

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, Attorney General,</p> <p>Plaintiff,</p> <p>v.</p> <p>LEONID SHIFRIN, a/k/a LEO SHIFRIN, Individually; MARK SHIFRIN, Individually; JERRY A. JOHNSON, Individually; MORTGAGE PLANNING AND LENDING SPECIALISTS, LTD., a Colorado Limited Partnership; WHOLESALE MORTGAGE LENDING, LLC, a Colorado Limited Liability Company; MORTGAGE PROCESSING GROUP, INC., a Colorado Corporation; SHIFRIN, INC., a Colorado Corporation; JUPITER LENDING, INC., a Nevada Corporation; UNITED STATES MARKETING ASSOCIATES, INC., a Nevada Corporation; and CBA, INC., a Nevada Corporation.</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff:</p> <p>JOHN W. SUTHERS, Attorney General CLAIRE M. LARGESSE, Reg. No. 18883* Assistant Attorney General ALISSA H. GARDENSWARTZ, Reg. No. 36126* Assistant Attorney General</p> <p>1525 Sherman Street, 7th Floor Denver, CO 80203 Telephone: 303-866-5079 Facsimile: 303-866-4916</p> <p>*Counsel of Record</p>	<p>Case Number:</p> <p>Division: Courtroom:</p>
<p>COMPLAINT</p>	

Plaintiff, the State of Colorado, ex rel. Colorado Attorney General JOHN W. SUTHERS, by and through 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 through -1120, C.R.S. (2007) (“CCPA”), to enjoin and restrain Defendants from engaging in certain unlawful deceptive trade practices, for statutorily-mandated civil penalties, for consumer restitution, disgorgement of illegal proceeds, and for other equitable relief as provided in the CCPA.

PARTIES

Plaintiff

2. John W. Suthers is the duly-elected Attorney General of the State of Colorado and is authorized under § 6-1-103, C.R.S. (2007), to enforce the provisions of the CCPA.

Defendants

3. Defendant **Leonid Shifrin a/k/a Leo Shifrin** is a Mortgage Broker and Lender who regularly conducts business in the State of Colorado. He resides at 9 Sandy Lake Road, City of Englewood, Colorado. During the times relevant to this Complaint, Leo Shifrin was an officer, director, partner, manager, owner, incorporator or registered agent of the following Defendants: Mortgage Planning and Lending Specialist, LTD, Wholesale Mortgage Lending, LLC, Mortgage Processing Group, Inc., Shifrin, Inc., United States Marketing Associates, Inc., and CBA, Inc. All of these business entities participated in the unlawful business practices alleged in this Complaint.

Defendant Leo Shifrin had knowledge of, controlled, directed, supervised, approved and acquiesced in the practices and policies of each and every Defendant to such a degree as to make him personally liable for the deceptive trade practices alleged herein. In addition, Defendant Leo Shifrin personally derived monetary proceeds from the other Defendants’ unlawful practices.

4. Defendant **Mark Shifrin** is the father of Leo Shifrin and resides at 1624 S. Fairplay Street, Aurora, Colorado. During the times relevant to this Complaint, he was an officer, director, partner, manager, owner, incorporator or registered agent of the following Defendants: Mortgage Planning and Lending Specialist, LTD, Wholesale Mortgage Lending, LLC, Shifrin, Inc. and CBA, Inc. All of these business entities participated in the unlawful business practices alleged in this Complaint.

Mark Shifrin acted in concert with Leo Shifrin and the other Defendants to perpetuate their unlawful business practices and derived monetary proceeds from these practices. He had

personal knowledge of, approved and acquiesced in the policies and practices of the other Defendants to such a degree as to be personally liable for the unlawful practices alleged herein.

5. Defendant **Jerry A. Johnson** is a Mortgage Loan Officer who regularly conducts business in the State of Colorado. He resides at 17276 East Lake Lane, Aurora, Colorado. During the times relevant to this Complaint, he was an officer, owner, director, employee or agent of the following Defendants: Mortgage Planning and Lending Specialist, LTD, Wholesale Mortgage Lending, LLC, Mortgage Processing Group, Inc., Shifrin, Inc., Jupiter Lending, Inc., United States Marketing Associates, Inc., and CBA, Inc.

Defendant Johnson acted in concert with Leo Shifrin and the other Defendants to perpetuate and expand the unlawful business practices of the Defendants throughout Colorado and into the State of Florida. Defendant Johnson personally engaged in the advertising, sales and marketing practices of the business entities. In addition to his own unlawful conduct, Defendant Johnson had personal knowledge of, approved and acquiesced in the practices and policies of the other Defendants to such a degree as to be personally liable for the unlawful practices alleged herein. He also personally profited from the deceptive trade practices of the other Defendants.

6. Defendant **Mortgage Planning and Lending Specialists, LTD (“MPLS”)** is a Colorado Limited Partnership formed on or about November 20, 1996 with general partners, CBA, Inc., a Nevada corporation and Time Hester. The principal place of business was 11551 East Arapahoe Road, Suite 116, Centennial, Colorado since October 17, 2005. Leo Shifrin was the Registered Agent until August 8, 2006, when he filed a Statement of Change with the State substituting his father, Mark Shifrin, as Registered Agent and changing the company’s principal business address to 1624 S. Fairplay Street, Aurora, Colorado, the home address of Mark Shifrin.¹

During the relevant times, MPLS engaged in the business of advertising residential mortgage loans, accepting and processing consumer loan applications, brokering mortgage loans and funding residential mortgage loans.

7. Defendant **Wholesale Mortgage Lending, LLC (“Wholesale Lending”)** is a Colorado Limited Liability company organized on or about March 28, 2006 with its principal place of business 11551 E. Arapahoe Road, Suite 110, Centennial, Colorado. The company was formed by Shifrin, Inc. and Mark Shifrin with Leo Shifrin as Registered Agent. On August 23, 2006, Mark Shifrin was made Registered Agent.

During the relevant times, Wholesale Lending engaged in the business of advertising residential mortgage loans, accepting and processing consumer loan applications, brokering mortgage loans and funding residential mortgage loans.

¹ On May 1, 2007 a “Statement of Dissolution” for MPLS was filed with the Colorado Secretary of State by Leo Shifrin. Seventeen days later, on May 18, 2007, the company was revived through “Articles of Reinstatement” filed with the same state office. The business address remains that of Mark Shifrin’s home.

8. Defendant **Mortgage Processing Group, Inc.** (“MPG”) is a Colorado Corporation incorporated on or about October 15, 1999. The company’s principal place of business is 11551 E. Arapahoe Road, Suite 116, Centennial, Colorado. The Registered Agent is Leo Shifrin. On May 1, 2007, Articles of Dissolution were filed with the Colorado Secretary of State by Leo Shifrin.

During the relevant times, MPG engaged in the business of advertising residential mortgage loans, accepting and processing consumer loan applications, brokering mortgage loans and funding residential mortgage loans.

9. Defendant **Shifrin, Inc.** is a Colorado Corporation incorporated on or about September 14, 2004 by Leo Shifrin and Mark Shifrin. Its principal place of business is 11551 E. Arapahoe Road, Suite 110, Centennial, Colorado. The Registered Agent is Mark Shifrin.

During the relevant times, Shifrin, Inc. engaged in the business of paying commissions to the loan officers affiliated with all the other Defendants through Defendant USMA. Shifrin, Inc. was also directly involved in the daily business and advertising practices of other Defendants such as MPLS, Wholesale Lending, MPG, Jupiter Lending and CBA. Shifrin, Inc. provided office space, telephone services, advertising funds and other support to various Defendants to facilitate the conduct of their business operations in the residential mortgage industry both in Colorado and Florida.

10. Defendant **Jupiter Lending, Inc.** (“**Jupiter Lending**”) is a foreign corporation incorporated in Nevada on or about July 27, 2005 with a principal place of business at 11551 E. Arapahoe Road, Englewood, Colorado. On August 1, 2006, the State of Nevada revoked the corporate registration due to failure to provide identification of the company officers. Jupiter Lending, Inc. has never been authorized by the Colorado Secretary of State to transact business as a foreign corporation pursuant to § 7-115-101, C.R.S.

During the relevant times, Jupiter Lending, in concert with the other Defendants, engaged in the business of advertising residential mortgage loans to the public in Colorado and accepting and processing consumer loan applications. Defendants Jerry Johnson, Leo Shifrin and Shifrin, Inc. were personally involved in the daily business operations of Jupiter Lending.

11. Defendant **United States Marketing Associates, Inc.** (“**USMA**”) is a foreign corporation incorporated in Nevada on or about November 2, 2004. Its principal place of business is 11551 East Arapahoe Road, Suite 110, Centennial, Colorado. Defendant Jerry Johnson is both President and Secretary of USMA. Defendant Leo Shifrin resigned as Treasurer on February 26, 2007. On December 1, 2007, the State of Nevada revoked the corporate registration due to failure to provide identification of the company officers. USMA has never been authorized by the Colorado Secretary of State to transact business as a foreign corporation pursuant to § 7-115-101, C.R.S.

During the relevant times, USMA contracted with various media outlets throughout Colorado, including the Denver Newspaper Agency, for the purchase and placement of printed

advertisements soliciting customers for the mortgage services and products of the other Defendants. USMA also served as the conduit for money transfers from various Defendants to their agents and loan officers for commissions and expenses, as well as, for the payment of business expenses such as marketing and travel.

12. Defendant **CBA, Inc.** (“CBA”) is a Nevada corporation incorporated on or about October 10, 1996. Although company filings with the Nevada Secretary of State provide a principal place of business in Las Vegas, Nevada, CBA conducts business in Colorado from 11551 E. Arapahoe Road, Suite 116, Centennial, Colorado. The Colorado address was provided to the Florida Department of State, Division of Corporations as CBA’s principal address in its June 5, 2006 business filing. Defendant Leo Shifrin is President of CBA and Defendant Mark Shifrin is a Director. Defendant Jerry Johnson was Treasurer of CBA until November 13, 2006. CBA has never been authorized by the Colorado Secretary of State to transact business as a foreign corporation pursuant to § 7-115-101, C.R.S.

13. There exists a unity of interest, activity and ownership between the individual Defendants Leo Shifrin, Mark Shifrin, Jerry Johnson and the business Defendants MPLS, Wholesale Lending, MPG, Shirin, Inc., Jupiter Lending, USMA and CBA, such that the individuality and separateness of any and all the Defendants has ceased to exist.

14. The business affairs of the various individuals and business entities are so intertwined as to make any strictly legal separations meaningless. There are no separate or independent identities among Defendants in the marketing and implementation of their residential mortgage business. To adhere to that fiction would serve to sanction their attempts to deceive the public and promote the injustice of their unlawful conduct.

15. Whenever in this Complaint reference is made to any act of Defendants Mortgage Planning and Lending Specialists, LTD, Wholesale Lending, LLC, Mortgage Processing Group, Inc., Shifrin, Inc., Jupiter Lending, Inc., United States Marketing Associates, Inc. CBA, Inc. or any other affiliated business entity, such reference shall be deemed to mean the acts of the entities, their officers, directors, shareholders, employees, agents, partners, and other representatives acting within the scope of their employment or authority, including, but not limited to, the acts of Leo Shifrin, Mark Shifrin and Jerry Johnson.

JURISDICTION AND VENUE

16 Pursuant to §§ 6-1-103 and 6-1-110 (1), C.R.S. (2007), this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

17. The violations alleged herein were committed, in whole or in part, in Denver County, Colorado and Defendants do business and affect commerce in the City and County of Denver and elsewhere in Colorado. Therefore, venue is proper in Denver County, Colorado pursuant to § 6-1-103, C.R.S. (2007) and Colo. R. Civ. P. 98 (2007).

RELEVANT TIMES

18. The conduct that gives rise to the claims for relief contained in this Complaint began in January 2004 and continued through June 2007.

19. This action is timely brought pursuant to § 6-1-115, C.R.S., in that it is commenced within three years of the date on which false, misleading, and deceptive acts or practices occurred and/or were discovered.

PUBLIC INTEREST

20. Through the unlawful and deceptive business practices described herein, Defendants have deceived, misled, and financially injured a number of Colorado consumers who entered into residential mortgage loans that were unlawfully advertised, brokered, originated and/or funded by the Defendants.

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

22. Therefore, these legal proceedings are in the public interest and are necessary to safeguard citizens from Defendants' unlawful business activities.

DEFENDANTS' BUSINESS PRACTICES

Business Structures

23. As previously stated, the individual Defendants and the Defendant businesses entities are so intertwined as to make any strictly legal separations meaningless. In particular:

a. Defendants have utilized over a dozen corporate and business entities, aliases and fictitious names interchangeably to market and transact their business of soliciting and brokering residential mortgage loans to consumers. The Defendant business entities were created, controlled and directed by the individual Defendants Leo Shifrin, Mark Shifrin and Jerry Johnson.

b. Defendants have all conducted their business and maintained records at the same office location of 11551 Arapahoe Road, Centennial, Colorado. All administrative and support functions were centralized at the one location. Rent payments were made by check from Defendants Shifrin, Inc., MPLS and CBA, Inc.

c. The individual and business Defendants used the same advertising and marketing materials, utilized the same business accounts for vendors such as payroll services and 1-800

telephone services, shared the same local telephone lines and fax numbers, the same office personnel, and shared computers and office equipment. The business overhead was shared by all Defendants and paid through various arrangements controlled by the individual Defendants.

d. During the relevant times, Defendants used several business names including Jupiter Lending, Mile High Mortgage, Wholesale Mortgage Lending, MPLS and Consumer Financial Services of Centennial, Colorado to market their mortgage services and products. The telephone contact numbers in the ads were to land lines or a call service paid for by Defendants. The agents who described the loan options to consumers and took the initial loan applications were paid by Defendants. The loan processors and settlement agents were also paid by Defendants.

e. The lines of credit extended to Defendants MPLS and Wholesale Mortgage Lending were executed by Defendant Leo Shifrin as President of MPLS and the guarantors were Defendants Mark Shifrin, Shifrin, Inc. and C.B.A., Inc.

Marketing/Advertising

24. Defendant Johnson, in concert with Defendant Leo Shifrin, Mark Shifrin and agents, employees and officers of the other Defendants, authored and submitted for publication, over 500 misleading and unlawful newspaper advertisements with the Denver Newspaper Agency and other Colorado publications to solicit consumers to contact Defendants Jupiter Lending, Mortgage Planning and Lending Specialists and Wholesale Mortgage Lending for residential mortgage services.

25. Defendant Johnson, through his company, Defendant USMA, contracted directly with the publishers for the ads. Defendant Leo Shifrin provided the credit reference for the USMA account with the Denver Newspaper Agency. The advertising costs were paid by Defendants Johnson, Leo Shifrin, Mark Shifrin, and Shifrin, Inc. either directly or through payments to USMA specifically designated for that purpose.

26. The ads produced by Johnson and the other Defendants contained misleading and deceptive statements regarding the services and products offered to consumers, particularly **“Option ARM loans.”**

27. An Option ARM loan initially appears to be a traditional adjustable rate mortgage (“ARM”). In actuality, it contains features that are very different than a traditional ARM and that can make the loan unaffordable to the borrower.

28. In a traditional ARM, the borrower locks in a fixed interest rate for a period of time, typically one to five years, after which the interest rate adjusts periodically based upon a reference rate, such as the monthly U.S. Treasury index or the London Interbank Offering Rate (“LIBOR”). In contrast, Option ARM loans start out with a **low introductory teaser rate** that typically applies only in the first one to three months of the loan. After that short

period, the interest rate becomes a fully-indexed rate. A fully-indexed rate is the current value of the loan's reference rate plus a margin that remains the same through the life of the loan.

29. When the interest rate changes to the fully-indexed rate, the teaser rate becomes the **minimum monthly payment rate**. This is typically lower than the actual interest rate being charged. As a result, a borrower making the minimum payment is not paying all of the interest due that month. Thus, the interest owed continues to accrue at the fully indexed rate and results in what is known as “**negative amortization.**”

30. The negative amortization feature will cause the loan to soon reach a “**negative amortization life cap.**” The negative amortization life cap is reached when the loan principal, inflated monthly by accrued and unpaid interest, exceeds a certain percentage of the original principal borrowed, usually 110% or 115%. Thereafter, the minimum payment is adjusted to an amount which would be sufficient to repay the new unpaid principal balance in full on the maturity date at the fully-indexed interest rate.

31. When an Option ARM loan reaches the negative amortization life cap, there is no limit on how much the minimum monthly payment may adjust upward, and it either becomes equal to the fully-amortized payment or is no longer a payment option. This payment shock leaves the borrower obligated to make monthly payments that are sometimes twice as much as the original minimum monthly payment.

32. Option ARM loans also typically include a one to three-year pre-payment penalty. This feature imposes a substantial penalty, often amounting to six months interest, if the borrower pays off the original loan in the first one to three years.

33. An Option ARM loan can easily reach the negative amortization life cap within two years. The negative amortization life cap and prepayment penalties, taken together, have the effect of restricting a borrower's ability to refinance out of an Option ARM loan before the minimum payment adjusts or is eliminated altogether. Often by the time the loan reaches the negative amortization life cap, the adjusted minimum monthly payment or fully-amortized payments are far more than the borrower can afford.

34. Between 2004 and 2006, Defendants ran numerous, often daily advertisements, in both the Rocky Mountain News and the Denver Post that marketed the Option ARM loan in a manner that was deceptive and misleading. Specifically, Defendants, under various business names, advertised Option ARM loans in a manner that suggested the initial teaser rate was a fixed interest rate for an extended period of time.

35. The following excerpts from ads that ran in either the Denver Post or Rocky Mountain News between 2004 and 2006 illustrate this practice and are attached as EXHIBIT 1:

- a. **“1.95% 5 year fixed rate loan”**
“JUPITER LENDING”
(Rocky Mountain News, Tuesday, October 12, 2004)
- b. **“1.95% 5 year fixed”**
“2.675% APR”
“Zero out of pocket closing cost”
“JUPITER LENDING”
(Rocky Mountain News, Tuesday, June 28, 2005)
- c. **“1.95% 5 YEAR FIXED”**
“ZERO OUT OF POCKET CLOSING COSTS”
“JUPITER LENDING”
(Rocky Mountain News, Tuesday, November 29, 2005)
- d. **“3.125% fixed for 5 years”**
“MORTGAGE PLANNING AND LENDING SPECIALISTS”
(Denver Post, May 9, 2006)
- e. **“3.25% 5 year fixed”**
MORTGAGE PLANNING AND LENDING SPECIALISTS, LTD.
(Rocky Mountain News, June 27, 2006)
- f. **“1.25% 1 YEAR ARM apr 4.10”**
“3.25% 5 YEAR FIXED apr 4.125”
“WHOLESALE MORTGAGE LENDING”
(Rocky Mountain News, Tuesday, July 11, 2006)

36. The intentional pairing of phrases such as “fixed for 5 years” or “5 year fixed” with the low percentage teaser rate, was designed to create an impression that the rate was a fixed interest rate available through Defendants’ brokerage services. In fact, the advertised rate was a payment rate available for one to five years that could result in the borrower owing more than the original loan amount. The deceptive advertising of these low temporary teaser rates was intended to lure the public into calling Defendants and to give them an unfair advantage over their competitors in the marketplace.

37. Although the ads contained multiple company names and various telephone contact numbers, all consumer calls generated by the ads were answered by employees, agents or officers of the Defendants.

38. Defendants Leo Shifrin and Jerry Johnson trained and supervised other sales agents, loan officers and processors; solicited consumers who responded to Defendants' newspaper ads; processed consumers' initial loan applications, prepared mortgage loan documents, attended loan closings and responded to consumer complaints against himself and the other Defendants.

Verbal representations to Consumers

39. In response to Defendants' misleading advertisements, consumers would call the phone number in the ad. These calls were typically answered by a call center service hired by Defendants to "pre-screen" potential customers. After ascertaining that the caller was seeking a residential mortgage, the consumer call was forwarded to one of Defendants' office lines at 11551 E. Arapahoe Ave., Centennial, CO. These calls were answered by Defendant Johnson or one of the Defendant businesses' agents or employees.

40. The consumer was verbally assured that the low interest rate described in the ads was available. At this point, Defendants' representative would elicit the consumer's financial information and complete a preliminary loan application over the phone. The application form, releases, and other documents necessary to complete the loan application were then typically mailed to the consumer for execution and return.

41. Defendants or their agents would typically misrepresent to consumers that their closing costs for the loan would be minimal. A Good Faith Estimate provided to the applicant also reflected false closing costs amounts.

42. The preliminary documents and Good Faith Estimates provided to consumers continued Defendants' deception regarding the characteristics of the anticipated loan by misrepresenting the true interest rate and concealing undesirable terms such as the negative amortization aspects.

43. Defendant Leo Shifrin prepared all final mortgage loan transactions.

44. Regardless of their specific requests for a fixed interest loan, consumers were steered to Option ARM loans with negative amortization features and substantial prepayment penalties that resulted in larger fees and commissions for Defendants.

45. Regardless of their credit rating, consumers were steered to Option ARM loans with negative amortization features and substantial prepayment penalties that resulted in larger fees and commissions for Defendants.

The Loan Closing

46. Defendants scheduled the loan closing appointments at the consumer's home, at off-site locations or, infrequently, at Defendants' East Arapahoe Road office.

47. In the most common scenario, neither Defendants or their agents or employees were present at the closing. Instead, a representative of a settlement or title company selected by Defendants would be present at the closing to control the document execution. The designated representative usually had no prior involvement in creating the loan product, no previous interaction with the consumer, no prior knowledge of the consumer's financial status and an undetermined knowledge of Defendants' previous representations to the consumer regarding the loan product.

48. In a significant number of transactions, employees or agents of VTA of Mile High acted as settlement agent at the closing of Defendants' mortgage loans. VTA of Mile High is a Colorado Limited Liability Company formed in 2005 by Defendant Leo Shifrin and Vision Title. Its principal place of business is listed with the Colorado Secretary of State as 11551 E. Arapahoe Road, Centennial, Colorado. This is also the address of all business entities named as Defendants in this case.

49. Defendants failed to disclose to consumers that the settlement agency, VTA of Mile High, was an affiliated business formed in 2005 by Defendant Leo Shifrin and Vision Title Agency of Colorado, Inc. Consumers were charged additional fees for the services of VTA of Mile High at the closings.

50. The true features of the loan were not disclosed to consumers until the closing. For most consumers, this final product was fundamentally different than had been discussed or described by Defendants. It also differed considerably from the terms presented in the Good Faith Estimate that Defendants had provided to consumers prior to closing.

51. Several consumer complainants learned for the first time at the closing that the loan product prepared by Defendants had the following characteristics:

- a. A "teaser" interest rate that would expire in one or two months;
- b. A fixed payment option that would cause the consumer to reach the negative amortization life cap, usually within two years;
- c. A two or three year prepayment penalty that would make refinancing extremely costly to the consumer; and,
- d. Excessive and undisclosed closing costs and fees.

52. Many of the consumers, on discovering the "switch" in loan products tried unsuccessfully from the closing table to contact Defendants Leo Shifrin or Jerry Johnson by telephone at both office and cell phone numbers.

53. Consumers who objected to the change in terms and attempted to stop the transaction were advised by Defendants' "settlement agent" to proceed with the closing and that any problems or discrepancies would be corrected by Defendant Leo Shifrin after the closing.

54. Many consumers were not aware that they had entered into a loan that would result in negative amortization until they received their first mortgage payment statement.

Post Closing

55. In a significant number of transactions, consumers were not given copies of their loan documents at the closing. Rather, the documents were mailed or delivered days after the closing and often, only after repeated requests by the consumer.

56. Consumers' Right to Rescind the loan contract within three days, as provided by state and federal law, was obstructed by Defendants' purposeful delay or refusal to provide copies of the closing documents to the consumer in a timely manner.²

57. In several instances, consumers who attempted to exercise their Right to Rescind with proper written notice delivered within the three-day time period, were simply ignored by Defendants or told that they could not rescind.

58. Consumers' telephone calls to Defendants were not returned and consumers repeated attempts to discuss their loan with Defendants were rebuffed.

59. In instances where consumers were actually able to make contact with Defendants after the closing, Defendant Leo Shifrin or one of his agents would promise to "redo the loan at no charge."

60. Consumers who initially agreed to this arrangement later learned that the "redo" involved a new loan in an amount thousands of dollars higher due to a "rolling in" of the prepayment penalty obligations of the original loan. In several instances, the consumers were unable to qualify for this greater principal amount and Defendant Leo Shifrin would recommend and prepare two loans, an 80% and 20% arrangement that would cost the consumers additional fees and closing costs.

² § 5-1-101(2), C.R.S. (The creditor shall disclose to the consumer the information, disclosures, and notices required by the federal "Truth in Lending Act" and any regulation thereunder.); *see* 12 C.F.R. 226.15(a)(Detailing consumer's right to rescind under the Truth and Lending Act).

VIOLATIONS OF THE CCPA

61. Plaintiff alleges that, in the course of their business, vocation, or occupation, Defendants have engaged in deceptive trade practices in violation of Section 6-1-105 (1) (e), (g) (i),(l), (u) and (uu) by, among other things:

- a. Misrepresenting and/or failing to fully disclose the legal and financial effects of the transaction and specifically the legal and financial effects of an Option ARM loan with negative amortization;
- b. Misrepresenting and/or failing to fully disclose the likelihood of the consumer's future ability to meet the escalating monthly payments required by the loan;
- c. Misrepresenting and/or failing to fully disclose the inclusion of prepayment penalty provisions;
- d. Misrepresenting or failing to disclose the effect of the prepayment penalties on the consumer's ability to refinance or secure a future loan secured by their property; and,
- e. Facilitating the making of unconscionable mortgage loans.

FIRST CLAIM FOR RELIEF

(Advertises Goods or Services with Intent Not to Sell Them as Advertised)

62. Plaintiff incorporates by reference all of the allegations contained in paragraphs 1 through 61 of this Complaint.

63. Through the above-described conduct undertaken by Defendants in the regular course of their business, Defendants have advertised mortgage loans with the intent not to sell them as advertised in violation of 6-1-105(1)(i), C.R.S. Among other things, Defendants specifically advertised the availability of loan products with interest rates that were false and misleading.

64. By means of the above-described deceptive trade practices, Defendants have unlawfully acquired money from numerous Colorado consumers.

SECOND CLAIM FOR RELIEF

(False Representations as to Characteristics and Benefits of Defendants' Services)

65. Plaintiff incorporates herein by reference the allegations contained in paragraphs

1 through 64 in the Complaint.

66. Through the above-described conduct undertaken by Defendants in the regular course of their business, the Defendants have knowingly made false representations as to the characteristics, uses and benefits of their goods and services in violation of § 6-1-105(1)(e), C.R.S., by, among other things:

- a. Misrepresenting to consumers that they are advocates for them and would obtain a mortgage loan product in the best interest of the consumer;
- b. Failing to disclose to consumers that the advertised interest rate was a “teaser rate” that would adjust to a higher rate, often within one month;
- c. Failing to disclose to consumers an accurate annual percentage rate (“APR”) on the advertised mortgage loan product;
- d. Failing to disclose to consumers that the advertised loans were Option ARM loans with negative amortization;
- e. Failing to disclose the negative amortization life cap feature of the loan;
- f. Failing to disclose that Defendants’ loan product included a substantial prepayment penalty that would impede refinancing for 1 to 3 years;
- g. Misrepresenting closing costs, fees and additional charges of the transaction prior to closing;
- h. Misrepresenting to consumers that the loan product could be altered or modified after the closing transaction; and,
- i. Failing to disclose to consumers the relationships between Defendants and their affiliated businesses involved in the loan transaction.

67. By means of the above-described deceptive trade practices, Defendants have unlawfully acquired money from numerous Colorado consumers;

THIRD CLAIM FOR RELIEF
(Misrepresentations as to the Price of Defendants’ Services)

68. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 67 in the Complaint.

69. Through the above-described conduct undertaken by Defendants in the regular course of their business, Defendants have knowingly provided consumers with false information regarding their loan origination fees, underwriting fees and processing fees.

70. By means of the above-described deceptive trade practices, Defendants have unlawfully acquired money from numerous Colorado consumers.

FOURTH CLAIM FOR RELIEF

(Misrepresentations Concerning the Standard and Quality of Defendants' Services)

71. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 70 in the Complaint.

72. Through the above-described conduct undertaken by Defendants in the regular course of their business, Defendants have knowingly misled consumers as to the loan product that Defendants were offering and the level of services to be provided to the consumer during and after the loan product was secured.

73. By means of the above-described deceptive trade practices, Defendants have unlawfully acquired money from numerous Colorado consumers.

FIFTH CLAIM FOR RELIEF

(Failure to Disclose Material Information)

74. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 73 in the Complaint.

75. Through the above-described conduct undertaken by Defendants in the regular course of their business, Defendants have failed to disclose material information concerning their services and loan products, which information was known at the time of their advertising and sales practices, when such information was intended to induce consumers to enter into mortgage loan transactions with the Defendants. Such conduct violated § 6-1-105(1)(u), C.R.S., by among other things:

- a. Failing to disclose that the rate advertised was not the true interest rate but a payment option rate;
- b. Failing to disclose to consumers numerous important details about the mortgage loan offered, including prepayment penalties;
- c. Failing to disclose to consumers the true interest rate on the mortgage loan they were obtaining through Defendants;

- d. Failing to disclose to consumers that the interest rate quoted in the Good Faith Estimate was a “teaser” rate that applied for only a set period of time;
- e. Failing to disclose to consumers numerous hidden fees and costs that would be assessed at closing;
- f. Failing to disclose to consumers true interest rates and other required loan terms as required by Truth in Lending laws;
- g. Failing to disclose to consumers the impact of the negative amortization life cap feature of the mortgage loans that would result in the loan being “recast” when the principal reached 110% of the original loan amount;
- h. Failing to disclose to consumers the end result of making interest-only or minimum monthly payments on their loan; and
- i. Failing to disclose to consumers all their rights accorded by statute including, among others, the right of rescission.

76. By means of the above-described deceptive trade practices, Defendants have unlawfully acquired money from numerous Colorado consumers.

SIXTH CLAIM FOR RELIEF

(Failure to Comply with § 38-40-105, C.R.S. in Violation of § 6-1-105 (1)(uu), C.R.S.)

77. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 76 in the Complaint.

78. Through the above-described conduct undertaken by Defendants in the regular course of their business, Defendants, both individually and in concert with each other, have conducted business activities as mortgage brokers, mortgage originators, mortgage lenders, or closing agents, with respect to loans secured by a first or subordinate mortgage or deed or trust lien against a dwelling, and performed the following deceptive and unconscionable acts, including but not limited to, the following:

- a. Knowingly advertised or caused to be advertised, false, misleading and deceptive statements regarding rates, terms or conditions for a mortgage loan in violation of § 38-40-105 (1)(a), C.R.S.;
- b. Made false promises or misrepresentations and concealed essential or material facts to entice borrowers to enter into a mortgage agreement when, under the terms and circumstances of the transaction, Defendants knew, or reasonably should have known, of the falsity, misrepresentation or concealment in violation of § 38-40-105 (1)(b), C.R.S.;

- c. Facilitated the consummation of a mortgage loan transaction that is unconscionable given the terms and circumstances of the transaction in violation of § 38-40-105 (1)(d), C.R.S.;
- d. Knowingly facilitated the consummation of a mortgage loan transaction that violated, or is connected with a violation of, § 38-40-105 (1.5), C.R.S. by not providing to the borrowers with draft copies of the mortgage loan agreements and all other documents material to the transaction, completed in accordance with good-faith estimates, at least one business day before closing as required by § 38-40-105 (1.5) (a).

79. By means of the above-described deceptive trade practices, Defendants have unlawfully acquired money from numerous Colorado consumers.

RELIEF REQUESTED

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

A. An order declaring Defendants' above-described conduct to constitute deceptive trade practices in violation of the CCPA, specifically §§ 6-1-105 (1)(e), (g), (i), (l), (u) and (uu), C.R.S., as alleged herein;

B. An order declaring Defendants' above-described conduct to be non-compliant with § 38-40-105, C.R.S. and, therefore, in violation of § 6-1-105 (1) (uu), C.R.S., as alleged herein;

C. An order declaring Defendants' above-described conduct to constitute evidence of an intent to injure competitors and to destroy or substantially lessen competition per § 6-1-105(2), C.R.S.;

D. An order pursuant to §§ 6-1-110, C.R.S., permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees and anyone acting in concert or participation with Defendants with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint;

E. A judgment in an amount to be determined at trial for restitution to consumers 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.;

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

G. An order requiring Defendants to pay to the General Fund of the State of Colorado civil penalties in an amount not to exceed \$2,000 per violation pursuant to § 6-1-112 (1) or \$10,000 per violation pursuant to §§ 6-1-112 (3), C.R.S.;

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

I. Prejudgment interest on any judgment entered; and

J. Any such further equitable relief and orders as the Court may deem just and proper to effectuate the purposes of the Colorado Consumer Protection Act.

DATED this 15th day of February, 2008.

JOHN W. SUTHERS
Attorney General

/s/

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

CERTIFICATE OF SERVICE

This is to certify that I have duly served the **PLAINTIFF'S CIVIL COVER SHEET, COMPLAINT WITH EXHIBITS AND SUMMONSES**, upon all parties herein via facsimile, hand delivery, and via Lexis-Nexis File and Serve on this date of February 15, 2008.

Subsequent delivery to the following parties:

Leonid Shifrin a/k/a Leo Shifrin, Individually,
Mortgage Planning and Lending Specialists, LTD,
Wholesale Mortgage Lending, LLC,
Shifrin, Inc.,

c/o

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/s/ Orlando H. Martinez

Pursuant to C.R.C.P. 121, § 1-26(7)(8)(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street 7th Floor, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.