

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</p> <hr/> <p>STATE OF COLORADO <i>ex rel.</i> JOHN W. SUTHERS, ATTORNEY GENERAL FOR THE STATE OF COLORADO; and JULIE ANN MEADE, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE,</p> <p>Plaintiffs,</p> <p>v.</p> <p>LAW OFFICE OF MICHAEL P. MEDVED, P.C.; WISE POSTS, LLC; MICHAEL P. MEDVED; TRACIE D. CASTANON; BETH A. MALONEY; and PATRICK R. MALONEY,</p> <p>Defendants.</p>	<p>DATE FILED: October 31, 2014 11:17 PM FILING ID: 16D837CFE3B4F CASE NUMBER: 2014CV34167</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General ALISSA GARDENSWARTZ, Reg. No. 36126* First Assistant Attorney General ERIK R. NEUSCH, Reg. No. 33146* Senior Assistant Attorney General Colorado Attorney General's Office Ralph L. Carr Colorado Judicial Center 1300 Broadway Denver, Colorado 80203 Telephone: 720-508-6228 *Counsel of Record</p>	<p>Case No.:</p> <p>Courtroom:</p>
<p>COMPLAINT</p>	

Plaintiffs, the State of Colorado, by and through John W. Suthers, Attorney General for the State of Colorado, and Julie Ann Meade, Administrator, Uniform Consumer Credit Code (collectively the "State"), through their counsel of record, state and allege against Defendants the following:

LEGAL AUTHORITY AND PARTIES

1. The State brings this action pursuant to its civil law enforcement authority under the Colorado Consumer Protection Act, §§ 6-1-101–115, C.R.S. (2013) (CCPA) and the Colorado Fair Debt Collection Practices Act, §§ 12-14-101–137, C.R.S. (2013) (CFDCPA).

2. John W. Suthers is the duly elected Attorney General of the State of Colorado, and is authorized under C.R.S. § 6-1-103 to enforce the CCPA.

3. Julie Ann Meade is the Administrator of the Uniform Consumer Credit Code and charged with enforcement of the CFDCPA. C.R.S. §§ 12-14-103(1) & 12-14-135.

4. Defendant Law Office of Michael P. Medved P.C. (“the Law Office of Michael P. Medved” or “the law firm”) is a Colorado professional corporation organized on March 27, 1995 and voluntarily dissolved on December 31, 2012, with a principal place of business at 355 Union Boulevard, Suite 302, Lakewood, Colorado 80228. It was, at all relevant times, regularly engaged in collecting, or attempting to collect, directly or indirectly, from Colorado consumers debts owed or asserted to be owed or due others.

5. Defendant Wise Posts, LLC (“Wise Posts”) is a Colorado limited liability company organized on June 30, 2009, with a principal place of business at 8012 South Otis Court, Littleton, Colorado 80128. Wise Posts posted foreclosure notices on behalf of the Law Office of Michael P. Medved.

6. Defendant Michael P. Medved (“Michael Medved”) is an individual with a principal business address at 355 Union Boulevard, Suite 302, Lakewood, Colorado 80228. He was the sole owner of The Law Office Michael P. Medved and a shareholder of Foothills Title and Escrow, which provided foreclosure title services.

7. Defendant Tracie Castanon (“Tracie Castanon”) is an individual with a principal business address at 355 Union Boulevard, Suite 302, Lakewood, Colorado 80228. She was the business manager of The Law Office Michael P. Medved and a shareholder of Foothills Title and Escrow, which provided foreclosure title services.

8. Defendant Beth A. Maloney (“Beth Maloney”) is an individual with a principal business address at 8012 South Otis Court, Littleton, Colorado 80128 and is an owner of Wise Posts.

9. Defendant Patrick R. Maloney (“Patrick Maloney”) is an individual with a principal business address at 8012 South Otis Court, Littleton, Colorado

80128 and is an owner of Wise Posts.

JURISDICTION AND VENUE

10. This Court has jurisdiction to enforce the CCPA in actions by the Attorney General under §§ 6-1-103 and 6-1-110 and the CFDCPA under § 12-14-135.

11. Under CCPA § 6-1-103, venue is proper in the City and County of Denver because portions of the transactions involving the deceptive trade practices occurred in the City and County of Denver.

12. Under CFDCPA § 12-14-135, the Administrator may bring an action in the City and County of Denver.

GENERAL ALLEGATIONS

I. INDUSTRY OVERVIEW

A. Residential Foreclosure Process in Colorado

13. Foreclosures in Colorado are largely an administrative process conducted through the public trustee offices in each county. The servicer, on behalf of the lender or investor that owns the mortgage in default, hires the law firm to complete the foreclosure from initiation through transfer of the property to the successful bidder at auction or back to the investor.

14. Before the law firm files a foreclosure, the borrower may reinstate the default by paying what is owed to the lender in late payments and what the law firm claims it incurred in fees and costs as set forth on a reinstatement notice. After the law firm files a foreclosure but before the auction, the homeowner may “cure” the foreclosure with the public trustee’s office by paying what is owed in late payments to the lender, and whatever fees and costs the law firm claims to have incurred in processing the foreclosure as set forth on the cure statement. If the property proceeds to auction, the successful bidder must pay whatever fees and costs the law firm claims to have incurred as set forth on the bid statement.

15. A court’s only involvement in a foreclosure is when the law firm files the required motion under Rule 120 of the Colorado Rules of Civil Procedure to authorize the foreclosure sale by the public trustee. This action is often resolved without a hearing because it is generally limited to an inquiry of whether the borrower is in default or in the military, neither of which is typically in dispute.

16. Neither the public trustee’s office that receives the cure and bid

statements, nor the court that handles the Rule 120 action, has authority to question the law firm's claimed fees and costs, allowing the law firm to unilaterally and without accountability dictate the costs for any foreclosure-related services.

17. Many foreclosures never proceed to sale and are withdrawn due to a cure, bankruptcy, or loan modification, meaning that the law firm's claimed costs, however improper, are often assessed to homeowners. For foreclosures that proceed to sale, the costs are assessed to homeowners in a deficiency judgment, purchasers at the auction, or the owner or insurer of the loan, often borne by taxpayers.

B. Fee/Cost Structure in Foreclosures

18. The allowable costs and fees charged by a law firm conducting foreclosures are governed by the mortgage loan documents, servicer agreements, investor guidelines, including Fannie Mae, and state law.

19. The law firm agreed to perform foreclosures for its servicer clients for a maximum allowable fee, and to seek reimbursement for only its actual, necessary, and reasonable (i.e., market rate) costs from the servicer, borrower, and investor. This maximum allowable fee is set by investors like Fannie Mae or Freddie Mac and is intended to compensate the law firm for all legal work required to complete a routine foreclosure. It includes, among other things, document preparation and review, title review, coordinating postings and filings, and overhead.

20. These agreements and guidelines further distinguish between the maximum allowable *fee* for work performed on a foreclosure and *costs* incurred by the law firm in processing a foreclosure. The agreements make clear that costs incurred by the law firm and passed along to the servicer/investor must be actually incurred, necessary to complete the foreclosure, and reasonable, i.e., market rate.

21. This distinction between fees and costs is deliberate. To reduce overall foreclosure costs payable by homeowners and the public, investors capped the compensation that law firms could receive per foreclosure and placed limitations on pass-through costs. These cost-control efforts were designed to minimize the cost of foreclosures and the impact of taxpayer-funded credit losses.

C. Servicers' Reliance on Law Firm's Representations

22. While automated billing permits servicers to monitor whether the law firm claims a fee in excess of the maximum allowable fee, there is generally no such monitoring of costs. Instead, servicers rely upon the law firm's representations that it will comply with investor guidelines relating to fees and costs.

23. Servicers that hire the law firm for the investor do not absorb the law firm's costs themselves. Rather, servicers obtain reimbursement from homeowners, investors, and insurers. Thus, the foreclosure law firm-servicer relationship differs from a typical attorney-client transaction in which any fraudulent or excessive charges are borne by the client alone. Here, the servicer has little incentive to scrutinize costs because it ultimately passes those costs to someone else.

24. Consequently, servicers rely on the law firm's representations as to what its vendors charge for foreclosure services without verifying whether these charges are actual, necessary, reasonable, or consistent with market rates.

D. Overcharges Alleged by the State

25. The State alleges that Defendants made the following two principal overcharges on certain foreclosure costs in Colorado that were assessed to borrowers, third-party purchasers at auction, servicers, and investors:

- \$120 or \$125 for each of the two required foreclosure postings per foreclosure when the market rate for each posting is \$25; and
- \$275 for title search reports when the market rate is \$100.

26. The State alleges that the law firm made certain other overcharges on foreclosure costs, including, but not limited to, document preparation, which were significantly less in volume and amount than the charges for postings and title searches.

27. After the State notified Defendants of its concerns about the charges for postings, The Law Office of Michael P. Medved immediately discontinued the charge of \$120 or \$125.

28. The Law Office of Michael P. Medved had voluntarily dissolved in or around December 2012 and thus did not receive notification or inquiry by the State regarding the State's concerns about the title search report costs until after it was no longer performing foreclosures.

II. FORECLOSURE POSTINGS

29. On or about May 4, 2009, the Colorado legislature passed House Bill (HB) 1276, which allowed borrowers an opportunity for a brief foreclosure deferment. HB 1276 was signed into law on June 2, 2009 and became effective August 1, 2009. It provides that a borrower in foreclosure who is qualified by a HUD-approved foreclosure counselor under a prescribed financial analysis has an opportunity to defer the foreclosure for up to 90 days by making reduced payments.

30. HB 1276 required the lender or its attorney to post a notice on every eligible borrower's door at the start of the foreclosure advising the borrower to contact a foreclosure counselor to determine whether he is qualified for deferment. An eligible borrower is, among other things, one whose primary residence is in foreclosure of a first mortgage of \$500,000 or less, which is the case for most foreclosures in Colorado.

31. The Law Office of Michael P. Medved followed the lead set by the two largest and most influential foreclosure law firms in Colorado, The Castle Law Group, LLC and Aronowitz & Mecklenburg, LLP, which conspired to set the minimum cost of a foreclosure deferment posting at \$125. The Castle Law Group represented to other foreclosure firms and servicers that Fannie Mae approved the posting charge of \$125.

32. Defendants were not involved in persuading, or obtaining approval from, Fannie Mae or any servicer for the posting cost. Rather, they followed the lead of The Castle Law Group and relied upon Castle Law Group's representation regarding the alleged approval by Fannie Mae.

33. Believing that The Castle Law Group obtained Fannie Mae's approval to charge \$125 for the deferment posting, the Law Office of Michael P. Medved contracted with Wise Posts to post the deferment notices at \$120 per notice.

34. This charge was in excess of the market rate of \$25 for deferment postings provided by unaffiliated process servers.

35. Beth and Patrick Maloney, Michael Medved's sister and brother-in-law, operated Wise Posts. Wise Posts would invoice the law firm \$120 for each posting, and then credit the law firm \$60 for each posting. This allowed the law firm to receive \$60 in additional compensation per posting.

36. In 2010, the Colorado legislature passed House Bill (HB) 1240, which made minor amendments to the foreclosure deferment statute enacted the previous year, and, in response to lobbying by The Castle Law Group, added a second, unrelated posting of a notice of Rule 120 hearing, the court hearing authorizing the sale in every foreclosure. Previously, the notice of Rule 120 hearing was mailed to the borrower and interested parties.

37. None of the Defendants were involved in the passage of HB 1240, and Michael Medved and Tracie Castanon believed such an amendment was unnecessary because the notice of the hearing was already mailed to the borrower.

38. After passage of HB 1240, The Castle Law Group notified the servicer

clients that the second posting would also cost \$125.

39. In response to The Castle Law Group's notification of this new cost, one or more large servicer clients, including the largest client of the Law Office of Michael P. Medved, approved reimbursement of \$125 for the second posting.

40. The Law Office of Michael P. Medved relied upon this uninformed approval from its largest client and charged, through Wise Posts, \$125 for the second posting, receiving fifty percent for compensation to the law firm.

41. When the Law Office of Michael P. Medved learned in July 2012 that the State was investigating the posting costs charged by foreclosure law firms, the Law Office of Michael P. Medved immediately discontinued the \$120 or \$125 charge for postings and attempted to resolve the State's concerns.

III. TITLE SEARCHES ON FANNIE MAE FILES

42. In Colorado, foreclosure law firms must provide notice of a foreclosure proceeding to parties with a recorded interest in the property that would be affected by the foreclosure. The most cost-effective title product containing this information is a two-owner title search report, which is an examination and report by a company of all applicable liens and encumbrances on the property. The law firm uses this title search report to prepare a mailing list that it delivers to the public trustee, who in turn provides notice of the foreclosure to the persons with recorded interests.

43. A foreclosure performed properly and with notice to all parties having a recorded interest conveys clear and marketable title to the person or lender receiving the property after foreclosure. Colorado statute C.R.S. § 38-38-501 provides that title to the property sold at auction vests in the person receiving the property free and clear of all liens and encumbrances junior to the lien foreclosed.

44. Many title search reports are straightforward, and reveal only the deed of trust in foreclosure, the prior deed of trust, and possibly one or two liens.

45. The law firm first obtains the initial search report to commence the foreclosure, and then typically obtains two updates: one after the foreclosure notice is filed to ensure no new liens were recorded prior to the foreclosure notice filing, and one before sale to ensure no IRS tax liens were recorded.

46. Such two-owner title search reports are available from unaffiliated businesses in Colorado for around \$100, which typically includes, among other things, a list and copy of all recorded documents going back two owners, a tax certificate, updates, and a legal description.

47. Despite significant opposition from foreclosure law firms, Fannie Mae, in its July 2008 engagement letter with law firms, stated that Colorado law firms could charge up to a maximum cost of \$250 for a title search report. In August 2009, Fannie Mae increased the maximum cost to \$275, but notified the law firms that it expected the actual cost to be lower in many instances.

48. Foothills Title and Escrow (Foothills) obtained two-owner title search reports from unaffiliated title search companies in Colorado, who charged Foothills between \$100 to \$125 for most title search reports. These reports were examined by the unaffiliated title search companies and typically included two to four updates, a tax certification, and all documents upon which the report was based.

49. Foothills would then charge the Law Office of Michael P. Medved \$275 for the report, not the actual cost or market rate of the title search report.

50. Although it set a maximum cost for a title search report, Fannie Mae emphasized in its 2008 Retained Attorney Network agreement and once again during a 2010 mandatory attorney training that it expected law firms to bill only their actual, necessary, and reasonable costs for title, which Fannie Mae expected to be lower than the maximum cost in many instances.

51. While Foothills claimed that the additional charge above the actual cost or market rate is for its review of the title search report that it obtained from the third party, Fannie Mae guidelines provide that the maximum allowable attorney fee covers review of title and exceptions; thus this charge was improper.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Makes false or misleading statements of fact concerning the price of services in violation of C.R.S. § 6-1-105(1)(l))

(All Defendants)

52. The State of Colorado incorporates herein by reference all of the allegations contained in the foregoing paragraphs of this Complaint.

53. As set forth in detail above, Defendants made “false or misleading statements of fact concerning the price of . . . services” on reinstatements, cures, bids, and invoices regarding the amounts claimed for certain foreclosure costs.

54. Through the conduct set forth in the Complaint and in the course of their business, vocation, or occupation, Defendants violated C.R.S. § 6-1-105(1)(l) by making “false or misleading statements of fact concerning the price of . . . services.”

SECOND CLAIM FOR RELIEF

(Violation of Colorado Fair Debt Collection Practices Act – False or Misleading Representations – Unfair Practices – C.R.S. § 12-14-107(1)(b)(I))
(Defendants the Law Office of Michael P. Medved, Michael Medved, and Tracie Castanon)

55. The Administrator incorporates herein by reference all of the allegations contained in the foregoing paragraphs of this Complaint.

56. As set forth in detail above, Defendants used false, deceptive, or misleading representations, including the false representations of the character, amount, or legal status of any debt, in connection with the collection of a debt relating to amounts claimed on reinstatements, cures, bids, and invoices for certain foreclosure costs.

57. As a result of Defendants' violations of section 12-14-107(1)(b)(I) of the CFDCPA, the Administrator is entitled to injunctive relief restraining Defendants from committing any of the acts, conduct, transactions, or violations described above, or otherwise violating the CFDCPA, together with all such other relief as may be required to completely compensate or restore to their original position all persons injured. C.R.S. § 12-14-135.

THIRD CLAIM FOR RELIEF

(Violation of Colorado Fair Debt Collection Practices Act – Unfair Practices – C.R.S. § 12-14-108(1)(a))
(Defendants the Law Office of Michael P. Medved, Michael Medved, and Tracie Castanon)

58. The Administrator incorporates herein by reference all of the allegations contained in the foregoing paragraphs of this Complaint.

59. As set forth in detail above, Defendants collected amounts, including fees, charges, and expenses incidental to the principal obligation that were not expressly authorized by the agreement creating the debt or permitted by law, including for amounts claimed on reinstatements, cures, bids, and invoices for certain foreclosure costs.

60. By reason of the foregoing, Defendants used unfair or unconscionable means to collect or attempt to collect any debt, including the collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

61. As a result of Defendants' violations of section 12-14-108(1)(a) of the

CFDCPA, the Administrator is entitled to injunctive relief restraining Defendants from committing any of the acts, conduct, transactions, or violations described above, or otherwise violating the CFDCPA, together with all such other relief as may be required to completely compensate or restore to their original position all persons injured. C.R.S. § 12-14-135.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that Defendants be enjoined from doing any of the acts referenced in this Complaint or any other act in violation of the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101 – 6-1-115, and the Colorado Fair Debt Collection Practices Act, C.R.S. §§ 12-14-101 – 12-14-137. In addition, Plaintiffs request a judgment against the Defendants for the following relief:

- A. An order pursuant to section 6-1-110(1) for an injunction and other orders or judgments which may be necessary to completely compensate or restore to their original position any persons injured;
- B. An order pursuant to section 6-1-113(4) for costs and attorney fees incurred by the Attorney General;
- C. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act for an injunction together with all such other relief as may be required to completely compensate or restore to their original position any persons injured; and
- D. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act for an award of costs and attorney fees.

Respectfully submitted this 31st day of October 2014,

JOHN W. SUTHERS
Attorney General

/s/ Erik R. Neusch

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