

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO</p> <p>201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 494-3500</p> <hr/> <p>STATE OF COLORADO, <i>ex rel.</i> PHILIP J. WEISER, Attorney General,</p> <p>Petitioner,</p> <p>v.</p> <p>RANDY JENSEN HOMECARE, LLC, a Colorado limited liability company,</p> <p>Respondent.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General JENNIFER H. HUNT, #29964* First Assistant Attorney General JENNIFER MINER DETHMERS, #32519* Senior Assistant Attorney General DANA L. SHOWALTER, #52522* Attorney Fellow COLORADO DEPARTMENT OF LAW Consumer Protection Section Ralph L. Carr Colorado Judicial Center 1300 Broadway, 7th Floor Denver, CO 80203 *Counsel of Record</p>	<p>Case No:</p> <p>Courtroom:</p>
<p style="text-align: center;">APPLICATION FOR RELIEF UNDER C.R.S. § 6-1-109 FOR FAILURE TO RESPOND TO CIVIL LAW ENFORCEMENT INVESTIGATIVE SUBPOENA</p>	

Petitioner, the State of Colorado, by and through Philip J. Weiser, Attorney General (the “Attorney General” or the “State”), respectfully applies for an order pursuant to C.R.S. § 6-1-109 enforcing the investigative subpoena served on

Respondent Randy Jensen HomeCare, LLC (“Randy Jensen HomeCare”) on September 25, 2018. For such application, the State states as follows:

INTRODUCTION

Under the Colorado Consumer Protection Act (CCPA), C.R.S. §§ 6-1-101, *et seq.* (2018), the Attorney General may issue pre-filing investigative subpoenas to require the attendance of witnesses or the production of documents whenever he has cause to believe that any person has engaged or is engaging in a deceptive trade practice. C.R.S. § 6-1-108(1). Based on a consumer complaint and investigative information, the Attorney General has reasonable cause to believe that Randy Jensen HomeCare has violated the CCPA and has information related to these violations, including but not limited to violations of C.R.S. § 6-1-105(1)(e), (i), (u), (xx), and the Colorado Foreclosure Protection Act (CFPA), C.R.S. §§ 6-1-1101 through -1121 (2018), in connection with equity purchasing, foreclosure consulting, and related activities.

The State attempted to personally serve subpoenas on Randolph G. Jensen (“Jensen”) and Randy Jensen HomeCare on multiple occasions in person and by email between May 31, 2018, and September 12, 2018, without success. On September 25, 2018, the State sent the subpoena for Randy Jensen HomeCare through certified mail, and service was perfected five days later pursuant to C.R.S. § 7-90-704. Randy Jensen HomeCare has not responded to the subpoena, has not

produced any documents responsive to the subpoena, and has generally disregarded the State's attempts to communicate.

Therefore, the State seeks an order requiring Randy Jensen HomeCare and Jensen, who is the registered agent and owner of Randy Jensen HomeCare, to cooperate with the State's investigation by complying with the subpoena and to refrain from engaging in equity purchasing and foreclosure consulting services until they comply with the subpoena. Additionally, the State also seeks an order requiring Randy Jensen HomeCare to pay the State's reasonable attorneys' fees and costs in making this application.

VENUE

The CCPA provides that "actions instituted pursuant to [the CCPA] may be brought in the county where an alleged deceptive trade practice occurred . . . or in the county where the principal place of business of any defendant is located . . ." C.R.S. § 6-1-103. The property that is the subject of the complaint alleging deceptive trade practices is located in Larimer County. *See* Ex. 1, Shelly-Jean Sartor Aff. ¶¶ 5-6. Additionally, Randy Jensen HomeCare has its principal place of business in Larimer County. *See* Ex. 1 ¶ 10. Therefore, venue is proper in Larimer County.

BACKGROUND

A. Identity of respondent

Randy Jensen HomeCare is a Colorado limited liability company formed by Jensen on March 9, 2017, with a principal place of business at 2203 Owens Avenue,

#101, Fort Collins, Colorado. *Id.* Jensen is the registered agent for Randy Jensen HomeCare. *Id.* Jensen is a professional poker player and real estate “investor.” Ex. 2, Findings of Fact, Conclusions of Law, Order and Judgment, *Stern v. Jensen*, Case No. 2017CV30924 (Larimer County District Court) at 2. In 1992, Jensen obtained his independent real estate broker license; however, the Colorado Real Estate Commission revoked his license in 2009 after two public disciplinary actions. *See* Ex. 1 ¶ 11.

B. Respondent’s deceptive trade practices

In the summer of 2017, Jensen approached a 67-year-old widow multiple times offering to help save her home from foreclosure. Ex. 1-A, Complaint to Colorado Attorney General’s Office at 2; Ex. 2 at 2-3. The homeowner had substantial equity in her home but limited means to make payments on her home equity loan. Ex. 2 at 2, 5. Although she said no to his services, Jensen returned on October 24, 2017, claiming that if she did not file a notice of intent to cure that afternoon, she would be homeless in fifteen days. *See* Ex. 1-A at 2; Ex. 3, Complaint with Jury Demand, *Stern v. Jensen*, Case No. 2017CV30924 (Larimer County District Court) ¶ 8. Jensen drove her to the public trustee’s office and filled out the intent to cure form, which the homeowner signed. Ex. 2 at 3. After leaving the office, Jensen insisted that the homeowner sign a power of attorney to give him authority to enter into real estate transactions involving the house. *Id.*

The next day, Jensen required the homeowner to sign another document that he claimed was necessary to allow him to negotiate financing and save her house. *Id.* He pressured her to sign the document, stating there was no time to get additional information or legal advice. *See* Ex. 1-A at 2; Ex. 3 ¶ 20. He did not disclose that this document was actually a warranty deed that transferred title of the home to Randy Jensen HomeCare. *See* Ex. 2 at 4. Jensen immediately recorded the deed on October 25. *Id.*; Ex. 1-B, Warranty Deed.

On November 2, the homeowner brought a quiet title action against Jensen and Randy Jensen HomeCare alleging fraudulent misrepresentation, constructive fraud, civil theft, conversion, extreme and outrageous conduct, and unjust enrichment claims. *See* Ex. 3 ¶¶ 24-55. A couple of months later, Jensen attempted to evict the homeowner. Ex. 2 at 6. After a trial at which both Jensen and the homeowner testified, the court determined that the transfer of the house was not supported by consideration, that the parties had not reached any oral or written agreement, that Jensen made fraudulent misrepresentations to the homeowner, and that the homeowner had no intent to deliver the warranty deed. Ex. 2 at 7-11. The court required Jensen to transfer title back to the homeowner. *Id.* at 11-12.

Also in November, the homeowner filed a complaint with the State regarding Randy Jensen and Randy Jensen HomeCare. *See* Ex. 1-A at 1. The State determined there was reasonable cause to believe that Jensen and Randy Jensen

HomeCare violated the CCPA and CFPA and issued subpoenas to obtain additional information about their business activities.

C. The subpoena requests information about Randy Jensen HomeCare's business activities and customers.

The State's subpoena seeks to determine the scope and nature of Randy Jensen HomeCare's business and activities, including the extent to which it has engaged in equity purchasing or foreclosure consulting activities with other consumers. In particular, the State is seeking records and information from May 1, 2015, to the present relating to the following five categories:

1. **Business Structure and Staffing**
The formation, organization, and structure of Randy Jensen HomeCare; the identification of persons employed by or who performed services for Randy Jensen HomeCare; and the identification of all professional licenses of these persons.
2. **Activities and Services**
The business activities of Randy Jensen HomeCare; any real property, mobile home, or manufactured housing in which Randy Jensen HomeCare acquired an interest or attempted to acquire an interest; documents relating to offers to assist any person who was having difficulty making his or her mortgage payments, against whom a foreclosure was pending, or was delinquent or in default on his or her mortgage payments; and documents relating to any time it obtained a power of attorney for another person.
3. **Marketing and Outreach**
The process of locating and soliciting potential customers; documents relating to advertising, marketing, and promotional efforts; and any training materials, operating manuals, policies and procedures, call center or door-to-door scripts, instruction manuals, and similar documents.
4. **Financial Information**
Any judgments, liens, or security interests purchased, acquired, or filed; documents sufficient to determine the amount of money spent in

connection with the services and business activities offered; and documents sufficient to determine the amount of money, compensation, remuneration, or other thing of value received in connection with the services and business activities offered.

5. Complaints and Investigations

Any complaints received in connection with Randy Jensen HomeCare's business activities, the response to each complaint, and the final resolution of each complaint; documents reflecting whether Randy Jensen HomeCare has been the subject of any governmental inquiry or investigation; and documents reflecting whether Randy Jensen HomeCare has been a party to any court action in connection with its business services and activities.

See Ex. 1-G, Randy Jensen HomeCare Subpoena at 6-9.

D. Respondent's refusal to respond to the subpoena

The State identified Jensen's current address to be 448 Kendalbrook Drive, Windsor, Colorado (the "Kendalbrook" address), and his former address to be 2203 Owens Avenue #101, Fort Collins, Colorado (the "Owens" address), which is a residential property. Ex. 1 ¶ 8. The Owens address is the current principal office address of Randy Jensen HomeCare and the current address of its registered agent, Jensen. *Id.* ¶ 10.

On May 31, 2018, the State issued two subpoenas: one for Jensen as an individual and one for Randy Jensen HomeCare. The State attempted personal service of these two subpoenas on nine separate occasions. Ex. 4, Emily Philemon Aff. The dates of these attempts were May 31, June 3, June 7, June 10, June 20, June 22, June 24, and July 1 at the Kendalbrook address and on June 3 at the Owens address. *Id.* The current resident at the Owens address does not know Jensen. *Id.*

After being unable to personally serve the subpoenas, the State's investigators visited Jensen's mother in Fort Collins on August 1. Ex. 1 ¶ 12. Jensen's mother confirmed his address to be the Kendalbrook address and provided his cell phone number. *Id.* ¶ 14. The State's investigators contacted Jensen by phone, and he agreed to accept electronic service of both subpoenas and provided his email address. *Id.* ¶¶ 15-17.

On August 2, the State sent an email to Jensen with both subpoenas and waivers of personal service attached. *Id.* ¶ 18. After receiving no response, the State sent a follow-up email on August 14 with the subpoenas and waivers attached again, explaining that the signed waivers were necessary to effect personal service. *Id.* On September 10, when the State still had not received the signed waivers or any response to the subpoenas, the State again contacted Jensen through email. *Id.* ¶ 19. On September 12, Jensen acknowledged receipt of the subpoenas via email, stating that he had no documentation "other than what is on the Secretary of State website" but did not provide the signed waivers of service. *Id.* That same day, the State again requested the waivers of service. *Id.* Neither Jensen nor Randy Jensen HomeCare returned the waivers of service or further contacted the State. *Id.* ¶ 21

Under the CCPA, service of a subpoena may be made "in the manner prescribed by law or as provided in rule 4 of the Colorado rules of civil procedure." C.R.S. § 6-1-108. Colorado statute allows for service by registered mail when a registered agent is not located at its registered address. C.R.S. § 7-90-704. As a

result of Jensen's failure to waive and accept service on behalf of Randy Jensen HomeCare, the State reissued the subpoena for Randy Jensen HomeCare and sent by certified mail on September 25 to Randy Jensen HomeCare's principal office address as listed on the Secretary of State's website. *See* C.R.S. § 7-90-704(2); Ex. 1 ¶ 20. Pursuant to C.R.S. § 7-90-704(2)(c), service was perfected five days later on September 30, 2018.

Randy Jensen HomeCare's response to the subpoena was due on October 5. Ex. 1-G at 1. The State has not received any response or responsive documents from Randy Jensen HomeCare. Ex. 1 ¶ 21.

ARGUMENT

A. The Attorney General has statutory authority to issue and enforce the subpoena.

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) *as modified on denial of reh'g* (Jan. 11, 2002). The Attorney General is authorized to enforce the CCPA. *See* C.R.S. § 6-1-103. When the Attorney General has cause to believe that any person has engaged or is engaging in any deceptive trade practice he may, among other things, (1) examine any property, record, document, account, or paper he deems necessary, and (2) issue subpoenas to require the attendance of witnesses or the production of documents in aid of any investigation. *See* C.R.S. § 6-1-107(1) & § 6-1-108(1).

A subpoena issued under C.R.S. § 6-1-108 must be “necessary to administer the provisions of the Consumer Protection Act,” including the Attorney General’s “duties of investigation and enforcement.” *People ex rel. MacFarlane v. Am. Banco Corp.*, 570 P.2d 825, 829 (Colo. 1977). The subpoena must be definite, not overbroad, and relevant to the purpose of the investigation. *Id.* at 830.

The requirement that the subpoena be definite and not overbroad is satisfied by a showing that the subpoena’s language exhibit such particularity of description that the person subpoenaed be able to know what he is being asked to produce and that there be such particularity of breadth that good faith compliance would not be unduly burdensome.

Id. A subpoena is relevant to a CCPA investigation if the Attorney General can show that “a relationship exists between the documents which must be produced and the purposes of the inquiry.” *Id.*; see also *Benson v. People*, 703 P.2d 1274, 1279 (Colo. 1985) (“The relevancy requirement is met if the government makes a prima facie showing that the requested documents bear some general relationship to the subject matter of the investigation.”).

If any person fails to cooperate with any investigation pursuant to C.R.S. § 6-1-107 or fails to obey any subpoena issued pursuant to C.R.S. § 6-1-108, the Attorney General may apply to the appropriate district court for an order to effectuate the purposes of the CCPA. C.R.S. § 6-1-109(1). The application shall state that there are reasonable grounds to believe that the order is necessary to terminate or prevent a deceptive trade practice. *Id.* If the court is satisfied that

reasonable grounds exist to terminate or prevent a deceptive trade practice, the court may:

- a) Grant injunctive relief restraining the sale or advertisement of any property by such person;
- b) Require the attendance of or the production of documents by such person, or both;
- c) Grant such other or further relief as may be necessary to obtain compliance by such person.

C.R.S. § 6-1-109(1)(a)-(c). If the State successfully enforces the subpoena pursuant to the CCPA, the court shall award attorneys' fees and costs. C.R.S. § 6-1-113(4).

B. The State has reasonable grounds to believe that enforcing the subpoena is necessary to terminate or prevent deceptive trade practices.

As set forth above and in the attached exhibits, the State has a reasonable basis to believe that Randy Jensen HomeCare has violated and has information related to violations of the CCPA, including but not limited to violations of C.R.S. § 6-1-105(1)(e), (i), and (u) by (1) knowingly making false representations as to the characteristics, uses, or benefits of services; (2) advertising services with intent not to sell them as advertised; and (3) failing to disclose material information concerning services known at the time of advertising with the intent to induce the consumer to enter into the transaction.

The State also has a reasonable basis to believe Randy Jensen HomeCare violated multiple provisions of the CFPA. *See* C.R.S. § 6-1-105(1)(xx). First, the State has a reasonable basis to conclude that Randy Jensen HomeCare may have

violated the foreclosure consulting provisions of the CFPA including, but not limited to, C.R.S. § 6-1-1104 and C.R.S. § 6-1-1107(e), (f), and (g). There was no contract in writing defining the exact nature of the foreclosure consulting services and the terms of the services, and there was no chance for advance review or opportunity to contact an attorney. *See* C.R.S. § 6-1-1104. Second, the State has a reasonable basis to conclude that Randy Jensen HomeCare violated the equity purchasing provisions of the CFPA including, but not limited to, C.R.S. § 6-1-1111, C.R.S. § 6-1-1112, and C.R.S. § 6-1-1117(4). There was no contract in writing and thus no disclosure of the financial and legal obligations of the parties, terms of any rental agreement, right to cancel, and date and time of possession transfer. *See* C.R.S. § 6-1-1111 through - 1114. Further, state law prohibits an equity purchaser from making untrue or misleading statements of material fact regarding the homeowner's rights and obligations, the nature of documents the homeowner is induced to sign, or other misleading statements regarding the sale of the residence. *See* C.R.S. § 6-1-1117.

This application is necessary to administer the provisions of the CCPA and the CFPA and to determine whether Randy Jensen HomeCare engaged in deceptive trade practices. The subpoena is relevant because it is targeted to learning about Randy Jensen HomeCare's business activities, including: (1) formation and staffing, (2) activities and services, (3) marketing and outreach, (4) financial information, and (5) complaints and investigations. Additionally, the subpoena is not overbroad or unduly burdensome, because it is narrowly tailored to activities related to and

performed by Randy Jensen HomeCare and is limited to the time period of May 1, 2015, to the present. The information requested is essential to determine if there are additional victims and to obtain injunctive relief necessary to prevent future violations of the CCPA.

C. The subpoena should be enforced against Jensen individually.

In addition to enforcing the subpoena against Randy Jensen Homecare, the Court should enforce the subpoena against Jensen individually. Colorado courts have long recognized that business entities must act through their agents. *Genova v. Longs Peak Emergency Physicians, P.C.*, 72 P.3d 454, 462 (Colo. App. 2003) (“As an inanimate entity, a corporation must act through agents.”). Courts have also held corporate officers in contempt for failing to respond to a subpoena directed to a corporation. *See, e.g., United States v. Voss*, 82 F.3d 1521, 1526 (10th Cir. 1996) (“[W]hen a subpoena or order unequivocally directs an organization to produce records, the persons who have knowledge of the court’s action and who ‘fail to take appropriate action within their power’ to comply with the subpoena or order may be held in contempt.”) (quoting *Wilson v. United States*, 221 U.S. 361, 376 (1911)).

Here, the subpoena was directed to Randy Jensen HomeCare, which is defined to include any “any persons acting on behalf of Randy Jensen HomeCare or under the direction, authorization, or control of Randy Jensen HomeCare” Ex. 1-G at 4. Jensen acted on behalf of Randy Jensen HomeCare on numerous occasions. First, he obtained the signature on the warranty deed and recorded it in

the name of Randy Jensen HomeCare. Ex. 1-B. Second, Jensen represented Randy Jensen HomeCare in the litigation in Larimer County. Ex. 2 at 1. Third, Jensen verbally agreed to waive personal service and accept service by email and he responded to the email indicating that he had no responsive documents. Ex. 1 ¶¶ 17-19. The State has no evidence that any other individual controls or directs the activities of Randy Jensen HomeCare.

Accordingly, Jensen has the exclusive ability to cause Randy Jensen HomeCare to respond to the subpoena and produce responsive documents, but has chosen not to. Therefore, Jensen, as representative and agent of Randy Jensen HomeCare, should be individually responsible to comply with the subpoena.

RELIEF REQUESTED

The State respectfully requests that this Court enter an order against Randy Jensen HomeCare and Jensen to:

1. Refrain from engaging in or advertising that they engage in equity purchasing and foreclosure consulting activities until Randy Jensen HomeCare complies with the State's subpoena pursuant to C.R.S. § 6-1-110(1);
2. Produce all documents responsive to the State's subpoena within seven days pursuant to C.R.S. § 6-1-109(1)(b); and
3. Pay the State's reasonable attorneys' fees and costs in connection with this application pursuant to C.R.S. § 6-1-113(4).

Respectfully submitted this 4th day of February, 2019.

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