

DISTRICT COURT, FREMONT COUNTY, COLORADO  136 Justice Center Rd. Canon City, CO 81212	<b>EFILED Document</b> <b>CO Fremont County District Court 11th JD</b> <b>Filing Date: Jun 22 2010 2:03PM MDT</b> <b>Filing ID: 31771100</b> <b>Review Clerk: Samantha L McCalla</b>
THE STATE OF COLORADO,  Plaintiff,  v.  INDEPENDENCE PLANNING LLLP dba ALTERNATIVE LENDING OF COLORADO, a Colorado limited liability limited partnership; JAMES W. DALE III, individually and as general partner thereof; and APRIL A. BIGLER, an individual.  Defendants.	▲ COURT USE ONLY ▲  Case No.: 09cv306
JOHN W. SUTHERS, Attorney General ANDREW P. McCALLIN, First Assistant Attorney General,* Reg. No. 20909 JENNIFER MINER DETHMERS, Assistant Attorney General,* Reg. No. 32519 1525 Sherman Street, 7 <sup>th</sup> Floor Denver, CO 80203 Phone: 303-866-5079 Fax: 303-866-4916 Email: jennifer.dethmers@state.co.us *Counsel of Record	
<b>CONSENT JUDGMENT AND PERMANENT INJUNCTION</b>	

Plaintiff, the State of Colorado, ex rel. John W. Suthers, Attorney General (“the State”), and Defendants, Independence Planning LLLP dba Alternative Lending of Colorado, James W. Dale III and April A. Bigler, (collectively, “the Parties”) state that they have fully and finally resolved all of the disputes between them arising out of the conduct alleged in the Complaint. As such, the Parties present to the Court this Consent Judgment and Permanent Injunction (“Consent Judgment”). By their duly authorized signatures, the Parties stipulate to the Court that they understand and agree to the terms of this Consent Judgment; that they have had an opportunity to consult with legal counsel concerning this Consent Judgment; that they accept the legal consequences involved in agreeing to this Consent Judgment; that they waive all rights to service of process of this suit; that they waive all rights of appeal from this Consent Judgment; that they are aware of the duties placed upon them by the Consent Judgment and are desirous and capable of carrying out their duties in full; that they acknowledge receipt of copies of this Consent Judgment and have full and actual notice of its terms; that they waive issuance and service of

writ of injunction; that the persons signing this Consent Judgment are legally and fully authorized to do so; and that this Consent Judgment represents a compromise and settlement of all matters arising out of facts alleged by the State in the Complaint.

The Defendants deny the allegations set forth in the Complaint, and the Parties agree and stipulate that neither this Consent Judgment nor the payment of money or other actions by the Defendants constitute an admission by Defendants of any violation of the Colorado Consumer Protection Act, §§ 6-1-101, *et seq.*, C.R.S. (2008) (“CCPA”).

The Parties submit to the jurisdiction of this Court and do not contest the entry of this Consent Judgment.

As all Parties have approved and agree to entry of this Consent Judgment by their authorized signatures below, the Court, after being fully advised in this matter, finds as follows:

- i. That it has jurisdiction of the Parties and subject matter of this suit;
- ii. That the settlement of this suit is fair, reasonable, and just; and
- iii. That it would be in the best interest of the Parties if the Court approves the settlement and renders judgment accordingly.

Based on these findings, and having heard and considered the representations made by the Parties, the Court is of the opinion that a permanent injunction should be issued as set forth in this Consent Judgment, and that the State is entitled to recover of and from Defendants as set forth below.

The Parties shall bear their own costs of court.

### **INJUNCTIVE RELIEF**

#### ***Defendant Bigler***

1. Bigler agrees to voluntarily surrender her mortgage broker license in the state of Colorado immediately. Bigler agrees that, if she decides to apply for a mortgage broker license, real estate broker license, appraiser license, insurance license, or any equivalent license in any state, she will notify the licensing body of that state of the existence and terms of this Consent Judgment. Additionally, Bigler agrees to notify the State if she intends to or applies for a mortgage broker license, real estate broker license, appraiser license, insurance license, or any equivalent license in any state.

2. Bigler must provide notice to the State if she intends to operate, incorporate, form, or obtain an ownership interest in any mortgage-related business in Colorado, including, but not limited to, businesses who offer mortgage origination, real estate, title, underwriting, lending, appraisal, loan modification, or foreclosure rescue services.

3. Bigler must provide notice to the State if she intends to work in a mortgage-related field in Colorado, including, but not limited to, businesses who offer mortgage origination, real estate, title, underwriting, lending, appraisal, loan modification, or foreclosure rescue services.

4. Bigler shall comply with the CCPA as now constituted or as may hereafter be amended in conducting business in the state of Colorado.

***Defendants Dale and Independence Planning***

5. Dale agrees to voluntarily surrender his mortgage broker license in the state of Colorado immediately. Dale agrees that, if he decides to apply for a mortgage broker license, real estate broker license, appraiser license, insurance license, or any equivalent license in any state, he will notify the licensing body of that state of the existence and terms of this Consent Judgment. Additionally, Dale agrees to notify the State if he intends to or applies for a mortgage broker license, real estate broker license, appraiser license, insurance license, or any equivalent license in any state.

6. Dale must provide notice to the State if he intends to operate, incorporate, form, or obtain an ownership interest in any mortgage-related business in Colorado, including but not limited to, businesses who offer mortgage origination, real estate, title, underwriting, lending, appraisal, loan modification, or foreclosure rescue services.

7. Dale must provide notice to the State if he intends to work in a mortgage-related field in Colorado, including, but not limited to, businesses who offer mortgage origination, real estate, title, underwriting, lending, appraisal, loan modification, or foreclosure rescue services.

8. Dale and Independence Planning, as well as any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, assigns or any person acting on their behalf, shall comply with the CCPA as now constituted or as may hereafter be amended in conducting business in the state of Colorado.

**MONETARY RELIEF**

***Defendant Bigler***

9. Bigler shall pay \$33,770.00 to the “Colorado Department of Law” for consumer restitution pursuant § 6-1-110(1), C.R.S. Bigler shall pay this restitution as follows:

- a. Bigler shall make a payment of \$450.00 within ten (10) days of the Court signing this Consent Judgment.
- b. Bigler shall make payments of \$450.00 per month beginning July 1, 2010, and on the first day of every month thereafter in twenty-three (23) equal additional installments.

- c. The remaining amount of this restitution shall be suspended until such time that Bigler violates any provision of this Consent Judgment. If Bigler violates any provision of this Consent Judgment, then she will pay the remainder of this restitution in full within ten (10) days of receiving notification of the violation(s).
- d. These funds, and any interest thereon, shall be held in trust by the Attorney General for purposes of making restitution to the persons harmed by the conduct alleged in the Complaint. Such funds shall be distributed by and at the discretion of the Attorney General.

10. Bigler shall pay \$14,000.00 as a civil penalty pursuant to § 6-1-112, C.R.S. This civil penalty shall be suspended until such time that Bigler violates any provision of this Consent Judgment. If Bigler violates any provision of this Consent Judgment, then she will pay the remainder of this civil penalty in full within ten (10) days of receiving notification of the violation(s).

11. All payments shall include a reference to the “Bigler Settlement” and shall be delivered to:

Jennifer Miner Dethmers  
Assistant Attorney General  
Colorado Department of Law  
Consumer Protection Section  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

12. Bigler may increase the payment amounts in paragraph 9 at any time without penalty. If Bigler fails to make a payment pursuant to this Consent Judgment, the State may accelerate all payments due hereunder and collect the entire amount due from her. In such event, the State shall be entitled to recover its costs and attorney fees in collecting such amounts.

13. If Bigler makes a partial payment under this Consent Judgment, the State’s acceptance of such partial payment does not prevent it from declaring the Consent Judgment breached and collecting the full amount due hereunder and to seek other remedies, including contempt. If a partial payment is made, the State may deem the partial payment and all future payments as payment towards restitution until the full restitution amount has been paid.

14. If the State discovers that Bigler made any material misrepresentation regarding the income or assets on her Financial Statement or related documents, then the State must provide written notice to the Court and Bigler describing the material misrepresentation(s). Upon receiving such notice, Bigler has ten (10) days to respond to the State’s allegations. If the Court finds a material misrepresentation in the income and/or assets as described on Bigler’s Financial Statement, the Court shall enter an order (1) trebling the suspended amounts of her restitution

and civil penalties; (2) accelerating all payments due hereunder, including any suspended restitution and civil penalties; and (3) making the entire amount immediately due and payable.

15. The obligations set forth in this Consent Judgment are continuing as to Bigler.

***Defendants Dale and Independence Planning***

16. Dale and Independence Planning shall pay \$16,885.00 to the “Colorado Department of Law” for consumer restitution pursuant § 6-1-110(1), C.R.S. Dale and Independence Planning shall pay this restitution as follows:

- a. Dale and Independence Planning shall make a payment of \$300.00 within ten (10) days of the Court signing this Consent Judgment.
- b. Dale and Independence Planning shall make payments of \$300.00 per month beginning July 1, 2010, and on the first day of every month thereafter in twenty-three (23) equal additional installments.
- c. The remaining amount of this restitution shall be suspended until such time that Dale or Independence Planning violates any provision of this Consent Judgment. If Dale or Independence Planning violates any provision of this Consent Judgment, then they will pay the remainder of this restitution in full within ten (10) days of receiving notification of the violation(s).
- d. These funds, and any interest thereon, shall be held in trust by the Attorney General for purposes of making restitution to the persons harmed by the conduct alleged in the Complaint. Such funds shall be distributed by and at the discretion of the Attorney General.

17. Dale and Independence Planning shall pay \$14,000.00 as a civil penalty pursuant to § 6-1-112, C.R.S. This civil penalty shall be suspended until such time that Dale or Independence Planning violates any provision of this Consent Judgment. If Dale or Independence Planning violates any provision of this Consent Judgment, then they will pay the remainder of this civil penalty in full within ten (10) days of receiving notification of the violation(s).

18. All payments shall include a reference to the “Dale/Independence Planning Settlement” and shall be delivered to:

Jennifer Miner Dethmers  
Assistant Attorney General  
Colorado Department of Law  
Consumer Protection Section  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

19. Dale and Independence Planning may increase the payment amounts in paragraph 16 at any time without penalty. If Dale and Independence Planning fail to make a payment pursuant to this Consent Judgment, the State may accelerate all payments due hereunder and collect the entire amount due from either or both of them. In such event, the State shall be entitled to recover its costs and attorney fees in collecting such amounts.

20. If Dale or Independence Planning makes a partial payment under this Consent Judgment, the State's acceptance of such partial payment does not prevent it from declaring the Consent Judgment breached and collecting the full amount due hereunder and to seek other remedies, including contempt. If a partial payment is made, the State may deem the partial payment and all future payments as payment towards restitution until the full restitution amount has been paid.

21. If the State discovers that Dale or Independence Planning made any material misrepresentation regarding the income or assets on their Financial Statements or related documents, then the State must provide written notice to the Court, Dale, and Independence Planning describing the material misrepresentation(s). Upon receiving such notice, Dale and Independence Planning have ten (10) days to respond to the State's allegations. If the Court finds a material misrepresentation in the income and/or assets as described on Dale's or Independence Planning's Financial Statement, the Court shall enter an order (1) trebling the suspended amounts of their restitution and civil penalties; (2) accelerating all payments due hereunder, including any suspended restitution and civil penalties; and (3) making the entire amount immediately due and payable.

22. The obligations set forth in this Consent Judgment are continuing and apply jointly to Independence Planning as well as to Dale, who is held personally liable under this Consent Judgment.

### **OTHER TERMS AND CONDITIONS**

23. **No Admission.** This Consent Judgment shall not constitute an admission of wrongdoing by Defendants, nor shall it be cited as such by the State. This Consent Judgment shall not be admissible in any other proceeding as evidence of wrongdoing or a concession of responsibility.

24. **Enforcement.** This Court shall retain jurisdiction over this matter for the purposes of (a) enabling the State to apply, at any time, for enforcement of any provision of this Consent Judgment and for sanctions or other remedies for any violation of this Consent Judgment; and (b) enabling any Party to this Consent Judgment to apply, upon giving 45 days written notice to all other Parties, for such further orders and directions as might be necessary or appropriate either for the construction or carrying out of this Consent Judgment or for the modification or termination of one or more injunctive provisions of this Consent Judgment.

25. **Cooperation.** Defendants agree to cooperate with all investigations and other proceedings that the State may bring to enforce the terms of this Consent Judgment or to enforce the CCPA against any entity. Included within this cooperation agreement are the obligations to:

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

26. **No Third Party Beneficiaries Intended.** This Consent Judgment is not intended to confer upon any person any rights or remedies, including rights as a third party beneficiary. This Consent Judgment is not intended to create a private right of action on the part of any person or entity other than the Parties hereto.

27. **Private Parties Retain Rights.** This Consent Judgment shall not be construed to affect the rights of any private party to pursue remedies pursuant to §6-1-113, C.R.S. or under any other statutes through claims or actions in common law.

28. **No Release by Any Other Government Authority.** Nothing in this Consent Judgment shall be construed to release claims held by any other government authority.

29. **Violation of this Consent Judgment.** A violation of any of the terms of this Consent Judgment shall constitute a prima facie violation of the CCPA and shall, in addition to resulting in the payment detailed above, give rise to remedial and punitive sanctions available under Colo. R. Civ. P. 107.

30. **Service of Notices and Process.** Service of notices and process required or permitted by this Consent Judgment or its enforcement shall be in writing and delivered or served (as appropriate) on the following persons, or any person subsequently designated by the Parties:

To Defendant April Bigler at:

609 N. Iliff Dr.  
Pueblo West, CO 81007  
Phone: (719) 459-1334  
Email: april@independence-planning.com

To Defendant Independence Planning LLLP  
dba Alternative Lending of Colorado at:

1256 Calle Antiqua  
Pueblo West, CO 81007  
Phone: (719) 406-7586  
Email: company@independence-planning.com

To Defendant James W. Dale III at:

1256 Calle Antiqua  
Pueblo West, CO 81007  
Phone: (719) 406-7586  
Email: jim@independence-planning.com

To The State at:

Jennifer Miner Dethmers, Assistant Attorney General  
Colorado Department of Law  
Consumer Protection Section  
1525 Sherman Street – 7<sup>th</sup> Floor  
Denver, CO 80203  
Phone: (303) 866-5079  
Fax: (303) 866-4916  
Email: jennifer.dethmers@state.co.us

Any Party may change the designated persons and address for delivery with respect to itself by giving notice to the other Parties as specified herein.

31. **Waiver.** The failure of any Party to exercise any rights under this Consent Judgment shall not be deemed a waiver of any right or any future rights.

32. **Severability.** If any part of this Consent Judgment shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder hereof, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

33. **Conflict with Subsequent Law.** In the event that any applicable law conflicts with any provision hereof, making it impossible for Defendants to comply both with the law and with the provisions of this Consent Judgment, the provisions of the law shall govern.

34. **Counterparts.** This Consent Judgment may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Consent Judgment. Facsimile copies of this Consent Judgment and the signatures hereto may be used with the same force and effect as an original.

35. **Inurement.** This Consent Judgment is binding and inures to the benefit of the Parties hereto and their respective successors and assigns.

36. **Integration.** This Consent Judgment constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof.

37. **Amendment.** This Consent Judgment may be amended solely by written agreement signed by the State and the Defendants.

38. **No Other Representations.** There are no other representations, agreements or understandings between Respondents and the State that are not stated in writing herein.

SIGNED on this 22<sup>nd</sup> day of June, 2010.

A handwritten signature in black ink, appearing to read "John A. Marshall", is written above a horizontal line.

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DISTRICT COURT JUDGE

Dated: \_\_\_\_\_  
Respondent April A. Bigler

\_\_\_\_\_  
APRIL A. BIGLER

Dated: \_\_\_\_\_  
Respondent James W. Dale III, personally,  
and as General Partner of Independence  
Planning LLLP dba Alternative Lending of  
Colorado

\_\_\_\_\_  
JAMES W. DALE III

Dated: \_\_\_\_\_

JOHN W. SUTHERS  
Attorney General

\_\_\_\_\_  
JENNIFER MINER DETHMERS  
Assistant Attorney General  
Consumer Protection Section