

DISTRICT COURT, DENVER COUNTY, COLORADO 1427 Bannock Street, Room 256 Denver, Colorado 80202	<b>COURT USE ONLY</b>
STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, Plaintiff,  v.  RMI INC. (RECOVERMYINVESTMENT) , DAILY DEAL 360, INC AND RUSSELL BRYANT, III, INDIVIDUALLY, AND DAMON SMITH, INDIVIDUALLY, Defendants.	
JOHN W. SUTHERS, Attorney General JAY B. SIMONSON First Assistant Attorney General, 24077* 1525 Sherman Street, 7 <sup>th</sup> Floor Denver, CO 80203 (303) 866-5162 (303) 866-4916 Fax *Counsel of Record	
<b>COMPLAINT</b>	

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. Plaintiff, the State of Colorado, upon relation of John Suthers, Attorney General, by and through the undersigned counsel, brings this action pursuant to the Colorado Consumer Protection Act (CCPA), § 6-1-101, et seq., C.R.S. (2011), to enjoin deceptive sales practices which threaten or cause injury to the health, safety and welfare of persons and property in the State of Colorado. Plaintiff seeks, among other things: a permanent injunction, an order compelling Defendants to pay restitution, civil penalties, and attorneys' fees and costs.

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. Defendant RMI, Inc. (RecoverMyInvestment.com) (Defendant RMI) is a Colorado company not registered to do business in Colorado. The company is owned by Defendant Russell Bryant, III (Defendant Bryant), who also operates the company along with Defendant Damon Smith (Defendant Smith).

4. Defendant Daily Deal 360 (Defendant Daily Deal) is a Colorado company registered to do business in Colorado. Defendant Daily Deal shares office space with Defendant RMI at 36 Steele St. #101, in Denver, Colorado. The two companies share employees as well as equipment.

5. Defendant Bryant is the registered owner of Defendant Daily Deal and the admitted owner of Defendant RMI. He is self-described as the head of customer service at Defendant RMI and the employer and partner of Defendant Smith.

6. Defendant Smith is an employee of RMI and supervises RMI's sales staff. He drafted the emails sent to consumers. Defendant Smith is a former employee of the (Russ) Dalbey Education Institute - a get-rich-quick late night infomercial company that was sued by the Federal Trade Commission and Colorado Attorney General's Office (FTC\AG), in federal court on May 26, 2011.

#### JURISDICTION AND VENUE

7. 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.

8. At all times relevant to this action, Defendant companies have maintained their principal executive office in Denver County, Colorado. Accordingly, venue is proper under Colo. Rev. Stat. § 6-1-103.

#### RELEVANT TIMES

9. The conduct that gives rise to the claims for relief contained in this Complaint began in June or July of 2011 and continues today.

10. 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 may be continuing in nature.

#### PUBLIC INTEREST

11. 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.

12. 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

13. The Colorado Consumer Protection Act (CCPA) prohibits deceptive trade practices as set forth in the statute. *Id.* § 6-1-105 (2011). 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

14. On May 26, 2011 the Federal Trade Commission and the Colorado Attorney General jointly filed a Complaint against Russ Dalbey, a late-night infomercial seller of a get rich quick scheme involving the sale of personal mortgage notes. The FTC/AG action seeks \$312,000,000 in damages from Dalbey, his wife, and their various corporate entities.

15. Defendant Smith is a former sales employee for Dalbey who assisted in deceiving consumers for more than four years. Around the time of the FTC/AG filing Defendant Smith either stole a customer list or purchased a “sucker list” containing the names of Dalbey consumers (including many who lost more than \$10,000). Defendant Smith partnered with Defendant Bryant and Bryant’s existing company, Defendant Daily Deal, to form Defendant RMI.

16. Defendant Smith and others at Defendant RMI are now contacting Dalbey victims and victimizing them a second time by falsely by claiming RMI will recover the money the consumer lost in the Dalbey scam. Misrepresentations made by Defendants include the falsehood that the FTC/AG has shut down Dalbey and confiscated millions of dollars that is available for immediate distribution to consumers. The FTC/AG has not “seized” or “frozen” and funds, as represented by RMI, and a payout of consumer restitution is not imminent since the case was only recently filed.

17. Defendants tell victims of the Dalbey scam that RMI will provide “representation” in recovering money lost to Dalbey. Defendants charge as much as \$995 for their “specialized services. To effectuate a sale, RMI salespeople make one or more of the following misrepresentations:

- a. That RMI is working for, or on the behalf of, the FTC/AG0;
- b. That the FTC/AG has shut down Dalbey’s operation;
- c. That the FTC/AG has “confiscated,” “seized,” or “frozen” millions of dollars that is available for consumer restitution;
- d. That the FTC/AG has already received their money and what remains is to be distributed to consumers who file claims;
- e. That the consumer must act by August 15, 2011 or lose their opportunity to recover;
- f. That an August 15, 2011 court proceeding will determine which consumers will recover funds;

- g. That RMI can guarantee recovery of their money lost to Dalbey if they pay the \$995 charge for RMI's services;
- h. That RMI will attempt to recover the \$995 payment as well;
- i. That the RMI salesperson is an attorney and/or is able to represent the consumer in court;
- j. That RMI has attorneys working on staff;
- k. That RMI has "partnered with" or "contracted" with an attorney(s) for the filing of a class action lawsuit; and
- l. That RMI "specializes" in consumer recovery and provides "representation" or assistance that will put the consumer in a better position than others to recover their funds.

18. None of the above representations are true. The FTC/AG action is in its infancy and, given the timetable set for most court cases, more than a year from any judgment. No money has been "seized," "confiscated," or "frozen" and no payout of consumer restitution is imminent. Defendant RMI is not working for, or on the behalf of the FTC/AG, and, in fact, was unknown to both agencies until these governmental agencies began receiving inquiries and complaints from consumers concerning Defendant RMI. There was no August 15, 2011 court date in the FTC/AG action. A scheduling conference set originally for August 16, 2011 was vacated well before that date and, in any event, nothing at a scheduling conference would affect consumer restitution nor cause any urgency for consumers to file complaints. Defendant RMI does not, and cannot, represent consumers in court nor can Defendant RMI do anything of significance to increase the consumers' chances or recovery.

19. Defendants Bryant and Smith collaborated in the dissemination of deceptive e-mail solicitations that highlighted the August 15, 2011 court date and created a false sense of urgency. The RMI emails also falsely stated that they have attorneys on staff. Defendant RMI's webpage stated that consumers could expect results in 30-45 days.

20. Additional misrepresentations were made via phone sales calls made from the small RMI offices. Defendants Smith and Bryant supervise Defendant RMI's sales staff and were aware of the misrepresentations being made. Defendant Bryant, as head of "customer service," spoke with dozens of consumers who had been subjected to these misrepresentations. Defendant Bryant and Smith incentivize their salespeople by commission and then fail to properly supervise the sales staff. Defendant Bryant's companies, as well as him personally, have profited from the deception outlined above - as has Defendant Smith.

21. Until contacted by the Colorado Attorney General's Office (AG's Office) on or about August 4, 2011, Defendant RMI had not provided to the AG's Office any of the paperwork they promised consumers they would prepare and deliver on their behalf. On August 4, 2011, a Defendant RMI representative claiming to be the company's president, "Bob Sanders", responded to a phone call from the AG's Office concerning recently received consumer complaints about Defendant RMI. (Defendant Damon Smith has since admitted there is no "Bob Sanders" at RMI and that this is an "alias" used by Defendant Smith. "Bob Sanders" assured the AG's Office that Defendant RMI had intended to contact the AG's Office to file their clients' documents but had not done so. Although Defendant RMI has convinced over 50 Dalbey

victims to pay for their services, Defendant RMI has so far produced to the AG's Office nothing more than a folder containing the paperwork forwarded to them by a half dozen Dalbey victims.

22. The folder produced to the AG by RMI on behalf of a half dozen or so of its clients contains little more than the same papers faxed or mailed to RMI by its consumer clients. The documents have not been filed with any court nor has RMI appeared at any court proceedings. The documents do nothing to improve a consumer's chances of recovery and are of little or no value.

#### FIRST CLAIM OF RELIEF

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

23. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 22 of this Complaint.

24. 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. (2011).

25. 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

(Advertising services with the intent not to sell them as advertised)

26. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 22 of this Complaint.

27. Through the above-described conduct in the course of their business, Defendants advertised services with intent not to sell them as advertised, in violation of § 6-1-105(i), C.R.S. (2011).

28. 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

(Failure to disclose material information)

29. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 22 of this Complaint.

30. Through the above-described conduct in the course of their business, Defendants failed to disclose material information in violation of § 6-1-105(u), C.R.S. (2011). Among the material information Defendants fail to disclose is that they have only been in operation since July, 2011 and have no prior experience or success in recovering consumer restitution despite claiming to be "specialists" in this area. Defendants also fail to disclose that consumers can

easily file their own claim with the FTC or the Colorado Attorney General at no cost and that such filing is not a prerequisite to eventual recovery in the event the FTC/AG action results in an award of damages.

31. By means of the above-described unlawful deceptive trade practices, Defendants deceived, misled, and unlawfully acquired money from consumers in 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(e), (i), and (u);

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.

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).

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), or \$10,000 per violation pursuant to Colo. Rev. Stat. § 6-1-112(3).

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) (2011).

G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated this 26<sup>th</sup> day of August 2011.

JOHN W. SUTHERS  
Attorney General

*/s/ Jay B. Simonson*

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JAY B. SIMONSON

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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.*