

<p>DISTRICT COURT, ADAMS COUNTY, COLORADO 1100 Judicial Center Drive Brighton, Colorado 80601</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, and LAURA E. UDIS, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE</p> <p>Plaintiffs,</p> <p>v.</p> <p>REAL TALK NETWORK, INC., d/b/a REAL TALK NETWORK and GET REAL WITH DAVE, a Colorado corporation, REAL TALK, LLC, a Colorado limited liability company, REAL TALK RADIO SHOW NETWORK, LLC, a Colorado limited liability company, INSTITUTE OF CONSUMER ECONOMIC EDUCATION, LLC, a Colorado limited liability company, DAVID ALLEN BURKE, individually, and ERIK SALE, individually.</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General ALISSA HECHT GARDENSWARTZ, 36126* JEANINE M. ANDERSON, 28206* Assistant Attorneys General JAY B. SIMONSON, 24077* First Assistant Attorney General alissa.gardenswartz@state.co.us jeanine.anderson@state.co.us jay.simonson@state.co.us 1525 Sherman Street, 4th Floor Denver, CO 80203 (303) 866-5079 (303) 866-4916 Fax *Counsel of Record</p>	<p>Case No.:</p>

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Plaintiffs, the State of Colorado, upon relation of John Suthers, Attorney General for the State of Colorado, and Laura E. Udis, Administrator of the Uniform Consumer Credit Code (“Administrator”), by and through undersigned counsel, move this Court for a Temporary Restraining Order and Preliminary Injunction pursuant to Colo. Rev. Stat. § 6-1-110(1) (2009), Colo. Rev. Stat. §§ 5-6-111 and 113 (2009), 15 U.S.C.A. § 1679h(c)(1)(A), and Rule 65, C.R.C.P., to enjoin Defendants from engaging in numerous deceptive trade practices and unlawful activities as specified in Plaintiff’s Complaint, and for such other relief as this Court deems necessary and appropriate. As grounds for the foregoing, Plaintiffs state as follows:

BACKGROUND

1. Concurrent with the filing of this Motion and Investigator’s Affidavit, Plaintiffs are filing a Complaint against the above-captioned Defendants. Plaintiffs’ Complaint alleges that Defendants have violated and continue to violate the Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 *et seq.* (2009) (“CCPA”), the Uniform Consumer Credit Code, Colo. Rev. Stat. §§ 5-1-101 *et seq.* (“UCCC”); the Colorado Credit Services Organization Act, Colo. Rev. Stat. §§ 12-14.5-101 *et seq.* (“CCSOA”), and the Federal Credit Repair Organizations Act, 15 U.S.C.A. §§ 1679a *et seq.* (“CROA”). Plaintiffs incorporate their Complaint by reference herein.

2. Defendants sell debt reduction and credit repair services to consumers using countless misrepresentations about the type of services they provide to consumers, and about the results their services can accomplish.

3. Defendants claim that their programs can:

- a. Help all consumers design an individualized debt reduction plan using advanced financial techniques and intensive, one-on-one coaching with highly-trained financial coaches;
- b. Help all consumers exponentially increase their credit scores and remove negative items from their credit histories;
- c. Eliminate all consumers’ debt in a matter of weeks or months;
- d. Allow all consumers that contract with Defendants to obtain low or no interest lines of credit through Defendants’ “special relationships” with banks;

- e. Help all consumers obtain zero percent credit cards; and
 - f. Help all consumers pay off their mortgages in less than ten years.
4. Defendants sell their programs through their websites, www.gortn.com and www.iceellc.com , through radio infomercials that they misrepresent as nationally-syndicated talk shows, and through free sales presentations held throughout the Denver metropolitan area as well as in California.
 5. Defendants broadcast as many as 27 radio infomercials weekly in Colorado and California.
 6. Defendants hold approximately 22 sales presentations a month in Colorado and California, and sign up thirty to fifty consumers a week.
 7. Defendants make false representations about Defendant David Burke's background at these presentations in an attempt to bolster the credibility of their program. Defendant David Burke is falsely represented as a top financial expert in the world. Defendant Burke also falsely states at these presentations that he graduated from the University of Southern California, that he has a large ranch in Montana, that he recently came out of ten years of retirement to "help save American families in this time of crisis," and that he has coached the House of Representatives and "a bunch of media figures."
 8. Defendants currently charge consumers \$3,497 for the Real Talk Network, Inc. ("RTN") program. Defendants require consumers to pay them prior to performing any promised services for the consumer. If a consumer is unable to pay the full \$3,497 up front, then Defendants will put the consumer on a payment plan and charge them an additional \$100 processing fee.
 9. Even though Defendants make consumer credit sales and impose a finance charge, Defendants have not notified or paid fees to the UCCC Administrator as required by Colo. Rev. Stat. §§ 5-6-201 through 203. *See* July 6, 2010 Certified Letters from Laura E. Udis and Claire S. Lewis, attached hereto as **Exhibit A**.
 10. The RTN contract states that "all sales are final." Defendants do not allow consumers a period of time in which they can rescind the RTN contract. Defendants rarely provide a copy of the RTN contract to the consumer.
 11. The RTN contract does not include a notice of cancellation that consumers can submit to Defendants should the consumer decide to rescind the contract. Nor does the contract contain any disclosures pursuant to the federal Truth in Lending Act.

12. If a consumer on a payment plan refuses to make payments to RTN, either due to inability to pay or due to not receiving promised services, Defendants send the consumer's account to Conrad Credit Corporation, a collections agency. Defendants do not give consumers notice or opportunity to cure nonpayment before sending the entire balance of their account to collections.

13. Defendants do not deliver services to consumers as promised in their advertising and sales presentations.

14. Consumers do not receive intensive, one-on-one coaching from financial experts as promised. Defendants' coaches are not highly-trained financial experts. Most of Defendants' coaches have no financial background, and coaches receive training primarily on how to obtain financial information from consumers. They receive minimal or no training on how to help consumers get out of debt.

15. Nor do coaches use "advanced financial techniques" to help consumers. Defendants programs are based in large part upon common-sense strategies, such as reducing debt by minimizing interest payments. Defendants instruct consumers to pay their credit cards on the closing date rather than the due date, to "park" their paychecks in a low interest line of credit and use that to pay living expenses, and to transfer debt to low or zero interest credit cards. Defendants also counsel consumers to make additional principal payments on their mortgage.

16. If the aforementioned basic strategies for eliminating debt do not work for a consumer, Defendants' counselors simply advise other common-sense approaches to reducing debt, such as taking a second job, renting a room in their house, or eliminating unnecessary expenses.

17. Consumers have tremendous difficulty scheduling coaching sessions with counselors because Defendants employ only three customer service representatives to schedule coaching for thousands of consumers, and Defendants do not employ enough coaches to service the amount of consumers that sign up with RTN. Consequently, consumers often wait as much as five weeks after they sign up with RTN before they can get their first coaching session scheduled.

18. Consumers also complain that coaches do not get back to them for follow-up sessions, and that they often receive coaching from multiple coaches who offer conflicting advice.

19. Defendants do not have special relationships with banks that would permit their members preferential treatment over other bank customers and allow them to access low or zero interest lines of credit. In fact, low interest lines of credit are very difficult to obtain, even for consumers with excellent credit, and bank regulators would not allow a bank to extend a zero percent line of credit to anyone. Nor can Defendants get zero percent interest credit cards for their members.

20. Defendants cannot improve consumers' credit scores as they claim. Contrary to their representations, Defendants do not employ the creator of the FICO scoring model, and cannot remove negative items from clients' credit histories.

21. Despite the obvious limitations of their program, Defendants market and sell their program as something that can work to eliminate debt for any consumer, regardless of income or debt levels. As a result, numerous consumers have paid for the RTN program and have not received any of the services or results that Defendants represented consumers would receive.

LEGAL ARGUMENT

22. This Court is expressly authorized by Colo. Rev. Stat. § 6-1-110(1) to issue a temporary restraining order and preliminary injunction to enjoin ongoing violations of the CCPA:

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.

Colo. Rev. Stat. § 6-1-110(1) (2009). Additionally, Plaintiffs may seek a preliminary injunction and a temporary restraining order pursuant to Colo. Rev. Stat. §§ 5-6-111 and 113 and Rule 65, C.R.C.P.

23. Both a temporary restraining order and preliminary injunction are 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). A temporary restraining order is meant to prevent "immediate and irreparable harm." *Id.* (quoting *Mile High Kennel Club v. Colo. Greyhound Breeders Ass'n*, 559 P.2d 1120, 1121 (Colo. Ct. App. 1977)). Like a temporary restraining order, a preliminary

injunction prevents irreparable harm before a decision on the merits of a case. *Id.* 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. Ct. App. 1997).

24. 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. Ct. App. 2007).

25. There is a reasonable probability that Plaintiffs will prove their claims. After an extensive investigation, Plaintiffs have asserted in the Complaint eight claims for relief under the CCPA, claims for relief pursuant to the UCCC, and claims for relief under the state and federal statutes that govern credit repair organizations.

26. The affidavit of Investigator Rebecca Wild in support of this Motion, attached hereto as **Exhibit B**, shows that Plaintiffs have extensively investigated Defendants by reviewing their radio and internet advertisements, attending two of their sales presentations, reviewing consumer complaints and accompanying documentation, interviewing consumers, and interviewing Defendants' ex-employees. The results of Plaintiffs' investigation as set forth in **Exhibit B** and in Plaintiffs' Complaint demonstrate a continuous pattern of deception that clearly violates the CCPA. Specifically, Investigator Wild's affidavit shows that Defendants have violated Colo. Rev. Stat. § 6-1-105(1)(b), (c), (e), (i), (u) and (z) and Colo. Rev. Stat. § 6-1-707(1)(a)(I)(A) by:

- a. Knowingly making a false representation as to the source, sponsorship, approval or certification of Defendants' services;
- b. Knowingly making a false representation as to Defendants' affiliation, connection, association with or certification by another;

- c. Knowingly making a false representation as to the characteristics or benefits of Defendants' services or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith;
- d. Advertising Defendants' services with the intent not to sell them as advertised;
- e. Fraudulently advertising or otherwise representing that Defendants' services are guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee;
- f. Failing to disclose material information concerning Defendants' services which was known at the time of an advertisement or sale to induce consumers to enter into transactions;
- g. Failing to obtain all governmental permits required to collect a processing fee when putting consumers on a payment plan for Defendants' services; and
- h. Falsely representing that Defendant David Burke graduated from the University of Southern California.

27. Investigator Wild's affidavit as well as the Complaint also show that Defendants have violated the UCCC by:

- a. Failing to notify the Administrator prior to collecting finance charges on consumer credit sales;
- b. Failing to disclose to consumers the information, disclosures and notices required by the federal Truth in Lending Act;
- c. Failing to provide consumers notice of their right to cure default prior to accelerating their entire balance due; and
- d. Failing to allow consumers an opportunity to cure a default on payment prior to accelerating the balance due.

See Colo. Rev. Stat. §§ 5-6-201 through 203, § 5-3-101(2), and §§ 5-5-110 and 111.

28. Moreover, the evidence as set forth in Investigator Wild's affidavit shows that Defendants are offering credit repair services to consumers without abiding by the requirements set forth in Colorado Credit Services Organization Act and the Federal Credit Repair Organizations Act. Specifically, Plaintiffs have demonstrated that Defendants are:

- a. Making misrepresentations in the course of selling Defendants' services;

- b. Receiving payment for services before Defendants have performed any services;
- c. Not providing required written disclosures to consumers prior to executing a contract for services;
- d. Not including required language in contracts regarding Defendants' services;
- e. Not advising consumers in writing of their right to rescind the RTN contract within three days of execution;
- f. Not including a cancellation form with the RTN contract; and
- g. Not providing consumers with copies of their contracts.

See Colo. Rev. Stat. §§ 12-14.5-104(1)(a), (c), 106, 107 and 108 and 15 U.S.C.A. §§ 1679b (a)(3) and (4), (b), 1679c, 1679d and 1679e. Accordingly, Plaintiffs have obtained enough evidence to demonstrate a reasonably probability of success on the merits in prosecuting their claims.

29. There is a real danger of immediate and irreparable injury to consumers if the Court does not enjoin Defendants from continuing to sell their services. As a preliminary matter, the temporary restraining order and preliminary injunction are sought by the Colorado Attorney General on behalf of the State of Colorado to enforce state laws affecting the public interest. Under Colorado law, the Attorney General is not required to plead or prove immediate or irreparable injury when a statute concerning the public interest is implicated. *Kourlis v. Dist. 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. Ct. App. 2001); *Lloyd A. Fry Roofing Co. v. State Dep’t of Health Air Pollution Variance Board*, 553 P.2d 800 (Colo. 1976).

30. Moreover, Defendants’ deceptive practices are injurious to the public and should be enjoined immediately to prevent further irreparable harm to consumers. The CCPA is designed to protect fair competition and safeguard the public from financial loss. *Dunbar v. Gym of Am.*, 493 P.2d 660, 667 (Colo. 1972). Through their consistent misrepresentations about what they can accomplish for consumers, Defendants have caused thousands of debt-ridden consumers to spend thousands of dollars on the RTN program, only to go further into debt without getting any of the actual services and results promised by Defendants.

31. For all of the same reasons, there is no adequate remedy at law. A law enforcement action under the CCPA is equitable in nature. *State ex rel. Salazar v. Gen. Steel*, 129 P.3d 1047, 1050 (Colo. Ct. App. 2005). There is an immediate need to stop this conduct to prevent additional consumers from being victimized by Defendants’ deception. Absent injunctive relief, Defendants may continue to solicit new clients and illegally take more money from insolvent consumers.

32. The balance of the equities overwhelmingly favors the entry of an injunction. An injunction will serve the public interest by protecting consumers both within and outside Colorado from significant harm, as it will prevent the Defendants from deceiving more consumers into spending \$3,497 and receiving nothing in return.

33. In contrast, Defendants will suffer no undue hardship by the entry of a temporary restraining order or preliminary injunction because Defendants have no right to continue to engage in unlawful and deceptive trade practices, or to collect money from consumers as a result of such unlawful and deceptive conduct in violation of the CCPA, the UCCC, the CCSOA, and the CROA. Further, Defendants have no right to unjustly benefit from such deceptive trade practices. Without an injunction, Plaintiffs will be unable to adequately protect the public from Defendants' ongoing unlawful activities.

34. Finally, the injunction should preserve the status quo by forcing Defendants to comply with the law. Because of the real harm to consumers already struggling to eliminate their debt, there is a need to restore the status quo to ensure that Defendants are adhering to the requirements in the CCPA, the UCCC, the CCSOA and the CROA that serve to protect consumers. If Defendants' unlawful scheme is allowed to continue, it will only promote further consumer losses, which may be reduced or avoided entirely if Defendants complied with the law.

**CERTIFICATION REGARDING NOTICE OF TEMPORARY RESTRAINING
ORDER PURSUANT TO RULE 65(b)**

35. Rule 65(b) C.R.C.P. allows the entry of a temporary restraining order without written or oral notice to defendants if it clearly appears from the facts shown by affidavit or the Complaint that immediate and irreparable injury or damage will result from giving said notice. In view of the continuing and serious harm to consumers as outlined in the accompanying Investigator's Affidavit and Complaint, the entry of a temporary restraining order is necessary and appropriate. If Defendants are not immediately stopped from advertising and marketing their program to consumers, more consumers will needlessly spend thousands of dollars on a credit repair and debt elimination program that will accomplish neither of those results for the consumer, and Defendants will continue to be unjustly enriched through their deception.

36. In view of Defendants' fraudulent and deceptive practices perpetrated in Colorado, it is additionally necessary and appropriate for the court to issue an Order to freeze Defendants' bank accounts. This will maximize the likelihood of recovering funds to compensate victims, will prevent Defendants' unjust enrichment, and will also help deter additional unlawful transactions.

37. Pursuant to Rule 65(c) C.R.C.P., Plaintiff is not required to provide a security bond.

38. Plaintiff respectfully requests that the Court set a date for an evidentiary hearing within 10 calendar days following the Court's Order regarding Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. Pursuant to 121 § 1-6, C.R.C.P., Plaintiff has filed contemporaneously with this Motion a Notice of Hearing.

WHEREFORE, Plaintiff requests that this Court enter a Temporary Restraining Order and Preliminary Injunction that:

A. Enjoins Defendants and their officers, directors, agents, servants, employees, independent contractors and any other persons in active concert or participation with Defendants who receive actual notice of the Court's order including, but not limited to, Melodie Rose Burke, Freedom Financial Partners, LLC and Reality Financial, LLC, from:

1. Soliciting or accepting payment for services of any kind in connection with REAL TALK NETWORK, INC., d/b/a REAL TALK NETWORK and GET REAL WITH DAVE, REAL TALK, LLC, REAL TALK RADIO SHOW NETWORK, LLC, and INSTITUTE OF CONSUMER ECONOMIC EDUCATION, LLC (collectively, "RTN"), or any other company or person relating to debt elimination, debt management, debt settlement, debt counseling, wealth-building or credit repair services or products offered or provided to consumers;
2. Advertising, selling, marketing, displaying, offering or performing debt elimination, debt management, debt settlement, debt counseling, wealth-building or credit repair services or products offered or provided to consumers;
3. Publishing, broadcasting, distributing or disseminating any information, including written, oral, or video, relating to debt elimination, debt management, debt settlement, debt counseling, wealth-building or credit repair services or products offered or provided to consumers;
4. Performing, supervising, or otherwise participating in debt elimination, debt management, debt settlement, debt counseling, wealth-building or credit repair services or products offered or provided to consumers; and
5. Referring any consumer who has signed a contract for the RTN program to a collections agency.

B. Requires Defendants and their officers, directors, agents, servants, employees, independent contractors and any other persons in active concert or

participation with Defendants who receive actual notice of the Court's order including, but not limited to, Melodie Rose Burke, Freedom Financial Partners, LLC and Reality Financial, LLC, to:

1. 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 or solicit any business relating to debt elimination, debt management, debt settlement, debt counseling, wealth-building or credit repair services including, but not limited to, www.gortn.com and www.iceellc.com ;
2. Within five calendar days of the entry of the Order, withdraw from collections any and all consumer accounts that Defendants had previously referred to a collections agency;
3. Notify all current clients of the Order in writing by e-mail sent no later than July 9, 2010, and United States mail, first-class postage prepaid, postmarked no later than July 9, 2010, attaching and enclosing the Order and a letter from the Colorado Attorney General's Office to notify each client that RTN has ceased operations; and
4. Provide a status report and certification to the Court by July 12, 2010 that Defendants have complied with the foregoing (1) through (4).

C. In view of Defendants' fraudulent and deceptive practices perpetrated in and outside Colorado, it is necessary and appropriate for the Court to freeze any bank accounts of Defendants into which consumer funds have been deposited or transferred. Thus, it is necessary and appropriate that Defendants and their officers, directors, agents, servants, employees, independent contractors and any other persons in active concert or participation with Defendants who receive actual notice of the Court's order including, but not limited to, Melodie Rose Burke, Freedom Financial Partners, LLC and Reality Financial, LLC, are enjoined from:

1. Withdrawing, transferring or otherwise encumbering any funds from any account, including but not limited to those accounts in Defendants' names, at any financial institution into which Defendants or their officers, directors, agents, servants, employees, independent contractors or any other persons in active concert or participation with Defendants including, but not limited to, Melodie Rose Burke, Freedom Financial Partners, LLC and Reality Financial, LLC, deposited or transferred money received from consumers as a result of Defendants' deceptive business practices;
2. Negotiating any checks, money orders, wire transfers, drafts, or other negotiable instruments received by Defendants or their officers, directors, agents, servants, employees, independent contractors or any other persons in active concert or participation with Defendants including, but not limited to,

Melodie Rose Burke, Freedom Financial Partners, LLC and Reality Financial, LLC, as a result of Defendants' business practices;

3. Depositing or processing any credit card and debit card receipts obtained by Defendants or their officers, directors, agents, servants, employees, independent contractors or any other persons in active concert or participation with Defendants including, but not limited to, Melodie Rose Burke, Freedom Financial Partners, LLC and Reality Financial, LLC, as a result of Defendants' business practices, and using any financial transaction device, such as a debit or credit card number, obtained from any consumer; and
4. Spending, transferring, giving away, or in any way disposing of any monies received by Defendants or their officers, directors, agents, servants, employees, independent contractors or any other persons in active concert or participation with Defendants including, but not limited to, Melodie Rose Burke, Freedom Financial Partners, LLC and Reality Financial, LLC, as a result of Defendants' business practices.

D. The provisions above apply, but are not limited to, accounts at the following banking institutions associated with Defendants: Wells Fargo, U.S. Bank, and BBVA Compass Bank.

E. Any further Order as this Court deems necessary and appropriate to further the purposes of the Colorado Consumer Protection Act, the Uniform Commercial Credit Code, the Colorado Credit Services Organization Act, and the Federal Credit Repair Organizations Act.

Dated this 7th day of July, 2010.

JOHN W. SUTHERS
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/s

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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.