

<p>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO</p> <p>7325 South Potomac Street Centennial, Colorado 80112</p>	<p>COURT USE ONLY</p>
<p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL,</p> <p>Plaintiff,</p> <p>v.</p> <p>CORPORATE ACQUISITION GROUP, LLC, GLOBAL ACQUISITIONS GROUP, LLC, TYRONE TYMKOVICH, an individual, SAM LEVINE, an individual; Defendants.</p>	
<p>JOHN W. SUTHERS, Attorney General JAY B. SIMONSON First Assistant Attorney General, 24077* 1525 Sherman Street, 7th Floor Denver, CO 80203 (303) 866-5079 (303) 866-4916 Fax *Counsel of Record</p>	<p>Case No.:</p> <p>Div:</p>
<p>COMPLAINT</p>	

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

INTRODUCTION

1. The Colorado Attorney General brings this action on behalf of the State of Colorado pursuant the Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 through 115 (2009) (“CCPA”), to enjoin and restrain the Defendants from engaging in certain deceptive and unfair business practices, as well as for statutorily-mandated civil penalties, for disgorgement, restitution, and for other relief as provided in the CCPA.

PARTIES

2. John W. Suthers is the duly-elected Attorney General of the State of Colorado and is authorized to enforce the CCPA under Colo. Rev. Stat. § 6-1-103.
3. Corporate Acquisitions Group, LLC is a Colorado Limited Liability Company formed on July 18, 2006, with a principal place of business located at 14 Inverness Drive E., H 236, Englewood, Colorado 80112. Corporate Acquisitions represents itself to be a commercial business broker representing buyers and sellers of businesses.
4. Corporate Acquisitions is owned by Defendants Sam Levine and Tyrone Tymkovich. Defendants Tymkovich and Levine are partners and the sole shareholders in the company. Defendant Tymkovich is the President and Defendant Levine is the managing partner.
5. Global Acquisitions is a Colorado corporation formed on July 19, 2008 with a principal place of business located at 14 Inverness Drive E., H 236, Englewood, Colorado 80112. Global Acquisitions represents itself to be a commercial business broker representing buyers and sellers of businesses. Defendant Tymkovich is the sole shareholder in Global Acquisitions. Defendant Levine has performed sales for Global Acquisitions. These two corporate entities, Corporate Acquisitions and Global Acquisitions, are essentially the same: sharing the same address, employees, and marketing. Global Acquisitions was formed after Corporate Acquisitions was the subject of negative publicity.
6. Defendant Tyrone Tymkovich is the President of both Corporate Acquisitions and Global Acquisitions. He is engaged in, or aware of, or acquiesces to, the sales practices of both companies to such a degree as to be liable for the allegations contained herein. As the president of both companies, Defendant Tymkovich supervises, directs, and controls the sales practices of both companies to such a degree as to be liable for the deceptive practices committed by Defendant companies. As a salesman for both companies, Defendant Tymkovich has also directly engaged in the deceptive sales practices described herein.
7. Defendants Tyrone Tymkovich and Sam Levine are the sole shareholders of Corporate Acquisitions, and Defendant Sam Levine is the managing partner. Defendant Levine is engaged in, or aware of, or acquiesces to, the sales practices of both Defendant companies to such a degree as to be liable for the allegations contained herein. Defendant Levine has also acted as a salesman for both Corporate Acquisitions and Global Acquisitions and has directly engaged in the deceptive and unfair sales practices alleged herein. In addition, as the managing partner of Corporate Acquisitions, he has directed, controlled, or acquiesced to the deceptive sales practices of the company.

JURISDICTION AND VENUE

8. Pursuant to the CCPA, Colo. Rev. Stat. §§ 6-1-103 and 6-1-110(1), this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

9. At all times relevant to this action, Defendant companies have maintained their principal office in Arapahoe County, Colorado. Accordingly, venue is proper under Colo. Rev. Stat. §§ 6-1-103, and Colorado Rule of Civil Procedure 98.

RELEVANT TIMES

10. The conduct that gives rise to the claims for relief contained in this Complaint began in 2006 and continues through the present.

11. This action is timely brought pursuant to Colo. Rev. Stat. § 6-1-115 in that it is brought within three years of the date on which false, misleading, and deceptive acts or practices occurred and/or were discovered, and the series of false, misleading, and deceptive acts and practices is continuing in nature.

PUBLIC INTEREST

12. Through the unlawful practices of their business, Defendants have deceived, misled, and financially injured consumers in Colorado and throughout the United States. In addition, through unlawful practices and unfair competition, Defendants have harmed legitimate and honest businesses in Colorado and throughout the United States.

13. Therefore, the Attorney General believes these legal proceedings are in the public interest and are necessary to safeguard Colorado citizens from Defendants' unlawful business activities.

STATUTORY BACKGROUND

14. The Colorado Consumer Protection Act (CCPA) prohibits deceptive trade practices as set forth in the statute. *Id.* § 6-1-105 (2009). Violators of the Act are subject to fines, payment of restitution, disgorgement, and payment of attorney fees and costs necessary for the investigation and filing of this action. The Act also provides broad injunctive powers to this Court to remedy and to prevent further violations.

GENERAL ALLEGATIONS

15. Defendants represent themselves to be a business broker company specializing in the sale of small businesses. Defendants solicit business owners contemplating the sale of their businesses. Defendants make exaggerated claims as to past success in selling businesses. Defendants misrepresent both the likelihood of a sale through their brokerage service and the timetable for the sale to take place.

16. From July 2006 through September 2009, Defendants convinced over 700 businesses to contract for the sale of their businesses. However, Defendants sold fewer than ten businesses during that same time period.

17. Defendants lead consumers to believe that the only way Defendants make money is through commissions earned on the sale of businesses. In reality, Defendants' revenue is derived primarily from the money they collect from consumers for an appraisal of the consumer's business. Of the Defendants' reported income of \$2.8 million over the past two years, less than \$100,000 was earned from commissions. The remainder came from the money collected for appraisals by the company. Of the average \$5,000 collected from consumers under the representation that the money is for an appraisal, less than \$1,000 is actually paid for the independent appraisal. On average, more than \$4,000 is retained by Defendants.

18. Salespeople are paid as much as 40 percent of the money they collect for appraisals. Defendants Tymkovich and Levine both acted as salespeople for their company and earned hundreds of thousands of dollars between them from sales of appraisals.

19. Defendants lure consumers with exaggerated claims of past success in selling businesses. Defendants distributed marketing materials that falsely represented that the company earned \$7 million in revenues in 2007. At the same time, they implied that the revenue was generated from commissions earned on deals closed in that year.

20. Over 700 businesses contracted with Defendants for the sale of their businesses (and paid an average of close to \$5,000). To date, Defendants have sold and earned commissions on less than one percent of those 700 businesses. Despite Defendants' lack of success in selling businesses, Defendants continued to misrepresent to consumers that the likelihood of a sales of a business was higher than was in fact the case. Despite their lack of success in making sales, Defendants continued to represent that the company made its money from commissions (and not from the sale of valuations).

21. In 2007–2008, Defendants reported \$2.8 million in revenue. Less than \$100,000 of that revenue was generated from commissions on the sale of businesses. More than \$2.7

million of Defendants' reported revenue was actually generated from the money they collected, purportedly for independent valuations.

22. Defendants often enticed consumers by representing that a buyer had expressed interest in buying the consumer's business. Consumers were told the reason they were being contacted by Defendants was that a buyer, represented by Defendants, had expressed interest in the particular business and was in a position to buy. Consumers complain that, upon signing the contract, the "interested buyer" never materialized.

23. Defendants claim to be a "buyer's representative search firm." Defendants claim they have been "hired by buyers and investors to find businesses that match their criteria." However, Defendants can provide no documentation that they were hired by any buyers or generated any income from buyers other than the commissions earned on fewer than seven sales.

24. Defendants enticed consumers by informally appraising their businesses at inflated prices. These inflated in-house valuations served not only to unreasonably excite consumers about the value of a potential sale, but also to allow Defendants to charge a higher fee for the formal valuations.

25. Defendants falsely represented that if the consumer's business was not sold, or Defendants failed to introduce an interested and qualified buyer, Defendants would refund the consumer's money. In some instances, Defendants guaranteed that, if no sale were made, the consumer's money would be refunded. In other instances, consumers were told that if Defendants failed to introduce a buyer with both an interest and an ability to buy, the consumer's money would be refunded. Consumers who properly asserted their right to a refund were wrongly denied by Defendants. Despite pre-sale representations and despite contractual obligations, Defendants have repeatedly refused to provide refunds. Only a few consumers—normally those who complained to law enforcement or the BBB—were provided a refund.

26. A contract used by Defendants states that Defendants guarantee "to introduce a qualified buyer or investor that is interested in the above company at fair market value. A qualified buyer is defined as a person or entity that is financially capable and interested in the general type of business being sold." The contract states that if the "introduction" is not made within one year, Defendants will refund 100 percent of the consumer's money.

27. Defendants wrongly deny refund requests by falsely claiming they introduced a qualified buyer to the consumer. In most instances, consumers state that they received no notice of any such buyer. In those limited instances where the consumer was made aware of a "qualified buyer," the consumer states that the prospective buyer had no interest in buying the company or that the buyer was not in a financial position to buy.

28. Before Defendant Tymkovich incorporated Corporate Acquisitions, he was a salesman for an Atlanta, Georgia company named Alliance Acquisitions Inc., owned by Randy Hicks. Defendant Tymkovich marketed the brokering services of Alliance to small business owners, incorporating the same misrepresentations alleged herein. Alliance's business model was the same as Corporate in that the vast majority of income was derived from the sale of valuations and not from commissions from the sale of businesses. Randy Hicks and his predecessor corporation, PBS, was the subject of an investigation by the U.S. Securities and Exchange Commission of which Ty Tymkovich was aware. Randy Hicks was charged and subsequently pled guilty to conspiracy to commit wire fraud and sentence to thirty months imprisonment. Defendant Tymkovich started Corporate Acquisitions with full knowledge from his work with Alliance that it is far more difficult to earn commissions from the sale of businesses than to make money selling valuations.

29. Defendants employed numerous appointment setters whose job was to contact small business owners to determine if they had an interest in selling their businesses. Defendants also employed numerous "analysts" whose job it was to present in person, or via a webinar, marketing materials designed to convince consumers to contract for Defendants' brokering services. Although Defendants fully staffed their sales side of the office, the production side was inadequately staffed. Defendants had few people working on brokering deals between buyers and sellers of businesses. Two of Defendants employees titled as "project managers" and tasked with bringing buyers and sellers together had no business experience before being hired by Defendant Tymkovich. Leah Rogers was only 19 years old and working as a waitress when she was hired by Defendant Tymkovich after she served him a meal. Nicole Long was only 26 when hired as a project manager and had no business experience prior to being hired by Defendant Tymkovich.

FIRST CLAIM OF RELIEF

(False representations as to the characteristics and benefits of services)

30. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 29 of this Complaint.

31. Through the above-described conduct in the course of their business, Defendants made false representations as to the characteristic or benefits of their services in violation of § 6-1-105(e), C.R.S. (2009).

32. By means of the above-described unlawful deceptive trade practices, Defendants deceived, misled, and unlawfully acquired money from consumers from Colorado.

SECOND CLAIM OF RELIEF

(False or misleading statements of fact concerning the price of services or goods)

33. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 29 of this Complaint.
34. Through the above-described conduct in the course of their business, Defendants made false or misleading statements of fact concerning the price of services or goods in violation of § 6-1-105(l), C.R.S. (2009).
35. By means of the above-described unlawful deceptive trade practices, Defendants deceived, misled, and unlawfully acquired money from consumers from Colorado.

THIRD CLAIM OF RELIEF

(Employing “bait and switch” advertising and failing to deliver services and refusing to make a refund)

36. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 29 of this Complaint.
37. Through the above-described conduct in the course of their business, Defendants made false representations as to the characteristics or benefits of their services in violation of § 6-1-105(n-VII), C.R.S. (2009).
38. By means of the above-described unlawful deceptive trade practices, Defendants deceived, misled, and unlawfully acquired money from consumers from Colorado.

FOURTH CLAIM OF RELIEF

(Failure to disclose material information)

39. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 29 of this Complaint.
40. Through the above-described conduct in the course of their business, Defendants made failed to disclose material information in violation of § 6-1-105(u), C.R.S. (2009).
41. By means of the above-described unlawful deceptive trade practices, Defendants deceived, misled, and unlawfully acquired money from consumers from Colorado.

RELIEF REQUESTED

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

- A. An order declaring Defendants' above-described conduct to be in violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(d)(e)(l), (n-VI), and (u) (2009).
- B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with any Defendant 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.
- C. Appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.
- D. For a judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to Colo. Rev. Stat. § 6-1-110(1) (2009).
- E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado civil penalties in an amount not to exceed \$2,000 per violation pursuant to Colo. Rev. Stat. § 6-1-112(1) (2009), or \$10,000 per violation pursuant to Colo. Rev. Stat. § 6-1-112(3) (2009).
- F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to Colo. Rev. Stat. § 6-1-113(4) (2009).
- G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated this 18th day of December 2009.

JOHN W. SUTHERS
Attorney General



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