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| DISTRICT COURT<br>ADAMS COUNTY COLORADO<br>1100 Judicial Center Drive<br>Brighton, CO 80601 | DATE FILED<br>April 30, 2025 10:27 AM<br>FILING ID: F4C4A4C4F9CDD<br>CASE NUMBER: 2025CV30655 |
| STATE OF COLORADO, *ex. rel.*, PHILIP J. WEISER, ATTORNEY GENERAL,<br><br>Plaintiff,<br><br>v.<br><br>MV REALTY OF COLORADO, LLC; MV REALTY PBC, LLC<br><br>Defendants. | ▲ **COURT USE ONLY** ▲ |
| PHILIP J. WEISER, Attorney General<br>LAUREN M. DICKEY, 45773*<br>First Assistant Attorney General<br>BRADY A. GRASSMEYER, 47479*<br>Senior Assistant Attorney General<br>CONOR A. KRUGER, 54111*<br>SOLEIL BALL VAN ZEE, 59644*<br>Assistant Attorneys General<br>Ralph L. Carr Colorado Judicial Center<br>1300 Broadway, 10th Floor<br>Denver, CO 80203<br>Telephone: (720) 508-6000<br>*Counsel of Record | Case No.<br><br>Div.: |
| **MOTION FOR PRELIMINARY INJUNCTION** | |

Plaintiff Philip J. Weiser, Attorney General of Colorado, in his law enforcement capacity, respectfully requests that this Court issue a preliminary injunction enjoining Defendants, MV Realty of Colorado, LLC and MV Realty PBC, LLC (collectively, "Defendants") from enforcing the unfair and unconscionable "Homeowner Benefit Agreements" currently in place with hundreds of Colorado homeowners, as well as the Memorandum that Defendants have recorded against

the residential properties of those homeowners. As grounds, the Attorney General states as follows.

## Introduction

In 2021, Defendants had a novel idea to make money as a Colorado real estate brokerage. They would target homeowners looking for a loan or quick cash and offer them a small payment that Defendants said never had to be paid back. All homeowners had to do to get this free money, Defendants claimed, was to use Defendants as their real estate agent if they ever sold their homes in the future.

Defendants embarked on an aggressive marketing campaign selling these "real estate broker engagement contracts," which Defendants branded as "Homeowner Benefit Agreements," or HBAs. Defendants advertised HBAs as a boon for homeowners. They told homeowners that, through an HBA, homeowners would receive free money that they could keep. Defendants promised homeowners "ongoing support and guidance" if they decided to sell their homes and purported to empathize with consumers' financial distress in statements like, "Hey homeowners. We know it's been a tough year. MV Realty can help."

Defendants' advertisements worked: approximately 892 Colorado homeowners entered into Defendants' HBAs.

The reality of Defendants' HBAs was much different than advertised. The HBAs were no boon: they contained unconscionable terms that dramatically favored Defendants, tying homeowners to *40-year* contracts that purported to bind even

homeowners' heirs after death, and costing homeowners thousands in unexpected fees. Defendants' claims of free money were false: homeowners always had to pay the money back, either in the form of a real estate commission or an early termination fee. Not only were homeowners required to pay the money back—Defendants demanded *thousands* more than what homeowners had initially received.

Defendants' professions of guidance and support were also misleading. Some homeowners tried to comply with the HBA and hire Defendants as their real estate agents to sell their homes, but never received a return phone call from Defendants. When homeowners resorted to selling their home in a different way, Defendants threatened and often sued them.

And, contrary to Defendants' repeated representations that they would not place liens on peoples' homes, Defendants secured the HBAs by recording a "memorandum" that operated identically to a lien, making sure that homeowners would have to pay them thousands of dollars to release the lien if the homeowner wanted to close on a home sale or refinance their mortgage. Many consumers had no idea these encumbrances existed until they tried to sell their home. This conduct caused Defendants to lose their real estate license in Colorado in 2024, meaning that—despite the HBA requiring homeowners to use Defendants as their agents—Defendants are prohibited from being those homeowners' real estate agents.

In short, the HBAs had devastating consequences for Colorado homeowners. Absent an injunction by this Court, these consequences will persist well into the future. Hundreds of Colorado consumers are subject to Defendants' HBAs but have not yet attempted to sell or refinance their homes, and are likely unaware of the problems they will encounter when they try to sell or refinance in the future. These problems could occur any time in the next four decades.

Defendants violated the law. The Attorney General thus asks this Court to preliminarily enjoin Defendants from continuing to benefit from their illegal scheme, to require Defendants to record terminations of all Memorandum of Homeowner Benefit Agreements filed on the properties of Colorado homeowners, and to enjoin Defendants from collecting, or attempting to collect, on any alleged breach of an HBA.

## Factual Background

Defendants hold themselves out as a real estate brokerage firm. Ex. 1, Affidavit of Investigator Shelly-Jean Sartor, ¶ 7. From 2021 to 2023, Defendants aggressively pursued Colorado homeowners to sell them a Homeowner Benefit Agreement, commonly known as an HBA. Ex. 1, ¶ 9. On its face, the HBA presented a simple proposition. In exchange for a small cash payment, a homeowner who agreed to the HBA gave Defendants the exclusive right to be the homeowner's real estate agent if the homeowner sold their home in the future. Ex. 1, ¶¶ 10-12.

Defendants marketed HBAs to homeowners in internet advertisements and mailers, in addition to soliciting homeowners through phone calls, text messages, and emails. Ex. 1, ¶¶ 24, 30; Ex. 2, Affidavit of Anthony Satariano, ¶ 4; Ex. 4, Affidavit of Demetrius Linzy, ¶ 4; Ex. 5, Affidavit of Denise Jones, ¶ 7; Ex. 6, Affidavit of Sean Kennedy, ¶ 5; Ex. 7, Affidavit of Tom Labine, ¶ 7.

In their advertisements to consumers, Defendants preyed on the financially vulnerable and touted the purported benefits of HBAs to consumers. For example, Defendants' advertisements promised that homeowners could receive money without a loan, that no credit or bad credit was not a problem, and that it had "been a tough year" but Defendants could help. Ex. 1, ¶ 24(q).

Defendants would contact the homeowner and offer a "promotional fee" to sign up for an HBA. Ex. 1, ¶ 10. This fee was approximately 0.287% of the value of a consumer's home. Ex. 1, ¶¶ 36-37, 40. In Colorado, the average dollar value paid to homeowners was $1,189. *Id.*, ¶ 40. Some Colorado homeowners received a promotional fee of as little as $385. *Id.*, ¶ 41.

If the homeowner accepted the payment, Defendants sent a notary to their home shortly after with a copy of the HBA. Ex. 2, ¶ 8; Ex. 4, ¶ 8; Ex. 5, ¶ 19. Sometimes, the homeowner was told to meet the notary at a place away from their home, like a McDonalds. Ex. 6, ¶ 7. Meeting with the notary was the first time a homeowner was given any opportunity to read the HBA's terms. Ex. 2, ¶¶ 9-10; Ex. 3, Affidavit of Clayton Christian ¶ 7; Ex. 4, ¶ 10; Ex. 5, ¶ 20; Ex. 6, ¶ 10.

Homeowners were given little or no time to review the HBA, and the notaries Defendants sent were not familiar with the agreements and could not answer questions about the HBA. Ex. 2, ¶ 11; Ex. 4, ¶ 11; Ex. 6, ¶ 12; Ex. 5, ¶ 21.

The terms of the HBAs significantly favored Defendants, to the detriment of homeowners. First, unbeknownst to many homeowners, the HBA lasts *40 years*, and were binding not only on the homeowners themselves, but also on their heirs. Ex. 1, ¶¶ 9-12, 19-22; Ex. 1-1 (Homeowner Benefit Agreement).

Second, contrary to Defendants' representations that homeowners would not need to repay the promotional fee, Defendants ensured that homeowners would pay this money back and thousands of dollars more. Ex. 1, ¶¶ 14-18. Under the HBA, Defendants are granted the exclusive right to serve as the homeowner's real estate agent should the homeowner sell their home. Ex. 1, ¶ 11. If a homeowner sells their home during the HBA's 40-year term using Defendants' real estate agents, they must pay Defendants 6% of either (1) the sale price, or (2) the fair market value at the time the HBA was executed, whichever is greater. Ex. 1, ¶ 16. If an outside broker participates in the sale along with Defendants, homeowners must pay Defendants the greater of (1) 3% of the sale price, or (2) 3% of the home's estimated value at the time the homeowner signed the HBA. Ex. 1, ¶ 17. Finally, if a homeowner breaches the HBA by, for example, using a non-MV Realty listing agent to sell their home, Defendants are entitled to an "early termination fee" worth 3% of the fair market value of the home at the time of either execution or the breach—

again, whichever is greater. Ex. 1, ¶¶ 14-15. Notwithstanding Defendants' promises of free money without a loan, almost every homeowner will have to pay thousands, or tens of thousands, of dollars in exchange for Defendants' limited promotional fee.

Third, despite Defendants' promises that they would not place a lien on homeowners' homes, this is precisely what Defendants did. After a homeowner agreed to an HBA, Defendants protected their investment by recording what operated as a lien on their home. Ex. 1, ¶¶ 20-23. Defendants call these liens a "memorandum," which they contend are only meant to put the public on notice of their relationship with the homeowner. Ex. 1, ¶ 27. The memorandum, however, operates as a lien and causes homeowners significant harm when they try to sell their home.

For example, one homeowner was informed that they had to move quickly because their job was relocating them. Ex. 4, ¶ 16. They tried to contact Defendants to begin the process of selling their home, but never received a response. *Id*., ¶¶ 17-19. Given the time constraints, he sold his house to a cash buyer, without using a real estate agent. *Id.*, ¶ 20. Before his home sale could close, Defendants' attorney contacted him and told him he had breached the HBA. *Id.*, ¶¶ 21-23. To proceed with the home sale, the homeowner had to pay Defendants $11,521 to release the memorandum and to close on his home sale. *Id.*, ¶ 28. Despite calling Defendants and *trying* to comply with the HBA, this homeowner never knew he had a lien against his home until he was contacted by Defendants' attorney. *Id*., ¶ 14.

Other homeowners have been threatened with legal action, bullied into selling their homes, and subjected to unfair real estate practices that cost those homeowners thousands of dollars in the sale of their home. Ex. 2, ¶ 20; Ex. 3, ¶¶ 12-16; Ex. 5, ¶¶ 26-28. Defendants have also filed at least twenty lawsuits seeking to collect on their illegal liens against Colorado homeowners. Ex. 1, ¶¶ 47-49.

In 2023, the General Assembly passed a statute that made selling a long-term broker engagement contract, like an HBA, a deceptive trade practice. Ch. 50, Sec. 2, § 6-1-105(1)(uuu), 2023 Colo. Sess. Laws 181 (S.B. 23-077). Shortly before the statute passed, Defendants stopped selling HBAs, but they did not release the HBAs they already had with Colorado homeowners.

More recently, in 2024, the Colorado Real Estate Commission revoked the license of Defendants' Colorado subsidiary, MV Realty of Colorado, LLC, and its managing broker. Now, despite the HBAs' requirement that homeowners use Defendants as their listing agent, Defendants are prohibited from acting as anyone's real estate agent.[1] Ex. 1, ¶¶ 45-46; Ex. 1-14, Stipulation and Final Agency Order p. 3.

[1] As discussed further below, in January 2025, Defendants sent letters to Colorado consumers purporting to offer consumers the chance to be released from their HBAs if they repaid their original promotional fees. Ex. 1, ¶¶ 42-43; Ex. 1-12, January 15, 2025 Letter; Ex. 1-13, January 30, 2025 Letter. This letter did not undo the fact that Defendants obtained these HBAs – and the attendant liens – through unfair and deceptive acts and practices, and does not impact the preliminary injunction analysis.

Nonetheless, Defendants continue to enforce their HBAs and collect thousands of dollars from Colorado homeowners despite providing no service to those homeowners. Homeowners continue to suffer significant harm by having their home sales or refinances delayed by the liens that exist on their property. As recently as April 17, 2025, one homeowner, whose house sale is pending, learned from the title company brokering the transaction that Defendants were enforcing her HBA and she would have to pay more than $14,000 if she wanted to release the memorandum and sell her home. Ex. 8, Affidavit of Elizabeth Gasca ¶ 8. There are currently hundreds of Colorado homeowners with HBAs recorded against the titles to their property.

## Argument

### I. The Attorney General is entitled to a preliminary injunction.

The Attorney General may seek a preliminary injunction when he has cause to believe that a person has engaged in, or is engaging in, an unfair or deceptive trade practice. C.R.S. § 6-1-110(1). An injunction may prohibit a person from continuing an unfair or deceptive trade practice, engaging therein, or doing any act in furtherance thereof. *Id*. Preliminary injunctive relief advances the CCPA's purpose of providing "prompt, economical, and readily available remedies against consumer fraud." *W. Food Plan, Inc. v. Dist. Court*, 598 P.2d 1038, 1041 (Colo. 1979).

Under C.R.C.P. 65, an injunction is appropriate when the Attorney General can show (a) a reasonable probability of success on the merits; (b) a danger of real,

immediate and irreparable injury; (c) the absence of a plain, speedy and adequate remedy at law; (d) that a preliminary injunction will not disserve the public interest; (e) that the balance of the equities favors entering an injunction; and (f) that the injunction will preserve the status quo pending a trial on the merits. *Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo. 1982).

### A. There is a reasonable probability that the Attorney General will prove his claims against Defendants.

The evidence shows that Defendants violated the CCPA in at least three independent ways: they sold hundreds of unconscionable contracts to Colorado consumers; they misrepresented or omitted material facts in their advertisements; and they unfairly recorded liens on homeowner's properties. The Attorney General is likely to succeed on each of these claims.[2]

#### 1. The Attorney General is likely to succeed on his claim that the HBA is unconscionable.

The CCPA prohibits unconscionable acts or practices. § 6-1-105(1)(rrr). It is well established under Colorado law that to support a finding of unconscionability, there must be evidence of "some overreaching on the part of one of the parties, such as that which results from an inequality of bargaining power or other circumstances in which there is an absence of meaningful choice on the part of the second party,"

[2] The Attorney General's Complaint, filed concurrently with this motion, brings five claims for relief against Defendants. While the Attorney General believes he will prevail on each of these claims, for purposes of efficiency, the Attorney General focuses on Claims 1, 2, and 3 in this motion for preliminary injunctive relief. The Court may grant a preliminary injunction based on any of these claims.

(procedural unconscionability), "together with contract terms unreasonably favorable to the first party" (substantive unconscionability).

*State ex rel. Weiser v. Ctr. for Excellence in Higher Educ., Inc.*, 2023 CO 23, ¶ 73. These two elements are measured on a sliding scale, meaning that significantly unconscionable contract terms can compensate for a lower level of procedural unconscionability, and vice versa. *See, e.g, Beltran v. AuPairCare, Inc.*, 907 F.3d 1240, 1253 (10th Cir. 2018). Here, the HBAs are both procedurally and substantively unconscionable.

***The HBA is procedurally unconscionable.*** A contract is procedurally unconscionable where the evidence shows an inequality of bargaining power or other circumstances showing that the contracting party lacked a meaningful choice. *Leprino v. Intermountain Brick Co.*, 759 P.2d 835, 836 (Colo. App. 1988). Courts evaluate a number of factors to determine whether a contract is procedurally unconscionable, including whether there is evidence of: (1) a standardized agreement executed by parties of unequal bargaining strength; (2) lack of opportunity to read or become familiar with the document before signing it; (3) use of fine print in the portion of the contract containing the provision; (4) the relationship of the parties, including factors of assent, unfair surprise and notice; and (5) and all the circumstances surrounding the formation of the contract, including its commercial setting, purpose and effect. *Davis v. M.L.G. Corp.*, 712 P.2d 985, 991 (Colo. 1986).

The first factor that Courts consider is whether the HBA is a standard form contract executed by parties of unequal bargaining power. *Id*. Here, Defendants did not negotiate the HBA with each homeowner; the homeowner was offered the payment, given a contract, told how much money they could receive, and told to sign. Ex. 6, ¶¶ 11-13; Ex. 4, ¶¶ 9-11; Ex. 3, ¶¶ 5-9. The bargaining power between the parties was entirely lopsided. On one side of the transaction are Defendants, a sophisticated, multistate real estate brokerage involved many real estate transactions every year. Ex. 1, ¶¶ 7-8, 23. On the other side of are homeowners, often targeted by Defendants because they were looking for loans or extra money. Ex. 3, ¶ 4; Ex. 4, ¶ 6. In internal training materials, Defendants specifically told their employees to pursue sales leads from homeowners who had filled out a form on a website looking for a quick payday loan or those seeking financial assistance in some way. Ex. 1, ¶ 29.

Second, homeowners were not given an adequate chance to read the HBA. *Davis*, 712 P.2d at 991. A consumer's first time seeing the HBA was when the notary came to their home to sign it. Ex. 6, ¶¶ 10-11, Ex. 4, ¶ 10. Often, this visit came within mere days after the customer first inquired with Defendants about their advertisements. *Id.*

Third, courts assess whether the unconscionable terms were included in the contract's fine print. *Davis*, 712 P.2d at 991. Here, the HBA consisted of seven pages of single-spaced typed print. Ex. 1-1; Ex. 1-2 Homeowner Benefit Agreement. The

only terms that were set apart, either bolded or underlined, were ones that helped Defendants, like an arbitration provision and a class action waiver. *Id*. More troubling, on some HBAs produced during the Attorney General's investigation, Defendants omitted language stating that the contract lasted 40 years in its entirety. *Compare* Ex. 1-1, MV00001289 *with* Ex. 1-2, MV00000991.

Fourth, courts consider the relationship of the parties, including evidence of assent, unfair surprise and notice. *Davis*, 712 P.2d at 991. Here, homeowners had no relationship with Defendants; many of them responded to advertisements or telemarketing calls and signed an HBA shortly thereafter, after they were induced by promises of quick cash. Ex. 1, ¶¶ 24, 29-30; Ex. 2, ¶ 6; Ex. 3, ¶ 5; Ex. 4, ¶ 6; Ex. 5, ¶ 5-9; Ex. 6, ¶ 4-7; Ex. 7, ¶¶ 7, 10.

Finally, the circumstances surrounding the formation of the HBAs, including their commercial setting, purpose and effect, further establish that the HBAs were unconscionable. *Davis*, 712 P.2d at 991. Defendants misrepresented or omitted many of the HBA's terms to convince homeowners to sign, including the amount that the homeowner would have to pay, the length of the agreement, that a lien would be recorded against the homeowner's property, or that the HBA would be binding on a homeowner's heirs. Ex. 2, ¶¶ 14-16; Ex. 3, ¶¶ 8-11; Ex. 4. ¶¶ 14-15; Ex. 5 ¶¶ 32-33; Ex. 6 ¶¶ 15-16; Ex. 7, ¶¶ 12-13.

The HBAs are procedurally unconscionable.

***The HBA is substantively unconscionable.*** A contract is substantively unconscionable if its terms are commercially unreasonable and substantively unfair. *Davis*, 712 P.2d at 991.

The HBA is commercially unreasonable and substantively unfair in at least three ways. First, the 40-year term is decades longer than a typical, commercially reasonable listing contract. A typical broker engagement contract lasts a limited time to incentivize the broker to sell the home and earn a commission in a timely manner. But Defendants' HBA lasts 40 years, and throughout that entire time Defendants are entitled to up to tens of thousands of dollars from the homeowner, regardless of whether Defendants perform their obligations under the HBA to serve as the homeowner's real estate agent. Ex. 1, ¶¶ 12-19.

Second, the HBA allows the Defendants to file a lien on the homeowner's property. There is no commercial justification for allowing a real estate agent to preemptively secure their commission, or a termination fee, by placing a lien on their client's home. In fact, as discussed in more detail below in paragraph I.A.2, the Colorado Real Estate Commission has a specific rule that prohibits real estate agents from preemptively recording a lien on a client's property to secure a commission. 4 C.C.R. § 725-1(6.22)(B).

Third, the HBA guarantees Defendants money even if they fail to follow their obligation to serve as the homeowner's real estate agent. The general rule is that "a real estate broker is entitled to a commission on the sale of a property only when

the broker produces a buyer who is ready, willing, and able to purchase the property on the seller's terms." *Int'l Network, Inc. v. Woodard*, 2017 COA 44, ¶ 27. Under the HBA, in contrast, Defendants are guaranteed a commission of between 3% to 6%, or a termination fee of 3%, regardless of whether they serve as the homeowner's agent. Ex. 1, ¶¶ 14-17. Defendants repeatedly failed to uphold their end of the HBA's bargain—including in cases where the homeowner tried to comply—and then sued or threatened to sue homeowners who were forced to find other listing agents to sell their homes. *See, e.g.,* Ex. 4, ¶ 16-22; Ex. 1, ¶¶ 47-52.

The evidence establishes that Defendants' HBAs were both procedurally and substantively unconscionable and are therefore unenforceable. *Core-Mark Midcontinent, Inc. v. Sonitrol Corp.*, 2012 COA 120, ¶ 13 (unconscionable terms are unenforceable); C.R.S. § 6-1-105(1)(rrr) (prohibiting unconscionable trade practices).

**2. The Attorney General is likely to succeed on his claim that the Defendants misrepresented facts in their advertisements.**

Defendants' misleading advertising and sales practices separately violated the CCPA. A business violates the CCPA when it knowingly or recklessly makes a false representation as to the benefits, uses, or characteristics of a service. C.R.S. § 6-1-105(1)(e). To establish a violation under C.R.S. § 6-1-105(1)(e), the Attorney General must establish that the representations at issue have the "capacity or tendency" to deceive consumers. *See Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142, 148 (Colo. 2003) ("Thus, a plaintiff may satisfy the

deceptive trade practices requirement of section 6-1-105(1)(e) by establishing either a misrepresentation or that the false representation had the capacity or tendency to deceive, even if it did not.").

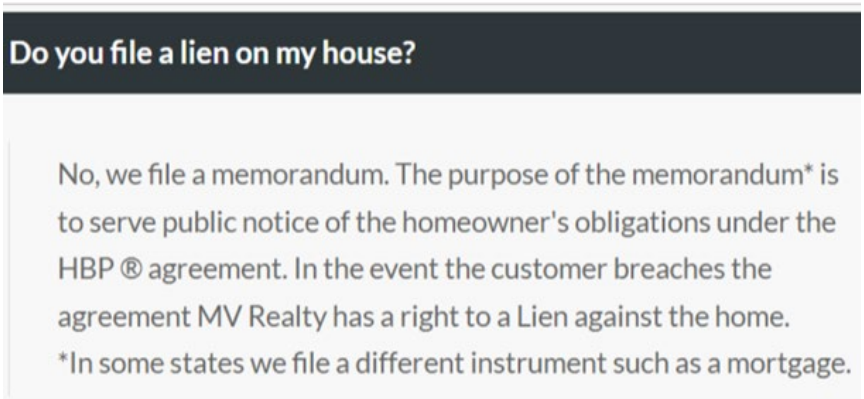
Defendants' practices are deceptive under C.R.S. § 6-1-105(1)(e). Defendants advertised that consumers could receive money with "no obligation," "no debt," and that consumers would "not have to pay back" the promotional fees. Ex. 1, ¶ 24. Defendants went so far to tell consumers that the promise of promotional fees without obligations "seems too good to be true – but it's not!" Ex. 1, ¶ 22(r); Ex 1-4, MV00000166. It was, however, too good to be true.

Contrary to these advertisements, Defendants told some, but not all, homeowners that the promotional fee *was* a loan that had to be repaid from the proceeds of their house sale. Ex. 3, ¶ 6. To other homeowners, Defendants ignored the details of the transaction and just told them they could get money soon. In training materials, Defendants instructed employees to tell homeowners that they could receive money "tomorrow" and that there would be no repayment. Ex. 1, ¶¶ 30-31. A template email that Defendants sent to homeowners told consumers that "you NEVER repay these funds." Ex. 1, ¶ 38.

Defendants knew these statements were false, and that the homeowner would be required to repay amounts well above the promotional fee through either a real estate commission or termination fee. As noted above, Defendants paid Colorado homeowners roughly 0.287% of their home value as a promotional fee but

required either 3% or 6% of their home value in repayment. Ex. 1, ¶ 40. Thus, Defendants' promise of free money, without a loan, was false.

Defendants also misrepresented their intention to place a lien on consumer's homes. Defendants posted on their website:




Ex. 1, ¶ 27.

Despite Defendants' attempts to differentiate between a "lien" and the HBA "memorandum" in this notice, the memoranda were the functional equivalent of a lien, which is any encumbrance on property as security for the payment of a debt or performance of an obligation. C.R.S. § 38-35-201(2). Here, and as explained further below, the memorandum creates an encumbrance and requires homeowners to pay Defendants' money to release that encumbrance.

Many homeowners did not know or understand that MV filed anything, much less a functional lien on their property until they tried to sell their home. Ex. 2, ¶ 19; Ex. 7, ¶ 17; Ex. 8, ¶ 8. At that point, the homeowners were told, sometimes by a title company, sometimes by Defendants' attorney, that they would need to pay thousands of dollars to release Defendants' encumbrance before they could complete

the transaction. *Id*. Some consumers did not know about the lien until Defendants sued them *after* they tried to comply with the HBA, received no response, and sold their homes without Defendants. Ex. 4, ¶¶ 17-21. Claiming that Defendants would not place a lien on homeowners' property is false and misleading.

### 3. The Attorney General is likely to succeed on his claim that the Defendants acted unfairly by recording liens on homeowners properties.

The CCPA prohibits a person from knowingly or recklessly engaging in an unfair business practice. C.R.S. § 6-1-105(1)(rrr). Although the CCPA does not specifically define an "unfair" trade practice, most courts analyzing similar statutes examine three factors to determine if a business practice is unfair: (1) whether the practice "without necessarily having been previously considered unlawful, offends public policy has it has been established by statutes, the common law or otherwise"; (2) whether the practice is immoral, unethical, oppressive, or unscrupulous; or (3) whether it causes substantial injury to consumers. *F.T.C. v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 n. 5 (1972).

Multiple states have adopted this *Sperry & Hutchinson* test to determine whether a practice is "unfair" under a state consumer protection statute. *Rohrer v. Knudson*, 203 P.3d 759, 764 (Mont. 2009) ("We join [at least a dozen states] in adopting a version of the *Sperry* standard to define unfairness under the Montana

Consumer Protection Act.").[3] A practice may be deemed "unfair" if it satisfies just one of the *Sperry* factors. *See, e.g., State ex rel. Shikada v. Bristol-Myers Squibb Co.*, 526 P.3d 395, 423 (Haw. 2023).

Applying these factors to Defendants' conduct shows that they acted unfairly when they recorded liens against a homeowners' property.

The General Assembly is explicit: Colorado's public policy "favors the transferability and marketability of interests in residential real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the residential real property." C.R.S. § 38-35-127(1)(a). No matter what it is called, Defendants' memorandum is a lien, that is recorded on residential real property, that does not touch and concern the property.

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[3] Other states that have adopted *Sperry & Hutchinson* include, for example: *See Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 973 P.2d 527, 543 (Cal. 1999); *Cheshire Mortg. Serv., Inc. v. Montes*, 612 A.2d 1130, 1143 (Conn. 1992); *PNR, Inc. v. Beacon Prop. Mgt., Inc.*, 842 So.2d 773, 777 (Fla. 2003); *Balthazar v. Verizon Hawaii, Inc.,* 123 P.3d 194, 202 (Haw. 2005); *Robinson v. Toyota Motor Credit Corp.*, 775 N.E.2d 951, 960-961 (Ill. 2002); *A&W Sheet Metal, Inc. v. Berg Mech., Inc.*, 653 So. 2d 158, 164 (La. App. 1995); *Morrison v. Toys "R" Us, Inc.,* 806 N.E.2d 388, 392 (Mass. 2004); *State ex rel. Stenberg v. Consumer's Choice Foods, Inc.*, 755 N.W.2d 583, 591 (Neb. 2008); *State v. Moran*, 861 A.2d 763, 766 (N.H. 2004); *Marshall v. Miller*, 276 S.E.2d 397, 403 (N.C. 1981); *Long v. Dell, Inc.*, 93 A.3d 988, 1000-1001 (R.I. 2014); *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 743 S.E.2d 808, 816 (S.C. 2013); *Foti Fuels, Inc. v. Kurrle Corp.*, 90 A.3d 885, 893(Vt. 2013); *Greenberg v. Amazon.com, Inc.*, 553 P.3d 626, 640 (Wash. 2024); *WyoLaw, LLC v. Off. of Att'y Gen., Consumer Prot. Unit*, 486 P.3d 964, 972 (Wyo. 2021).

Specifically, the memorandum states that the homeowner owes the Defendants money, in the form of an early termination fee, if the homeowner fails to perform their obligations under the HBA.

> 3. Under the Agreement, if the Property Owner fails to perform any of its obligations under the Agreement or there is a sale or other transfer of the Property that does not result in the Company being paid the amounts owed under the Agreement, then the Company is immediately owed an early termination fee (the "Early Termination Fee") in the amount of three percent (3%) of the greater of (i) $478,840.00, the Property's Realtors Valuation Model home value estimate on or about the Commencement Date, or (ii) the fair market value of the Property at the time of the Property Owner's breach or the sale or transfer.

Ex. 1-1, MV00001299.

This language in the memorandum creates a lien. *See* C.R.S. § 38-35-201(2) (a lien is any "encumbrance on real . . . property as security for the payment of a debt or performance of an obligation."). In their own termination agreements, Defendants confirmed that a memorandum was an encumbrance because they included language that, upon signing of the termination agreement, a property was "RELEASED FROM THE EFFECT, RESTRICTION AND *ENCUMBRANCE* OF THE AGREEMENT." Ex. 9, Termination Agreement (emphasis added).

Moreover, the covenant created by the HBA is not a real covenant that touches and concerns the homeowner's real estate. A covenant touches and concerns the land if it relates closely to the land or its use or enjoyment. *Reishus v. Bullmasters, LLC*, 2016 COA 82, ¶ 37. The HBA, by contrast, is a personal covenant which operates like an ordinary contract and is binding only on the actual parties to that covenant. *Cloud v. Ass'n of Owners, Satellite Apartment Bldg., Inc.*, 857 P.2d 435, 440-441 (Colo.App.1992) (covenant awarding corporation 10% of future profits

would be a personal covenant, but because remaining 90% of profits benefit the land, the covenant at issue in this case runs with the land); *see also Gurney, Becker & Bourne, Inc. v. Bradley*, 476 N.Y.S.2d 677, 678 (N.Y. App. Div. 1984) ("There is no question that the brokerage agreement is not a covenant running with the land."); *Cushman & Wakefield of Maryland, Inc. v. DRV Greentec, LLC*, 2018 WL 3025859, at *7 (Md. Ct. Spec. App. June 18, 2018), *aff'd*, 203 A.3d 835 (Md. 2019) (covenant to pay brokerage commission is a "personal obligation, not one that encumbers the property").

Defendants appear to have tried to create a real covenant that runs with the land by inserting language into every memorandum stating that the obligations in the HBA **"shall constitute covenants running with the land and shall bind future successors in interest to title to the Property."** Ex. 1-1, MV00001299. Substance, however, matters more than form. *Cloud*, 857 P.2d at 440 ("[e]ven if there is an intent to make a covenant run with the land, the covenant must still 'touch and concern' the land"). The memorandum requires the homeowner to perform an obligation—comply with the HBA. If the homeowner does not, the memorandum requires that the homeowner pay Defendants a debt—an early termination fee. The homeowner's obligation to pay that early termination fee does not arise out of anything that is related to the use, enjoyment, or benefit of the land; it arises out of their personal obligation in the HBA to hire Defendants as their real estate agent or pay the early termination fee. That creates a personal covenant that

the General Assembly has said cannot be recorded as a lien because it does not touch and concern the land. C.R.S. § 38-35-201(2).

When Defendants filed memoranda on the properties belonging to Colorado homeowners, they violated Colorado's statutory public policy that residential properties should not be burdened by liens like Defendants' that do not touch and concern the land. Thus, the recording of those liens is an unfair practice, which violates the CCPA. *See S&H*, 405 U.S. at 244 n. 5 (unfairness established where practice "without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes"); C.R.S. § 6-1-105(1)(rrr).

Even if section 38-35-127(1)(a) did not apply to the memoranda that Defendants recorded, their actions would still violate public policy because preemptively filing a lien against a client's property violates the rules that govern Colorado real estate agents. These rules provide that an agent involved in a residential real estate transaction may not file a lien, lis pendens, or record a listing contract to secure the payment of any commission or fee unless the agent has adjudicated a claim and a judgment is entered. 4 C.C.R. § 725-1(6.22)(B). Defendants ignored these rules and recorded liens on approximately 892 homes in Colorado and lost their license because of it. *See* Ex. 1, ¶¶ 23, 46. Violating the Real Estate Commission's rules against preemptively recording liens on client's residential property is unfair and unethical. *See S&H*, 405 U.S. at 244 n. 5.

Most importantly, recording the memorandum caused significant injury to consumers. As discussed above, homeowners have had to pay thousands of dollars to release or otherwise remove liens that Defendants had no right to record in the first place. Ex. 2, ¶ 20; Ex. 4, ¶ 28. The liens have caused havoc as homeowners try to sell their home. Ex. 2, ¶ 20; Ex. 4, ¶ 24-28; Ex. 8, ¶ 8-9. Others have been threatened with lawsuits or even sued by Defendants simply because Defendants had an illegal lien on their property. Ex. 1, ¶¶ 47-52.

Because recording liens (1) violated public policy as reflected Colorado statutes; (2) was unethical or oppressive; and (3) harmed consumers, it was unfair conduct. *Sperry & Hutchinson Co.*, 405 U.S. at 244 n. 5. The Attorney General is thus likely to succeed on his claim that recording the Memoranda violated the CCPA. C.R.S. § 6-1-105(1)(rrr).

### B. Defendants' ongoing HBAs present a danger of real, immediate and irreparable injury which may be prevented by injunctive relief, and there is no other plain, speedy, and adequate remedy at law that would protect the public interest.

As a preliminary matter, the Colorado Attorney General seeks this preliminary injunction to enforce state laws affecting the public interest. Generally, the Court may award equitable relief without proof of irreparable injury in suits that are brought on behalf of the public interest. *See, e.g*, *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 312 P.2d 998, 1004 (Colo. 1957). Nor is the Attorney General required to prove consumer harm to prevail on a CCPA violation. *See Rhino*

*Linings USA,* 62 P.3d at 148 (deceptive trade practices include those that "had the capacity or tendency to deceive, even if [they] did not.").

Regardless, the Attorney General has established that the public will suffer irreparable injury if an injunction does not issue. As recently as April 27, 2025, a Colorado homeowner was told that they had to pay $14,000 to release a memorandum and sell her home. Ex. 8, ¶ 8. Moreover, because multiple consumers did not know that Defendants would be filing a lien on their property until they tried to sell or refinance their home, Ex. 2, ¶ 19; ; Ex. 8, ¶ 9, Ex. 7, ¶ 16, it is likely that hundreds of other Colorado homeowners will suffer the same fate if the liens are not removed from their homes. These problems will only continue to compound because Defendants do not have a Colorado real estate license and therefore cannot provide the services that the HBA says they must provide. Ex. 1, ¶¶ 45-46.

An injunction is thus required to protect the public, and there is no other plain, speedy, or adequate remedy at law. Absent an injunction, hundreds of Colorado homeowners will remain subject to an unfair, unconscionable, and deceptive lien encumbering their property for the next 40 years.[4] Although some

[4] This Court has already set aside one of Defendants' liens under the spurious lien statute. *See Estate of Lovato v. MV Realty of Colorado*, Order to Declare Spurious Lien Invalid, 2024CV31362 (Adams County Dist. Ct. Sept. 26, 2024)). In two other cases, the Court questioned whether it was appropriate for Defendants to seek a lis pendens while a dispute was in arbitration because Defendants failed to submit any evidence that they had a valid interest in the homeowner's property. *See MV Realty of Colorado LLC v. Stephanie Duran,* Order re Motion for Clerk's Entry of Default, Adams County Dist. Ct. Case No. 2022CV31092 (Nov. 28, 2022); *MV Realty of*

homeowners may learn of these liens in advance of a sale or refinance and try to sue Defendants to have their lien released, that is a remedy which would require multiple lawsuits and is not a plain, speedy, and adequate remedy at law. *Cobai v. Young*, 679 P.2d 121, 124 (Colo. App. 1984). It would not be equitable to require hundreds of Colorado homeowners to prosecute their own lawsuits.

Courts around the country have recognized the need to enjoin enforcement of Defendants' HBAs, consistently finding that injunction against these Defendants is necessary and warranted to protect the public. *See Florida v. MV Realty PBC, LLC*, Hillsborough County Circuit Court Case No. 22-CA-9958 (Sept. 24, 2024), pp. 2-3 (granting summary judgment in favor of the Florida Attorney General because the HBA, Memoranda are unconscionable as a matter of law); *California v. MV Realty PBC, LLC, et. al.*, Los Angeles County Case No. 23STCV30464 (Sept. 13, 2024) (granting California Attorney General's request for a preliminary injunction and ordering that Defendants record a termination of the HBA on all California properties); *Massachusetts v. MV Realty PBC, et. al.*, Suffolk County Superior Court Case No. 2284CV02823-BLS2 (Feb 1, 2023) (order granting Massachusetts Attorney General's request for a preliminary injunction because Attorney General was likely to succeed on deceptive acts and practices claims); *North Carolina v. MV*

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*Colorado LLC v. Anthony Satariano et al.,* Order to Show Cause re Motion for Clerk's Entry of Default, Adams County Dist. Ct. Case No. 2022CV31246 (Nov. 28, 2022).

*Realty PBC, LLC*, Wake County Business Court Case No. 23 CVS 6408, 2023 WL 5658892, at *21 (Aug. 30, 2023) (granting North Carolina Attorney General's motion for preliminary injunction); *see also Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47, 54 (Colo. 2001) ("[I]n interpreting the CCPA it is helpful to examine other states' interpretations of their consumer protection statutes.").

Defendants may contend that an injunction is not appropriate because they ostensibly gave homeowners a way out in January 2025. That month, Defendants sent consumers a letter with an offer: repay the promotional fee and Defendants will release the HBA. Ex. 1-13, p. 2. But offering consumers a settlement is not an adequate substitute for injunctive relief. *Old Homestead Bread Co. v. Marx Baking Co.,* 117 P.2d 1007, 1010 (Colo. 1941) ("If the practice has been abandoned in good faith and for all time, an injunction can do the defendant no harm, and it is a protection to which he deem the plaintiff entitled") (internal quotation omitted). Nor does the evidence show that consumers are even receiving the benefit of the offer that was made in these letters. At least one consumer who tried to accept Defendants' offer release his lien never received a return phone call. Ex. 7, ¶ 23. Another consumer did not receive the letter and never knew about the offer to rescind the HBA until she called the Attorney General's Office mere weeks before her home sale was scheduled to close. Ex. 8, ¶ 10-14.

Moreover, asking cash-strapped homeowners—who were targeted specifically *because* they needed money—to immediately repay hundreds of dollars

or more is not a solution. Homeowners should not have to repay money they received as part of an unfair, unconscionable, and deceptive scheme orchestrated by Defendants. They are entitled to have those liens dissolved at no cost to them.

Defendants continue to profit from their unlawful, misleading conduct by enforcing HBAs that were procured through their deceptive conduct. Without an injunction, Defendants will continue to receive those benefits at the expense of Colorado homeowners.

### C. The remaining Rathke factors favor the Attorney General.

The other *Rathke* factors—the balance of equities, and the preservation of the status quo—are met for the same reasons. The status quo is defined as "the last peaceable uncontested status existing between the parties before the dispute developed." *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 798, n.3 (10th Cir. 2019); *Rathke*, 648 P.2d at 654 (an injunction should "preserve the status quo pending a trial on the merits").

The balance of the equities overwhelmingly favors the entry of an injunction. An injunction will serve the public interest and protect consumers from significant harm by preventing Defendants from attempting to collect on the HBAs and providing homeowners the freedom to transact with clear title. Without an injunction, the Attorney General will be unable to protect the public from the negative consequences of Defendants' HBAs.

By contrast, Defendants will suffer no undue hardship by the entry of an injunction because Defendants have no right to continue to engage in unfair, unconscionable, and deceptive trade practices. Defendants had no right to record an encumbrance against consumers' property in the first place, and an order enjoining the enforcement of the HBAs, and requiring a release of these liens will return these homeowners to their pre-deception status quo.

Pursuant to Rule 65(c) C.R.C.P., Plaintiff is not required to provide a security bond. Plaintiff respectfully requests that the Court enter the proposed order for Preliminary Injunction filed simultaneously herewith or, in the alternative, set the matter for an evidentiary hearing.

**WHEREFORE**, the Attorney General respectfully requests the Court to issue the attached proposed Preliminary Injunction.

Respectfully submitted this 30th day of April, 2025.

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