

<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>MEDVED DALE DECKER & DEERE, LLC; Foothills Title and Escrow, Inc.; TONI M.N. DALE; HOLLY L. DECKER; and HEATHER L. DEERE,</p> <p>Defendants.</p>	<p>DATE FILED: October 30, 2014 12:11 PM FILING ID: D29AEF3FAACC9 CASE NUMBER: 2014CV34143</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 Medved Dale Decker & Deere, LLC (“MDDD” or the “law firm”) is a Colorado limited liability company organized on October 23, 2012 with a principal place of business at 355 Union Boulevard, Suite 250, Lakewood, Colorado 80228. 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. On or about December 31, 2012, MDDD entered into an agreement to purchase certain assets from another foreclosure law firm the Law Office of Michael P. Medved, P.C. (“Medved law firm”).

5. Defendant Toni M.N. Dale is an individual with a principal business address at 355 Union Boulevard, Suite 250, Lakewood, Colorado 80228. She is the managing attorney of MDDD.

6. Defendant Holly L. Decker is an individual with a principal business address at 355 Union Boulevard, Suite 250, Lakewood, Colorado 80228. She is a member of MDDD.

7. Defendant Heather L. Deere is an individual with a principal business address at 355 Union Boulevard, Suite 250, Lakewood, Colorado 80228. She is a member of MDDD.

8. Defendant Foothills Title and Escrow, Inc. (“Foothills”), is a Colorado corporation organized on July 20, 1999, with a principal place of business at 355 Union Boulevard, Suite 275, Lakewood, Colorado 80228. On or about December 31, 2012, Holly Decker and Heather Deere purchased Foothills from its shareholders, the shareholder of the Medved law firm, Michael P. Medved, and its business manager, Tracie D. Castanon.

JURISDICTION AND VENUE

9. 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.

10. 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.

11. 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

12. 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.

13. 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.

14. 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.

15. 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.

16. 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

17. 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.

18. 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, currently \$1,225 or \$1,250, 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.

19. 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.

20. 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

21. 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.

22. 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.

23. 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

24. The State alleges that MDDD and Foothills, after MDDD purchased in December 2012 the assets of the Medved law firm and the shares of Foothills, made the following overcharges in Colorado that were assessed to borrowers, third-party purchasers at auction, servicers, and investors:

- \$275 for title search reports on Fannie Mae files when the market rate is around \$100.

25. Up until May 2014, MDDD used a posting vendor affiliated with the Medved law firm that charged \$60 per foreclosure posting. However, MDDD did not receive any financial benefit from the foreclosure posting. In May 2014, MDDD terminated this posting vendor and began using a different posting company that charges \$25 for most foreclosure postings and \$40 in remote counties.

26. In 2013, MDDD voluntarily discontinued other overcharges such as mailings and document preparation used by the Medved law firm.

II. TITLE SEARCHES ON FANNIE MAE FILES

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. For Fannie Mae files, Foothills obtained two-owner title search reports from unaffiliated title search companies in Colorado, who charged Foothills between \$105 and \$125 for most title search reports. These reports were examined by the unaffiliated title search company and typically included two to four updates, a tax certification, and all documents upon which the report was based.

34. Foothills would then charge MDDD \$275 for the report, not the actual cost or market rate of the title search report.

35. 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.

36. While Foothills claimed that the additional charge above the actual cost or market rate is for its review of the title search report that it obtained from the third party, Fannie Mae guidelines provide that the maximum allowable attorney fee covers review of title and exceptions; thus this charge was improper.

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)(I))
(All Defendants)

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

38. 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.

39. 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)(I) 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))
(All Defendants except Foothills)

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

41. 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.

42. 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))
(All Defendants except Foothills)

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

44. 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.

45. 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.

46. 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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