

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
IN RE: Gabee, LLC d/b/a ModificationHUB

STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION	
In re: ModificationHUB Respondent: Gabee, LLC d/b/a ModificationHUB	
JOHN W. SUTHERS, Attorney General ANDREW P. McCALLIN, First Assistant Attorney General 1525 Sherman Street, 7 th Floor Denver, CO 80203 Phone: (303) 866-5134 Fax: (303) 866-4916 Email: Andrew.McCallin@state.co.us	
ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE WITH GABEE, LLC d/b/a MODIFICATIONHUB	

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into between the State of Colorado, ex rel. John W. Suthers, Attorney General and Respondent Gabee, LLC d/b/a ModificationHUB. This Assurance is entered into pursuant to the Attorney General's powers under § 6-1-110(2), C.R.S. (2008), and is being agreed to by the parties in lieu of the Attorney General filing a complaint against Respondent for the conduct described below.

I. PARTIES

1. John W. Suthers is the duly elected Attorney General for the State of Colorado ("Attorney General") and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act ("CCPA"), §§ 6-1-101, *et seq.*, C.R.S. (2008).

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2. Respondent Gabee, LLC d/b/a ModificationHUB (“Respondent” or “ModificationHUB”) has its principal place of business at 6049 Douglas Blvd. Granite Bay, CA 95746. Respondent is not registered with the Colorado Secretary of State as a foreign entity or authorized to do business in the State of Colorado. Respondent, including but not limited to employees, independent contractors, brokers, salespersons and/or agents of ModificationHUB have offered to negotiate or originate loan modifications for Colorado consumers.

II. FACTUAL BACKGROUND

3. Pursuant to the CCPA, Colorado Attorney General John W. Suthers has conducted an investigation into the business and advertising practices of Respondent.

4. The Attorney General contends that Respondent sent misleading and deceptive direct mail solicitations to Colorado consumers.

A. ModificationHUB’s Direct Mail Solicitation Appears To Come From Someone Other Than Respondent.

5. ModificationHUB’s direct mail solicitation, a copy of which is attached hereto as Exhibit A, purports to be an official “Final Notice.” Respondent did not send prior notices to the Colorado consumer.

6. The name of the consumer’s lender appears in large font on the direct mail solicitation. The notice reads as though it is coming from the consumer’s lender. It states “Unfortunately our attempts sometimes get confused with those of telemarketers.

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Washington Mutual Bank may be willing to negotiate [a] reduction of principal and interest on your account. Contact us at”

7. The mail piece only states ModificationHUB at the bottom and has “*Authorized Program Provider*” below the name, which suggests Respondent has an association with the consumer’s lender.

8. Respondent does not have the permission of the consumers’ lenders to use the lender’s names in its advertising.

9. Respondent states “You have been selected for a loan modification program. Your outstanding debt can be reduced and the terms of repayment modified. Your total principal, interest and monthly payments may be reduced. Any late fees and penalties can be forgiven.” It suggests that consumer is already eligible for a modification.

10. The Attorney General contends that ModificationHUB’s direct mail solicitation sent by Respondent to Colorado consumers in the form of Exhibit A is misleading and deceptive in that it appears to be an official notice from the consumer’s lender.

B. Respondent’s Agents Acted as Mortgage Brokers Without Proper Licenses.

11. The Director of the Division of Real Estate has determined that “persons who directly or indirectly negotiate, originate *or offer or attempt to* negotiate or originate loan modifications for a borrower and for a commission or other thing of value are required to be licensed as mortgage brokers.” (Ex. B, Division of Real Estate, Position Statement MB 1.5 – Loan Modifications, Nov. 19, 2008.) (Emphasis added.) Additionally, “persons who

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directly supervise individuals who negotiate, originate, *or offer or attempt to* negotiate or originate loan modifications for a commission or other thing of value are required to be licensed as mortgage brokers.” (*Id.*) (Emphasis added.)

12. Through these direct mail solicitations, Respondent or its agents offered to negotiate or originate loan modifications for Colorado borrowers.

13. Respondent, however, does not have employees or independent contractors who are licensed as mortgage brokers by the Colorado Division of Real Estate.

14. As such, the Attorney General contends that Respondent and its agents offered to negotiate or originate loan modifications without mortgage broker licenses in violation of §§ 6-1-105(1)(z) and 12-61-903(1)(a), C.R.S. (2008).

C. Summary

15. The Attorney General contends that the above misrepresentations and omissions of material facts are misleading and deceptive, may have caused significant financial harm to Colorado consumers, and have the potential to continue.

16. The Attorney General contends that these advertising and sales practices violate the CCPA, including but not limited to §§ 6-1-105(1) (b), (c), (e), (u), (z), (uu), & (bbb) C.R.S. (2008).

III. CONSIDERATION

17. Respondent enters this Assurance as a compromise and settlement of the Attorney General’s allegations herein. This Assurance shall not be considered an admission of

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violation for any purpose. Respondent expressly denies liability under the CCPA and is entering into this Assurance to avoid further costs and litigation.

18. The Attorney General intends that this Assurance will finally and fully resolve all of the disputes between the Attorney General and Respondent arising out of the conduct alleged in Section II, Factual Background, of this Assurance.

IV. ASSURANCES

19. Respondent will not target advertisements directly to Colorado consumers.

20. The term “advertisements” includes all advertisements, marketing or promotional materials issued by Respondent, including but not limited to, newspaper and magazine advertisements, direct mail solicitations, flyers, brochures, emails, faxes, telemarketing, billboards, envelopes, and banner or pop-up advertising that is disseminated electronically.

21. Respondent shall comply with the CCPA as now constituted or as may be amended in conducting business in the State of Colorado; the federal Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* (“TILA”); the Uniform Consumer Credit Code, §§ 5-1-101 through 5-13-105, C.R.S. (2008) (“UCCC”); and the Colorado Mortgage Broker Licensing Act, §§ 12-61-101, *et seq.*

22. Respondent shall comply with all applicable rules and regulations implementing the laws set forth in the preceding paragraph.

23. Within ten (10) business days of executing this Assurance, Respondent will provide the Colorado Attorney General with the names, company names, addresses, telephone numbers, and email addresses of all persons who assisted it in creating and/or disseminating the

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ModificationHUB's direct mail solicitation attached as Exhibit A.

V. ENFORCEMENT

24. The obligations set forth in this Assurance are continuing under this Assurance.

25. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with § 6-1-110(2), C.R.S. (2008). Upon a violation of any of the terms of this Assurance by Respondent, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

26. In addition to any remedies provided under the CCPA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against Respondent as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General of a violation by a Respondent of this Assurance. In such event, Respondent agrees to waive any and all defenses and counterclaims they may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

27. This Assurance shall not be construed to affect the rights of any private party to pursue remedies pursuant to § 6-1-113, C.R.S. (2008), or under any other statutes through claims or actions in common law.

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28. Nothing in this Assurance shall be construed to release claims held by any other governmental authority.

29. Pursuant to § 6-1-110(2), C.R.S. (2008), this Assurance shall be a matter of public record.

30. This Assurance may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute the Assurance.

31. The person who signs this Assurance in a representative capacity for Respondent warrants that he or she is duly authorized to do so. Respondent acknowledges that they have had a full opportunity to review this Assurance and consult with legal counsel regarding same. Respondent agrees and represent that they have read and understand this Assurance, that they accept the legal consequences involved in signing it, and that there are no other representations, agreements or understandings between Respondent and the Attorney General that are not stated in writing herein.

32. Respondent and their principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, contractors, and any person acting on behalf of any Respondent agree to cooperate with all investigations and other proceedings that the Attorney General may bring to enforce the terms of this Assurance or to enforce the CCPA against any other 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;

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- b) Produce documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the Attorney General; and
- c) Accept a subpoena from the Attorney General without the need for service of process.

33. Any notices, complaints or other documents required by this Assurance (including any request or subpoena) shall be sent to the following individuals at the address, email or fax set forth below:

To Respondent Gabee, LLC d/b/a ModificationHUB

100 Woodsmoke way
Folsom, CA 95630
Email: JeffGarcia420@vahoo.com
Phone: 916.612.2737
Fax: _____

To The Attorney General at:

Andrew McCallin
First Assistant Attorney General
Antitrust, Tobacco, and Consumer Protection Unit
Consumer Protection Section
1525 Sherman Street – 7th Floor
Denver, CO 80203
Email: Andrew.McCallin@state.co.us
Phone: (303) 866-5134
Fax: (303) 866-4916

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Dated: 7/23/09

RESPONDENT GABEE, LLC d/b/a MODIFICATIONHUB

By: Jeff Garcia

Jeff Garcia President
Print Name and Title

Dated: 8/31/09

JOHN W. SUTHERS

Attorney General

Andrew M. Callin

ANDREW MCCALLIN

First Assistant Attorney General

Consumer Protection Section