

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</p> <hr/> <p>STATE OF COLORADO <i>ex rel.</i> JOHN W. SUTHERS, ATTORNEY GENERAL FOR THE STATE OF COLORADO; and JULIE ANN MEADE, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE,</p> <p>Plaintiffs,</p> <p>v.</p> <p>JANEWAY LAW FIRM, P.C. and LYNN M. JANEWAY,</p> <p>Defendants.</p>	<p>DATE FILED: October 30, 2014 11:36 AM FILING ID: BCE2222E5AF37 CASE NUMBER: 2014CV34140</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General ALISSA GARDENSWARTZ, Reg. No. 36126* First Assistant Attorney General ERIK R. NEUSCH, Reg. No. 33146* Senior Assistant Attorney General Colorado Attorney General's Office Ralph L. Carr Colorado Judicial Center 1300 Broadway Denver, Colorado 80203 Telephone: 720-508-6228 *Counsel of Record</p>	<p>Case No.:</p> <p>Courtroom:</p>
<p>COMPLAINT</p>	

Plaintiffs, the State of Colorado, by and through John W. Suthers, Attorney General for the State of Colorado, and Julie Ann Meade, Administrator, Uniform Consumer Credit Code (collectively the "State"), through their counsel of record, state and allege against Defendants the following:

LEGAL AUTHORITY AND PARTIES

1. The State brings this action pursuant to its civil law enforcement authority under the Colorado Consumer Protection Act, §§ 6-1-101–115, C.R.S. (2013) (CCPA) and the Colorado Fair Debt Collection Practices Act, §§ 12-14-101–137, C.R.S. (2013) (CFDCPA).

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

3. Julie Ann Meade is the Administrator of the Uniform Consumer Credit Code and charged with enforcement of the CFDCPA. C.R.S. §§ 12-14-103(1) & 12-14-135.

4. Defendant Janeway Law Firm, P.C. (“Janeway Law Firm” or the “law firm”) is a Colorado professional corporation organized on February 26, 2004 with a principal place of business at 9800 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112. It is, and was at all relevant times, regularly engaged in collecting, or attempting to collect, directly or indirectly, from Colorado consumers debts owed or asserted to be owed or due others.

5. Defendant Lynn M. Janeway (“Lynn Janeway”) is an individual with a principal business address at 9800 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112. She is the sole owner of Janeway Law Firm.

JURISDICTION AND VENUE

6. This Court has jurisdiction to enforce the CCPA in actions by the Attorney General under §§ 6-1-103 and 6-1-110 and the CFDCPA under § 12-14-135.

7. Under CCPA § 6-1-103, venue is proper in the City and County of Denver because portions of the transactions involving the deceptive trade practices occurred in the City and County of Denver.

8. Under CFDCPA § 12-14-135, the Administrator may bring an action in the City and County of Denver.

GENERAL ALLEGATIONS

I. INDUSTRY OVERVIEW

A. Residential Foreclosure Process in Colorado

9. Foreclosures in Colorado are largely an administrative process conducted through the public trustee offices in each county. The servicer, on behalf of the lender or investor that owns the mortgage in default, hires the law firm to complete the foreclosure from initiation through transfer of the property to the successful bidder at auction or back to the investor.

10. Before the law firm files a foreclosure, the borrower may reinstate the default by paying what is owed to the lender in late payments and what the law firm claims it incurred in fees and costs as set forth on a reinstatement notice. After the law firm files a foreclosure but before the auction, the homeowner may “cure” the foreclosure with the public trustee’s office by paying what is owed in late payments to the lender, and whatever fees and costs the law firm claims to have incurred in processing the foreclosure as set forth on the cure statement. If the property proceeds to auction, the successful bidder must pay whatever fees and costs the law firm claims to have incurred as set forth on the bid statement.

11. A court’s only involvement in a foreclosure is when the law firm files the required motion under Rule 120 of the Colorado Rules of Civil Procedure to authorize the foreclosure sale by the public trustee. This action is often resolved without a hearing because it is generally limited to an inquiry of whether the borrower is in default or in the military, neither of which is typically in dispute.

12. Neither the public trustee’s office that receives the cure and bid statements, nor the court that handles the Rule 120 action, has authority to question the law firm’s claimed fees and costs, allowing the law firm to unilaterally and without accountability dictate the costs for any foreclosure-related services.

13. Many foreclosures never proceed to sale and are withdrawn due to a cure, bankruptcy, or loan modification, meaning that the law firm’s claimed costs, however improper, are often assessed to homeowners. For foreclosures that proceed to sale, the costs are assessed to homeowners in a deficiency judgment, purchasers at the auction, or the owner or insurer of the loan, which results in these costs ultimately being borne by taxpayers.

B. Fee/Cost Structure in Foreclosures

14. The allowable costs and fees charged by a law firm conducting

foreclosures are governed by the mortgage loan documents, servicer agreements, investor guidelines, including Fannie Mae, and state law.

15. The law firm agreed to perform foreclosures for its servicer clients for a maximum allowable fee, and to seek reimbursement for only its actual, necessary, and reasonable (i.e., market rate) costs from the servicer, borrower, and investor. This maximum allowable fee is set by investors like Fannie Mae or Freddie Mac and is intended to compensate the law firm for all legal work required to complete a routine foreclosure. It includes, among other things, document preparation and review, title review, coordinating postings and filings, and overhead. In setting this maximum allowable fee, the investors take into account the work typically performed for a foreclosure in a given jurisdiction and endeavor to ensure that firms are fairly compensated and profitable.

16. These agreements and guidelines further distinguish between the maximum allowable *fee* for work performed on a foreclosure and *costs* incurred by the law firm in processing a foreclosure. The agreements make clear that costs incurred by the law firm and passed along to the servicer/investor must be actually incurred, necessary to complete the foreclosure, and reasonable, i.e., market rate.

17. This distinction between fees and costs is deliberate. To reduce overall foreclosure costs payable by homeowners and the public, investors capped the compensation that law firms could receive per foreclosure and placed limitations on pass-through costs. These cost-control efforts were designed to minimize the cost of foreclosures and the impact of taxpayer-funded credit losses.

C. Servicers' Reliance on Law Firm's Representations

18. While automated billing permits servicers to monitor whether the law firm claims a fee in excess of the maximum allowable fee, there is generally no such monitoring of costs. Instead, servicers rely upon the law firm's representations that it will comply with investor guidelines relating to fees and costs.

19. Servicers that hire the law firm for the investor do not absorb the law firm's costs themselves. Rather, servicers obtain reimbursement from homeowners, investors, and insurers. Thus, the foreclosure law firm-servicer relationship differs from a typical attorney-client transaction in which any fraudulent or excessive charges are borne by the client alone. Here, the servicer has little incentive to scrutinize costs because it ultimately passes those costs to someone else.

20. Consequently, servicers rely on the law firm's representations as to what its vendors charge for foreclosure services without verifying whether these charges are actual, necessary, reasonable, or consistent with market rates.

D. Overcharges Alleged by the State

21. The State alleges that Defendants made the following overcharges on certain foreclosure costs in Colorado that were assessed to borrowers, third-party purchasers at auction, servicers, and investors:

- \$275 for a Public Trustee Sale Guarantee when the market rate or actual cost of a title search report is \$100, which comprises the vast majority of the work involved in creating the Public Trustee Sale Guarantee; and
- \$500 for commitment cancellation costs when the actual cost of the search which comprises the vast majority of the work involved in creating the commitment is \$100.

22. Defendants originally followed the lead of larger foreclosure law firms, such as Castle Law Group, LLC and Aronowitz & Mecklenburg, LLP, in charging \$125 for foreclosure postings. Castle Law Group and Aronowitz & Mecklenburg, as the most influential firms, set the standard of using affiliated businesses to post foreclosure notices at \$125 to generate additional and improper revenues for the law firms, but the actual market rate for these postings is \$25. Defendants, in 2010, briefly engaged in this practice of using an affiliated entity to post foreclosure notices but voluntarily discontinued it. Defendants then charged \$25 per posting and even performed many of these postings at the same time so that both required foreclosure postings were completed for a total of \$25.

II. TITLE SEARCHES ON FANNIE MAE FILES

23. In Colorado, foreclosure law firms must provide notice of a foreclosure proceeding to parties with a recorded interest in the property that would be affected by the foreclosure. A foreclosure performed properly and with notice to all parties having a recorded interest conveys clear and marketable title to the person or lender receiving the property after foreclosure.

24. Law firms determine who is entitled to notice by purchasing a title product from a title search company or a title agent. Although law firms sometimes purchase expensive title products, like title commitments, the most cost-effective title product containing this information is a two-owner title search report, which is an examination and report by a title search company containing all applicable liens and encumbrances on the property. The law firm uses this title search report to prepare a mailing list that it delivers to the public trustee, who in turn provides notice of the foreclosure to the persons with recorded interests.

25. Many title search reports are straightforward and reveal only the deed of trust in foreclosure, the prior deed of trust, and possibly one or two liens.

26. The law firm first obtains the initial search report to commence the foreclosure and then typically obtains two updates: one after the foreclosure notice is filed to ensure no new liens were recorded prior to the foreclosure notice filing, and one before sale to ensure no IRS tax liens were recorded.

27. Businesses that are not affiliated with foreclosure law firms offer two-owner title search reports for around \$100. These searches typically include, among other things, a list and copy of all recorded documents going back two owners, a tax certificate, updates, and a legal description.

28. In 2007, Fannie Mae realized that foreclosure law firms were abusing the title process by obtaining expensive and unnecessary title products, such as title commitments, for a foreclosure. Fannie Mae terminated this practice by imposing a cap on the amount spent for title products and by requiring the firms to obtain an uninsured title search report when it was less expensive than an insured product.

29. Fannie Mae determined that because it was exceedingly rare to encounter post-foreclosure problems resulting from defective title searches, obtaining an insured title product during the foreclosure was largely unnecessary and simply resulted in additional revenue to the foreclosure law firms.

30. Despite significant opposition from foreclosure law firms, Fannie Mae, in its July 2008 engagement letter with law firms, stated that Colorado law firms could charge up to a maximum cost of \$250 for a title search report. In August 2009, Fannie Mae increased the maximum cost to \$275, but notified the law firms that it expected the actual cost to be lower in many instances.

31. Although it set a maximum cost for a title search report, Fannie Mae emphasized in its 2008 Retained Attorney Network agreement and once again during a 2010 mandatory attorney training that it expected law firms to bill only their actual, necessary, and reasonable costs for title, which Fannie Mae expected to be lower than the maximum cost in many instances.

32. For Fannie Mae files, Janeway Law Firm obtains two-owner title search reports from unaffiliated title search companies in Colorado, who charge the law firm around \$100 for most title search reports. These reports are examined by the unaffiliated title search companies and typically included two to four updates, a tax certification, and all documents upon which the report was based.

33. For Fannie Mae files, Janeway Law Firm then charged \$275 for a

Public Trustee Sale Guarantee issued by an affiliated title agent, not the actual cost or market rate of the title search report used to create the Public Trustee Sale Guarantee. While Janeway Law Firm claimed that the additional charge above the actual cost or market rate of the title search report was for the review of the title search report to create the Public Trustee Sale Guarantee, and for assurances contained therein, Fannie Mae guidelines provide that the maximum allowable attorney fee covers review of title and exceptions; thus, this charge was improper.

III. TITLE COMMITMENTS

34. When servicers or investors, unlike Fannie Mae, do not specify which title product should be obtained in a foreclosure, Janeway Law Firm usually acquires a “foreclosure title commitment” through Lynn Janeway as an affiliated title agent, usually for FHA and VA loan types. A commitment is an agreement to issue an owner’s policy once certain requirements are met. After the foreclosure sale and if the property transfers to the note holder, Lynn Janeway causes the foreclosure title commitment to convert into an owner’s policy for FHA and VA loans before transferring title to the investor/insurer, i.e. FHA and VA.

35. A foreclosure commitment is based entirely on the title search report available or obtained from an unaffiliated title search company for around \$100, which represents the vast majority of the work involved for a commitment. The information from this title search report is transferred or merged into a template called “commitment for title insurance.” Most of the commitment consists of form language and requires entry of a handful of exceptions and requirements. Any additional information for the title commitment, such as covenants and restrictions, may also come from the original lender’s title policy and results in no cost to the law firm or its affiliated title agent.

36. An underwriter must file its *insurance rates* for title products such as a title commitment with the Colorado Division of Insurance. Agents cannot modify and must charge these filed rates, which are the insurance premiums, in issuing title products insured by the underwriter. By contrast, an underwriter’s schedule of fees, including a foreclosure commitment cancellation fee, is not an insured product or rate. Accordingly, the title agent may file a different fee than the underwriter.

37. The agency agreements between agents and underwriters recognize that agents may file fees different from those of the underwriter.

38. If a title agent, such as Lynn Janeway, issues an owner’s policy after the foreclosure sale for a premium, usually in excess of \$900, as the agent, Lynn Janeway, by contract with the underwriter, retains 85 to 90 percent of that premium and remits only 10 to 15 percent to the underwriter.

39. If a foreclosed property does not go to sale, however, and thus the commitment cannot turn into an owner's policy, the title agent, such as Lynn Janeway, charges a \$500 cancellation fee. Because the \$500 fee for a cancelled foreclosure commitment obtained during a foreclosure is not a filed insurance rate, the title agent retains 100 percent of the cancellation fee and does need to remit anything to the underwriter.

40. Regardless of whether a title commitment during the foreclosure is necessary or advisable, charging homeowners \$500 for stopping a foreclosure for a cure or loan modification is deceptive and unreasonable given the actual cost incurred in preparing a commitment. Nearly all foreclosure law firms were engaged in this practice by using affiliated title agents to issue commitments.

41. In contrast, title agents preparing commitments for non-foreclosure transactions generally do not charge a cancellation fee at all.

42. As an example, at least one underwriter in Colorado has published a schedule of fees allowing a \$500 cancellation fee for *foreclosure* commitments, but only a \$100 cancellation fee for *non-foreclosure* commitments. In the case of non-foreclosure commitments, however, agents may only charge the published \$100 fee if there is excessive or unusual work performed prior to cancellation. There is no such limitation for *foreclosure* commitments.

43. This discrepancy is the result of the law firms and their affiliated title agents' influence over the underwriters, which rely on agents for business.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

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

44. The State of Colorado incorporates herein by reference all of the allegations contained in the foregoing paragraphs of this Complaint.

45. As set forth in detail above, Defendants made "false or misleading statements of fact concerning the price of . . . services" on reinstatements, cures, bids, and invoices regarding the amounts claimed for certain foreclosure costs.

46. Through the conduct set forth in the Complaint and in the course of their business, vocation, or occupation, Defendants violated C.R.S. § 6-1-105(1)(l) by making "false or misleading statements of fact concerning the price of . . . services."

SECOND CLAIM FOR RELIEF

(Violation of Colorado Fair Debt Collection Practices Act – False or Misleading Representations – Unfair Practices – C.R.S. § 12-14-107(1)(b)(I))

47. The Administrator incorporates herein by reference all of the allegations contained in the foregoing paragraphs of this Complaint.

48. As set forth in detail above, Defendants used false, deceptive, or misleading representations, including the false representations of the character, amount, or legal status of any debt, in connection with the collection of a debt relating to amounts claimed on reinstatements, cures, bids, and invoices for certain foreclosure costs.

49. As a result of Defendants' violations of section 12-14-107(1)(b)(I) of the CFDCPA, the Administrator is entitled to injunctive relief restraining Defendants from committing any of the acts, conduct, transactions, or violations described above, or otherwise violating the CFDCPA, together with all such other relief as may be required to completely compensate or restore to their original position all persons injured. C.R.S. § 12-14-135.

THIRD CLAIM FOR RELIEF

(Violation of Colorado Fair Debt Collection Practices Act – Unfair Practices – C.R.S. § 12-14-108(1)(a))

50. The Administrator incorporates herein by reference all of the allegations contained in the foregoing paragraphs of this Complaint.

51. As set forth in detail above, Defendants collected amounts, including fees, charges, and expenses incidental to the principal obligation that were not expressly authorized by the agreement creating the debt or permitted by law, including for amounts claimed on reinstatements, cures, bids, and invoices for certain foreclosure costs.

52. By reason of the foregoing, Defendants used unfair or unconscionable means to collect or attempt to collect any debt, including the collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

53. As a result of Defendants' violations of section 12-14-108(1)(a) of the CFDCPA, the Administrator is entitled to injunctive relief restraining Defendants from committing any of the acts, conduct, transactions, or violations described above, or otherwise violating the CFDCPA, together with all such other relief as may be required to completely compensate or restore to their original position all

persons injured. C.R.S. § 12-14-135.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that the Defendants be enjoined from doing any of the acts referenced in this Complaint or any other act in violation of the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101 – 6-1-115, and the Colorado Fair Debt Collection Practices Act, C.R.S. §§ 12-14-101 – 12-14-137. In addition, Plaintiffs request a judgment against the Defendants for the following relief:

- A. An order pursuant to section 6-1-110(1) for an injunction and other orders or judgments which may be necessary to completely compensate or restore to their original position any persons injured;
- B. An order pursuant to section 6-1-113(4) for costs and attorney fees incurred by the Attorney General;
- C. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act for an injunction together with all such other relief as may be required to completely compensate or restore to their original position any persons injured; and
- D. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act for an award of costs and attorney fees.

Respectfully submitted this 30th day of October 2014,

JOHN W. SUTHERS
Attorney General

/s/ Erik R. Neusch

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