

<p>DISTRICT COURT, FREMONT COUNTY, COLORADO</p> <p>136 Justice Center Rd. Canon City, CO 81212</p> <hr/> <p>THE STATE OF COLORADO,</p> <p>Plaintiff,</p> <p>v.</p> <p>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.</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>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, 7th Floor Denver, CO 80203 Phone: 303-866-5079 Fax: 303-866-4916 Email: jennifer.dethmers@state.co.us *Counsel of Record</p>	<p>Case No.:</p>
<p>COMPLAINT</p>	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, by and through the undersigned counsel, states and alleges as follows:

INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, §§ 6-1-101, *et seq.*, C.R.S. (2009) (the “CCPA”), to enjoin and restrain Independence Planning LLLP dba Alternative Lending of Colorado, James W. Dale III, and April A. Bigler (collectively, “Defendants”) from engaging in deceptive trade practices, impose statutorily-mandated civil penalties, and for other relief as provided in the CCPA.

PARTIES

2. John W. Suthers is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and prosecute violations of the CCPA.

3. Defendant April A. Bigler is an individual residing at 745 S. Watermelon Drive, Pueblo West, Colorado 81007. Bigler is a mortgage loan originator licensed with the State of Colorado, License Number LMB100010273. Bigler's mortgage loan originator license does not expire until December 13, 2009. Upon information and belief, Bigler currently is a loan officer with Alternative Lending, Inc. ("Alternative Lending, Inc.") located at 265 Joe Martinez Boulevard, Pueblo West, Colorado 81007. Previously, Bigler was a loan officer with Independence Planning LLLP dba Alternative Lending of Colorado with its principal place of business at 655 Southpointe Ct., Suite 200, Colorado Springs, Colorado 80906.

4. Defendant James W. Dale III is an individual currently residing at 1256 Calle Antiqua, Pueblo West, Colorado 81007. Dale has the following licenses with the State of Colorado: a mortgage loan originator license, License Number LMB100009234; an insurance license, License Number 37731; and a Series 7 securities license, CRD# 4627719. Upon information and belief, Dale is a loan officer with Apple Mortgage located at 1155 Kelly Johnson Blvd., Suite 200, Colorado Springs, Colorado 80920. Additionally, upon information and belief, Dale is employed and registered with H.D. Vest Investment Services.

5. Defendant Independence Planning LLLP dba Alternative Lending of Colorado ("Independence Planning") is a Colorado limited liability limited partnership. Its mailing address is P.O. Box 6999, Pueblo West, Colorado 81007, and its last known principal place of business was 655 Southpointe Ct., Suite 200, Colorado Springs, Colorado 80906. The general partners of Independence Planning are Dale and Margaret Aucone.

JURISDICTION AND VENUE

6. This court has jurisdiction over this matter pursuant to the CCPA, §§ 6-1-103 and -110(1), C.R.S. (2009).

7. Under § 6-1-103, C.R.S. (2009), venue is proper because Defendants engaged in the advertising, marketing, and origination of residential mortgage loans in the County of Fremont.

RELEVANT TIMES

8. The conduct giving rise to the claims for relief contained in this Complaint began in 2004 and continued throughout 2008. Thus, the Plaintiff timely brings this action pursuant to § 6-1-115, C.R.S. (2009) in that Plaintiff commenced the action within three years of the date on which false, misleading, and deceptive acts or practices occurred or were discovered.

PUBLIC INTEREST

9. Through the misleading and deceptive trade practices of their businesses, vocations, or occupations, Defendants have misled and deceived consumers in Colorado.

10. Additionally, the deceptive trade practices engaged in by Defendants evidences an intent to gain an unfair advantage in the marketplace and substantially lessen competition.

11. As Bigler and Dale are currently licensed as mortgage loan originators by the State of Colorado and as Independence Planning remains in good standing with the Colorado Secretary of State, the Attorney General believes that Defendants will continue to cause injury, loss, and damage to Colorado consumers as well as businesses that make legitimate mortgage transactions.

12. Therefore, these legal proceedings are in the public interest.

FACTUAL ALLEGATIONS

A. Independence Planning

13. Dale formed Independence Planning in 2000 and registered the trade name “Alternative Lending of Colorado” in October 2002. Independence Planning offers financial, mortgage brokerage, and insurance services.

14. Dale is the managing general partner of Independence Planning. In addition to supervising loan managers and senior loan officers, including Bigler, Dale handled consumer complaints about loan officers. Dale also was in charge of quality control, and he and his loan managers reviewed loan officers’ loan files to ensure accuracy and compliance with office policies.

15. As a mortgage loan originator, Dale personally originated approximately 50 loans through Independence Planning.

16. Throughout its history, Independence Planning has had a total of 120 or 130 loan officers.

B. April Bigler Was The Top-Performing Loan Officer at Independence Planning.

17. Bigler has worked in the mortgage industry since approximately 2000. She began originating loans with Independence Planning in 2001 or 2002. Bigler reported to Dale.

18. Between 2004 and 2006, Bigler closed between 12 and 20 mortgage loans per month resulting in a total of 120 to 240 loans each year. Even though the real estate market began to

slow in 2007, Bigler closed at least 35 loans that year. Bigler was the top-performing loan officer at Independence Planning.

19. Bigler focused on originating residential mortgage loans for subprime borrowers.

20. The majority of borrowers for whom Bigler originated loans either purchased or refinanced properties located in Fremont County, Colorado, including the cities of Cañon City, Florence, Penrose, Coal Creek, and Rockvale. Bigler also originated loans for consumers in Colorado Springs and Pueblo as well as a few consumers in other areas of Colorado.

21. Bigler left Independence Planning some time in 2008 and became a loan officer with Alternative Lending, Inc.

C. Consumer Complaints

22. The Attorney General has received at least 15 complaints from borrowers regarding the conduct of Bigler, Dale, and Independence Planning in originating, brokering, and closing mortgage loans. Consumers who contacted the Attorney General's office all expressed similar complaints about their experiences with the Defendants.

Bigler Misrepresented or Did Not Fully Disclose the Terms of Loans to Consumers.

23. Bigler misrepresented or failed to disclose the material terms of loans to consumers prior to closing. Additionally, Bigler did not notify consumers of changes to the material terms of their loans throughout the loan origination process. As a result, consumers did not understand the material terms of their loans until closing or later.

24. For example, Bigler led consumers to believe that they were entering into one fixed interest rate mortgage loan throughout the loan origination process. At closing, however, consumers discovered for the first time that Bigler had originated two variable rate interest loans, some of which had prepayment penalties and large balloon payments.

25. Bigler also misrepresented the interest rates on consumers' loans throughout the loan origination process. Consumers only discovered the actual interest rates on their loans, which were usually much higher than Bigler represented, at closing.

26. Bigler originated loans for consumers that resulted in monthly mortgage payments in excess of what the borrowers had told Bigler they could afford. Again, consumers only discovered the actual amount of monthly mortgage payments at closing.

27. In some cases, Bigler failed to explain that the consumers' monthly mortgage payments did not include taxes and insurance. These consumers were surprised to receive a bill for taxes and insurance after closing, which effectively increased their monthly mortgage payment and placed them in a precarious financial position.

28. When consumers questioned Bigler about why their loan terms were different than represented throughout the loan origination process, Bigler assured them that she would refinance their loans within a few months to lower their monthly payments or interest rates. Bigler, however, did not disclose that the majority of the loans had prepayment penalties, thereby making it very difficult and expensive to refinance prior to the expiration of the penalty period. Bigler did not refinance the majority of these loans.

29. In short, Bigler led consumers to believe that she was originating a loan with terms to which the consumers had agreed when, in reality, Bigler originated a loan that contained different terms that were less favorable to the consumer.

Bigler Delayed Closings.

30. Bigler delayed loan closings many times without explanation, resulting in consumers feeling pressure to enter into mortgage loans.

31. To illustrate, one family with small children was scheduled to close before the Christmas holidays. They gave notice to their landlord of their intent to vacate their apartment by the end of December. Bigler delayed the closing until December 30. Although the consumers discovered that the loan was not what they expected at closing, they felt pressure to sign the loan documents, because they literally had no place to live unless they obtained the loan. Bigler told them not to worry as they only had to make loan payments for a few months, and then she would refinance them into a more affordable loan. Bigler never refinanced the loan, and the family lost their house in foreclosure.

32. In other situations, Bigler delayed the closings so long that the borrowers' credit reports expired. As a result, lenders required updated credit reports and Bigler pulled the borrowers' credit reports again, which caused the consumers' credit scores to decline.

Consumers Did Not Receive Timely, Accurate, or Complete Disclosures.

33. Bigler did not provide timely, accurate, complete, or updated disclosures to the vast majority of her customers.

34. The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601, *et seq.* ("RESPA"), and its implementing regulation, Regulation X, 24 C.F.R. Part 3500, require that mortgage loan originators provide consumers with Good Faith Estimates ("GFEs") within three days of receiving a loan application so that consumers receive advance notice of all settlement costs. *See* 12 U.S.C. § 2601(b)(1); 24 C.F.R. § 3500.7(b). The GFE must include each charge that the borrower will normally pay at or before the settlement, including all fees that the mortgage loan originator will receive such as origination fees, processing fees, discount points, and yield spread premiums. *See* 24 C.F.R. § 3500 App. A. In 2007 the Colorado General Assembly required that, as a matter of state law, all mortgage loan originators comply with RESPA and Regulation X, 24

C.F.R. Part 3500; the Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* (“TILA”), and Regulation Z, 12 C.F.R. Part 226; and other federal laws and regulations. *See* § 12-61-911(1)(j), C.R.S. (2009).

35. When Bigler did provide disclosures to borrowers, the disclosures were usually incomplete and inaccurate. In many instances, the disclosures did not contain such basic information as estimated title charges, recording charges, funds needed to close, estimated monthly payment, interest rate and annual percentage rate, third party fees, amount financed, finance charge, and items required by the lender to be paid in advance.

36. The disclosures also did not accurately reflect the fees that Bigler or Independence Planning would receive in connection with the mortgage loan transaction or the material terms of the loans such as whether the loans had prepayment penalties or variable interest rate features.

37. If the initial disclosures actually contained the required information, Bigler did not provide updated and corrected disclosures until closing. For example, some initial disclosures that Bigler provided to consumers stated that the loans did not have prepayment penalties and did not have variable interest rates. As Bigler did not provide corrected disclosures to the consumers, they were surprised to learn at closing that their loans had adjustable interest rates and substantial prepayment penalties.

38. In one instance, Bigler dated both GFE and TILA disclosures after the loan had closed. As the purpose of the disclosures is to notify the consumer of the loan costs and terms prior to the entering the loan, there is absolutely no reason to prepare a disclosure after the consumer had already closed on the loan.

39. Bigler frequently told consumers that they would be getting cash back at closing. However, many consumer never received the expected money or, only a short time prior to closing, consumers were informed that they needed to bring cash to the closing

40. Although consumer loan files indicate that some consumers brought money to closing, many consumers reported that they did not bring any money to closing. Therefore, while closing documents indicate that the source of funds provided at closing came from the borrower, the funds actually came from another source.

Other Complaints

41. Bigler did not attend many of her customers’ closings, so they could not question her about the loan terms in person. When consumers attempted to contact Bigler via telephone during the loan closing, they had difficulty reaching her. If consumers did reach Bigler, she advised them to sign the loan documents and promised to refinance them into a more affordable loan containing the terms originally requested by the consumers within a few months.

42. Moreover, Bigler did not timely return customer calls or respond to their requests. Many consumers escalated their complaints to Dale; however, Dale did not adequately address their concerns or resolve their problems. As such, Dale and Independence Planning knew that Bigler failed to respond to requests from customers and potential customers.

Bigler's Actions Placed Borrowers in a Worse Position Than They Were in Prior to Entering into the Mortgage Loan.

43. Bigler originated mortgage loans for consumers that were unsuitable for their needs, had no tangible net benefit, and left consumers in a worse financial position than they were in prior to entering the loan. Instead of helping consumers to purchase houses or successfully refinance their home mortgage loans, many consumers who entered into loans originated by Bigler experienced foreclosure actions on their properties and other detrimental effects.

44. Of the 192 loans¹ for which the Attorney General has information, at least 84 of the properties have gone into foreclosure or had a Notice of Election and Demand ("NED") filed. These figures do not include those borrowers who are delinquent on their mortgage payments, but whose lenders have not yet initiated foreclosure proceedings, or those borrowers who were forced to short sell their homes or refinance after paying a penalty to avoid foreclosure. Thus, 43.75% of the borrowers for whom Bigler originated loans have faced foreclosure actions, placing them in a far worse position than they were in prior to obtaining into their loans.

45. Bigler also advised consumers who were refinancing to stop making their monthly mortgage payments during the refinancing process. By following Bigler's improper advice, the consumers fell behind on their mortgage payments and damaged their credit scores.

46. Consumers' monthly mortgage payments, including taxes and insurance, were more than they had told Bigler that they could afford. Many of these loans had prepayment penalties, so borrowers who tried to refinance out of their unaffordable loans could not afford to do so or had to spend substantial sums to refinance. Additionally, many borrowers were immediately "underwater," because they owed more on the house than it was worth, due to an inflated home price. Consumers saw a decline in their credit scores as a result of Bigler's actions and advice. These consumers are also in a worse position than prior to obtaining their loans.

D. Questionable Appraisals

47. Bigler worked with appraisers to ensure that her customers' houses appraised at an amount exceeding the properties' actual values. This artificial home price inflation resulted in many borrowers owing more on their mortgage loans than their houses were actually worth.

¹ These 192 loans count a situation where a borrower entered into a first and second mortgage on the same property during the same transaction as one loan. A subsequent refinance of the property is counted as a separate loan.

48. Additionally, this practice of artificially inflating the price of homes also caused lenders unknowingly to incur additional risk. To illustrate, lenders often lend up to eighty percent (80%) of the home value. If a house is listed at \$200,000, then the lender may loan up to \$160,000 thereby requiring the borrower to pay \$40,000 up front, obtain a second mortgage, or purchase mortgage insurance. However, if the price of the house is artificially increased to \$250,000, then the lender may be willing to loan up to eighty percent (80%) of this amount, or \$200,000, which was the original listing price. The lender is, in effect, loaning one-hundred percent (100%) of the value of the house instead of eighty percent (80%). The inflated appraisal allows this scenario to occur.

49. Artificially inflated home prices not only impact borrowers, but also negatively impact home prices and cause economic disruption to communities.

50. Bigler worked with at least three appraisers who have been the subject of disciplinary actions by the Division of Real Estate: Albert (“Pete”) Fajt, Ryan Goydich, and Jerome Forsythe. Dale acknowledges that he knows Fajt well.

51. Bigler used Fajt more than any other appraiser. The Division of Real Estate assessed a \$46,000 administrative fine against Fajt and revoked his license after investigating Fajt’s appraisals and appraisal reporting of numerous properties. Bigler was the mortgage loan originator on at least six of the properties that formed the basis of the Division of Real Estate’s disciplinary action against Fajt.

52. This artificial home price inflation resulted in Bigler and Independence Planning receiving increased compensation as origination and other fees were based on the inflated loan amount.

53. Bigler refused to provide copies of appraisals to many of her customers, despite repeated requests.

E. Stated Income Loans

54. Bigler originated stated income loans for some of her customers. Lenders offering these types of loan products, commonly known as “liar’s loans,” do not verify the amount of income stated on the loan application. These types of loans encourage fraud, because lenders do not require mortgage loan originators or borrowers to substantiate the income stated on the loan application with W-2 forms, tax returns, employer corroboration, or other types of verification. Mortgage loan originators often participate in perpetrating this type of fraud, because the mortgage loan originator is in a unique position to know the amount of income needed in order to qualify for a certain loan amount or product.

55. Despite the fact that Bigler knew that the incomes declared on some borrowers’ loan applications were inflated, Bigler presented loan applications containing false income information to lenders and continued to originate loans.

F. Bigler and Independence Planning Received Substantial Compensation from Loans that Bigler Originated.

56. Independence Planning compensated its loan officers on a commission basis.

57. To calculate Bigler's commissions, Independence Planning subtracted a \$500 administrative fee from the total amount of fees Bigler assessed or received on each loan. Then, Independence Planning split the remaining fees with Bigler, giving seventy percent (70%) of the fees to Bigler in the form of a commission and keeping thirty percent (30%) of the fees.

58. The commission consisted, in part, of various fees that Bigler charged to originate the loan. For example, Bigler charged borrowers origination fees, processing fees, administrative fees, application fees, underwriting fees, broker fees, and discount points.

59. Independence Planning did not have guidelines on the types or amounts of fees that a loan officer should or could charge on each loan; rather, Independence Planning allowed each loan officer to use his or her complete discretion in assessing fees. As a result, the loans originated through Independence Planning loan officers were inconsistent in the types and amounts of fees charged to each borrower.

60. Bigler varied significantly in the types and amounts of fees that she charged to each borrower. Bigler charged processing fees between \$0 - \$1999, broker fees between \$0 - \$3543, application fees between \$200 - \$992, administrative fees between \$199 - \$1456, and origination fees between zero percent (0%) and two and one-half percent (2.5%) of the loan amount.

61. While neither Bigler nor Independence Planning performed underwriting services, Bigler charged underwriting fees of anywhere from \$0 - \$802 per loan.

62. Additionally, while other Independence Planning loan officers did not typically charge processing or application fees, Bigler routinely charged processing and application fees to her customers.

63. On some loans, Bigler received additional commission from the lender in the form of a yield spread premium. The lender – not the borrower – pays the yield spread premium directly to the mortgage loan originator in exchange for a loan that contains an interest rate that is higher than the par rate or that contains a prepayment penalty. However, the consumer indirectly contributes to this yield spread premium in that he or she pays more money in interest to the lender over the life of the loan as a result of the higher interest rate and/or prepayment penalty.

64. Bigler received over \$123,312 in compensation from originating mortgages through Independence Planning in 2004 and over \$146,560 from originating mortgages in 2005. Upon information and belief, Bigler received at least \$80,000 - \$90,000 in each of 2006 and 2007 from originating mortgage loans through Independence Planning.

65. Independence Planning received hundreds of thousands of dollars in administrative fees and commissions on loans originated by Bigler.

G. Dale Did Not Enforce Independence Planning's Policies Against Bigler.

Independence Planning's Office Policies

66. Dale created Independence Planning's office policies. The contract that Independence Planning entered into with its loan officers stated:

The Agreement will immediately terminate for cause if You
Falsify or omit material information to Alternative [Lending or
Independence Planning] or a Lender
Commit [or] attempt to commit fraud
Misrepresent any of The Alternative contracts or Services
Misuse Alternative property
Repeatedly fail to respond to requests from Clients and potential
Clients
Fail to return documents to Clients in a timely manner
Fail to comply with any applicable Federal, state or local Law.

67. Dale required Independence Planning's loan officers to attend their customer's closings as a matter of policy.

68. As the managing general partner, Dale was responsible for enforcing these policies. Dale and Independence Planning loan managers frequently reviewed loan officers' files to ensure that the loan files were in order and that borrowers timely received all appropriate disclosures and information.

Bigler Violated Independence Planning's Office Policies.

69. As discussed in paragraphs 47-55, Bigler presented loan applications containing false income information to lenders. Bigler, therefore, "[f]alsif[ied] or omit[ted] material information to Alternative [Lending or Independence Planning] or a Lender" in violation of Independence Planning's office policies.

70. As discussed in paragraphs 41-42, Bigler "[r]epeatedly fail[ed] to respond to requests from Clients and potential Clients" in violation of Independence Planning's policies.

71. As discussed in paragraphs 33-40, Bigler "[f]ail[ed] to comply with any applicable Federal, state or local Law" by failing to provide required disclosures in a timely and accurate manner.

72. As discussed in paragraph 41, Bigler did not attend many of her customers' closings in violations of Independence Planning's policies.

73. Among other things, Dale and Independence Planning would have discovered that Bigler presented documents containing false or incomplete information to lenders, did not respond to customers in a timely manner, failed to provide disclosures required by federal and state law, made other misrepresentations in violation of the CCPA, and did not attend closings when they reviewed Bigler's loan files. Dale also would have discovered these violations when he spoke with consumers who complained about Bigler. Dale and Independence Planning therefore knew of Bigler's failure to follow office policies.

Dale and Independence Planning Did Not Terminate or Otherwise Discipline Bigler for Violating Office Policies or Making Misrepresentations to Consumers and Lenders.

74. Despite their knowledge of Bigler's misrepresentations to consumers and lenders and her failure to comply with office policies, neither Dale nor Independence Planning terminated or otherwise disciplined Bigler. Instead, despite repeated consumer complaints, Dale allowed his top-producing mortgage loan originator to continue her misleading and deceptive practices and generate commissions for herself and Independence Planning. Dale and Independence Planning effectively approved of Bigler's conduct in originating residential mortgage loans by failing to discipline her or require that she comply with office policies.

ALLEGED CCPA VIOLATIONS

75. Bigler's conduct in originating, brokering, and closing mortgage loans through the course of her business, vocation, or occupation as described above violates § 6-1-105(1) of the CCPA.

76. Dale's and Independence Planning's conduct, through the course of their business, vocation, or occupation, in allowing Bigler to originate, broker, and close mortgage loans and failing to correct her misleading and deceptive conduct as described above violates § 6-1-105(1) of the CCPA.

FIRST CLAIM FOR RELIEF

(As to All Defendants)

(False representations as to characteristics, uses, benefits, or quantities of services in violation of § 6-1-105(1)(e), C.R.S.)

77. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 76 of this Complaint.

78. Through the above-described conduct, Defendants have knowingly made false representations as to the characteristics, uses, benefits, or quantities of services in violation of § 6-1-105(1)(e), C.R.S. (2009).

79. Through the above-described unlawful deceptive trade practices, Defendants have deceived and misled consumers.

SECOND CLAIM FOR RELIEF

(As to All Defendants)

(Representations that services are of a particular standard, quality, or grade knowing that they are of another in violation of § 6-1-105(1)(g), C.R.S.)

80. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 79 of this Complaint.

81. Through the above-described conduct, Defendants made representations that services were of a particular standard, quality, or grade even though they knew that they were of another in violation of § 6-1-105(1)(g), C.R.S. (2009).

82. Through the above-described unlawful deceptive trade practices, Defendants have deceived and misled consumers.

THIRD CLAIM FOR RELIEF

(As to All Defendants)

(False or misleading statements of fact concerning price of services in violation of § 6-1-105(1)(l), C.R.S.)

83. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 82 of this Complaint.

84. Through the above-described conduct, Defendants made false and misleading statements of fact concerning the price of services in violation of § 6-1-105(1)(l), C.R.S. (2009).

85. Through the above-described unlawful deceptive trade practices, Defendants have deceived and misled consumers.

FOURTH CLAIM FOR RELIEF

(As to All Defendants)

(Failure to disclose material information concerning services in violation of § 6-1-105(1)(u), C.R.S.)

86. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 85 of this Complaint.

87. Through the above-described conduct, Defendants failed to disclose material information concerning services of which they knew at the time of advertising or sale thereby

intending to induce consumers to enter into mortgage loans in violation of § 6-1-105(1)(u), C.R.S. (2009).

88. Through the above-described unlawful deceptive trade practices, Defendants have deceived and misled consumers.

FIFTH CLAIM FOR RELIEF

(As to Defendants Bigler and Dale)

(False promises, misrepresentation, or concealment of essential or material facts in violation of §§ 38-40-105(1)(b) and 6-1-105(1)(uu), C.R.S.)

89. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 88 of this Complaint.

90. Defendants Bigler and Dale have conducted business as mortgage loan originators with respect to loans that are secured by a first or subordinate mortgage or deed or trust lien against a dwelling.

91. Through the above-described conduct, Defendants Bigler and Dale made false promises or misrepresentations or concealed essential or material facts to entice borrowers and creditors to enter into mortgage agreements when, under the terms and circumstances of the transactions, Defendants knew or reasonably should have known of such falsity, misrepresentation, or concealment in violation of § 38-40-105(1)(b), C.R.S. (2009). As such, Defendants violated § 6-1-105(1)(uu) of the CCPA. *See also* § 38-40-105(3), C.R.S. (2009).

92. Through the above-described unlawful deceptive trade practices, Defendants Bigler and Dale have deceived and misled consumers.

SIXTH CLAIM FOR RELIEF

(As to Defendant Bigler)

(Present written statement or information in support of mortgage loan application to lender knowing it contains false information or conceals information with respect to a material fact in violation of §§ 38-40-105(1)(c) and 6-1-105(1)(uu), C.R.S.)

93. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 92 of this Complaint.

94. Defendant Bigler has conducted business as a mortgage loan originator with respect to loans that are secured by a first or subordinate mortgage or deed or trust lien against a dwelling.

95. Through the above-described conduct, Defendant Bigler knowingly and with the intent to defraud presented, caused to be presented, or prepared with the knowledge or belief that it would be presented to or by a lender written statements or information in support of an

application for a mortgage loan that she (1) knew contained false information concerning any material fact or (2) knowingly and with intent to defraud or mislead concealed material facts in violation of § 38-40-105(1)(c), C.R.S. (2009). As such, Defendant Bigler violated § 6-1-105(1)(uu) of the CCPA. *See also* § 38-40-105(3), C.R.S. (2009).

96. Through the above-described unlawful deceptive trade practices, Defendant Bigler has deceived and misled consumers.

SEVENTH CLAIM FOR RELIEF

(As to Defendant Bigler)

(Commit unconscionable acts by knowingly flipping residential mortgage loan in violation of §§ 38-40-105(1.7)(a)(II) and 6-1-105(1)(uu), C.R.S.)

97. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 96 of this Complaint.

98. Defendant Bigler has conducted business as a mortgage loan originator with respect to loans that are secured by a first or subordinate mortgage or deed or trust lien against a dwelling.

99. Through the above-described conduct, Defendant Bigler knowingly or intentionally flipped residential mortgage loans by refinancing existing loans when the new loan did not have a reasonable, tangible net benefit to the consumer in violation of § 38-40-105(1.7)(a)(II), C.R.S. (2009). As such, Defendant Bigler has violated § 6-1-105(1)(uu) of the CCPA. *See also* § 38-40-105(3), C.R.S. (2009).

100. Through the above-described unlawful deceptive trade practices, Defendant Bigler has deceived and misled consumers.

EIGHTH CLAIM FOR RELIEF

(As to Defendant Bigler)

(Commit unconscionable acts by entering into mortgage loan transactions knowing there is no reasonable probability of repayment by consumer in violation of §§ 38-40-105(1.7)(a)(III) and 6-1-105(1)(uu), C.R.S.)

101. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 100 of this Complaint.

102. Defendant Bigler has conducted business as a mortgage loan originator with respect to loans that are secured by a first or subordinate mortgage or deed or trust lien against a dwelling.

103. Through the above-described conduct, Defendant Bigler entered into a residential mortgage loan transactions knowing that there was no reasonable probability that the consumer

would repay the obligation in violation of § 38-40-105(1.7)(a)(III), C.R.S. (2009). As such, Defendant Bigler violated § 6-1-105(1)(uu) of the CCPA. *See also* § 38-40-105(3), C.R.S. (2009).

104. Through the above-described unlawful deceptive trade practices, Defendant Bigler has deceived and misled consumers.

NINTH CLAIM FOR RELIEF

(As to Defendant Bigler)

(Influence real estate appraisal in violation of §§ 6-1-717(1) and 6-1-105(1)(zz), C.R.S.)

105. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 104 of this Complaint.

106. Through the above-described conduct, Defendant Bigler knowingly submitted a false or misleading appraisal and/or influenced the independent judgment of appraisers in violation of § 6-1-717(1), C.R.S. (2009). As such, Defendant Bigler violated § 6-1-105(1)(zz) of the CCPA.

107. Through the above-described unlawful deceptive trade practices, Defendant Bigler has deceived and misled consumers.

TENTH CLAIM FOR RELIEF

(As to Defendants Bigler and Dale)

(Breach of duty of good faith and fair dealing in violation of §§ 12-61-904.5(1) and 6-1-105(1)(aaa), C.R.S.)

108. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 107 of this Complaint.

109. Through the above-described conduct, Defendants Bigler and Dale breached their duties of good faith and fair dealing in all communications and transactions with borrowers in violation of § 12-61-904.5(1), C.R.S. (2009). As such, Defendants Bigler and Dale violated § 6-1-105(1)(aaa) of the CCPA. *See also* § 12-61-904.5(3), C.R.S. (2009).

110. Through the above-described unlawful deceptive trade practices, Defendants Bigler and Dale have deceived and misled consumers.

ELEVENTH CLAIM FOR RELIEF

(As to Defendants Bigler and Dale)

(Employ scheme, device or artifice to defraud or mislead borrowers in violation of §§ 12-61-911(1)(a) and 6-1-105(1)(bbb), C.R.S.)

111.Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 110 of this Complaint.

112.Through the above-described conduct, Defendants Bigler and Dale directly and/or indirectly employed schemes, devices, or artifices to defraud or mislead borrowers or lenders or defraud other persons in violation of § 12-61-911(1)(a). As such, Defendants Bigler and Dale violated § 6-1-105(1)(bbb) of the CCPA.

113.Through the above-described unlawful deceptive trade practices, Defendants Bigler and Dale have deceived and misled consumers.

TWELFTH CLAIM FOR RELIEF

(As to Defendants Bigler and Dale)

(Engage in unfair or deceptive practice toward any person in violation of §§ 12-61-911(1)(b) and 6-1-105(1)(bbb), C.R.S.)

114.Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 113 of this Complaint.

115.Through the above-described conduct, Defendants Bigler and Dale engaged in unfair and deceptive practices in violation of § 12-61-911(1)(b). As such, Defendants Bigler and Dale violated § 6-1-105(1)(bbb) of the CCPA.

116.Through the above-described unlawful deceptive trade practices, Defendants Bigler and Dale have deceived and misled consumers.

THIRTEENTH CLAIM FOR RELIEF

(As to Defendant Bigler)

(Fail to make disclosures to borrowers as required by state and federal law in violation of §§ 12-61-911(1)(f) and 6-1-105(1)(bbb), C.R.S)

117.Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 116 of this Complaint.

118.Through the above-described conduct, Defendant Bigler failed to make disclosures to loan applicants as required by state and federal law in violation of § 12-61-911(1)(f). As such, Defendant Bigler violated § 6-1-105(1)(bbb) of the CCPA.

119. Through the above-described unlawful deceptive trade practices, Defendant Bigler has deceived and misled consumers.

FOURTEENTH CLAIM FOR RELIEF

(As to Defendant Bigler)

(False or deceptive representations with regard to rates, points, other financing terms, or conditions for a residential mortgage loan in violation of §§ 12-61-911(1)(g) and 6-1-105(1)(bbb), C.R.S)

120. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 119 of this Complaint.

121. Through the above-described conduct, Defendant Bigler made false or deceptive statements or representations with regard to the rates, points, other financing terms, or conditions for residential mortgage loan in violation of § 12-61-911(1)(g). As such, Defendant Bigler violated § 6-1-105(1)(bbb) of the CCPA.

122. Through the above-described unlawful deceptive trade practices, Defendant Bigler has deceived and misled consumers.

FIFTEENTH CLAIM FOR RELIEF

(As to Defendants Bigler and Dale)

(Fail to comply with federal law in violation of §§ 12-61-911(1)(j) and 6-1-105(1)(bbb), C.R.S)

123. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 122 of this Complaint.

124. Through the above-described conduct, Defendants Bigler and Dale failed to comply with federal law by failing to provide required disclosures in violation of § 12-61-911(1)(j). As such, Defendants violated § 6-1-105(1)(bbb) of the CCPA.

125. Through the above-described unlawful deceptive trade practices, Defendants have deceived and misled consumers.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against the Defendants and for the following relief:

A. An order declaring Defendants' above-described conduct to be in violation of the Colorado Consumer Protection Act, §§ 6-1-105(1)(e), (g), (l), and (u), C.R.S. (2009).

B. An order declaring the above-described conduct by Defendants Bigler and Dale to be in violation of the following statutes:

1. § 38-40-105(1)(b), C.R.S., and therefore in violation of § 6-1-105(1)(uu), C.R.S. (2009);

2. § 12-61-904.5(1), C.R.S., and therefore in violation of § 6-1-105(1)(aaa), C.R.S. (2009); and

3. § 12-61-911(1)(a), (b), & (j), C.R.S., and therefore in violation of § 6-1-105(1)(bbb) , C.R.S. (2009).

C. An order declaring Defendant Bigler's above-described conduct to be in violation of the following statutes:

1. §§ 38-40-105(1)(c), -(1.7)(a)(II), & -(1.7)(a)(III), C.R.S. (2009), and therefore in violation of § 6-1-105(1)(uu), C.R.S. (2009);

2. § 6-1-717(1), C.R.S., and therefore in violation of § 6-1-105(1)(zz) , C.R.S. (2009); and

3. § 12-61-911(1)(f) & (g), C.R.S., and therefore in violation of § 6-1-105(1)(bbb) , C.R.S. (2009).

D. An order permanently enjoining Defendants and their officers, directors, successors, assigns, agents, employees, contractors, loan officers, mortgage loan originators, attorneys, and anyone in active concert or participation with any Defendant who has notice of such order from engaging in any deceptive trade practices defined in and proscribed by the CCPA and as set forth in this Complaint.

E. Appropriate orders necessary to prevent Defendants' continued or future deceptive or misleading trade practices, advertisements, solicitations, or statements.

F. A judgment in an amount to be determined at trial to completely compensate or restore to the original position of any person injured as a result of Defendants' violations of the CCPA and as set forth in this Complaint pursuant to § 6-1-110(1), C.R.S. (2009).

G. An order requiring Defendants to disgorge all unjust proceeds derived from their misleading and deceptive trade practices pursuant to § 6-1-110(1), C.R.S. (2009).

H. An order requiring Defendants to forfeit and pay to the general fund of the State of Colorado civil penalties, including prejudgment interest, in an amount not to exceed \$2,000 per violation pursuant to § 6-1-112(1), C.R.S. (2009), and not to exceed \$10,000 per violation committed against an elderly person pursuant to § 6-1-112(3), C.R.S. (2009).

I. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including but not limited to, Plaintiff's attorney fees under § 6-1-113(4), C.R.S. (2009).

J. Any such further relief as this Court may deem just and proper to effectuate the purposes of the CCPA.

Respectfully submitted this 8th day of October, 2009.

JOHN W. SUTHERS
Attorney General

s/ Jennifer Miner Dethmers

ANDREW P. MCCALLIN, 20909*

First Assistant Attorney General

JENNIFER MINER DETHMERS, 32519*

Assistant Attorney General

Antitrust, Tobacco, and Consumer Protection Unit

Consumer Protection Section

Attorneys for Plaintiff

*Counsel of Record

**Pursuant to C.R.C.P. 121, § 1-26(7)& (8), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.*