

<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>VADEN LAW FIRM, LLC; CITY PARK TITLE, LLC; and WAYNE E. VADEN,</p> <p>Defendants.</p>	<p>DATE FILED: November 18, 2014 12:09 PM FILING ID: 7FA7A3E76B440 CASE NUMBER: 2014CV34380</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<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:

INTRODUCTION

1. This action is the result of the State's extensive two-year civil law enforcement investigation of Colorado foreclosure law firms. This investigation revealed that these law firms, including the Vaden Law Firm and its principal, Wayne E. Vaden, unlawfully exploit the foreclosure process by misrepresenting and inflating the costs they incur for foreclosure-related services to fraudulently obtain millions of dollars in unlawful proceeds. Although the law firms agreed to perform these routine foreclosures for a flat attorney fee, they viewed this fee as insufficient and devised a scheme to generate additional millions by inflating foreclosure costs. Homeowners, purchasers, investors, and taxpayers paid for and continue to pay for these fraudulent charges.

2. Defendants get away with this conduct by taking advantage of the inherent lack of oversight in the foreclosure process. The mortgage servicers that hire the law firm on behalf of the loan's investor rely upon the law firm to perform all the legal work in the foreclosure for an agreed-upon flat attorney fee (the "maximum allowable fee") and to pass through only its actual, necessary, and reasonable costs. Servicers do not conduct market analyses of these foreclosure costs; rather, they rely on the law firm to comply with the law and investor guidelines by charging costs that are actual, reasonable, and the market rate. For example, the Vaden Law Firm's largest mortgage servicer client, Ocwen Loan Servicing, admitted that it did not review any bill from the law firm under \$5,000.

3. Defendants also get away with charging excessive, unauthorized, and unlawful costs because no homeowner, purchaser, or taxpayer can challenge the law firm's claimed costs. Nor may the public trustees, which administer the foreclosure process, or the courts, which authorize the foreclosure sale, challenge these costs. As such, a homeowner seeking to save his home from foreclosure or a person purchasing a property at a foreclosure auction must pay whatever costs the law firm claims to have incurred in performing the foreclosure. If the property returns to the lender, the mortgage servicer assesses these costs to the investor or insurer, which are often borne by taxpayers.

4. Since 2009, on approximately 3,000 foreclosures, the Vaden Law Firm and Wayne Vaden charged on average between \$400 and \$800 in unlawful costs per foreclosure by making false, misleading, and deceptive statements of costs to homeowners, servicers, investors/insurers, and the public on reinstatements, cures, bids, and invoices, as follows:

- \$125 or \$150 cost for each of the two foreclosure postings for a total of \$250 to \$300 per foreclosure when the market rate was \$25 per posting and when the Vaden Law Firm uses an employee/family member to post

notices as part of his salary or paid a third-party vendor \$40 or \$50;

- \$300 for Rule 120 district court filing costs when the actual cost was \$200.54 or \$242.54;
- \$500 for title commitment cancellation costs when the actual cost of the search comprising the vast majority of the work is around \$100;
- \$60 for technology costs when the actual cost is \$40 and this cost is firm overhead covered by the maximum allowable fee;
- \$25 mailing cost when the actual cost is much less; and
- \$30 for “document search – recorded DOT” cost, though there was no cost associated with the charge.

5. After the State issued a subpoena to the Vaden Law Firm in December 2012 seeking information about its claimed costs, the Vaden Law Firm’s billing practices changed and it reduced the costs claimed for Rule 120 filings to the actual costs, the technology costs from \$60 to \$40, and the deferment posting and Rule 120 posting costs from \$150 each to \$75 each—still exceeding the market rate by \$50 per notice. It also eliminated the \$30 “document search cost.” But it added a \$100 cost for title review, which is already compensated in the maximum allowable fee.

6. In mid-2013, the Vaden Law Firm’s largest servicer client, Ocwen, stopped referring foreclosures to it. Ocwen had transferred payments to the Vaden Law Firm in 2011 and in 2012 of \$1,688,163 and of \$2,073,133, respectively.

7. In doing foreclosures today for Bank of America, the Vaden Law Firm and Wayne Vaden still have Mr. Vaden’s family member post foreclosure notices not at the market rate for most foreclosures of \$25 per notice, but at \$75 per notice.

8. When asked by the State during a civil investigative demand hearing about the claimed costs, Mr. Vaden, a former Denver public trustee, stated that the costs of \$125 or \$150 for foreclosure postings were his estimating “the worst case scenario” and admitted that the actual cost paid to the vendor should have been claimed by the firm. However, he estimated, and made the public pay, this “worst case scenario” of \$125 or \$150 for each of the two postings on every foreclosure despite knowing that the third-party vendor invoices to his law firm were \$40 or \$50 for most postings and despite the market rate being \$25 for most postings.

9. Every homeowner, third-party purchaser, and investor/insurer had to pay the “worst case scenario” on hundreds of foreclosures and no refunds were issued by the law firm, meaning that Mr. Vaden and the Vaden Law Firm collected

and retained the difference between the actual cost or the market rate and what was billed for every file—resulting in approximately \$500,000 in improper costs and thus unlawful profit on foreclosure postings alone.

10. Defendants’ wrongful conduct not only harms desperate homeowners facing foreclosure and persons buying properties at auction, it reverberates to the public at large, as servicers hiring the law firm pass these costs to investors or insurers, many of which are taxpayer-backed entities. These inflated foreclosure costs also negatively impact housing and loan costs outside the foreclosure industry.

11. This conduct violates the Colorado Consumer Protection Act and the Colorado Fair Debt Collection Practices Act, and harms homeowners and the public.

LEGAL AUTHORITY AND PARTIES

12. The State, pursuant to its law enforcement authority under the Colorado Consumer Protection Act, §§ 6-1-101–115, C.R.S. (2014) (CCPA) and the Colorado Fair Debt Collection Practices Act, §§ 12-14-101–137, C.R.S. (2014) (CFDPCA), seeks to enjoin Defendants from engaging in deceptive and other unlawful practices, including charging inflated, deceptive, unauthorized, unlawful, and unreasonable costs in foreclosure proceedings in Colorado, to disgorge unjust proceeds, to completely compensate or restore to their original position any persons injured by Defendants’ conduct, to recover statutory civil penalties, and to recover costs and attorney fees.

13. The CCPA is a remedial statute intended to deter and punish deceptive trade practices committed by businesses in dealing with the public. *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47, 50–51 (Colo. 2001). The statute’s broad purpose is “to provide prompt, economical, and readily available remedies against consumer fraud.” *Id.* (quoting *W. Food Plan, Inc. v. Dist. Court*, 598 P.2d 1038, 1041 (Colo. 1979)).

14. Under the CCPA, evidence that a person engaged in a deceptive trade practice shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

15. The CFDPCA is a remedial consumer protection statute that is liberally construed to protect consumers against deceptive, misleading, and unfair debt collection practices. *Flood v. Mercantile Adjustment Bureau*, 176 P.3d 769, 772–74 (Colo. 2008).

16. 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 and may

bring an action against any person for engaging in deceptive trade practices. The State may seek injunctive relief to prohibit the person from violating the CCPA, obtain disgorgement of unjust proceeds, civil penalties, and restitution, and recover costs and attorney fees. C.R.S. §§ 6-1-110, 6-1-112, & 6-1-113.

17. Julie Ann Meade is the Administrator of the Uniform Consumer Credit Code and charged with enforcement of the CFDCPA. She is authorized to bring an action to restrain any person from any violation of the CFDCPA, obtain injunctive relief, restitution, disgorgement, civil penalties, costs and attorney fees. C.R.S. §§ 12-14-103(1),12-14-135.

18. Defendant the Vaden Law Firm, LLC is a Colorado limited liability company organized on January 7, 2007, with a principal place of business at 2015 York Street, Denver, Colorado 80205. It is, and at all relevant times was, regularly engaged in collecting, or attempting to collect, directly or indirectly, from Colorado consumers debts owed or asserted to be owed or due others. In addition to providing foreclosure legal services, the Vaden Law Firm also served as a title agent providing foreclosure title services.

19. Defendant City Park Title, LLC is a Colorado limited liability company organized on March 22, 2010, with a principal place of business at 2015 York Street, Denver, Colorado 80205. It provides foreclosure title services for the law firm.

20. Defendant Wayne E. Vaden is an individual with a principal business address at 2015 York Street, Denver, Colorado 80205. He is the managing member and sole owner of the Vaden Law Firm and City Park Title, and he is responsible for the management decisions at the law firm, including decisions regarding foreclosure costs charged to borrowers, investors, servicers, and the public. Mr. Vaden is also the sole owner of the law firm City Park Law Group, LLC, which he formed in January 2013. He has engaged in or caused another to engage in a deceptive trade practice. He is personally liable under the CCPA and the CFDCPA for the conduct of the Vaden Law Firm and City Park Title by approving, directing, participating, or cooperating in their conduct. He is, and at all relevant times was, regularly engaged in collecting, or attempting to collect, directly or indirectly, from Colorado consumers debts owed or asserted to be owed or due others.

JURISDICTION AND VENUE

21. 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.

22. 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.

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

PUBLIC INTEREST

24. Through the deceptive trade practices of their businesses, vocations, or occupations, Defendants, on about 3,000 foreclosures since 2009, have defrauded homeowners and the public by claiming false, misleading, deceptive, unauthorized, unlawful, and unreasonable foreclosure costs presented to and payable by homeowners in foreclosure, purchasers of foreclosed properties, mortgage servicers, and investors and insurers.

25. Accordingly, these legal proceedings are in the public interest.

GENERAL ALLEGATIONS

I. INDUSTRY OVERVIEW

A. Residential Foreclosure Process in Colorado

26. 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.

27. Before the law firm files a foreclosure, the borrower may reinstate the default by paying what the lender is owed 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 the lender is owed in late payments 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.

28. 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.

29. 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.

30. 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.

B. Fee/Cost Structure in Foreclosures

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

32. 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 or servicers 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. In setting this maximum allowable fee, the investors and servicers take into account the work typically performed for a foreclosure in a given jurisdiction and endeavor to ensure that firms are fairly compensated and profitable.

33. 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.

34. 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

35. 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.

36. 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. The Vaden Law Firm's largest servicer client, Ocwen, testified during the State's investigative hearing that Ocwen did not review any invoices under \$5,000, but nevertheless expected and relied upon the law firm to charge actual costs and the market rate.

37. 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.

II. DEFENDANTS EXPLOIT THE FORECLOSURE PROCESS TO COMMIT FRAUD

38. Despite agreeing to perform foreclosures for a maximum allowable fee per file, the Vaden Law Firm and Wayne Vaden (the "Vaden Defendants") view this fee as insufficient. Accordingly, the Vaden Defendants circumvent the maximum allowable fee by inflating foreclosure costs to generate improper revenue beyond the maximum allowable fee.

39. Specifically, the Vaden Defendants obtain unjust enrichment by (1) inflating costs for services performed by unaffiliated third parties or by law firm employees; (2) claiming and inflating costs for services already compensated by the maximum allowable fee as separate and reimbursable; and (3) using affiliated vendors to generate invoices containing inflated costs for title and posting services.

40. The Vaden Defendants' business practices differed from larger Colorado foreclosure firms such as the Castle Law Group, LLC ("Castle") and Aronowitz & Mecklenburg, LLP ("Aronowitz"), which routinely used affiliated vendors to create artificially high invoices for foreclosure costs such as postings and title searches to create unlawful profits above the maximum allowable fee. Unlike this practice of using an affiliated vendor, the Vaden Defendants would generally markup invoices from third parties to obtain improper profits, thereby increasing

postings by about \$110 per posting or Rule 120 court costs by about \$100 per file. The only exceptions to this practice of a straight markup of third-party costs were using an affiliated title agent for title commitment cancellation fees and using a family member to post foreclosure notices.

41. The Vaden Defendants initially had a family member post the notices as part of his law firm employment and salary, but rather than charge the market rate of \$25 or the \$40 to \$50 the law firm paid third-party vendors, the Vaden Defendants charged \$125 or \$150 per posting. Now this family member creates posting invoices for \$75, not the market rate of \$25.

42. For other postings, the Vaden Defendants would hire a third-party vendor that charged \$40 or \$50 per posting, but the Vaden Defendants would still claim a cost of \$125 or \$150 per posting. One of the vendors that charged \$50 per posting also worked at the Vaden Law Firm preparing bids.

43. The Vaden Defendants also fraudulently obtained additional compensation by marking up the pass-through costs of other third-party vendors. For example, the law firm overcharged for Rule 120 court filing costs by charging a flat rate cost of \$300, when the actual costs incurred were \$200.54 or \$242.54.

44. They further obtained additional compensation by billing for work already included in the maximum allowable fee as a separate cost. For example, the law firm charged \$30 as a “document search cost,” \$100 for title review, and \$60 for a technology cost when there was either no actual cost associated with these services or the cost was included in the maximum allowable fee.

45. Again, because of servicer reliance on the law firm and the inability of homeowners, public trustees, or courts to challenge these costs, the law firm gets away with charges that were over and above the maximum allowable fee and inflated above the actual costs or market rate.

46. The Vaden Law Firm’s servicer clients did not verify whether the costs charged for foreclosure services were the actual cost or the market rate for such services. At most, some servicers checked to see whether invoices from the vendors matched costs invoiced to the servicer. This superficial inquiry allowed the law firm to continue its unlawful conduct undetected.

47. As set forth in detail below, the Vaden Defendants intentionally circumvent the maximum allowable fee by making false, misleading, and deceptive statements about the actual costs they incur in processing a foreclosure.

48. City Park Title, owned by Wayne Vaden, participated in this conduct

by invoicing the law firm for inflated amounts for title commitment costs, and thus, as described below, exploited the foreclosure process to obtain unjust enrichment.

III. THE FORECLOSURE POSTING SCHEME

49. 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.

50. 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.

51. The Vaden Defendants followed the lead set by the two largest and most influential foreclosure law firms in Colorado, Castle and Aronowitz, which conspired to set the minimum cost of a foreclosure deferment posting at \$125. Castle represented to other foreclosure firms and servicers that Fannie Mae approved the posting charge of \$125.

52. While the Vaden Defendants used the posting company affiliated with Castle, Absolute Posting & Process Services, LLC, for a handful of distant or outer county postings, which charged \$125 per posting, the Vaden Defendants mostly used a law firm employee/family member, who posted the notices as part of his law firm duties, and other third-party vendors, which charged \$40 or \$50 per posting.

53. While the market rate for postings by vendors unaffiliated with Castle and Aronowitz charged about \$25 for most postings, the Vaden Defendants, when using their own law firm employee/family member, charged borrowers, servicers, and third-party purchasers \$125, and beginning in 2012, \$150 per posting.

54. When the Vaden Defendants used third-party vendors that were not the employee/family member posting as part of his law firm duties, the third-party vendors charged the law firm \$40 to \$50 per foreclosure posting, but the Vaden Defendants turned around and charged borrowers, servicers, third-party purchasers, and investors \$125 and \$150.

55. 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 Castle, 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.

56. After passage of HB 1240, Castle notified the servicer clients that the second posting would also cost \$125.

57. The Vaden Defendants charged the same \$125 for this second posting and, beginning in 2012, \$150 each for the first and second posting. Like the first posting (the foreclosure deferment posting), the Vaden Defendants charged \$100 to \$125 more than the actual market rate when it performed the postings itself or charged up to \$110 more than the actual cost charged by a third-party vendor.

58. This scheme enabled the Vaden Defendants to obtain improper revenue between \$200 to \$250 per foreclosure on foreclosure postings on about 3,000 foreclosures.

59. Wayne Vaden testified during the State's investigative hearing that the \$150 charge was "the worst case scenario" and that his law firm estimated the "worst case scenario" for each posting on every cure submitted to a homeowner, every bid submitted to the public, and every invoice submitted to the servicer.

60. He admitted during this hearing that if the actual cost or invoice to his law firm was \$40 to \$50 per posting, then that amount should have been billed and collected by the Vaden Law Firm, and he could not imagine any reason to increase the cost above the charge by the third-party vendor.

61. However, all the cures and bids submitted to the public had the \$125 or \$150 charge per posting and all the invoices to the servicers had the \$125 or \$150 charge per posting. Because all invoices had this improper cost, this cost was assessed to homeowners, third-party purchasers, investors, and insurers on all foreclosures. Moreover, the Vaden Defendants collected and retained the substantial difference between the market rate for postings or actual third-party costs and what they claimed as the "worst case scenario."

62. Mr. Vaden testified during the State's investigative hearing that, if the invoice was \$40 or \$50, his law firm should have refunded the difference between the \$40 to \$50 cost his firm incurred and the \$125 or \$150 charge his firm claimed.

63. However, the Vaden Law Firm never adjusted this charge after estimating the "worst case scenario," and there were no refunds.

64. The Vaden Defendants also kept the difference between the market rate of \$25 per posting and the \$125 or \$150 charge per posting for the numerous postings performed by the law firm employee/family member as part of his salary for his law firm duties, which extended beyond postings.

65. After the State's investigation of the Vaden Defendants, they reduced the claimed posting costs from \$150 per posting to \$75 per posting.

66. In or around 2014, presumably in response to a servicer requirement for the law firm to produce third-party invoices to support costs, the Vaden Defendants had the law firm employee/family member generate a foreclosure posting invoice for \$75—\$50 above the fair market rate. Mr. Vaden testified during his investigative hearing that the servicers were recently requiring invoices as part of the submission of law firm invoices.

IV. ADDITIONAL INFLATED COSTS

A. Rule 120 Filing Costs

67. Under Colorado law, the foreclosing party, typically through a law firm, must file with the district court a motion to authorize the sale of the property in accordance with Rule 120 of the Colorado rules of civil procedure.

68. Most Rule 120 actions require three filings with the district court. First, the law firm initiates the Rule 120 action by filing a motion to authorize the sale, which results in a hearing date within 35 days. Second, after posting the notice of the hearing date on the homeowner's door at least 14 days before the hearing, the law firm files an affidavit of service showing that the homeowner has been notified of the hearing. Third, the law firm files either a motion to dismiss the Rule 120 action if the foreclosure is withdrawn before auction (e.g., a cure or loan modification) or the return of sale if the property is sold at auction.

69. The state court statutory filing cost for initiating the Rule 120 action is \$224, except for the period between January 23, 2012 and June 30, 2013, when the statutory filing cost was reduced to \$182. In addition to the statutory filing cost, LexisNexis charged an additional cost of \$6.18 per filing. (Beginning January 1, 2013, ICCES replaced LexisNexis and charged \$6.00 to \$6.50 per filing.) Thus, the initial filing cost for a Rule 120 action would have been \$230.18 or \$188.18, at the reduced statutory filing cost. LexisNexis would charge another \$6.18 each for the second and third filing. Thus, the typical charge for the three filings in a Rule 120 action would be \$242.54 when the Rule 120 statutory cost was \$224 (\$224 plus \$6.18 plus \$6.18 plus \$6.18) or \$200.54 when the Rule 120 statutory cost was \$182.

70. Instead of charging for the actual costs of statutory state court filings as set forth above, the Vaden Defendants charged \$300 for Rule 120 filing costs that were only \$200.54 or \$242.54 after June 30, 2013.

71. The Vaden Defendants repeatedly committed this inflation of Rule 120 costs despite regularly receiving invoices from LexisNexis showing the actual Rule 120 costs billed to the firm of \$200.54 or \$242.54. This misrepresentation occurred on cure statements to homeowners, bid statements to purchasers at the auction, and invoices to the client ultimately paid by the homeowner, investor, or insurer.

72. After the State's investigation, the Vaden Law Firm eventually began charging its actual costs for Rule 120 actions and now charges \$242 per foreclosure.

B. Flat-Rate Mailing

73. The Vaden Law Firm routinely charged \$20 or \$25 for statutory mailings, though the actual cost of a mailing was generally less than \$5.

74. The foreclosing party, typically the law firm, is responsible for mailing the notice of Rule 120 hearing to parties with a recorded interest in the property, the homeowner, and the occupant and lessee of the premises, at the first-class mailing rate of around \$0.46 per mailing. In many foreclosures, the number of mailings is fewer than ten and, as such, a mailing charge should be less than \$5. For instance, in foreclosures now filed by the Vaden Law Firm after the State's investigation of the firm, it charges the actual cost such as \$1.47 in mailing, not the former \$25 for mailing.

75. Accordingly, the Vaden Defendants routinely misrepresented the mailing cost to homeowners, third-party purchasers, investors and insurers on average of \$15 to \$20 more than the actual cost per foreclosure.

C. MDS Technology Charge

76. Since 2011, the Vaden Law Firm also charged \$60 for an "MDS Technology Fee," for which the Law Firm is already compensated through the maximum allowable fee.

77. MDS is a third-party software program used by the law firm to process foreclosure files. mTech, the company that owns the MDS software, charges the Vaden Law Firm \$40 per file when using the MDS software. Because MDS assists the law firm in processing files, a task already compensated in the maximum allowable fee, the MDS costs are firm overhead and should not be paid by homeowners, third-party purchasers, investors and insurers.

78. Mr. Vaden testified during the State’s investigative hearing that the \$20 increase to the technology cost above what was charged by mTech was to cover the law firm’s information technology costs and the costs to maintain the MDS servers. Information technology costs and costs to maintain servers are also firm overhead and should not be paid by homeowners, third-party purchasers, investors and insurers when the firm is already being compensated for such overhead through the maximum allowable fee.

79. Accordingly, the Vaden Defendants routinely misrepresented this technology cost to homeowners, third-party purchasers, investors and insurers up to \$60 per foreclosure.

D. Document Search

80. The Vaden Law Firm also routinely charged on foreclosures as a “cost” \$30 for “Document Search - Obtaining Recorded Deed of Trust” when there was no actual cost associated with this service.

81. Accordingly, the Vaden Defendants routinely misrepresented this \$30 cost to homeowners, third-party purchasers, investors and insurers per foreclosure.

E. Title Review and Statutory Notice

82. In 2012, the Vaden Law Firm also began charging \$100 for “title review and statutory notice,” even though compensation for this work was already included in the maximum allowable fee.

83. Accordingly, the Vaden Law Firm routinely misrepresented this \$100 cost to homeowners, third-party purchasers, investors and insurers per foreclosure.

V. THE USE OF TITLE COMMITMENTS TO OBTAIN UNJUST ENRICHMENT

A. Background

84. 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. 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.

85. Law firms determine who is entitled to notice by purchasing a title product from a title search company or a title agent. Although law firms sometimes purchase expensive title products, like title commitments, the most cost-effective

title product containing this information is a two-owner title search report, which is an examination and report by a title search company containing 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.

86. 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.

87. 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.

88. Businesses that are not affiliated with foreclosure law firms offer two-owner title search reports for around \$100. These searches typically include, among other things, a list and copy of all recorded documents going back two owners, a tax certificate, updates, and a legal description.

B. Title Commitment Cancellation Scheme

89. When servicers or investors do not specify which title product to obtain in a foreclosure, the Vaden Defendants acquire a “foreclosure title commitment,” usually through the Vaden Law Firm or City Park Title as an affiliated title agent. A title commitment is an agreement to issue an insured owner’s policy once certain requirements are met.

90. In preparing a “foreclosure title commitment” the Vaden Defendants, through the Vaden Law Firm or City Park Title, charge homeowners \$500 to stop the foreclosure, claiming that it is the cancellation fee allowed by the underwriter, even though it is an unreasonable charge, more than the actual costs, and the title agent is able to reduce or eliminate this cancellation fee.

91. The cancellation fee is a mechanism for the law firm and its affiliated title agent to generate additional, significant income for the many foreclosures that do not go to sale and thus do not provide the law firm and affiliated title agent the opportunity to charge a substantial premium for an owner’s policy.

92. A foreclosure title commitment is based entirely on the title search report available or obtained from an unaffiliated title search company for around \$100, which represents the vast majority of the work involved for a commitment. The information from this title search report is transferred or merged into a template called “commitment for title insurance.” Most of the commitment consists

of form language and requires entry of a handful of exceptions and requirements. Any additional information for the title commitment, such as covenants and restrictions, may also come from the original lender's title policy and results in no cost to the law firm or its affiliated title agent.

93. An underwriter must file with the Colorado Division of Insurance its *insurance rates* for insured title products like an owner's policy. Agents cannot modify and must charge these filed rates, which are the insurance premiums, in issuing title products insured by the underwriter, such as an owner's policy. By contrast, an underwriter's schedule of fees, including a foreclosure commitment cancellation fee, is not an insured product or rate. Accordingly, the title agent may file a different fee than the underwriter.

94. The agency agreements between agents and underwriters recognize that agents may file fees different from those of the underwriter.

95. If a title agent issues an owner's policy after the foreclosure sale for a premium, usually in excess of \$900, as the agent by contract with the underwriter, retains 85 to 90 percent of that premium and remits only 10 to 15 percent to the underwriter.

96. If a foreclosed property does not go to sale, however, and thus the commitment cannot turn into an owner's policy, City Park Title or the Vaden Law Firm as the agent charges a \$500 cancellation fee. Because the \$500 fee for a cancelled foreclosure commitment obtained during a foreclosure is not a filed insurance rate, the title agent retains 100 percent of the cancellation fee, remitting no portion to the underwriter.

97. Regardless of whether a title commitment during the foreclosure is necessary or advisable, charging homeowners \$500 for stopping a foreclosure for a cure or loan modification is deceptive and unreasonable given the actual cost incurred in preparing a commitment.

98. In contrast, title agents preparing commitments for non-foreclosure transactions generally do not charge a cancellation fee at all.

99. As an example, the underwriter used by the Vaden Defendants and City Park Title has published a schedule of fees allowing a \$500 cancellation fee for *foreclosure* commitments, but only a \$100 cancellation fee for *non-foreclosure* commitments. In the case of non-foreclosure commitments, however, agents may only charge the published \$100 fee if there is excessive or unusual work performed prior to cancellation. There is no such limitation for *foreclosure* commitments.

100. This discrepancy is the result of the law firms and their affiliated title agents' influence over the underwriters, which rely on agents for business.

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)

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

102. 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:

- a. foreclosure deferment posting costs;
- b. Rule 120 notice of hearing posting costs;
- c. title commitment cancellation costs;
- d. technology costs;
- e. flat-rate mailing costs;
- f. document preparation or search costs; and
- g. Rule 120 court filing costs.

103. 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” and as a result deceived and defrauded homeowners, the public, servicers, and investors/insurers, and obtained unjust enrichment as a result.

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 Vaden Law Firm and Wayne Vaden)

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

105. As set forth in detail above, Defendants Vaden Law Firm and Wayne Vaden 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:

- a. foreclosure deferment posting costs;
- b. Rule 120 notice of hearing posting costs;
- c. title commitment cancellation costs;
- d. technology costs;
- e. flat-rate mailing costs;
- f. document preparation or search costs; and
- g. Rule 120 court filing costs.

106. 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 engaging, directly or indirectly, in consumer debt collection or otherwise 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 consumers injured or prevent unjust enrichment of any person, by reason or through the use or employment of such practices, acts, conduct, or violations, or as may otherwise be appropriate, including, without limitation, requiring Defendants to disgorge to the Administrator or refund to consumers all amounts collected in violation of the CFDCPA. 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 Vaden Law Firm and Wayne Vaden)

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

108. As set forth in detail above, Defendants Vaden Law Firm and Wayne Vaden 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:

- a. foreclosure deferment posting costs;
- b. Rule 120 notice of hearing posting costs;
- c. title commitment cancellation costs;
- d. technology costs;
- e. flat-rate mailing costs;
- f. document preparation or search costs; and
- g. Rule 120 court filing costs.

109. By reason of the foregoing, Defendants used, and continue to use, 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.

110. 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 engaging, directly or indirectly, in consumer debt collection or otherwise 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 consumers injured or prevent unjust enrichment of any person, by reason or through the use or employment of such practices, acts, conduct, or violations, or as may otherwise be appropriate, including, without limitation, requiring Defendants to disgorge to the Administrator or refund to consumers all amounts collected in violation of the CFDCPA. C.R.S. § 12-14-135.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that the Defendants the Vaden Law Firm, LLC, Wayne E. Vaden, and City Park Title, LLC be enjoined and restrained from doing any of the wrongful 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, personally, jointly and severally, for the following relief:

- A. An order that all Defendants' conduct violates the Colorado Consumer Protection Act, including, but not limited to, section 6-1-105(1)(I);
- B. An order pursuant to section 6-1-110(1) for an injunction or other orders or judgments against all Defendants;
- C. An order pursuant to section 6-1-110(1) requiring all Defendants to disgorge all unjust proceeds to prevent unjust enrichment;
- D. An order pursuant to section 6-1-110(1) against all Defendants which may be necessary to completely compensate or restore to their original position any persons injured by means of such deceptive practice;
- E. An order pursuant to section 6-1-112(1)(a) against all Defendants for civil penalties of not more than two thousand dollars for each such violation of any provision of the Colorado Consumer Protection Act with respect to each consumer or transaction involved not to exceed five hundred thousand dollars for any related series of violations;
- F. An order pursuant to section 6-1-112(1)(c) against all Defendants for civil penalties of not more than ten thousand dollars for each violation of any provision of the Colorado Consumer Protection Act with respect to each elderly person;
- G. An order pursuant to section 6-1-113(4) requiring all Defendants to pay the costs and attorney fees incurred by the Attorney General;
- H. An order that Wayne Vaden's and the Vaden Law Firm's conduct violates the Colorado Fair Debt Collection Practices Act, section 12-14-107(1)(b)(I);
- I. An order that Wayne Vaden's and the Vaden Law Firm's conduct violates the Colorado Fair Debt Collection Practices Act, section 12-14-108(1)(a);
- J. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act for an injunction against Wayne Vaden and the Vaden Law Firm together with all such other relief as may be required to completely compensate or restore to their original position all consumers injured or prevent unjust enrichment of any person or as may otherwise be appropriate, including disgorgement to the Administrator or refund to consumers;
- K. An order pursuant to section 12-14-135 of the Colorado Fair Debt

Collection Practices Act for civil penalties against Wayne Vaden and the Vaden Law Firm;

- L. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act against Wayne Vaden and the Vaden Law Firm for an award of reasonable costs and attorney fees; and
- M. Any such further orders as the Court may deem just and proper to effectuate the purposes of the Colorado Consumer Protection Act and the Colorado Fair Debt Collection Practices Act.

Respectfully submitted this 18th day of November 2014,

JOHN W. SUTHERS
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/s/ Erik R. Neusch

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Pursuant to C.R.C.P. 121, § 1-26(7), the original of this document with the original signature is maintained at the offices of the Colorado Attorney General, Ralph L. Carr Colorado Judicial Center, 1300 Broadway, Denver, Colorado 80203, and will be made available for inspection upon request.