

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Denver, CO 80202	DATE FILED: July 28, 2016 10:04 AM CASE NUMBER: 2014CV34780
<hr/> <p>Plaintiff:</p> <p>STATE OF COLORADO <i>ex rel.</i> JOHN W. SUTHERS, ATTORNEY GENERAL FOR THE STATE OF COLORADO; and JULIE ANN MEADE, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE</p> <p>v.</p> <p>Defendants:</p> <p>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</p>	<hr/> <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 2014CV34780</p> <p>Courtroom: 269</p>
<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER</p>	

This matter came before the Court on February 29, March 1, 2, 3, 4, 7 and 8, 2016, for a trial to the Court. Plaintiffs, the State of Colorado *ex rel.* John W. Suthers, Attorney General for the State of Colorado, and Julie Ann Meade, Administrator, Uniform Consumer Credit Code (collectively “the State”) appeared through their attorneys, Erik R. Neusch, Rebecca Taylor and Mark L. Boehmer. Defendants, 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, appeared with their attorney Christopher P. Carrington. The Court, having considered the evidence, the proposed findings of fact submitted by counsel,¹ and the relevant legal authority, makes the following findings of fact, conclusions of law, and order:

¹ The Court has incorporated some of the proposed findings of fact and conclusion of law into this Order, in whole or in part, but only after careful consideration and adoption by the Court.

INTRODUCTION

On December 19, 2014, the State filed its Complaint against Defendants, asserting one claim for violation of the Colorado Consumer Protection Act (“CCPA”) and two claims for violation of the Colorado Fair Debt Collection Practices Act (“CFDCPA”). In its first claim for relief, the State alleges a violation of Section 6-1-105(1)(I), C.R.S. (2015), of the CCPA, which prohibits “mak[ing] false or misleading statements of fact concerning the price of . . . services.” In its second and third claims for relief, the State alleges violations of Sections 12-14-107(1)(b)(I) and 12-14-108(1)(a), C.R.S. (2015), of the CFDCPA, which prohibit using “any false, deceptive or misleading representation or means in connection with the collection of a debt, including . . . [t]he character, amount, or legal status of a debt” or “any unfair or unconscionable means to collect or attempt to collect any debt, . . . unless such amount is expressly authorized by the agreement creating the debt or permitted by law,” respectively. These claims related to Defendants’ representations and conduct in connection with the prices of foreclosure services, particularly related to foreclosure commitment charges.² On February 10, 2016, the Court granted the State’s request to amend the Complaint to add additional allegations regarding title commitments ordered from and prepared by LPS Default Title and Closing, also known as LSI Title Agency.

FINDINGS OF FACT

The Court finds that the following facts have been proven by a preponderance of the evidence:

A. The Defendants

1. Robert J. Hopp & Associates, LLC (“RJHA”), and The Hopp Law Firm, LLC (“HLF”) (collectively “the Hopp Law Firms”) are Colorado limited liability companies organized on September 28, 2006, and October 3, 2006, respectively. RJHA ceased operations in late 2011, while HLF ceased operations on March 31, 2013.

2. Robert J. Hopp (“Mr. Hopp”), an attorney licensed to practice law in the state of Colorado, was the sole member and manager of RJHA and HLF.

3. RJHA was formed principally to provide mortgage default legal services; HLF was formed initially to provide non-default and non-foreclosure legal services. In late 2011, upon the closure of RJHA, HLF began providing foreclosure legal services.

4. Since 2006, Mr. Hopp’s primary practice has been the provision of mortgage default legal services, including residential foreclosures, in Colorado. The

² On January 19, 2016, the Court granted Defendants’ Motion for Summary Judgment as to the State’s allegation that Defendants’ violated the CCPA and the CFDCPA by including, on cure statements submitted to public trustees, a charge for \$15.00 for its use of the Government Technology System. Prior to trial, the State abandoned its claim that Defendants violated the CCPA and CFDCPA by charging an unlawful amount for title searches on Fannie Mae loans.

Hopp Law Firms also have offices in New York, California, Washington, Texas, Arizona, New Mexico, Idaho, Utah and Wyoming.

5. Mr. Hopp maintained sole responsibility for the manner in which the Hopp Law Firms billed costs.

6. National Title, LLC (“National Title”), is a Colorado limited liability company organized on May 23, 2009. It provided foreclosure commitments for the Hopp Law Firms. National Title was wholly-owned by SafeHaus Holdings Group, LLC.

7. Mr. Hopp formed National Title and was its sole manager. He held himself out as the Chief Executive Officer of National Title. Mr. Hopp estimated that approximately ninety percent of National Title’s foreclosure services in Colorado were generated by the Hopp Law Firms. National Title and the Hopp Law Firms were located in the same building.

8. SafeHaus Holdings Group, LLC, is a Colorado limited liability company organized on August 15, 2008. Mr. Hopp and his wife, Lori Hopp (“Ms. Hopp”), are the owners of SafeHaus Holdings Group. Mr. Hopp owns 15 percent of the company, while Ms. Hopp owns 85 percent of the company.

9. SafeHaus Holdings Group wholly owns SafeHaus Financial, which provided the accounting and bookkeeping services for National Title and the Hopp Law Firms.

10. First National Title Residential, LLC (“FNTR”), was a Colorado limited liability company organized on March 9, 2007. It provided foreclosure commitments for RJHA in 2008 and 2009.

B. Colorado’s Non-Foreclosure Process

11. Generally, in Colorado, when an individual borrows money from a lender for the purchase of real property, the borrower signs a promissory note with an accompanying deed of trust. In the deed of trust, the borrower agrees that, upon default, the lender can send notice to the public trustee’s office to initiate a non-judicial foreclosure proceeding.

12. In Colorado, non-judicial foreclosures are largely an administrative process conducted through the public trustee’s office in each county. The foreclosure is typically commenced by the lender, through its attorney, by sending a notice of election and demand (“NED”) to the public trustee. The NED informs the public trustee that the lender has elected to declare the note in default and demand initiation of the foreclosure process, which includes scheduling a date for the sale of the collateral.

13. Pursuant to Section 38-38-108(1)(a), C.R.S. (2015), the initial sale date must be “no later than one hundred ten calendar days nor more than one hundred twenty-

five calendar days after the date of the recording of the notice of election and demand.” After scheduling the sale date, the public trustee sends notice to the borrower and other interested parties as identified by the lender, or its attorney, of the sale date and their rights.

14. Between 2008 and 2013, approximately half of the foreclosures filed in Colorado were withdrawn before the sale. These foreclosures were withdrawn for several reasons, including the borrower’s entry into a loan modification, disposal of the property through a short sale, the lender’s agreement to a deed-in-lieu of foreclosure, and the borrower’s cure of the default.

15. Typically, the lender’s attorney files the withdrawal notice with the public trustee.

The Cure Process

16. In a non-judicial foreclosure, the borrower has the right to be provided with an itemization of all sums necessary to cure the default. To accomplish this, the borrower files a written request with the public trustee seeking notification of the amount necessary to cure the default. The public trustee asks the lender’s attorney for a written statement of all sums necessary to cure the default, including missed payments, accrued interest, late fees and penalties, and the fees and costs associated with the foreclosure. The lender’s attorney is authorized to include good faith estimates in the cure statement with respect to interest, fees and costs. The cure statement is effective, pursuant to Section 38-38-104(5), “for no more than thirty calendar days after the date the cure statement is received by the [public trustee] or until the last day to cure [under the statute], whichever occurs first.”

17. The public trustee reviews the amounts on the cure statements, but does not have any ability to verify particular amounts or request supporting documentation from a law firm for a particular charge.

18. The borrower does not have the ability to negotiate the cure amount with the public trustee since the public trustee lacks authority to reduce the amount on the cure statement.

The Bid Process

19. If a foreclosure is not withdrawn, the matter proceeds to a sale of the real property that serves as collateral for the promissory note. Typically, prior to the scheduled sale date, the foreclosure law firm submits a bid to the public trustee. The bid includes the law firm’s fees and costs.

20. The lender’s bid amount sets the floor for the bidding and the amount of the bid must comply with Section 38-38-106(6).

21. If the property is purchased for less than the amount of the total indebtedness to the lender, the lender may pursue the deficiency in another manner. If the property is purchased for more than the amount of the total indebtedness to the lender, the overbid may be claimed by others with an interest in the property, such as a junior lien, a lien of credit or a second mortgage, and then, upon payment of these claims, by the borrower.

22. Upon sale of the property at a foreclosure sale, the public trustee issues a public trustee's deed to the winning bidder.

C. Servicers and the Hopp Law Firms

23. A "servicer" or "mortgage servicer" is defined as "an entity that directly services a loan or that is responsible for interacting with the borrower; managing the loan account on a daily basis, including collecting and crediting periodic loan payments; managing any escrow account; or enforcing the note and security interest, either as the current holder of the evidence of debt or as the current holder's authorized agent." § 38-38-100.3(23.3)(a).

Colorado Housing and Finance Authority

24. The Colorado Housing and Finance Authority ("CHFA") is a quasi-governmental agency that provides affordable housing to low and moderate income borrowers in Colorado. Prior to March of 2013, CHFA serviced the loans on the housing it provided.³ In that capacity, CHFA prepared foreclosure packages and submitted them to a law firm with whom it had entered a contract to perform foreclosure actions on CHFA's behalf. RJHA was a law firm with whom CHFA entered such a contract.

25. As part of the note and deed of trust which CHFA entered with its borrowers, CHFA was authorized to pass the customary and reasonable costs of a foreclosure proceeding to the borrower. These fees and cost would be passed to the borrower, either through loss mitigation activities or when curing the default.

26. During the relevant time period, CHFA did not require RJHA to obtain a particular title product or retain a specific vendor for the title product.

27. RJHA performed foreclosure activities on behalf of CHFA and submitted invoices to CHFA for its fees and costs, including charges for title products that were incurred during the foreclosure proceeding. Initially, RJHA emailed or mailed the invoices to CHFA. After CHFA began using the LPS⁴ management system, RJHA submitted the invoices to CHFA through that system.

28. Upon receiving the invoice, CHFA paid the invoiced amount to RJHA. When it used the LPS management system, LPS created a disbursement and then

³ In March of 2013, CHFA outsourced the servicing to a third party, but continued to oversee the servicing of the loans by that third party.

⁴ Lender Processing Services ("LPS") was a company that provide and managed a web-based interface between clients and law firms.

disbursed the check on the following day. The designation of “check confirmed” on the LPS invoice indicated that the check was paid by CHFA to the law firm.

29. Typically, CHFA received invoices from a foreclosure law firm early in the proceedings and after the foreclosure sale.

30. CHFA did not audit the costs that were submitted by foreclosure law firms, including the costs submitted by RJHA. Instead, CHFA “relied upon the invoices that were submitted by the attorney to be actual and for fees that they actually incurred.”⁵

31. The Hopp Law Firms never refunded any amounts to CHFA for title charges.

32. CHFA would not pass non-recoverable fees or costs to the borrower if CHFA knew that those fees or costs were not recoverable from the borrower.

33. CHFA paid the title costs claimed by RJHA and added those costs to amounts ultimately owed by the borrower.

JPMorgan Chase

34. JPMorgan Chase (“Chase”) was another servicer of loans. On or about April 15, 2011, Chase retained RJHA to provide legal services described in its Home Lending Foreclosure and Bankruptcy Manual (“HLFBM”)⁶ and the Chase Outside Counsel Manual (“OCM”).⁷ These legal matters included representation of Chase in non-judicial foreclosure proceedings. In its representation of Chase, RJHA agreed to adhere to the terms and guidelines set forth in the HLFBM and the OCM.

35. The HLFBM provided that a law firm should submit invoices for fees twice during the foreclosure process: “upon filing of the complaint or other first legal action” and “within ten (10) Business Days of the completion of sale, redemption, ratification, or confirmation date, whichever is latest, or when the foreclosure action is interrupted by a bankruptcy or cancelled due to completion of a loss mitigation program[.]”⁸

36. The HLFBM further prohibited a foreclosure law firm from including any estimated costs on its invoices and only allowed the billing of actual costs.⁹

37. Kevin Hickey, a former vice president of non-judicial foreclosures at Chase, testified that the contract between Chase and foreclosure attorneys required attorneys to adhere to Fannie Mae guidelines on allowable fees and costs. Mr. Hickey

⁵ Transcript, vol. I, 187:5-7.

⁶ Defendants’ Exhibit 1010.

⁷ The engagement letter was dated March 25, 2011, and signed by Mr. Hopp on April 15, 2011. Plaintiffs’ Exhibit 3.

⁸ Defendants’ Exhibit 1010, page 41.

⁹ *Id.*

explained that these guidelines required that “[t]he costs were actual; they were necessary to pursue the matter; and they are reasonable for the service.”¹⁰

38. Costs advanced by the foreclosure attorney, and paid by Chase, if deemed to be borrower recoverable, were assessed to the borrower’s account. Chase relied upon the foreclosure attorney for guidance as to what fees and costs were recoverable or non-recoverable from the borrower. Indeed, Mr. Hopp acknowledged that his agreement with Chase required him to review all charges submitted to Chase to confirm that each charge was necessary to his representation of Chase and reimbursable.

39. Chase granted foreclosure attorneys discretion to obtain the appropriate title product and relied upon the foreclosure attorney to obtain title for a foreclosure. For a period of time, Chase required the foreclosure attorney to obtain the title products from LSI Title, a subsidiary or affiliated title company of LPS. Foreclosure attorneys submitted invoices to Chase through the LPS invoicing system but also may have submitted invoices, at times, to Chase through a non-LPS system. Chase relied on the foreclosure attorney and expected title costs to be actual, reasonable and necessary.

Bank of America

40. Bank of America (“BOA”) also acted as a servicer of loans. On or about June 17, 2011, Mr. Hopp, as the managing member of RJHA, entered into an agreement with BOA (the “BOA Agreement”) for RJHA to provide foreclosure legal services to BOA.¹¹

41. The BOA Agreement contained the following provision regarding Billing For and Quoting Fees and Costs:

All Fees and Cost quoted by the Firm in accordance with this Agreement are (i) reasonable, (ii) strictly for Services that were necessary to protect Bank of America’s interests in the Subject Property, (iii) strictly for Services that were actually performed prior to billing, (iv) permitted under all Applicable Law and the terms of the Loan Documents, and (v) no greater than the allowable fees, costs, and expenses defined by the Investor/Insurer Requirements and this Agreement for the type of file and the Loan or matter that the Firm is handling.¹²

The BOA Agreement demanded compliance with all applicable laws, including the Federal Fair Debt Collection Practices Act, as amended.¹³

42. Mr. Hopp agreed to only bill for fees and costs that were permitted by the borrower’s loan documents.

43. If there was not an investor schedule on reimbursable costs, BOA followed the Fannie Mae schedule.

¹⁰ Transcript, vol. I, 196:16-20.

¹¹ Plaintiffs’ Exhibit 1.

¹² *Id.*, at page 7.

¹³ *Id.*, at page 6.

44. Recoverable costs are costs that the bank or servicer would seek to recover from a borrower if the borrower was able to reinstate the loan or become current on the loan. Nathan Schutt, a vendor manager for BOA, oversaw the services provided by BOA foreclosure attorneys nationwide. He testified that the initial recommendation for recoverability of costs was made by the foreclosure attorney “based on [the attorney’s] review of the law, applicable law, facts and circumstances of the case, and the loan documents.”¹⁴ BOA relied on the attorney’s recommendation and passed the cost to the borrower’s account as an item that was due if the borrower wanted to reinstate the loan.

45. BOA did not allow a foreclosure attorney to bill estimated costs and thus required supporting documentation for any costs. However, if a borrower requested a “reinstatement or payoff quote,” BOA would engage the foreclosure attorney to provide an estimate of potential costs “if the foreclosure continues over a period of time.”¹⁵ In that circumstance, BOA relied on the expertise of the law firm.

46. For non-Fannie Mae or Freddie Mac loans, except for the time period of November 7, 2011, through September, 2012, BOA directed foreclosure attorneys to order title products from LandSafe, BOA’s affiliated title vendor.¹⁶ LandSafe billed BOA directly and did not bill the foreclosure attorney. Thus, any invoicing by the foreclosure law firm to BOA for title products did not include title products ordered from LandSafe.

47. BOA permitted RJHA to bill early in the foreclosure, after the foreclosure sale, or upon another triggering billing event, such as a loan modification or a short sale.

Fannie Mae Guidelines

48. When an investor or loan is silent as to guidelines, mortgage servicers generally required adherence to Fannie Mae’s Guidelines.

49. Pursuant to Fannie Mae’s guidelines on foreclosure fees and costs, a foreclosure attorney was only reimbursed for “actual, necessary and reasonable third-party costs.”¹⁷

Representation of Costs to Homeowners

50. Mr. Hopp acknowledged that, under a homeowner’s promissory note and deed of trust, his servicer clients “had the right to collect damages that they incurred due to the default by the borrower.”¹⁸ He further acknowledged that the Hopp Law Firms’ costs were represented to homeowners on cure statements, whether or not the homeowner cures the default through the public trustee, and were included on invoices to servicers. Mr. Hopp admitted that he was aware that fees and costs, including the fees and costs

¹⁴ Transcript, vol. I, 241:15-22.

¹⁵ *Id.*, 245:4-19.

¹⁶ From November 7, 2011, through September, 2012, foreclosure law firms, such as RJHA, were able to choose the title vendor. RJHA’s relationship with BOA ended in March 2012.

¹⁷ Plaintiffs’ Exhibit 6, at Exhibit 2, page 2.

¹⁸ Transcript, vol. II, 42:1-11.

related to the retention of a foreclosure attorney, are assessed to the homeowner who agreed to pay the servicer or lender for those fees and costs.

51. Mr. Hopp also acknowledged the responsibility of a borrower to pay costs if the borrower “stops” the foreclosure directly with the lender or servicer, unless the lender or servicer waived costs.¹⁹ Additionally, he noted that, if the borrower resolved the foreclosure through a loan modification or other agreement with the lender or servicer, the borrower may or may not be responsible for the costs of a title product.

52. Servicers retained the Hopp Law Firms as a debt collector to pursue a foreclosure. The Hopp Law Firms identified themselves as a debt collector, within the meaning of the Fair Debt Collection Practices Act, on cure statements filed with the public trustee.²⁰

53. The Hopp Law Firms submitted invoices through different invoicing systems, including LPS.

54. Mr. Hopp indicated that, under some of the Hopp Law Firms’ agreements with servicers or lenders, the Hopp Law Firms had an obligation to identify costs that were recoverable or non-recoverable against the borrower. He noted that the billing systems employed by the Hopp Law Firms easily allowed for the designation of that information.

55. The invoices of the Hopp Law Firms that were admitted into evidence do not designate the cost for foreclosure commitments of 110% of the schedule of basic rates billed as non-recoverable.

D. Title Industry and Foreclosure Commitments

56. Upon the initiation of a non-judicial foreclosure, the lender’s attorney orders a title product, often from a title agent, for the property to be foreclosed.

57. The lender’s attorney is responsible for ensuring that he or she is acquiring and delivering insurable and marketable title to his or her client at the conclusion of the foreclosure.

58. Typically, unless otherwise directed by a client, the attorney selects the title product for the non-judicial foreclosure.

59. Foreclosure commitments are title insurance products that can be used in non-judicial foreclosures to facilitate the foreclosure of a deed of trust. A foreclosure title commitment is a commitment to issue a title policy upon the satisfaction of certain conditions, including the issuance of a public trustee’s confirmation deed to the proposed insured after a foreclosure sale.

¹⁹ *Id.*, 65:1-11.

²⁰ *See, e.g.*, Plaintiffs’ Exhibit 20: “The Fair Debt Collection Practices Act requires that we advise you that ROBERT J. HOPP & ASSOCIATES, LLC IS ACTING AS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION PROVIDED WILL BE USED FOR THAT PURPOSE. (Emphasis in original).

60. While a non-foreclosure title commitment usually expires at the end of six months, a foreclosure title commitment often contains a “hold-open” provision. Pursuant to that provision, the commitment extends the expiration period to twenty-four months.

61. The cost of the title product is dictated by the underwriter. The costs are set forth in the underwriter’s rate manual. The Department of Insurance (“DOI”) regulates and oversees the insurance industry and must approve the rate manual to ensure that the rates are “not . . . excessive, inadequate, or unfairly discriminatory.”²¹ A title agent relies upon the manual to determine the appropriate amount to charge for a title insurance product.

62. A title agent may not charge more or less than the rate filed with the DOI.

63. Fidelity National Title Insurance Company (“FNTIC”) is a title insurance company which is licensed to insure titles to real estate in Colorado. As required, FNTIC filed its Title Insurance Rates and Charges for the State of Colorado (“FNTIC’s Manual”)²² with the Commission of the DOI. Section I-16 sets forth the following rates and charges for a Foreclosure Commitment:

This section applies to a title commitment issued to facilitate the foreclosure of a deed of trust, including a policy to be issuable, within a 24-month period after the commitment date, naming as proposed insured the grantee of a Confirmation Deed following the foreclosure, the holder of a certificate of redemption or the grantee upon the consummation of a resale between the holder of a Confirmation Deed and a bona fide third party purchaser within the 24-month hold open period. In the event of a bankruptcy petition that affects the property described in the commitment, the 24-month hold open period shall be extended by the number of months the automatic stay is in effect precluding the foreclosing party from proceeding with foreclosure.

The charge will be 110% of the applicable Schedule of Basic Rates based on the unpaid balance of the deed of trust being foreclosed.

In the event of a cancellation prior to the public trustee’s sale there shall be a charge of \$300.00 to \$750.00, based on the amount of work performed.

Section I-16 provides that the charge of “110% of the applicable Schedule of Basic Rates” applies only to a title commitment which results in the issuance of a title insurance policy. If there is a cancellation prior to the public trustee’s sale, the charge is limited to “300.00 to \$750.00, based on the amount of work performed.”²³

64. Section I-16 further includes the 24-month hold-open feature.

²¹ See *Maxwell v. United Services Automobile Assoc.*, 342 P.3d. 474, 488 (Colo. App. 2014).

²² Plaintiffs’ Exhibit 52.

²³ See Court’s January 19, 2016 Order (Defendants’ Rule 56(h) Motion to Determine Question of Law).

Expert Testimony on Foreclosure Commitments

65. Ronald Kymn Walter, an expert on title insurance retained by the State, provided credible testimony as to the use of title commitments in non-judicial foreclosures. Mr. Walter explained that title commitments, in the context of a foreclosure proceeding, are prepared in anticipation of a foreclosure and thus, if the foreclosure is cancelled, withdrawn, cured, or otherwise not completed within the applicable period of time, the title company cannot issue a title policy. He thus opined that it was the custom and practice of the industry for a title agent to charge a cancellation fee.

66. Mr. Walter testified that a title agent, upon ordering a title commitment may provide an invoice for the full amount of the policy. He indicated, however, that if the client paid the full amount in advance, the title agent was required to deposit the funds in a trust or escrow account since the funds were unearned premiums.

67. Mr. Walter recognized that a cancellation was an affirmative act that had to be performed by the client. He testified that, if the requirements for issuance of a policy had not been satisfied within the 24-month hold-open period, it was incumbent on the agent to determine the status of the foreclosure and the commitment through public records or discussions with the client. If the agent had collected the premium amount and was holding that amount in an escrow or trust account, the agent was required to contact the client to determine whether the requirements for issuance of a title policy had been met. If the conditions had not been met, the agent was required to refund the premium, less the cancellation fee, to the client.

68. Mr. Walter emphasized that the act of issuing a policy does not require an affirmative act by the purchaser of the property. If the requirements for issuance of the policy are met, Mr. Walter explained that it is the duty of the title agent to issue the policy. In that situation, in order to convert the foreclosure commitment to a policy, the agent must obtain a title update, pull a policy jacket from the underwriter, send the policy to the insured, and remit the underwriter's share of the premium to the underwriter. The full title policy premium is not earned until the agent has satisfied the duty to issue the policy.

69. According to Mr. Walter, the failure of an agent to issue a policy that is due can present complications for the insured if the insured makes a claim but does not have a copy of the policy. Without a policy and a remittance, the underwriter lacks proof of coverage.

70. Joseph Murr, an expert in the areas of real estate and foreclosure proceedings retained by Defendant, testified that a foreclosure commitment was the preferred title product in a foreclosure. He testified that it was proper to charge for a title commitment prior the issuance of a policy or a cancellation. He also testified that the foreclosure attorney is not responsible for requesting the issuance of a title policy on behalf of the client. He did not, however, present a clear expert opinion on the propriety of accepting the full premium for a policy where the deed of trust had not been foreclosed or the title policy had not been issued.

Fidelity National Title Company's Practices with Title Commitments

71. Steven Wood is the vice president of state title operations and state underwriter for Fidelity National Title Company ("FNTC"). FNTC is a title agent authorized by the state of Colorado to issue title insurance policies. FNTC uses FNTIC as its primary underwriter and Chicago Title Insurance Company as its secondary underwriter. Mr. Wood has extensive experience in the preparation and issuance of foreclosure commitments.

72. Mr. Wood testified that FNTC, as the title agent, charges "a fee up front [for a foreclosure commitment] based on the amount of work that's gone into that product and with the anticipation that it has a high probability of cancelling before it finishes."²⁴ He testified that, pursuant to FNTIC's Manual, a title agent was authorized to charge a fee for the title commitment, ranging from \$300.00 to \$750.00 based on the amount of work performed by the agent. Mr. Wood stated that, in most cases, FNTC charged \$300.00 for foreclosure commitments ordered from FNTIC. He explained that this charge reflects the amount of work involved to prepare a foreclosure commitment and that, if the subject property was not sold at a foreclosure sale, this is the amount that FNTC would expect to be paid as a cancellation fee.

73. Mr. Wood indicated that FNTC applied the charge of "110% of the applicable Schedule of Basic Rates" only if the deed of trust was foreclosed and that, upon receipt of that amount, issued the policy. He explained that FNTC issued the policy because "[b]oth the product and the rate filing anticipate that once the transaction is complete and payment is made, that a policy is due."²⁵

74. He further noted that, prior to the expiration of the 24-month hold-open period, FNTC would contact the client to determine the status of the foreclosure.

E. Charges by the Hopp Law Firms for Foreclosure Commitments

National Title Operations and Foreclosure Commitment Orders

75. From April of 2009 through the end of 2014, Claudia Smith served as National Title's executive vice president of operations. She testified that Mr. Hopp was the only individual in a supervisory capacity at National Title.

76. As the executive vice president of operations, Ms. Smith ordered title products for the Hopp Law Firms. She did not, however, have any authority to determine the charge for any product. She further indicated that the procedures for invoicing were established prior to her employment.

77. Ms. Smith verified that foreclosure commitments comprised the majority of National Title's work. She further indicated that, until early 2013, the Hopp Law Firms were National Title's only customer which ordered foreclosure commitments.

²⁴ Transcript, vol. V, 10:3-9.

²⁵ *Id.*, 22:15-18.

After the cessation of the Hopp Law Firms in 2013, National Title provided foreclosure commitments to the Randall Miller & Associates foreclosure law firm.

78. Ms. Smith testified that National Title did not have any communication with the proposed insured at the ordering stage, the preparation stage or the delivery stage of the foreclosure commitment. She further was unaware of any communication with the proposed insured upon issuance or delivery of the foreclosure commitment. She indicated that National Title's only communications were with the Hopp Law Firms.

79. Mr. Hopp confirmed that the Hopp-affiliated title companies used FNTIC as their exclusive underwriter.

80. When it provided a foreclosure commitment to the Hopp Law Firms, National Title attached an invoice which identified the "foreclosure rate" at 110% of the schedule of basic rates. This amount is identical to the amount on Schedule A which identifies the premiums and charges for a "Policy (or Policies) to be issued." The invoice further stated, "Terms, net, due upon receipt."²⁶

81. As discussed above, the "foreclosure rate" of 110% is the filed rate in FNTIC's Manual for the issuance of a policy. *See* ¶ 63, *supra*. Ms. Smith verified that National Title billed the Hopp Law Firms the rate of 110% of the schedule of basic rates which was based on the amount to be insured. She referred to this amount charged for a foreclosure commitment as "[t]he premium based on the file rates of the underwriter."²⁷

82. Ms. Smith further acknowledged that the foreclosure commitment contained language that the commitment "presumes to issue a Policy upon completion of non-judicial foreclosure action." She explained that this language meant that a policy would only issue under the completion of a foreclosure sale which resulted in the issuance of a certificate of purchase and a confirmation deed.

The Hopp Law Firms Billing for Foreclosure Commitments

83. Unless otherwise prohibited, the Hopp Law Firms exercised their discretion in selecting the foreclosure title product and typically ordered foreclosure commitments from National Title or FNTR.

84. Mr. Hopp testified that the Hopp Law Firms received invoices from National Title which billed 110% of the schedule of basic rates upon delivery of the foreclosure commitment. He stated that it was the Hopp Law Firms' practice to seek reimbursement, on the Hopp Law Firms' invoices to the servicers, for these charges. The invoices usually were sent to the servicers within ten days of the filing of the foreclosure actions. As a general rule, the servicers paid the amount sought on the invoices.

85. Mr. Hopp explained that the Hopp Law Firms, as a routine practice, at the inception of the foreclosure action, would bill and seek reimbursement from servicers for

²⁶ *See, e.g.*, Plaintiffs' Exhibit 85.

²⁷ Transcript, vol. IV, 11:13-15.

the 110% of the schedule of basic rates which he admitted was the amount charged for a title policy.

86. According to Mr. Hopp, in some circumstances, clients or LPS directed the Hopp Law Firms to order the foreclosure commitment from LSI Title. In those circumstances, the Hopp Law Firms would receive the foreclosure commitment from LSI Title and, within ten days, bill the client. The invoices from LSI Title identified the cost as “premiums” for “Policy or Policies to be issued.”²⁸

87. Mr. Hopp testified that the procedure for invoicing title commitments was the same regardless of the vendor. He also confirmed that the foreclosure commitments from FNTR, National Title and LSI Title presumed issuance of a policy and required the completion of a foreclosure sale prior to the issuance of a policy.

88. Mr. Hopp also acknowledged that the Hopp Law Firms could only bill for fees and cost that were actually incurred. He also agreed that, as owner of the Hopp Law Firms, he maintained control over the amount of reimbursement to seek from the servicers.

Issuance of Policies

89. National Title only issued policies from foreclosure commitments for Department of Housing and Urban Development (“HUD”) and Veterans Affairs (“VA”) foreclosures.²⁹ Mr. Hopp described the HUD package which contained the documents and backup required post-sale on a HUD property and which was necessary for the servicer to make its claim. He noted that the package was provided at the direction of the servicer.

90. Chase’s HLFBM specifically provides, as follows: “For [Federal Housing Administration] and VA loans, title package costs must be submitted within ten (10) Business Days of the title package submission date.”³⁰ The Post-Sale section of the HLFBM similarly provides, as follows: “The Firm must present its final invoice via iClear of Invoice Management within ten (10) business days of the title package submission and prior to the time [Chase] makes its referral of the final Agency/Insurer claim for reimbursement of these expenses.”³¹ The HLFBM suggests that Chase expected to be billed only upon the submission of the title package, which includes the title policy, after the foreclosure and before the re-conveyance process for HUD and VA foreclosures.

91. According to Ms. Smith, National Title’s foreclosure commitments were held open for a 24-month period. She noted, however, that National Title did not issue policies during or after the expiration of the 24-month period unless a policy was

²⁸ Defendants’ Exhibit 1028.

²⁹ Jamie Sells, a mortgage fraud investigator for the State, testified that her review of the records established the issuance of only 30 title policies. She indicated that 28 policies were issued to HUD and 2 policies were issued to VA.

³⁰ Defendants’ Exhibit 1010, at page 41.

³¹ *Id.*, at page 26.

requested. Mr. Hopp similarly testified that, in non-HUD or VA files, National Title “wait[ed] for the client to give us a direction.”³² He admitted that, in most cases, the client never gave any direction and thus, even where the foreclosure had been completed and the servicer paid the full amount for the policy, National Title did not issue the policy. He speculated that servicers “may value the commitment sufficiently through the sale that they don’t need to get additional value in a policy.”³³

92. For cases in which the foreclosure had not been completed and the servicers had paid 110% of the schedule of basic rates for a foreclosure commitment, Mr. Hopp further suggested that the servicers “enjoy[ed] that benefit [of the hold-open period] for the next two years.”³⁴ He indicated that, if the borrower cured the default, the servicer would have a “potential policy” if the borrower defaulted again.³⁵ He also admitted that, upon a new default by the borrower, the Hopp Law Firms could order a new foreclosure commitment.

93. Mr. Hopp testified that, after the expiration of the 24-month hold-open period, National Title did not have any further obligations, including any obligation to issue a policy. He admitted that in many instances, National Title did not issue a policy even though National Title or the Hopp Law Firms collected the premium for the policy from the servicer.

94. Ms. Smith further explained that National Title did not receive any notifications as to the status of foreclosures for which it issued foreclosure commitments and did not assume any responsibility to monitor those foreclosures. She also confirmed that the Hopp Law Firms did not advise National Title as to the status of those foreclosures.

95. Mr. Hopp testified that Hopp Law Firms ordered foreclosure commitments on behalf of the servicer. He also noted that, if the servicer directed the law firm to withdraw or cancel the foreclosure, it was the Hopp Law Firms’ responsibility to file the notice of withdrawal with the public trustee. He conceded that the Hopp Law Firms thus were aware that the foreclosure was withdrawn. Nevertheless, he maintained that it was the servicer’s obligation to cancel the commitment, commenting “[t]he only party that can cancel a commitment is the proposed insured.”³⁶

96. Mr. Hopp further testified that the Hopp Law Firms did not take any action if a homeowner cured the default after the servicer or lender paid the Hopp Law Firms’ customary charge of 110% of the schedule of basic rates for a foreclosure commitment. He recognized that, by curing the default, the homeowner paid the 110% charged. Nevertheless, he claimed that the Hopp Law Firms bore no responsibility, explaining as follows: “The law firm does nothing. It cannot. It’s not the title agent. So

³² Transcript, vol. II, 185:9-13.

³³ *Id.*, at 187:17-19.

³⁴ *Id.*, at 147:19-22.

³⁵ *Id.*, at 148:2-5.

³⁶ Transcript, vol. II, 174:2-6.

the law firm cannot do anything with that foreclosure product, the commitment. It cannot convert it. It doesn't do anything."³⁷

97. Mr. Hopp further testified that the Hopp Law Firms never charged or obtained a cancellation fee from National Title, reasoning, "I was never directed by my client. I was never given authority to."³⁸ He denied that the Hopp Law Firms had any obligation as the attorney for the servicer to inform National Title to cancel the foreclosure commitment because the matter was not proceeding to a foreclosure sale. He maintained that the act of cancellation belonged to the client.

98. Mr. Hopp further indicated that the Hopp Law Firms did not request cancellation fees from National Title because "the law firm doesn't have the authority to intervene in that relationship" between National Title and the servicer.³⁹

99. However, according to Ms. Smith, National Title did not have any communications with the servicers regarding foreclosure commitments. She explained that all communications were between National Title and the Hopp Law Firms.

100. When further asked why the Hopp Law Firms did not advise the servicers that they could cancel the commitment because the foreclosure was withdrawn, he responded,

Understand this environment, there is no reaching out by phone or otherwise. All communications are through the chosen system.

So I can't say that there was not a note made on every file a paragraph long – a paragraph long that says, this is what your options are. I do believe that they were generally informed and understood how title commitments work, how cancellations work.⁴⁰

He emphasized that "unless the client canceled, we did not cancel. They were telling us what to do."⁴¹

101. Ms. Smith testified that the Randall Miller & Associates foreclosure law firm maintained a different practice as to the act of cancellation. She indicated that Randall Miller & Associates cancelled foreclosure commitments after the commitment was issued by National Title. In those cases, National Title charged for the cancellation on the basis of the amount of work performed by National Title. She added that she discussed the appropriate charge for cancellation with Mr. Hopp.

102. Jamie Sells, the State's mortgage fraud investigator, reviewed 500 foreclosure commitment files from National Title to determine if policies had been issued or if cancellations were requested. From this sample, Ms. Sells located only 30 title insurance policies which had been issued to HUD or VA. *See* fn. 29. Thus, from the

³⁷ *Id.*, at 145:21-24.

³⁸ *Id.*, at 194:10-12

³⁹ *Id.*, at 191:3-5.

⁴⁰ *Id.*, at 198:13-20.

⁴¹ *Id.*, at 198:1-199:1.

sample files for which a cancellation was not requested, she determined that policies had been issued in only 6.4 percent of the cases. She also located only 28 cancellation requests. Each of these cancellation requests was made by the Randall Miller & Associates foreclosure law firm; there were no cancellations by the Hopp Law Firms.

103. Ms. Sells calculated the amounts invoiced by the Hopp Law Firms for the 500 sample commitments. She determined that the Hopp Law Firms invoiced a total of \$525,162 for the commitments which were not cancelled and which did not result in the issuance of a policy.

104. Ms. Sells also reviewed 374 bid statements from Adams, Jefferson, Arapahoe, Denver, and El Paso Counties where a third party purchased the property at the foreclosure sale. She testified that these bid statements included title charges ranging from \$300.00 to \$1,800.00, with 240 bid statements including title charges over \$800.00.

National Title's Foreclosure Commitments' Identification of Specific Exceptions

105. On a foreclosure commitment, Schedule B-2 sets forth the matters of record which will remain as exceptions to the commitment and title insurance coverage. These exceptions include easements, covenants and rights-of-way. According to Ms. Smith, these exceptions must be included in the foreclosure commitment in order to provide insurable title.

106. Mr. Hopp discussed the importance of Schedule B-2 exceptions, noting that these exceptions provide accurate information about the title of the property to the client.

107. Mr. Walter conducted an extensive review of foreclosure commitments prepared by National Title. He testified that exceptions 12-15 on Schedule B-2 lacked the required specificity by failing to identify the referenced document in the public records and therefore constituted "junk exceptions," in violation of insurance regulations and statutes.

Effects on Homeowners

108. Mr. Hopp admitted that the Hopp Law Firms' practice of invoicing the 110% premium charge for a title commitment exposed homeowners who sought to stop the foreclosure, through the public trustee or through the servicer, to payment of that full amount. Whether the foreclosure was cancelled "per lender" or by "curing the foreclosure," the homeowner was obligated to pay the 110% premium charge rather than a cancellation fee. Mr. Hopp justified this charge since he "incurred the liability" to the vendor whether or not he paid the vendor.⁴²

109. Ms. Sells reviewed 131 cure statements submitted by the Hopp Law Firms where the homeowners cured defaults, between 2008 and 2013, in Jefferson, Arapahoe, Denver, Adams, and El Paso Counties. In these 131 cured files, Ms. Sells observed a general range of title charges from \$300.00 to \$1,800.00, with a couple charges as high as

⁴² *Id.*, at 124:11-12.

\$4,000.00. She indicated that 46 homeowners who cured their foreclosures paid more than \$1,000.00 for the claimed title cost.

110. Mr. Hopp was not able to credibly justify the payment of 110% of the schedule of basic rates by a homeowner who cured a foreclosure.⁴³

Issuance of a Title Policy and Recordkeeping

111. Ms. Smith confirmed Mr. Walter's testimony regarding the additional work necessary to issue a policy from a foreclosure commitment. She stated that the title agent must conduct another search of the public records, update internal records, prepare the policy, notify the underwriter about issuance of the policy, obtain a policy jacket, obtain the policy number and remit the underwriter's share of the premium.

112. Notably, National Title only remits a share of the premium to the underwriter when National Title obtains a policy of insurance. National Title is not required to remit a premium to the underwriter when it only obtains a foreclosure commitment even though it invoices the same charge.

113. On or about June 15, 2009, FNTIC and National Title entered into an Issuing Agency Contract.⁴⁴ Paragraph 21(B) of the Contract provides, in pertinent part, as follows:

Agent agrees to maintain, either manually or electronically, a policy register pertaining to the Forms. For each policy of title insurance, the policy register shall contain the following information: (i) the policy number; and (ii) Agent's file number; and (iii) the Date of Policy and (iv) the gross title insurance premium collected.

Pursuant to the Contract, the agent was required to pay FNTIC 13% of the gross premiums for title policies only.⁴⁵

114. Mr. Hopp testified that National Title segregated the amounts for policies issued into a separate account for the purpose of remitting premiums collected to FNTIC. FNTIC sent National Title a monthly bill for the amounts to be remitted for issued policies.

115. Upon issuance of a policy with FNTIC as the underwriter, the title agent, such as National Title, enters information, including the date and gross premium of the policy into an electronic system known as TRAX.

116. National Title was not required to remit amounts for foreclosure commitments to FNTIC. Thus, National Title did not deposit amounts for foreclosure commitments into the separate account. Thus, Mr. Hopp admitted that there are no records to reflect the amounts collected by National Title for each foreclosure commitment.

⁴³ See *id.*, at 143:13-146:4.

⁴⁴ Plaintiffs' Exhibit 111.

⁴⁵ *Id.*, Schedule A, ¶ F.

The Hopp Law Firms' Payments to National Title for Foreclosure Commitments

117. SafeHaus Financial provided bookkeeping and accounting services to National Title.

118. Ms. Smith testified that National Title's records set forth the amounts it billed to the Hopp Law Firms for foreclosure commitments. She noted, however, that National Title did not maintain any records establishing that the Hopp Law Firms paid for any particular foreclosure commitments. She indicated that National Title did not have a procedure to ensure that it was paid for a foreclosure commitment which it issued to the Hopp Law Firms.

119. Indeed, Ms. Smith testified that National Title did not receive any money for a foreclosure commitment. She indicated that National Title invoiced its client, the Hopp Law Firms, and the Hopp Law Firms invoiced their client. She further assumed that the client paid the Hopp Law Firms.

120. Mr. Hopp also noted that there were not any records tracking payments by the Hopp Law Firms to National Title for foreclosure commitments. He added that he did not believe that there were "accounting records at that level of detail."⁴⁶

121. Mr. Hopp further conceded that the Hopp Law Firms did not pay all of National Title's invoices even though the Hopp Law Firms may have sought reimbursement for those amounts on their own invoices. He explained, "It was similar owners, as you've pointed out. Kind of in the left pocket, right pocket. . . . [T]hey were on the same tax return, is what I'm saying."⁴⁷

122. Mr. Hopp similarly could not confirm if RJHA paid FNTR for the foreclosure commitments, which also were charged to the servicers at 110% of the schedule of basic rates.

Mr. Hopp and FNTR

123. Prior to joining National Title, Ms. Smith worked at SafeHaus Asset Management, one of Mr. Hopp's companies, and then at FNTR. Mr. Hopp hired her to work at these companies.

124. Within a few months of her employment at FNTR, FNTR was closed and National Title began its operations. National Title used the same offices as FNTR. RJHA was the primary client of FNTR and National Title.

125. Ms. Smith testified that FNTR and National Title employed the same business model in regards to the charges for foreclosure commitments.

126. Mr. Hopp testified that he became involved with FNTR in middle or late 2008. He claimed that he only had a partial ownership interest in the company and that he did not have any managerial responsibilities.

⁴⁶ Transcript, vol. II, 179:18-23.

⁴⁷ *Id.*, at 178:16-22.

127. As of July 31, 2008, however, Mr. Hopp retained a 50 percent interest in FNTR. In November 2008, his personal interest in FNTR was transferred to SafeHaus Holdings Group.

128. Mr. Hopp attempted to minimize his role in FNTR. The Court discounts his minimization. Notably, on or about January 17, 2008, he executed an underwriting agreement between FNTR and Attorneys Title Guaranty Fund and identified his self as the attorney for FNTR as well as the manager of FNTR. Indeed, Mr. Hopp admitted that he had “the authority to bind the company.”⁴⁸

Foreclosure Commitments provided by LSI Title

129. As indicated above, on certain files, the Hopp Law Firms were directed by servicers to obtain the title product from LPS Default Title or LSI.

130. Mr. Hopp was unaware of the Hopp Law Firms’ role in ordering the title product. He thought “it just showed up.”⁴⁹ He indicated that the Hopp Law Firms were expected to pay for the product and then seek reimbursement from their client.

131. The Hopp Law Firms failed to pay LSI on more than 1,100 files where LSI provided the foreclosure commitment. The Hopp Law Firms nevertheless billed the clients for these amounts on the LSI invoices.

132. Brian Howard, the controller of accounting for ServiceLink, testified as to the amounts billed by LSI to the Hopp Law Firms and the amounts paid by the Hopp Law Firms. Mr. Howard was employed by LPS⁵⁰ until it merged with ServiceLink, a subsidiary of Fidelity National Financial.

133. Plaintiffs’ Exhibit 104 is a statement obtained from Title Management, ServiceLink’s operating system. It purportedly sets forth items billed to the Hopp Law Firms by ServiceLink and LPS Default Title from 2008 to the present. The statement includes charges for title products, including the description of the title product, the amount billed for the product, payments made for the item, the applicable loan number specific to that file, and the address of the property which is the subject of the loan.

134. Plaintiffs’ Exhibit 104 contains many items for which the price was adjusted from the original price that was billed to the Hopp Law Firms to a charge of \$350.00. The charges of \$350.00 were inconsistent with the invoices that had been provided to the Hopp Law Firms upon delivery of the LPS title product. The charges of \$350.00 were not supported by invoices. Further, the changes to the original charges were made after the closure of the Hopp Law Firms and after the filing of the Complaint in this action. Moreover, at the time of the price adjustments, the Hopp Law Firms’ account was in collections and the charges were more than 1,500 days old.

⁴⁸ Transcript, vol. III, 154:2-10.

⁴⁹ Transcript, vol. II, 204:23-205:1.

⁵⁰ LSI was a division of LPS and produced title products for LPS. See ¶ 39, supra.

135. Most significantly, Mr. Howard could not provide an explanation for the adjustments. He testified that “[his] team made them at the request of operations.”⁵¹ He noted, however, that the \$350.00 charges did not reflect cancellation charges.

136. On December 4, 2014, LPS billed the Hopp Law Firms for the full amount of the title products.⁵² This billing did not contain the \$350.00 adjustments found on Plaintiffs’ Exhibit 104.

137. In an email dated January 9, 2015, an Assistant Attorney General inquired to LPS as to “any adjustment to the amounts billed on invoices, such as some form of cancellation fee.”⁵³ At the time of this inquiry, LPS was subject to an “Assurance of Discontinuance under C.R.S. § 6-1-110(2),” whereby it promised to discontinue the practice of signing and attesting to documents without personal knowledge.⁵⁴ As part of that agreement, LPS agreed to cooperate in “any investigation and other proceeding into any nonparty providing default or legal services to mortgage loan servicers” including providing documents and testimony at the request of the State.⁵⁵ LPS agreed that failure to produce documents or provide testimony as requested would subject LPS to a liquidated monetary payment to the State of \$100,000.00.⁵⁶

138. Because of the unusual and unexplained adjustments on Plaintiffs’ Exhibit 104, the Court declines placing any weight on the exhibit.

Hopp Law Firm Invoices through the LPS Invoice System

139. Gerald Sharp, the director of software development for BlackKnight Financial Services, testified about the software which it offers to mortgage servicing companies. BlackKnight was formerly part of LPS.

140. BlackKnight offers an invoicing system known as LoanSphere Invoicing, Invoice Management, or the LPS invoicing system. With this system, vendors and law firms submit an electronic invoice into the mainframe application and the mainframe application creates a file and transmits the invoice nightly to the invoicing system. The vendors and law firms are able to work on that invoice. After the invoice is created, the servicer would review the data within the invoice and, through an automated process, send a check to the vendor or law firm.

141. Plaintiffs’ Exhibit 103 is a LoanSphere spreadsheet that contains invoices sent to servicers by the Hopp Law Firms from 2008 to present. The spreadsheet includes the loan and invoice numbers, the date of submission, descriptions of the category and subcategory for the charges, the item and adjusted prices, and the paid amount. The spreadsheet also provides information as to the status of the check. The status of “check confirmed” means that LoanSphere sent the request to the mainframe application and that

⁵¹ Transcript, vol. IV, 150:22-24.

⁵² Defendants’ Exhibit 1093.

⁵³ Defendants’ Exhibit 1088.

⁵⁴ Defendants’ Exhibit 1090, ¶14.

⁵⁵ *Id.*, at ¶ 36(b), (c), and (e).

⁵⁶ *Id.*, at ¶ 38.

the mainframe processed the request and issued the check. The spreadsheet then provides the date on which the check from the servicer to the law firm was issued.

142. The Hopp Law Firms submitted charges through the LPS invoicing system for 8442 unique loan numbers.

143. Although Mr. Sharp oversaw the creation of Plaintiffs' Exhibit 103, he did not have personal knowledge as to the underlying process reflected in the exhibit. For example, he admitted that he did not have any knowledge as to whether a check was created and sent to a vendor even if the spreadsheet reflected "check confirmed." He further was unable to explain the meaning of "Check Confirmed(Exc)," "Check Confirmed(Exc/Res)" or "Check ConfirmedAdj/Exc/Res" as found on LPS invoices.⁵⁷

144. The Hopp Law Firms periodically resubmitted outstanding invoices to some clients. In 2009, Karen Inman, the Hopp Law Firms' controller, submitted to Chase an affirmation and list of outstanding and unpaid invoices as of November 12, 2009.⁵⁸ These same invoices are designated as "check confirmed" in Plaintiffs' Exhibit 103 with a check confirmed date prior to November 12, 2009.

145. Because of the lack of verification of the entries in Plaintiffs' Exhibit 103, the Court places little weight on the exhibit.

Lori Hopp's Involvement in the Entities

146. Lori Hopp was the 85 percent owner of SafeHaus Holdings Group which owned SafeHaus HR and SafeHaus Financial. As noted above, SafeHaus Financial provided bookkeeping and financial services to the Hopp Law Firms and National Title.

147. Although Ms. Hopp has access to SafeHaus bank accounts and accounting systems, prepared invoices for the clients of the Hopp Law Firms, including Chase and BOA, and was a signer of National Title's bank accounts, she operated in a support role for the Hopp Law Firms and SafeHaus HR. She was not assigned to any specific task and instead provided assistance as needed.

148. Ms. Hopp did not create National Title and did not play any role in its management. She assisted with bookkeeping functions and performed some data input functions but lacked any discretion or responsibility for which bills were sent to clients.

F. Timing of State's Filing of the Complaint

149. In January 2014, the State first received information regarding the types of title products provided by Defendants during foreclosure proceedings. This information was produced in response to investigative subpoenas issued to the Hopp Law Firms and National Title. The State neither requested nor received any information from FNTR prior to the filing of its Complaint.

⁵⁷ See Plaintiffs' Exhibit 25.

⁵⁸ Defendants' Exhibit 1019.

G. The State's Calculations⁵⁹

150. Shelly-Jean Sartor, another investigator for the State, reviewed invoicing data from spreadsheets provided by LPS. She then removed the data for invoices where the Hopp Law Firms billed their clients for title that had been billed to the Hopp Law Firms by LPS. She then sorted the remaining population for any charge over \$500.00 since she assumed a charge over \$500.00 was for a title commitment. Ms. Sartor removed from her calculations the few files that showed an adjusted price entry.

151. Ms. Sartor then totaled up the billings by year and subtracted from each yearly total the amount of money which National Title remitted to FNTIC for that year. She next determined the number of "occurrences" by year, defining an "occurrence" as any row of data where the title charge was more than \$500.00.

152. Ms. Sartor multiplied the number of occurrences by the "market rate" of \$300.00.

153. Ms. Sartor next subtracted the amount which she claims should have been billed for that particular year, yielding the State's proposed disgorgement figure.

154. Ms. Sartor was present during most of the trial and observed the testimony of other witnesses. Thus, upon realizing that she had made some erroneous calculations, she modified the proposed disgorgement figure.

155. The disgorgement calculation lacks trustworthiness and reliability. First, Ms. Sartor admitted that the market rate was actually the minimum cancellation authorized by the FNTIC Manual. She testified that she used that rate "[b]ased on the amount of work that was done prior."⁶⁰ However, she conceded that she had not completed any investigation to determine the amount of work performed on the files. She also referenced using that figure because she had been advised to do so by the attorneys. Second, Ms. Sartor was hesitant as to the accuracy of her remittance calculations.⁶¹

156. Ms. Sartor also determined that 2,539 loan numbers from the LPS invoicing system with title charges greater than \$500.00 did not match a loan number where LSI provided the commitment. Title costs greater than \$500.00 are consistent with foreclosure commitments. It is more likely than not that these loan numbers reflect National Title and FNTR commitments where the Hopp Law Firms were paid a policy premium through the LPS invoicing system. Upon subtracting the files in which a policy was issued (or for which amounts were remitted to FNTIC), the number of transactions was 2,291.⁶² Although Defendants raised challenges to this number, the Court finds that it is more likely than not that this number is correct.

⁵⁹ Because it has determined that Plaintiffs' Exhibit 104 is not reliable or trustworthy, the Court declines to make any findings of fact as to disgorgement calculations under the LPS invoice claim.

⁶⁰ Transcript, vol. VI, 55:15-17.

⁶¹ These are the primary concerns about trustworthiness and reliability of the disgorgement figure.

⁶² Plaintiffs' Exhibit 106, page 2 (743 (2008) + 725 (2009) + 516 (2010) + 123 (2011) + 80 (2012) + 101 (2013) = 2,291).

CONCLUSIONS OF LAW

The Court concludes as follows:

A. Claims for Relief

1. In its Complaint, the State asserts one claim for relief based on violations of Section 6-1-105(l)(l) of the CCPA against all Defendants. It states that “Defendants make ‘false or misleading statements of fact concerning the price of . . . services,’”

2. The State also asserts against Robert J. Hopp & Associates, LLC, The Hopp Law Firm, LLC, and Robert J. Hopp, individually, two claims for relief based upon the following violations of Sections 12-14-107 and 12-14-108 of the CFDCPA:

- a. “A debt collector . . . shall not use any false, deceptive, or misleading representation or means in connection with the collection of any debt, including, but not limited to, the following conduct: (b) The false representation of: (I) The character, amount, or legal status of any debt,” § 12-14-107(1)(b)(I); and
- b. “A debt collector . . . shall not use unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to . . . The collection of any amount, including any interest, fee, charge, or expense incidental to the principal obligation, unless such amount is expressly authorized by the agreement creating the debt or permitted by law,” § 12-14-108(1)(a).

B. This Court’s Jurisdiction

3. This Court has jurisdiction to enforce the CCPA in actions by the Attorney General under Sections 6-1-103 and 6-1-110.

4. Section 6-1-103 of the CCPA provides that “actions instituted pursuant to this article may be brought in the county where an alleged deceptive trade practice occurred or where any portion of a transaction involving an alleged deceptive trade practice occurred, or in the county where the principal place of business of any defendant is located, or in the county in which any defendant resides.” § 6-1-103, C.R.S. (2015).

5. Section 6-1-110 similarly provides that where the attorney general has cause to believe that a person has engaged in a deceptive trade practice, she may apply for and obtain an injunction, or request other equitable relief, “in an action in the appropriate district court of this state.” § 6-1-110, C.R.S. (2015).

6. This Court similarly has jurisdiction to enforce the CFDCPA in actions by the Administrator. The CFDCPA authorizes the Administrator to apply to the Denver District Court for injunctive or other relief in any successful action brought pursuant to the statute. § 12-14-135, C.R.S. (2015); *see also* § 12-14-114 (stating that compliance with the CFDCPA shall be enforced by the Administrator).

7. At all relevant times, Robert J. Hopp & Associates, LLC, The Hopp Law Firm, LLC, National Title, LLC, First National Title Residential, LLC, SafeHaus Holdings Group, LLC, Robert J. Hopp, and Lori L. Hopp operated out of Colorado and maintained principal places of business or resided in Colorado.

8. The alleged deceptive trade practice occurred in the state of Colorado and involves foreclosures filed in Colorado.

9. Under these circumstances, the Court has the authority to address Defendants' conduct under the CCPA and the CFDCPA.

C. Violations of the CCPA and the CFDCPA – The Hopp Law Firms

First Claim for Relief – Violation of Section 6-1-105(1)(l)

10. In its First Claim for Relief, the State alleges that the Hopp Law Firms violated Section 6-1-105(1)(l) of the CCPA for making “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 filing costs.” Compl. ¶ 98.

11. The CCPA was enacted “to deter and punish deceptive trade practices committed by businesses in dealing with the public.” *Showpiece Homes Corp. v. Assurance Co. of America*, 38 P.3d 47, 50-51 (Colo. 2001). The CCPA provides “prompt, economical and readily available remedies against consumer fraud.” *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142, 146 (Colo. 2003). In order to maintain a private cause of action under the CCPA, a plaintiff must establish that the defendant engaged in an unfair or deceptive trade practice within the course of the defendant’s business and that such unfair or deceptive trade practice “significantly impacts the public as actual or potential consumers of the defendant’s goods, services, or property.” *Id.* at 146-47.⁶³

12. In order to sustain a claim for violation of the CCPA, the plaintiff must show that “the defendant knowingly engaged in a deceptive trade practice.” *Crowe v. Tull*, 126 P.3d 196, 204 (Colo. 2006). “The CCPA ‘provides an absolute defense’ to a misrepresentation caused by negligence or an honest mistake.” *Id.*

13. The State first asserts that the Hopp Law Firms violated Section 6-1-105(1)(l) by making false and misleading statements on their invoicing for foreclosure commitments ordered from FNTR and National Title.

14. The Court finds and concludes that the Hopp Law Firms did make false or misleading statements of fact concerning the price of foreclosure commitments by

⁶³ While the case law is largely silent on the issue of whether the State must prove public impact in a civil law enforcement action, the Court finds that it is a necessary element of the claim. “The CCPA is a remedial statute intended to deter and punish deceptive trade practice committed by businesses in dealing with *the public*.” *State v. Castle Law Grp., LLC*, 2016 CO 54 ¶22 (Colo. July 5, 2016).

charging for and collecting policy premium amounts shortly after the initiation of the foreclosure proceeding and by representing that these costs were actually incurred.

15. In so finding and concluding, the Court finds the testimony of Mr. Walter and Mr. Wood to be credible and persuasive as it relates to charges for foreclosure commitments. Although these individuals had different practices for foreclosure commitment charges, they both emphasized that the premium charge was not earned unless a policy was issued.

16. The Court finds and concludes that the Hopp Law Firms did not actually incur the cost at the time they invoiced their client a policy premium for a foreclosure commitment prepared by their affiliated title companies, for the following reasons:

a. The charge was an anticipated premium amount for a title insurance policy that had not issued and could not issue until the consummation of the foreclosure sale. In its January 19, 2016 Order (Defendants' Rule 56(h) Motion to Determine Question of Law), the Court determined, as a matter of law, that the "110% of the applicable Schedule of Basic Rates' applies only to a title commitment which results in the issuance of a title insurance policy and that the lesser charges apply in the event of a cancellation prior to the public trustee's sale;"

b. The Hopp Law Firms knew that the 110% cost was for a future policy that may not, and more than likely would never, exist;

c. The Hopp Law Firms nonetheless used the invoice attached to the commitment to obtain reimbursement of the full premium amount, knowing that if the homeowner cured the default or the foreclosure was withdrawn, a lesser cancellation fee should be assessed in lieu of the policy premium;

d. A foreclosure commitment is either cancelled or becomes a policy. The vast majority of foreclosure commitments ordered by the Hopp Law Firms resulted in neither a cancellation nor a policy. The Hopp Law Firms and their affiliated title companies used each other to shield themselves from accountability for failing to cancel commitments or issue policies.

i. The Hopp Law Firms and the title companies never cancelled foreclosure commitments. The Hopp Law Firms claimed that they were not asked to cancel commitments and could not cancel commitments on the client's behalf. This explanation lacks credibility since the Hopp Law Firms ordered the commitment, filed the foreclosure and withdrew the foreclosure. The title companies claimed that their only obligation was to prepare the foreclosure. This explanation also lacks credibility since the title companies knew the Hopp Law Firms were collecting policy premium charges for their work, knew the premium charge was for a policy to be issued, and provided a foreclosure commitment that did not specifically identify the necessary exceptions to provide insurable title.

ii. Absent an affirmative request (which occurred in 6.4 percent of the cases), the title companies systematically failed to issue title policies to the

proposed insured even though the requirements for issuance of a policy had been met. The Hopp Law Firms claimed that they had no role with the client after the foreclosure sale and the title companies claimed that the proposed insureds never requested the policy. The title companies failed to track title commitments that it issued in order to determine when a policy was due and to whom to issue the policy.

e. Neither the Hopp Law Firms nor the title companies treated the cost as an actually incurred cost or even as an incurred liability, unless and until a policy was to issue:

i. National Title lacked a system to track amounts owed by the Hopp Law Firm for foreclosure commitments; in contrast, it did have a system to track amounts owed for policies;

ii. National Title lacked a system to accept funds for a foreclosure commitment; in contrast, it did have a premium account to accept funds when policies were being issued;

iii. National Title never pursued the Hopp Law Firms for unpaid foreclosure commitment amounts; and

iv. National Title's and the Hopp Law Firms' accounting and bookkeeping were performed by the safe entity, SafeHaus Financial.

17. The Court moreover finds and concludes that the Hopp Law Firms' deceptive trade practices significantly impacted the public as actual or potential consumers. As outlined above, these title policy premium charges were repeatedly represented as actual costs to homeowners although these amounts were not actually incurred. Not only were these amounts represented by the Hopp Law Firms directly to homeowners through the cure process, some of whom paid these amounts to cure the foreclosure, but these amounts were routinely added to the borrowers' loan balance when the foreclosure did not proceed to sale.

18. The State next asserts that the Hopp Law Firms violated Section 6-1-105(1)(l) by making false and misleading statements on their invoicing for foreclosure commitments ordered from and prepared by LPS Default Title and Closing, also known as LSI Title Agency.

19. The Court finds and concludes that the State has failed to prove this claim. First, the primary basis for the State's claim as to these foreclosure commitments is that the Hopp Law Firms failed to pay the LPS invoices. The Court finds that the Hopp Law Firms' alleged failure to pay amounts owed to LPS is a private contractual dispute between the Hopp Law Firms and LPS. The CCPA was not intending to redress strictly private wrongs between contracting parties. *Rhino*, 62 P.3d at 148 (“[i]f a party to a contract fails to perform a promise mutually bargained for and agreed upon by the parties, then the remedy is an action for breach of contract”).

20. Moreover, the Court has found that Plaintiffs' Exhibit 104, which was offered in support of the State's LPS invoice claim, is not reliable and lacks the necessary indicia of trustworthiness. The Court has great concerns about the unexplained adjustments by an entity which had a cooperation agreement with the State.

Second and Third Claims for Relief – Violations of Section 12-14-107(1)(b)(I) and 12-14-108(1)(a)

21. In its Second Claim for Relief, the State alleges that the Hopp Law Firms and Robert J. Hopp violated Section 12-14-107(1)(b)(I) of the CFDCPA by using "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[.]"

22. In its Third Claim for Relief, the State alleges that the Hopp Law Firms and Robert J. Hopp violated Section 12-14-108(1)(a) of the CFDCPA by using "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."

23. The CFDCPA applies to any collection agency or debt collector that has a place of business located in Colorado. § 12-14-102(1)(a).

24. A "collection agency" means any person "who engages in a business the principal purpose of which is the collection of debts," or a person who "regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." § 12-14-103(2)(a)(I) & (II)(A).

25. A "consumer" means "any natural person obligated or allegedly obligated to pay any debt." § 12-14-103(4)

26. A "debt collector" is "any person employed or engaged by a collection agency to perform the collection of debts owed or due or asserted to be owed or due to another." § 12-14-103(7); *see also* § 12-14-103(9.3) (defining "person" as "a natural person, firm, corporation, limited liability company, or partnership").

27. "Debt" includes "any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment," and does not include a debt "for business, investment, commercial, or agricultural purposes[,] or a debt incurred by a business." § 12-14-103(6)(a) & (b).

28. A "false representation of a past or present fact" in the context of a fraud claim, has been defined as "any words or conduct which create[s] an untrue or misleading impression of the actual past or present fact in the mind of another." *Nelson v. Gas Research Institute*, 121 p.3D 340, 343 (Colo. App. 2005)(quoting *Russell v. First Am. Mortgage Co.*, 39 Colo. App. 360, 364, 565 P.3d 972, 975 (1977).

29. The Court finds and concludes that the Hopp Law Firms were engaged in a business, the principal purpose of which was the collection of debts, and that the Hopp Law Firms regularly collected or attempted to collect debts owed or due, or asserted to be owed or due, another. *See Shapiro & Meinhold v. Zartman*, 823 P.2d 120, 124 (Colo. 1992) (“Since a foreclosure is a method of collecting a debt by acquiring and selling secured property to satisfy a debt, those who engage in such foreclosures are included within the definition of debt collectors if they otherwise fit the statutory definition.”); *see also Oasis Legal Fin. Grp., LLC v. Coffman*, 361 P.3d 400, 407 (Colo. 2015) (“Debt is a broad concept. . . . In sum, a debt is an obligation to repay”).

30. The Court thus finds and concludes that the Hopp Law Firms were collection agencies within the meaning of the CFDCPA. Indeed, the Hopp Law Firms acknowledged their role as debt collectors as evidenced by their disclosure on cure statements.⁶⁴

31. The Court further finds and concludes that the homeowners and borrowers were “natural persons” ultimately obligated or allegedly obligated to pay the debt which was represented to them on cure statements.

32. The Court further finds and concludes that the CFDCPA claims are not time-barred. *See* Court’s June 8, 2015 Order (Defendants’ Motion to Dismiss). Moreover, the State did and could not have discovered the conduct at issue until January 2014, at the earliest. Defendants did not submit any evidence to dispute this date of discovery. Thus, the Complaint was filed within one year of the discovery of the conduct at issue.

33. The Court further finds and concludes that Robert J. Hopp is personally liable, jointly and severally, with the Hopp Law Firms, for the Hopp Law Firms’ violations of the CFDCPA because he directed and participated in the conduct of the Hopp Law Firms that gave rise to the Hopp Law Firms’ violations of the CFDCPA. *See Kistner v. Law Offices of Michael P. Margelefsky, LLC*, 518 F.3d 433 (6th Cir. 2008) (holding attorney liable as a “debt collector” under the Federal Fair Debt Collection Practices Act where the attorney oversaw and directed the practices that gave rise to the law firms’ liability for violations).⁶⁵

34. The Court finds and concludes that the Hopp Law Firms and Robert J. Hopp violated Section 12-14-107(1)(b)(I) of the CFDCPA. The Hopp Law Firms and Mr. Hopp used false, deceptive, and misleading representations in connection with the collection of homeowners’ debt because they falsely represented the 110% policy premium amount as an actual, necessary, reasonable, and actually incurred cost, when that amount was not actually incurred by the Hopp Law Firms. The Hopp Law Firms, acting pursuant to Mr. Hopp’s direction, invoiced these amounts to servicers, knowing

⁶⁴ *See, e.g.*, Plaintiffs’ Exhibit 26.

⁶⁵ The issue of an individual’s liability for acts of the debt-collection business has not been decided under the CFDCPA. The Colorado Supreme Court has found individual liability of corporate officers and agents under the CCPA. *Hoang v. Arbess*, 80 P.3d 863, 870 (Colo. 2003). The Court finds the reasoning of the Sixth Circuit to be persuasive.

these amounts would be represented to homeowners, the ultimate consumer. The Hopp Law Firms, acting pursuant to Mr. Hopp's direction, also represented these amounts directly to homeowners through cure statements filed with the public trustee.

35. The Court further finds and concludes that the Hopp Law Firms and Mr. Hopp violated Section 12-14-108(1)(a) of the CFDCPA. The Hopp Law Firms, acting pursuant to Mr. Hopp's direction, used unfair and unconscionable means to collect or attempt to collect homeowners' debt by collecting amounts for policy premiums that were incidental to homeowners' principal obligations and were not expressly authorized by the agreements creating their debt—meaning, the promissory notes and deeds of trust—or permitted by law, including the cure statute, Section 38-38-104(5), which allows a law firm to claim on a cure statement a good faith estimate through the cure period, which is effective for not more than 30 calendar days.

36. Although the deeds of trust between homeowners and lenders generally authorize the lender to collect "reasonable attorneys' fees and costs of title evidence," the Court finds and concludes that the deeds of trusts did not authorize costs of title evidence that were not actually incurred. Moreover, charging homeowners for policy premiums, including, but not limited to, on cure statements, during the foreclosure when that homeowner cannot and will not ever receive a policy is not a reasonable cost.⁶⁶

D. Violations of the CCPA by National Title, First National Title Residential, and SafeHaus Holdings Group

37. Section 6-1-105 prohibits a "person" from engaging in deceptive trade practices. The CCPA defines a "person" as "an individual, corporation, business trust, estate, trust partnership, unincorporated association, or two or more thereof having a joint or common interest, or any other legal or commercial entity." § 6-1-102(6), C.R.S.

38. The Court finds and concludes that Defendants National Title, FNTR, and SafeHaus Holdings Group have a joint or common interest in working together to obtain the unjust profits at issue.

39. The Hopp Law Firms, National Title, FNTR, and SafeHaus Holdings Group all have common ownership through Defendants Lori Hopp and Robert Hopp.

40. When National Title was formed in 2009, it continued the same business practices already in place at FNTR and continued to provide foreclosure commitments to the Hopp Law Firms. Mr. Hopp was a manager at FNTR at least as early as January 2008 and was the manager at National Title for its entire existence.

41. National Title and the Hopp Law Firms did not maintain any accounting records which detailed the amounts owed or the amounts paid between the entities for commitments. National Title had neither an accounting nor billing department.

⁶⁶ The Court's finding of liability on this claim is based on the 110% policy premium amount which was represented as an actual, necessary, reasonable, and actually incurred cost, and not on any charges for titles ordered and prepared by LPS.

SafeHaus Financial, another entity wholly owned by SafeHaus Holdings Group, performed all accounting and billing services for the Hopp Law Firms and National Title. Similarly, Mr. Hopp testified that he did not know if RJHA paid FNTR for the foreclosure commitments, which also charged to the servicers at 110% of the schedule of basic rates.

42. Moreover, Mr. Hopp recognized the symbiotic relationship of the entities. As noted above, Mr. Hopp explained, “it was similar owners, as you’ve pointed out. Kind of in the left pocket, right pocket.”⁶⁷ “At the end of the day, and Lori and I were the owners, so it was the same tax return.” *Id.* at 178:24-25

43. Accordingly, the Court finds and concludes that Defendants National Title, FNTR, and SafeHaus Holdings Group had a joint or common interest and therefore constitute a “person” within the CCPA. The Court further finds and concludes that, as a person, these Defendants violated the CCPA by participating in the Hopp Law Firms’ wrongfully obtaining reimbursement for policy premium amounts at the outset of the foreclosure when those charges were not actually incurred.

E. Defendant Robert J. Hopp’s Personal Liability for Conduct of the Hopp Law Firms, National Title, and First National Title Residential under the CCPA and the CFDCPA

44. The CCPA provides that the “provisions of this article shall be available in a civil action for any claim against *any person* who has engaged in or caused another to engage in any deceptive trade practice[.]” Section 6-1-113(1) (emphasis added). “Any person” includes an “individual.” Section 6-1-102(6). Thus, under the CCPA, “[i]ndividual liability of corporate officers and agents is proper[.]” *Hoang v. Arbess*, 80 P.3d 863, 870 (Colo. App. 2003).

45. During the relevant time period, Robert J. Hopp was the sole owner and manager of the Hopp Law Firms. Mr. Hopp testified that he has sole responsibility as to the manner and amount of costs billed by the Hopp Law Firms.

46. National Title was wholly owned by SafeHaus Holdings Group, a family holding company owned at all times by Mr. Hopp and his wife, Lori Hopp. For a substantial period of time, Ms. Hopp owned 85 percent of SafeHaus Holdings and Mr. Hopp owned the remaining 15 percent. Mr. Hopp was the manager of National Title since its inception in 2009 and through 2014 and held himself out as the Chief Executive Officer of National Title. He was intimately involved in all aspects of operations of the Hopp Law Firms, National Title, and FNTR. Claudia Smith, the executive vice president of operations of National Title, reported to him and discussed any pricing with him.

47. Mr. Hopp also had an ownership interest in FNTR in 2008. Further, Mr. Hopp signed the underwriting agreement on behalf of FNTR in January, 2008, and he

⁶⁷ Transcript, vol. II, 178:17-18.

testified that this agreement, demonstrated that “[he] was considered to be an officer or a manager of First National Title Residential, with the authority to bind the company.”⁶⁸

48. As noted above, the Court did not find Mr. Hopp’s testimony, which minimizes his role in FNTR, to be credible. The Court concludes that the underwriting agreement sufficiently demonstrates Mr. Hopp’s control over FNTR’s operations. Moreover, FNTR’s practices were already in place when Mr. Hopp formed National Title, and he continued those same practices at National Title.

49. Section 6-1-105(1)(l) of the CCPA does not specifically delineate whether a defendant’s conduct must be “knowing” in order to be actionable. *Compare* § 6-1-105(1)(l) *with* (a), (b), & (c). The Court determines that any violation of the CCPA, including the instant violation, must be knowing. *See Crowe v. Tull*, 126 P.3d at 204. The term “knowingly,” as used in the CCPA, requires actual knowledge. *State ex rel. Suthers v. Mandatory Poster Agency, Inc.*, 260 P.3d 9, 14 (Colo. App. 2009).

50. “Willful ignorance is equivalent, in law, to actual knowledge. A man who abstains from inquiry when inquiry ought to be made, cannot be heard to say so, and to rely upon his ignorance.” *Mackey v. Fullerton*, 4 P. 1198, 1200 (Colo. 1884); *see also Powder Mountain Painting v. Peregrine Joint Venture*, 899 P.2d 279, 281 (Colo. App. 1994) (“willful ignorance . . . is equivalent to chargeable actual knowledge”); *Tibbetts v. Terrill*, 96 P. 978, 982 (Colo. 1908) (“no man having knowledge of such signs of suspicion as these is at liberty to close his eyes, remain willfully blind to the facts, and by his negligence make himself the instrument of consummating a fraud against which the injured party might otherwise have protected himself”).

51. Here, the evidence establishes that Mr. Hopp knowingly, or with willful ignorance, engaged in and profited from the deceptive conduct of the Hopp Laws Firms and National Title. Accordingly, Mr. Hopp is jointly and severally liable for any relief assessed against the Hopp Law Firms, National Title, FNTR, and SafeHaus Holdings Group.

F. Defendant Lori Hopp’s Personal Liability for the Conduct of National Title and SafeHaus Holdings Group, LLC

52. The Court finds and concludes that the State has failed to prove that Defendant Lori Hopp knowingly, or with willful ignorance, profited from the sanctioned and deceptive conduct of the Hopp Law Firms and National Title.

53. As the Court has found, Ms. Hopp operated only in a support role and did not exercise discretion or bear any responsibility for the invoicing of charges sent to clients.

⁶⁸ Transcript, vol. III, 154:5-10.

I. Remedies for Violations of the CCPA and CFDCPA

54. The CCPA is a remedial statute designed to deter and punish deceptive trade practices by persons in dealing with the public. *Showpiece Homes Corp. v. Assurance Co. of America*, 38 P.3d at 50-51.

55. Civil law enforcement actions by the State under the CCPA serve to protect the public and ensure full and fair competition. *See, e.g., May Dep't Stores Co. v. State*, 863 P.2d 967, 980 (Colo. 1993) (noting that the CCPA was enacted to protect the public and abate evils arising from business pursuits); *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d at 146 (“[t]he CCPA deters and punishes businesses which commit deceptive trade practices in their dealings with the public by providing prompt, economical, and readily available remedies against consumer fraud”). The Colorado Supreme Court accords the CCPA a “liberal construction” in reliance upon its “broad remedial relief and deterrence purposes.” *Hall v. Walter*, 969 P.2d 224, 230 (Colo. 1998).

56. The CCPA provides for enforcement by the Attorney General. Pursuant to Section 6-1-110(1), the Attorney General “may apply for and obtain” injunctive relief prohibiting a person from the continuation of deceptive trade practices. That statutory provision further authorizes the Court to make available the following additional remedies:

The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

Id. This remedial provision grants the court “considerable discretion in entering orders and judgment.” *In re Jensen*, 395 B.R. 472, 495 (Bankr. Colo. 2008).

57. The Attorney General further may seek imposition of civil penalties under Section 6-1-112 of the CCPA against any person who violates or causes another to violate the statute.

58. The CFDCPA also vests the Court with broad equitable powers that it can invoke to remedy harm caused by violations of the Act. § 12-14-135. Those powers include issuing injunctive relief, imposing civil penalties, ordering restitution for consumers or creditors, and awarding “other relief to effectuate the provisions of this article.” *Id.*

Unjust Enrichment

59. The Court recognizes that disgorgement of a defendant’s ill-begotten profits is a well-established remedy available to courts that are exercising their equitable authority to address violations of statutory consumer protection statutes. *See People v.*

Shifrin, 342 P.3d 506, 512 (Colo. App. 2014) (citing *United States v. Universal Mgmt. Servs., Inc.*, 191 F.3d 750, 760-61 (6th Cir. 1999) (stating in case involving Attorney General’s claims under the CCPA that disgorgement is part of the court’s traditional equitable authority)). “Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating . . . law by making violations unprofitable.” *Shifrin*, 342 P.3d at 525 (quoting *Sec. & Exch. Comm’n v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 113 (9th Cir. 2006)).

60. In calculating disgorgement, the State must “‘show that its calculations reasonably approximated’ the amount of the defendant’s unjust gains, after which ‘the burden shifts to the defendants to show that those figures were inaccurate.’” *FTC v. Verity Int’l, Ltd.*, 443 F.3d 48, 67 (2d Cir. 2006) (quoting *FTC v. Febre*, 128 F.3d 530, 535 (7th Cir. 1997)).

61. The Court has broad discretion in determining whether or not to order disgorgement in a civil enforcement action, as well as in calculating the amount to be disgorged. *See S.E.C. v. Maxxon, Inc.*, 465 F.3d 1174, 1179 (10th Cir. 2006).

62. Here, the Court declines to exercise that discretion. As the Court has found and concluded, the State has failed to present trustworthy and reliable evidence to show that its calculations reasonably approximated the amount of Defendants’ unjust gains.

Civil Penalties

63. Section 6-1-112(1)(a) provides as follows:

Any person who violates or causes another to violate any provision of [the CCPA] shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation. For purposes of this paragraph (a), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.

Civil penalties may be imposed for separate violations with respect to: (a) each consumer involved; or (b) each related series of transactions involved. *Id.*; *see also May Dep’t Stores*, 863 P.2d at 976. A civil penalty is mandatory and is designed to “punish and deter the wrongdoer and not to compensate the injured party.” *May Dep’t Stores*, 863 P.2d at 976. Thus, “the CCPA does not require proof of an actual injury or loss before a civil penalty can be awarded.” *Id.* at 973.

64. The CFDCPA also authorizes the Court to award civil penalties up to \$1,500.00 per violation. § 12-14-135.

65. Here, Defendants committed one series of violations:⁶⁹ charging and collecting a policy premium on National Title or FNTR foreclosure commitments when that cost had not actually been incurred.

66. The State has elected to seek civil penalties on a transaction-involved basis. Each invoice submitted by the Hopp Law Firms to a servicer containing a charge for a policy premium when this charge had not actually been incurred—regardless of whether the servicer paid it or whether a policy eventually issued—is a transaction in violation of one provision of the CCPA and two separate provisions of the CFDCPA.

67. To determine the number of violations, the Court relies on the testimony of Investigator Shelly-Jean Sartor. She identified 2,539 National Title and FNTR commitments where the Law Firm were paid a policy premium through the LPS invoicing system. The Court has subtracted the files in which policies were ultimately issued (or amounts were remitted to FNTIC) to arrive at a total of 2,291.

68. In the determination of the amount of civil penalties under Section 6-1-112(1)(a), the Court should consider several factors, including: “(1) the good or bad faith of the defendant; (2) the injury to the public; (3) the defendant's ability to pay; and (4) the desire to eliminate the benefits derived by violations of the CCPA.” *People v. Wunder*, 371 P.3d 785 (Colo. App. 2016). These same factors are equally applicable in the Court’s determination of the amount of civil penalties under Section 12-14-135. *See, e.g., United States National Financial Services, Inc.*, 98 F.3d 131, 140 (4th Cir. 1996) (applying the same factors in determining the amount of civil penalties for violation of the Federal Fair Debt Collection Practices Act).

69. The Court enters civil penalties of \$1,000.00 per violation of the CCPA. The Court finds that these amounts are appropriate considering: (1) the bad faith in claiming at the outset of every foreclosure the cost of a policy premium before this cost was actually incurred; (2) invoicing this cost knowing that it would be exposed to homeowners in foreclosure; (3) the public impact of this conduct on thousands of already vulnerable homeowners in foreclosure who must pay these costs to save their home; (4) the knowledge that in over 90 percent of cases, no policy would issue and thus never incur this cost; (5) the failure to produce any evidence that the Hopp Law Firms paid any amounts collected from servicers for these policies to National Title or FNTR; and (6) the failure to cancel foreclosure commitments that did not proceed to a foreclosure sale, which would have resulted in a lesser charge based on the amount of work performed rather than a premium. The Court does not, however, impose the maximum fine because of the lack of standardization in the industry.

70. The Court enters civil penalties of \$300.00 per each violation of the CFDCPA. The Court reiterates the factors cited above, but also acknowledges that it is unlikely that Defendants will be able to pay an even greater amount than \$300.00 per violation. Moreover, the Court is imposing the penalties for different violations, but the

⁶⁹ Again, the Court has found and concluded that the State has failed to sustain its burden to prove the other series of violations related to the commitments ordered and prepared by LPS.

violations are based on the same conduct. Finally, the Court finds that this lesser amount does not diminish the seriousness of the violations.

71. The Court therefore calculates the penalties as follows:

Claim	Unlawful Practice	Violations	Penalty per Violation	Total Penalties
First Claim for Relief – CCPA § 6-1-105(1)(I)	Invoicing Nat’l Title and FNTR Policy Premium	2,291	\$1,000	\$500,000*
Second Claim for Relief – CFDCPA § 12-14-107(1)(b)(I)	Invoicing Nat’l Title and FNTR Policy Premium	2,291	\$300	\$687,300
Third Claim for Relief – CFDCPA § 12-14-108(1)(a)	Invoicing Nat’l Title and FNTR Policy Premium	2,291	\$300	\$687,300

*Based on the Court’s finding of the maximum civil penalty, the CCPA penalties would be calculated at 2,291 transactions multiplied by \$1,000 for a total of \$2,291,000, but these penalties are statutorily capped by the CCPA at \$500,000 for “any related series of violations.” § 6-1-112(1)(a).

72. All Defendants, except for Defendant Lori Hopp, are liable for the series of CCPA violations relating to National Title and FNTR files. There are 2,291 transactions at issue for the CCPA violations multiplied by \$1,000, which is \$2,291,000, and thus are capped at \$500,000. Accordingly, the Court finds that all Defendants, except for Defendant Lori Hopp, jointly and severally, are liable for \$500,000 in CCPA penalties, the statutory cap.

73. Defendants Robert J. Hopp, Robert J. Hopp & Associates, and The Hopp Law Firm, jointly and severally, are also liable for all penalties under the CFDCPA, totaling \$1,374,600.

74. Accordingly, the Court orders as follows:

a. Defendants, except for Defendant Lori Hopp, jointly and severally, shall pay civil penalties in the amount of \$500,000 for violations of the CCPA; and

b. Defendants Robert J. Hopp, Robert J. Hopp & Associates, and The Hopp Law Firm, jointly and severally, shall pay civil penalties in the amount of \$1,374,600 for violations of the CFDCPA.

Injunction

75. In order to prevent Defendant Robert J. Hopp, Robert J. Hopp & Associates, and The Hopp Law Firm from using or employing deceptive trade practices

in violation of the CCPA or collecting a debt in violation of the CFDCPA, this Court concludes that it is in the public interest to permanently enjoin Defendant Robert J. Hopp, Robert J. Hopp & Associates, and The Hopp Law Firm, and any other persons or entities acting under Defendant Robert J. Hopp, Robert J. Hopp & Associates, and The Hopp Law Firm's control, or in concert or participation with Defendant Robert J. Hopp, Robert J. Hopp & Associates, and The Hopp Law Firm, from engaging in any of the conduct that is the subject of this order, including claiming against homeowners in foreclosure a policy premium for a foreclosure commitment before that cost is actually incurred.

Attorney Fees

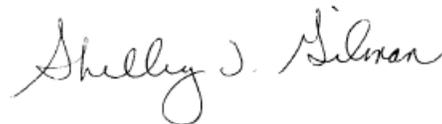
76. Section 6-1-113(4) provides that attorney fees and costs are mandatory when the Attorney General successfully enforces the CCPA: "Costs and attorney fees *shall* be awarded to the attorney general . . . in all actions where the attorney general . . . successfully enforces this article." (Emphasis added). As indicated by the Court's conclusions regarding Defendants' liability, issuance of injunctive relief, and imposition of civil penalties, the Attorney General has successfully enforced the CCPA and is entitled to all reasonable attorney fees and costs.

77. Section 12-14-135 provides that for actions by the Administrator to enforce the CFDCPA the Court may award reasonable costs and attorney fees to the Administrator if the Administrator prevails in an action by the Administrator. As indicated by the Court's conclusions regarding Defendants' liability, issuance of injunctive relief, and imposition of civil penalties, the Administrator has successfully enforced the CFDCPA and is awarded all reasonable attorney fees and costs.

78. The State shall provide, within twenty-one days of the date of this Order, an affidavit of attorney fees and costs. This Court concludes that recovery of fees for governmental prosecution should be calculated at market rate. *Balkind v. Telluride Mountain Title Co.*, 8 P.3d 581, 588 (Colo. App. 2000).

DATED: July 28, 2016

BY THE COURT:



SHELLEY I. GILMAN
District Court Judge