

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, Colorado 80202</p> <hr/> <p>STATE OF COLORADO, <i>ex rel.</i> John W. Suthers, Attorney General,</p> <p>Plaintiff,</p> <p>v.</p> <p>AUHLL AND ASSOCIATES, LLC, d/b/a LOAN MODIFICATION SOLUTIONS, a Colorado limited liability company; NANETTE M. AUHLL, an individual; ROBERT R. AUHLL, an individual; PRINCIPAL FINANCIAL PARTNERS, INC., a Colorado corporation; and THOMAS S. STEFANSZKY, an individual,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General ANDREW P. McCALLIN, Reg. No. 20909* First Assistant Attorney General ERIK R. NEUSCH, Reg. No. 33146* JENNIFER MINER DETHMERS, Reg. No. 32519* Assistant Attorneys General 1525 Sherman Street Denver, Colorado 80203 Phone: 303-866-5079 *Counsel of Record</p>	<p>Case No.:</p> <p>Courtroom:</p>
<p>MOTION FOR PRELIMINARY INJUNCTION</p>	

Plaintiff, the State of Colorado, *ex rel.* John Suthers, Attorney General for the State of Colorado, by and through the undersigned counsel, respectfully requests that this Court issue a preliminary injunction under § 6-1-110(1), C.R.S. (2010), of the Colorado Consumer Protection Act (“CCPA”) and under Rule 65 of the Colorado Rules of Civil Procedure to enjoin and restrain Defendants from engaging in deceptive trade practices as specified in Plaintiff’s Complaint,

doing any act in furtherance thereof, and to prevent the use or employment by Defendants of any such deceptive trade practice. As grounds in support of this motion, Plaintiff states as follows:

FACTUAL BACKGROUND

A. Loan Modification Solutions: January 2009 to September 2010

Beginning in or around January 2009 and ending in or around September 2010, Colorado-based Loan Modification Solutions (LMS) solicited distressed homeowners in Colorado and elsewhere with offers of mortgage assistance relief services—primarily loan modifications—for an upfront fee of at least \$2,995.¹ *See* Affidavit of Investigator Sartor, at ¶ 6, attached. LMS, which is a trade name for Auhll and Associates, LLC, was, at relevant times, owned, operated, and controlled by Robert Auhll and his wife, Nanette Auhll. *Id.* at ¶ 8. Thomas Stefanszky served as LMS’ lead salesperson and now serves in the same capacity with the Auhlls’ new company, Principal Financial Partners, Inc., which, as discussed below, is a continuation of their effort to collect upfront fees from distressed homeowners. *Id.* at ¶ 9.

LMS advertised on its Web site and by distributing thousands of direct mail solicitations to homeowners in Colorado and other states. *Id.* at ¶ 10. Specifically, LMS lured consumers with the following false advertisements:

- Offering a 100-percent money back and 100-percent satisfaction guarantee;
- Claiming that they are “experts at reducing mortgage payments”;
- Providing an “Attorney Assisted Loan Modification Program”;
- Having a 90-percent or greater success rate for loan modifications;

¹ Mortgage assistance relief service generally involves any service or program offered to the consumer that is represented to assist the consumer with stopping or postponing any foreclosure or obtaining a modification of any term of a mortgage loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees. *See generally* 16 CFR Part 322, Mortgage Assistance Relief Services; Final Rule (Dec. 1, 2010).

- Having “modified thousands of loans with all of the major and minor banks”;
- Having “relationships within the lending industry”; and
- Having “skilled” and “professional” negotiators.

Id. at ¶ 11. LMS has obtained more than a million dollars from homeowners through such false advertisements. *Id.* at ¶ 6.

Numerous homeowners each paid at least \$2,995 to LMS as a result of these false advertisements and relied on LMS’ claims of expertise, but most received no or questionable results. *Id.* at ¶ 26-27. *See also* Affidavits of Consumers, attached. In most cases, homeowners paid LMS the upfront fee and waited several months for a decision while believing that LMS was performing negotiations, but they were rejected by the lender for a loan modification. When these homeowners sought a refund in accordance with LMS’ advertised 100-percent money back and 100-percent satisfaction guarantee, however, LMS largely ignored the requests or denied them based on some suspect reason. *Id.* at ¶ 16. *See, e.g.,* Affidavits of Consumers.

In addition to obtaining a substantial upfront fee from homeowners through deception and then failing to honor the guaranteed refund policy, LMS harmed homeowners by denying them an opportunity to obtain effective assistance. LMS deceived homeowners into believing that LMS was a specialist in loan modifications, had a greater than 90-percent success rate, used lawyers and other experts skilled at negotiation, and had relationships with lenders. *See* Investigator Sartor affidavit, at ¶ 11. As a result, homeowners reasonably believed that LMS was working competently and diligently to obtain a solution that was unavailable to the homeowner working by himself. The homeowner relied on LMS to his detriment by not working directly with the lender or with a nonprofit counselor, believing that LMS was negotiating with the

lender. To the contrary, LMS simply faxed to the lender the documents furnished and completed by the homeowner, and then contacted the lender sporadically by using the general telephone number available to the public. *See id.* at ¶ 15. LMS also told some homeowners not to pay their mortgage, resulting in delinquency, late fees, and foreclosure proceedings. *See id.* at ¶ 21. In many cases, homeowners did not receive a decision on their modification request until they themselves finally contacted the lender directly. *See, e.g.,* Affidavits of Consumers.

B. Principal Financial Partners, Inc.: September 2010 to Present

While numerous customers are still seeking their guaranteed refund from LMS, Robert and Nanette Auhll walked away from their advertised guarantees and began selling another form of mortgage assistance relief services—principal reductions—for an upfront fee. On September 14, 2010, Robert Auhll or Nanette Auhll incorporated Principal Financial Partners, Inc. under Colorado law to offer a principal reduction program targeting homeowners whose mortgage exceeds the home’s current value. *See id.* at ¶ 28. In an apparent effort to conceal this new company from the Attorney General, the Auhlls omitted their names from the corporate filings, used Nanette Auhll’s mother’s credit card for the filing fee, and Mr. Auhll denied involvement with it during an examination under oath. *Id.* Principal Financial Partners began using LMS’ same virtual office, same telephone number, same facsimile number, and even testimonials from LMS clients to display on Principal Financial Partners’ Web site. *Id.* at ¶ 30. LMS’ sales agent Thomas Stefanszky then became Principal Financial Partners’ sales agent. *Id.* at ¶ 31.

Principal Financial Partners sells its principal reduction program for a \$3,495 upfront fee. *Id.* at ¶ 32. It advertises through direct mail and on a Web site that homeowners whose mortgage exceeds the home’s current value could reduce the principal balance of their mortgage to match

the actual value of the home and reduce their monthly mortgage payment up to fifty percent. *Id.* Like LMS, Principal Financial Partners purports to offer a refund. *Id.* at 33. The Attorney General is unaware of any homeowner who has obtained a principal reduction through Principal Financial Partners' program. *Id.* at ¶ 34.

Defendants are therefore still engaged in similar conduct by collecting an upfront fee from homeowners for purported mortgage assistance relief services. Defendants simply changed company names and the form of mortgage assistance relief in an effort to collect more upfront fees. Like LMS, they are once again advertising by direct mail and online—and using Mr. Stefanszky for sales. Whether there is as yet discoverable consumer harm with this new scheme is immaterial to CCPA enforcement actions. As the Colorado Supreme Court recognized, the State does not have to wait until consumers are victimized before it can seek relief. *May Dept. Stores Co. v. State ex rel. Woodard*, 863 P.2d 967, 973 n.9 (Colo. 1993). The CCPA is an equitable and remedial statute designed to deter deceptive trade practices. *Id.* at 973. For this reason the State is not required to prove any injury and may bring an action to enjoin a deceptive trade practice even before any consumers are harmed. *Id.* The CCPA “is intended to proscribe deceptive acts and not the consequences of those acts.” *Id.* at 972. “[I]t is in the public interest to invoke the state's police power to prevent the use of methods that have a tendency or capacity to attract customers through deceptive trade practices” *Id.* at 973 (quoting *Dunbar v. Gym of America, Inc.*, 493 P.2d 660, 668 (Colo. 1972)).

Nevertheless, Defendants' new business venture also violates the CCPA. First, Principal Financial Partners “[r]epresents that services are of a particular standard, quality, or grade if [it] knows or should know that they are of another” in violation of C.R.S. § 6-1-105(1)(g). Second,

the act of collecting an upfront fee without disclosing that an upfront fee is illegal violates sections 6-1-105(1)(u) and/or 6-1-105(1)(xx) of the CCPA. Under the Colorado Foreclosure Protection Act, Principal Financial Partners may not “[c]laim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform.” § 6-1-1103(4)(a), § 6-1-1107(1)(a), and § 6-1-105(1)(xx), C.R.S. (2010). Effective January 1, 2011, this prohibition against upfront fees applies to any Colorado homeowner’s principal place of residence regardless of whether the mortgage is current or delinquent. § 6-1-1103(4)(a) and § 6-1-1103(7), C.R.S. (2010). Under federal law, effective January 31, 2011, Principal Financial Partners is prohibited from collecting an upfront fee from any person in any state. 16 CFR Part 322, *Mortgage Assistance Relief Services* (Dec. 1, 2010).

Accordingly, to the extent Principal Financial Partners collects upfront fees from Colorado homeowners, it violates the Colorado Foreclosure Protection Act. § 6-1-1107(1)(a), C.R.S. (2010), and § 6-1-105(1)(xx), C.R.S. (2010). If Principal Financial Partners collects upfront fees from out-of-state homeowners, it also violates the CCPA by failing to disclose to consumers material information, including that collecting an upfront fee is prohibited by federal law, which is known at the time of advertisement or sale and which is intended to induce the consumer to enter a transaction. § 6-1-1015(1)(u), C.R.S. (2010); 16 CFR Part 322, *Mortgage Assistance Relief Services* (Dec. 1, 2010).²

² A violation of the federal ban on upfront fees constitutes a violation of a rule under section 18 of the Federal Trade Commission Act under 15 U.S.C. § 57a regarding unfair or deceptive acts or practices. *See* Public Law 111-8 (March 11, 2009), Sec. 626. (a)(1), as clarified by Public Law 111-24 (May 11, 2009), Sec. 511.

LEGAL ARGUMENT

Injunctive Relief Pursuant to the CCPA

This Court is expressly authorized by section 6-1-110(1) of the CCPA to issue a preliminary injunction to enjoin violations of the CCPA or doing any act in furtherance thereof:

Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this article, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

§ 6-1-110(1), C.R.S. (2010).

Civil law enforcement actions by the Attorney General under the CCPA serve to protect the public and ensure full and fair competition. *May Dep't Stores Co.*, 863 P.2d at 980; *Gym of America, Inc.*, 493 P.2d at 665 (declaring that the CCPA was “clearly enacted to control various deceptive trade practices in dealing with the public and as such is obviously designed to both declare and enforce an important public policy”). The CCPA is designed “to provide prompt, economical, and readily available remedies against consumer fraud.” *Western Food Plan, Inc. v. District Court*, 198 Colo. 251, 255-56, 598 P.2d 1038, 1041 (Colo. 1979). *See also People ex rel. MacFarlane v. Alpert Corp.*, 660 P.2d 1295, 1297 (Colo. App. 1982) (noting that the Colorado Supreme Court recognized the CCPA as “a broad protective statute”); *Crowe v. Tull*,

126 P.3d 196, 209 n.10 (Colo. 2006) (“In contrast to a private action, a showing of actual injury is not required in a district attorney’s or attorney general’s action for civil penalties.”) (citing *May Dep’t Stores Co.*, 863 P.2d at 972-973). Furthermore, “cessation or modification of an unlawful practice does not obviate the need for injunctive relief to prevent future misconduct.” *May Dep’t Stores Co.*, 863 P.2d at 979 n.24.

Preliminary Injunction Factors

A preliminary injunction is designed to preserve the status quo or protect a party's rights pending the final determination of a matter. *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004). Granting preliminary injunctive relief is within the sound discretion of the trial court, and its ruling will not be disturbed on appeal unless it is manifestly unreasonable, arbitrary, or unfair. *Board of County Commissioners v. Fixed Base Operators*, 939 P.2d 464, 467 (Colo. App. 1997).

The Court may grant a preliminary injunction when:

- a) there is a reasonable probability of success on the merits;
- b) there is a danger of real, immediate and irreparable injury which may be prevented by injunctive relief;
- c) there is no plain, speedy and adequate remedy at law;
- d) the granting of the preliminary injunction will not disserve the public interest;
- e) the balance of the equities favors entering an injunction; and
- f) the injunction will preserve the status quo pending a trial on the merits.

Rathke v. MacFarlane, 648 P.2d 648, 653–654 (Colo. 1982); *see also Gitlitz v. Bellock*, 171 P.3d 1274, 1278 (Colo. App. 2007).

Reasonable Probability of Success on the Merits

Based on the allegations in the Complaint, the sworn investigator affidavit, and the sworn consumer affidavits, there is a reasonable probability of success on the merits. The following conduct by Defendants violates section 6-1-105(1) of the CCPA when, in the course of such person's business, vocation, or occupation, such person:

- (1) "Knowingly makes a false representation as to the affiliation, connection, or association with . . . another." C.R.S. § 6-1-105(1)(c).

Defendants Auhll and Associates, LLC, Robert Auhll, and Nanette Auhll have knowingly made false representations to consumers by claiming an affiliation, connection, or association with an attorney by advertising an "Attorney Assisted Loan Modification Program," using a sales script stating that LMS' "legal staff has successfully completed over 600 modifications to date," and claiming on the LMS Web site that "[o]ur professional negotiators combined with our legal staff have years of experience negotiating with mortgage companies."

- (2) "Knowingly makes a false representation as to the characteristics . . . uses . . . [or] benefits . . . of services." C.R.S. § 6-1-105(1)(e).

Defendants Auhll and Associates, LLC, Robert Auhll, Nanette Auhll, and Thomas Stefanszky knowingly made false representations regarding the characteristics, uses, or benefits of their services by falsely claiming the following:

- "relationships within the lending industry";
- "Our processors have modified thousands of loans with all of the major and minor banks.";
- "We currently carry a 90% success rate on modifications in our program.";
- "Our professional negotiators combined with our legal staff have years of experience negotiating with mortgage companies and they are ready to go to work for you today....";
- "We are experts at reducing mortgage payments and

resolving home foreclosure claims . . . and offer a 100% money back guarantee if we cannot help you.”;

- “skilled” and “professional” negotiators;
- “Our experience within the loss mitigation departments of major mortgage companies & lenders, combined with our expert knowledge of Federal and Consumer Homeowner Protection Laws, will give you the advantage needed to secure a financial plan that you can live with.”; and
- “100-percent satisfaction guaranteed.”

(3) “Represents that services are of a particular standard, quality, or grade if he knows or should know that they are of another.” C.R.S. § 6-1-105(1)(g).

Defendants Auhll and Associates, LLC, Robert Auhll, Nanette Auhll, and Thomas Stefanszky represented that LMS’ services are of a particular standard, quality, or grade but knew or should have known that they are of another by claiming, among other things, that LMS had “experts at reducing mortgage payments,” an “Attorney Assisted Loan Modification Program,” “90-percent or greater success rate for loan modifications,” “modified thousands of loans with all of the major and minor banks,” “relationships within the lending industry,” and “skilled” and “professional” negotiators.

Defendant Principal Financial Partners, Inc., through its agents Robert Auhll and Thomas Stefanszky, represented that its services are of a particular standard, quality, or grade but knew or should have known that they are of another by claiming, among other things, that Principal Financial Partners offers a principal reduction program that could lower the amount owed on a homeowner’s mortgage down to the current market value and lower the monthly principal and interest payment by up to fifty percent through Principal Financial Partners’ investors who are “sanctioned by the federal government,” without any evidence, knowledge, or experience that such a program has worked, can work, or that such investors exist.

(4) “Advertises . . . services . . . with intent not to sell them as advertised.” C.R.S. § 6-1-105(1)(i).

Defendants Auhll and Associates, LLC, Robert Auhll, and Nanette Auhll advertised services with the intent not to sell them as advertised by claiming that LMS had a 100-percent satisfaction and a 100-percent money back guarantee, had skilled and professional negotiators, and used lawyers to negotiate loan modifications.

(5) “Advertises or otherwise represents that . . . services are guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, any material conditions or limitations in the guarantee which are imposed by the guarantor, the manner in which the guarantor will perform, and the identity of such guarantor.” C.R.S. § 6-1-105(1)(r). Subsection (1)(r) also states, “Guarantees shall not be used which . . . are otherwise of such a nature as to have the capacity and tendency of misleading purchasers or prospective purchasers into believing that the . . . services so guaranteed have a greater degree of . . . performance capability in actual use than is true in fact.”

Defendants Auhll and Associates, LLC, Robert Auhll, and Nanette Auhll prominently displayed and advertised a 100-percent satisfaction and a 100-percent money back guarantee without clearly and conspicuously disclosing the nature and extent of the guarantee, any material conditions or limitations in the guarantee which are imposed by the guarantor, the manner in which the guarantor will perform, and the identity of such guarantor. These guarantees also were of such a nature as to have the capacity and tendency of misleading prospective consumers into believing that LMS’ services had a greater degree of performance capability in actual use than is true in fact.

(6) “Fails to disclose material information concerning . . . services . . . which information was known at the time of advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.” C.R.S. § 6-1-105(1)(u).

Defendants Auhll and Associates, LLC, Robert Auhll, and Nanette Auhll failed to disclose the following material information concerning the services known at the time of advertisement or sale to induce the consumers to enter into a transaction: (1) there was no 100-percent satisfaction guaranteed policy; (2) the 100-percent money back guarantee would not be honored in most cases; (3) LMS did not have a 90-percent or greater success rate; (4) LMS did not have professional or skilled negotiators; (5) LMS did not use attorneys to assist with loan modifications; (6) LMS had no expertise at reducing mortgage loan payments; (7) LMS lacked relationships within the lending industry that would benefit the client; and (8) LMS has not modified hundreds of loans.

Defendant Principal Financial Partners, through its owners, officers, and agents, fails to disclose to consumers material information, including, but not limited to, that collecting an upfront fee is prohibited by federal law.

(7) “Refuses or fails to obtain all governmental licenses . . . required to perform the services” C.R.S. § 6-1-105(1)(z).

Defendants Robert Auhll and Nanette Auhll engaged in unlicensed mortgage loan origination activity while offering and attempting to perform loan modifications for Colorado homeowners for approximately nine months before Defendant Robert Auhll obtained his mortgage loan originator license. Even after he obtained this license, LMS still engaged in unlicensed activity because unlicensed individuals, including Nanette Auhll, at LMS engaged in loan modification services on behalf of Colorado clients.

(8) “Violates any provision of section 12-61-911,” which describes prohibited conduct by a mortgage loan originator, such as collecting certain fees in advance. C.R.S. § 6-1-105(1)(bbb).

Defendants Auhll and Associates, LLC, Robert Auhll, and Nanette Auhll violated C.R.S. § 12-61-911 by collecting an upfront fee prohibited by C.R.S. § 12-61-915.

See Affidavit of Investigator Sartor, at ¶¶ 10-27 and 35-42.

Danger of Real, Immediate and Irreparable Injury

Because the preliminary injunction sought by the Attorney General enforces state laws affecting the public interest, the Attorney General is not required to prove immediate and irreparable injury. *Kourlis v. District Court*, 930 P.2d 1329, 1335 (Colo. 1997) (“Special statutory procedures may supersede or control the more general application of a rule of civil procedure.”); see also *Baseline Farms Two, LLP v. Hennings*, 26 P.3d 1209, 1212 (Colo. App. 2001) (“[T]he supreme court held the *Rathke* requirements inapplicable, in part because, unlike in *Rathke*, *Kourlis* involved ‘a statutory injunction pursuant to a statutory scheme carried out by

an administrative agency” *Id.* at 1212) (quoting *Kourlis*, 930 P.2d at 1333 n.10)). Here, section 6-1-110(1) provides for a special statutory procedure for injunctive relief “[w]henver the attorney general or a district attorney has cause to believe that such person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105”

Even so, Defendants’ deceptive practices are injurious to the public and should be enjoined immediately to prevent further irreparable harm. When there is evidence that a person has committed a deceptive trade practice, there is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition. § 6-1-105(2), C.R.S. (2010). If Defendants are not enjoined, homeowners in Colorado and other states will continue to be victimized into providing upfront fees for suspect results rather than working with their lender, a nonprofit housing counselor for free, or a competitor that follows the law. Defendants have demonstrated with the recent formation of yet another mortgage assistance relief company that they are much less interested in honoring their promises to their customers than they are in collecting more upfront fees from other distressed homeowners. If a homeowner relies on Defendants without taking action himself, he could become delinquent, fall further behind on his mortgage, and face the loss of his home to foreclosure. As such, the public interest is served by enjoining this, and any other, deceptive scheme created by Defendants.

No Plain, Speedy and Adequate Remedy at Law

There is no plain, speedy, and adequate remedy at law. A law enforcement action under the CCPA is equitable in nature. *State ex rel. Salazar v. General Steel*, 129 P.3d 1047, 1050 (Colo. App. 2005). There is an immediate need to stop this conduct to prevent additional homeowners from paying an upfront fee and relying on Defendants for no results. It is also

necessary to prevent homeowners from being denied an opportunity to seek legitimate and meaningful assistance. Even if Defendants ultimately issue refunds, it would not remedy the situation because of the harm caused to homeowners who rely on Defendants.

Granting of the Preliminary Injunction Will Not Disserve the Public Interest

Actions by the Attorney General under the CCPA are intended to protect the public interest, not disserve it. *May Dep't Stores Co.*, 863 P.2d at 980. An injunction that enjoins Defendants from engaging in conduct that violates the CCPA will ensure that the public is not harmed by false and deceptive practices in connection with mortgage assistance relief services. Defendants have collected more than one million dollars from distressed homeowners because of false advertisements and will continue to collect money and harm consumers if not enjoined. And a preliminary injunction ensures that the public is properly informed that collecting an upfront fee for mortgage assistance relief services violates Colorado and federal law. Injunctive relief also will help inform consumers that they should work directly with their lender or a nonprofit housing counselor for mortgage assistance without wasting money and time.

Balance of the Equities Favors Entering an Injunction

The balance of the equities favors entering an injunction, because Defendants have no right to engage in unlawful and deceptive conduct and collect money from consumers as a result. Moreover, Defendants have no right to unjustly benefit from such deceptive trade practices. If Defendants wish to offer a principal reduction program, they must comply with the law and, among other things, stop collecting an unlawful upfront fee and provide proper disclosure to consumers. Without an injunction, the Attorney General will be unable to adequately protect the public from Defendants' ongoing unlawful activities, and to ensure that the public receives

competent assistance.

An Injunction Will Preserve the Status Quo Pending a Trial on the Merits

Finally, an injunction preserves the status quo by forcing Defendants to comply with the law, including ceasing collection of upfront fees, pending a trial on the merits. Because of the real, immediate harm to homeowners, there is a need to restore the status quo to a circumstance where Defendants adhere to the requirements in the CCPA that serve to protect consumers and ensure fair competition. Defendants' conduct is costing homeowners' substantial money in unlawful upfront fees and meaningful opportunities to seek effective assistance. It is inequitable to permit Defendants to obtain more than a million dollars from consumers, deny numerous refund requests despite the advertised 100-percent money back guarantee, and then continue to engage in a similar activity by changing their company name and collecting more upfront fees.

ASSET FREEZE REQUEST UNDER C.R.S. § 6-1-110(1)

Given the broad remedial scope of the CCPA and the conduct of Defendants Robert and Nanette Auhll, and the Court should enter an equitable order pursuant to C.R.S. § 6-1-110(1) that freezes the Auhlls' assets to preserve effective final relief for consumers. Section 6-1-110(1) authorizes an equitable order which may be necessary to "completely compensate or restore to the original position of any person injured . . . or to prevent any unjust enrichment." *See also Western Food Plan, Inc.*, 598 P.2d at 1041 (stating that the CCPA is designed "to provide prompt, economical, and readily available remedies against consumer fraud."); *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 438, 496 (2001) (stating that district courts sitting in equity have discretion to craft a fitting remedy "unless a statute clearly provides otherwise.").

During the operation of LMS, the Auhlls acquired certain real and personal property,

including real estate, a 25-foot boat, and a vehicle; during the Attorney General's investigation the Auhlls then transferred all or most of these assets to an entity, Sunset Properties, Inc., that they control. *See* Affidavit of Investigator Sartor, at ¶¶ 43-53. These assets were likely purchased from the more than \$1M in income generated from consumers through deceptive practices since January 2009. *Id.* at ¶ 45. On November 4, 2009, for example, the Auhlls purchased real estate at 1412 Pinyon Drive, Castle Rock, Colorado 80104, for \$185,000. *Id.* at ¶ 49. Three days after the Attorney General delivered in writing to the Auhlls' attorney a second subpoena as part of its investigation into LMS, the Auhlls transferred this property to Sunset Properties. *Id.* at ¶¶ 50-51. The Auhlls are now listing that property for sale at \$269,000, with Nanette Auhll as the listing agent. *Id.*

Courts have ordered asset freezes under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. §53, which, like the CCPA, provides equitable relief against deceptive practices.³ *See, e.g., F.T.C. v. U.S. Mortgage Funding, Inc.*, 2011 WL 810790, at *1 (S.D. Fla. March 01,

³ "Section 13(b) of the Federal Trade Commission Act authorizes the FTC to seek, and the district courts to grant, preliminary and permanent injunctions against practices that violate any of the laws enforced by the Commission." *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996). Section 13(b) provides, in relevant part, as follows:

Whenever the Commission has reason to believe-

- (1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and
- (2) that the enjoining thereof ... would be in the interest of the public-the Commission ... may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest ... a temporary restraining order or a preliminary injunction may be granted without bond:

... Provided, further, That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction....

15 U.S.C. 13(b). Although section 13(b) does not expressly authorize courts to grant monetary equitable relief, "the unqualified grant of statutory authority to issue an injunction under section 13(b) carries with it the full range of equitable remedies, including the power to grant consumer redress and compel disgorgement of profits." *Id.* (cited in *F.T.C. v. U.S. Mortgage Funding, Inc.*, 2011 WL 810790, at *2 (S.D. Fla. March 01, 2011)).

2011) (ordering asset freeze against loan modification defendants “thereby preserving Court’s ability to provide effective final relief.”); *F.T.C. v. USA Financial, LLC*, 2011 WL 679430, at *4 (11th Cir. February 25, 2011) (“Maintaining the asset freeze until the monetary judgment was satisfied was necessary to ‘accomplish complete justice.’”) (quoting *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 996 (7th Cir. 2002)); *F.T.C. v. Inc21.com Corp. Slip Copy*, 2010 WL 1486356, at *1 (N.D. Cal. April 13, 2010) (ordering asset freeze in a preliminary injunction so refunds may be issued if FTC prevails); *F.T.C. v. Darling Angel Pin Creations, Inc.*, 2011 WL 65917 (M.D. Fla. Jan. 10, 2011) (granting asset freeze to preserve court’s ability to grant effective final relief to consumers); *Levi Strauss & Co. v. Sunrise Intern. Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995) (“A request for equitable relief invokes the district court’s inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief.”); *In re National Credit Management Group*, 21 F. Supp. 2d 424, 462 (D.N.J. 1998) (observing that state and FTC were likely to prevail on merits in a consumer fraud action under state and federal law and thus an asset freeze is appropriate to preserve assets for possible restitution awards); *F.T.C. v. H. N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982) (stating that an asset freeze by a preliminary injunction is an appropriate provisional remedy to give form to the final equitable relief); *id.* (“While it is true that the asset freeze has an effect comparable to that of an attachment, it is not an attachment.”).

CONCLUSION

WHEREFORE, Plaintiff, the State of Colorado, *ex rel.* John W. Suthers, Attorney General, respectfully requests that this Court enter a preliminary injunction pursuant to C.R.S. § 6-1-110(1) that:

A. Enjoins Defendants Auhll and Associates, LLC, Robert Auhll, Nanette Auhll, Thomas Stefanszky, and Principal Financial Partners, Inc., jointly and individually, and any other persons under their control or in concert or participation with Defendants who receive notice of this order, from:

- (1) Soliciting, offering, or accepting, indirectly or directly, payment for mortgage assistance relief services, including foreclosure assistance, loan modifications, and principal reductions;
- (2) Advertising, marketing, or displaying mortgage assistance relief services, including foreclosure assistance, loan modifications, and principal reductions; and
- (3) Publishing, distributing, or disseminating any information, including written, oral, or video, relating to mortgage assistance relief services, including foreclosure assistance, loan modifications, and principal reductions.

B. Requires Defendants Auhll and Associates, LLC, Robert Auhll, Nanette Auhll, and Principal Financial Partners, Inc., jointly and individually, and any other persons under their control or in concert or participation with Defendants who receive notice of this order, to:

- (a) Deactivate within forty-eight (48) hours of the order all Internet sites, domain names, URL addresses, registrations, and any other forms or materials that advertise, market, discuss, or solicit any business relating to mortgage assistance relief services, including foreclosure assistance, loan modifications, and principal reductions;
- (b) Produce to the Colorado Attorney General's Office in writing within three (3) business days of this order a complete list by name, address, and telephone number of each person who has entered into any agreement with Principal Financial Partners, Inc.,

including any related or affiliated entity;

(c) Notify in writing within five (5) business days of this order each person who has entered into any agreement with Principal Financial Partners, Inc., including any affiliated entity, of this order;

(d) Notify in writing within five (5) business days of this order each person who has entered into any agreement with Loan Modification Solutions of this order;

(e) Provide a status report and certification to the Court within seven (7) business days of this order that Defendants have complied with the foregoing (a) through (d).

ASSET FREEZE

C. Restrains and enjoins Defendants Auhll and Associates, LLC, Robert Auhll, and Nanette Auhll, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons and entities in active concert or participation with them who receive notice of this order, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, from:

(a) Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any asset, including, but not limited to, real property located at 1412 Pinyon Drive, Castle Rock, Colorado 80104; the 2001 Ford, VIN: 1FDRE14L91HA38568; the 2003 Rinker boat, Reg. No.: CL7359GD and VIN: RNK71388F203; and all personal and business accounts for which Auhll and Associates, LLC, Robert Auhll, or Nanette Auhll is a signatory, or has any interest in, wherever located, including outside the United States, that are:

1. owned or controlled by, or in the actual or constructive possession of, Auhll and

Associates, LLC, Robert Auhll or Nanette Auhll, in whole or in part;

2. held, directly or indirectly, for the benefit of Auhll and Associates, LLC, Robert Auhll or Nanette Auhll, in whole or in part;

3. held by an agent of Auhll and Associates, LLC, Robert Auhll or Nanette Auhll as a retainer for the agent's provision of services; or

4. owned or controlled by, in the actual or constructive possession of, collected on behalf of, or otherwise held for the benefit of, any corporation, partnership, or other entity that is owned, managed, or controlled, directly or indirectly, by Auhll and Associates, LLC, Robert Auhll or Nanette Auhll, including, but not limited to, any asset held or collected by, for, or subject to access by, any of them at any bank or savings and loan institution, or collected for Auhll and Associates, LLC, Robert Auhll or Nanette Auhll by any credit card processing agent, automated clearing house processor or other payment processor, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind.

(b) Opening or causing to be opened any safe deposit box in the name of Auhll and Associates, LLC, Robert Auhll or Nanette Auhll, or any related entity, or subject to access by any of them; and

(c) Incurring liens or other encumbrances on any asset in the name, singly or jointly, of any corporation, partnership, or other entity owned, managed, or controlled, directly or indirectly, by Auhll and Associates, LLC, Robert Auhll, or Nanette Auhll.

D. Requiring that Robert Auhll and Nanette Auhll, individually and jointly, provide to the Court within five (5) business days of the order, the following under oath and subject to

perjury: (1) an accounting as of March 25, 2011 of all real property, all personal and business bank accounts, all investment accounts, and all vehicles, boats, and trailers, whether owned by or titled in their name or any entity over which they have any control or in which they have any interest; and (2) a statement identifying every transfer, sale, and gift of both real and personal property valued in excess of \$5,000 that either of them authorized, individually or as a member, manager or officer of any entity, between October 1, 2009 and the date of the order.

Respectfully submitted this 25th day of March 2011,

JOHN W. SUTHERS
Attorney General

/s/

ANDREW P. McCALLIN*
First Assistant Attorney General
ERIK R. NEUSCH*
JENNIFER MINER DETHMERS*
Assistant Attorneys General
Attorneys for Plaintiff
*Counsel of Record

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