—the case in many foreclosures that are stopped or withdrawn—the agent need not remit any portion because the premium should not have been charged in the first instance, and only a cancellation fee is allowed by the underwriter for which no remittance is required.

91. Most foreclosures in which National Title charges a premium for a foreclosure title commitment follow a familiar pattern. First, the law firm receives a foreclosure referral from a mortgage servicer client. Second, the law firm orders a title commitment from National Title. Third, National Title prepares the title commitment and sends it to the law firm with an invoice for the premium plus 10 percent, usually in excess of $1,000. Fourth, the law firm immediately bills the servicer for this commitment, months before the foreclosure sale, and the servicer pays it. Finally, the foreclosure is withdrawn before the sale, typically because of a cure or loan modification, forcing the homeowner to pay an insurance premium for a non-existent title insurance policy. Defendants retain a premium averaging $1,200 to $1,400 for a title insurance policy that does not exist, for which no premium may be charged, and for which no amount needs to be remitted to the underwriter.

92. Consequently, a homeowner seeking to stop foreclosure must pay on average between $1,200 and $1,400 for a non-existent insurance policy.

93. Defendants' fraudulent practice of immediately charging and collecting a policy premium for a title product that never exists results in significant harm to the public and has generated significant unlawful income for Defendants.

IV. MISREPRESENTATIONS OF OTHER COSTS

94. The Hopp Defendants also claimed and received payment from servicers, homeowners, and third-party purchasers of more than $200 than the actual cost for certain court filings related to the motion to authorize the sale of the property in district court under Rule 120 of the Colorado rules of civil procedure.

95. They did so by claiming a filing cost of around $257 where the client for which the law firm filed the motion to authorize the sale was not assessed a court filing cost because it was exempt by law from filing costs imposed by the state.

96. Additionally, the Hopp Defendants charged a $15 "filing cost" for a service already included in the maximum allowable fee.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Makes false or misleading statements of fact concerning the price of services in violation of C.R.S. § 6-1-105(1)(l))
(All Defendants)

97. The State of Colorado incorporates herein by reference all of the allegations contained in the foregoing paragraphs of this Complaint.

98. As set forth in detail above, Defendants make "false or misleading statements of fact concerning the price of . . . services" on reinstatements, cures, bids, and invoices regarding the amounts claimed for title search costs; title commitment costs; and Rule 120 court filing costs.

99. Through the conduct set forth in the Complaint and in the course of their business, vocation, or occupation, Defendants violated C.R.S. § 6-1-105(1)(l) by making "false or misleading statements of fact concerning the price of . . . services" and as a result deceived and defrauded homeowners, the public, servicers, and investors/insurers, and obtained unjust enrichment as a result.

SECOND CLAIM FOR RELIEF

(Violation of Colorado Fair Debt Collection Practices Act – False or Misleading Representations – Unfair Practices – C.R.S. § 12-14-107(1)(b)(I))
(The Hopp Defendants)

100. The Administrator incorporates herein by reference all of the allegations contained in the foregoing paragraphs of this Complaint.

101. As set forth in detail above, Defendants use false, deceptive, or

misleading representations, including the false representations of the character, amount, or legal status of any debt, in connection with the collection of a debt relating to amounts claimed on reinstatements, cures, bids, and invoices for title search costs; title commitment costs; and Rule 120 court filing costs.

102. As a result of Defendants' violations of section 12-14-107(1)(b)(I) of the CFDCPA, the Administrator is entitled to injunctive relief restraining Defendants from committing any of the acts, conduct, transactions, or violations described above, or otherwise violating the CFDCPA, together with all such other relief as may be required to completely compensate or restore to their original position all consumers injured or prevent unjust enrichment of any person, or as may otherwise be appropriate, including, without limitation, requiring Defendants to disgorge to the Administrator or refund to consumers all amounts collected in violation of the CFDCPA. C.R.S. § 12-14-135.

THIRD CLAIM FOR RELIEF

(Violation of Colorado Fair Debt Collection Practices Act – Unfair Practices – C.R.S. § 12-14-108(1)(a))

(The Hopp Defendants)

103. The Administrator incorporates herein by reference all of the allegations contained in the foregoing paragraphs of this Complaint.

104. As set forth in detail above, Defendants collect amounts, including fees, charges, and expenses incidental to the principal obligation that were not expressly authorized by the agreement creating the debt or permitted by law, including for amounts claimed on reinstatements, cures, bids, and invoices for title search costs; title commitment costs; and Rule 120 court filing costs.

105. By reason of the foregoing, Defendants used, and continue to use, unfair or unconscionable means to collect or attempt to collect any debt, including the collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

106. As a result of Defendants' violations of section 12-14-108(1)(a) of the CFDCPA, the Administrator is entitled to injunctive relief restraining Defendants from committing any of the acts, conduct, transactions, or violations described above, or otherwise violating the CFDCPA, together with all such other relief as may be required to completely compensate or restore to their original position all consumers injured or prevent unjust enrichment of any person, or as may otherwise be appropriate, including, without limitation, requiring Defendants to disgorge to the Administrator or refund to consumers all amounts collected in violation of the CFDCPA. C.R.S. § 12-14-135.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that Defendants be enjoined and restrained from doing any of the wrongful acts referenced in this Complaint or any other act in violation of the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101 – 6-1-115 and the Colorado Fair Debt Collection Practices Act, C.R.S. §§ 12-14-101 – 12-14-137.

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

A. An order that all Defendants' conduct violates the Colorado Consumer Protection Act, including, but not limited to, section 6-1-105(1)(l);

B. An order pursuant to section 6-1-110(1) for an injunction or other orders or judgments against all Defendants;

C. An order pursuant to section 6-1-110(1) requiring all Defendants to disgorge all unjust proceeds to prevent unjust enrichment;

D. An order pursuant to section 6-1-110(1) against all Defendants which may be necessary to completely compensate or restore to their original position any persons injured by means of such deceptive practice;

E. An order pursuant to section 6-1-112(1)(a) against all Defendants for civil penalties of not more than two thousand dollars for each such violation of any provision of the Colorado Consumer Protection Act with respect to each consumer or transaction involved not to exceed five hundred thousand dollars for any related series of violations;

F. An order pursuant to section 6-1-112(1)(c) against all Defendants for civil penalties of not more than ten thousand dollars for each violation of any provision of the Colorado Consumer Protection Act with respect to each elderly person;

G. An order pursuant to section 6-1-113(4) requiring all Defendants to pay the costs and attorney fees incurred by the Attorney General;

H. An order that Robert Hopp's, The Hopp Law Firm, LLC's, and Robert J. Hopp & Associates' conduct violates the Colorado Fair Debt Collection Practices Act, section 12-14-107(1)(b)(I);

I. An order that Robert Hopp's, The Hopp Law Firm, LLC's, and Robert J. Hopp & Associates' conduct violates the Colorado Fair Debt Collection Practices Act, section 12-14-108(1)(a);

J. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act for an injunction against Robert Hopp, The Hopp Law Firm, LLC, and Robert J. Hopp & Associates together with all such other relief as may be required to completely compensate or restore to their original position all consumers injured or prevent unjust enrichment of any person or as may otherwise be appropriate, including disgorgement to the Administrator or refund to consumers;

K. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act for civil penalties against Robert Hopp, The Hopp Law Firm, LLC, and Robert J. Hopp & Associates;

L. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act against Robert Hopp, The Hopp Law Firm, LLC, and Robert J. Hopp & Associates for reasonable costs and attorney fees; and

M. Any such further orders as the Court may deem just and proper to effectuate the purposes of the Colorado Consumer Protection Act and the Colorado Fair Debt Collection Practices Act.

Respectfully submitted this 19th day of December 2014,

JOHN W. SUTHERS
Attorney General

/s/ Erik R. Neusch

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