DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
STATE OF COLORADO *ex rel.* JOHN W. SUTHERS, ATTORNEY GENERAL FOR THE STATE OF COLORADO; and JULIE ANN MEADE, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE, Plaintiffs, v. ARONOWITZ & MECKLENBURG, LLP; XCELERON, LLC; ASSURED TITLE AGENCY LLC; STACEY L. ARONOWITZ; JOEL T. MECKLENBURG; and ROBERT J. ARONOWITZ, Defendants.	▲ **COURT USE ONLY** ▲
JOHN W. SUTHERS, Attorney General ALISSA GARDENSWARTZ, Reg. No. 36126* First Assistant Attorney General ERIK R. NEUSCH, Reg. No. 33146* MEGAN PARIS RUNDLET, Reg. No. 27474* JOHN FEENEY-COYLE, Reg. No. 44970* REBECCA M. TAYLOR, Reg. No. 40645* MARK L. BOEHMER, Reg. No. 40352* LAUREN M. DICKEY, Reg. No. 45773* Assistant Attorneys General Colorado Attorney General's Office Ralph L. Carr Colorado Judicial Center 1300 Broadway Denver, Colorado 80203 Telephone: 720-508-6228 *Counsel of Record	Case No.: Courtroom:

COMPLAINT

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, including individually, the following:

INTRODUCTION

1. This action is the result of the State's extensive two-year civil law enforcement investigation of foreclosure law firms, including Aronowitz & Mecklenburg ("Aronowitz" or "the law firm"), that have performed the vast majority of the roughly 275,000 residential foreclosures in Colorado since 2006. This investigation revealed that these law firms, including Aronowitz, unlawfully exploit the foreclosure process by misrepresenting and inflating the costs they incur for foreclosure-related services to fraudulently obtain tens of 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 systematically and intentionally misrepresent, inflate, and charge unreasonable, unauthorized, unlawful, and deceptive costs for posting foreclosure notices, obtaining title products, preparing documents, and providing other foreclosure-related services. They do this primarily through affiliated vendors, which create invoices for foreclosure services at costs grossly inflated above the actual costs and above what unaffiliated vendors charge for the same services.

3. Defendants get away with this extensive fraud 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.

4. 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. Thus, a homeowner seeking to save his home from foreclosure or a person purchasing a property at 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.

5. The law firm abuses this system, which it knows is devoid of administrative or judicial oversight, to charge whatever costs it can get away with in order to generate significant revenue beyond the maximum allowable fee.

6. For example, in early 2009 when the Colorado legislature began considering a bill to allow for a brief foreclosure deferment that would require posting a notice similar to an eviction notice, Stacey Aronowitz began working with Caren Castle of The Castle Law Group ("Castle"), Aronowitz's largest competitor, on what they could get away with charging. Stacey Aronowitz emailed a foreclosure lawyer in another state that also required a foreclosure posting and asked: "I am curious how much you get away with charging . . . ." She later emailed Caren Castle: "I just wanted our offices to try and get on the same page on what we are charging for all of this." They agreed that Caren Castle would try to seek approval from Fannie Mae, the dominant investor in the foreclosure industry, to charge $125 for this new posting, not the $25 charged for similar eviction postings.

7. Accordingly, these two competitors, who handle 75 percent of Colorado foreclosure filings, coordinated to set the minimum price for posting at $125—an amount unrelated to the actual cost for such postings or the market rate charged by unaffiliated vendors. Once the bill requiring the foreclosure posting passed, Aronowitz and Castle secured financial interests in posting companies and claimed fraudulent and inflated costs of at least $125 per posting. This amount multiplied by tens of thousands of foreclosures resulted in a multimillion-dollar windfall to the posting companies and, directly or indirectly, to the law firm, Stacey Aronowitz, Robert Aronowitz and Joel Mecklenburg (collectively "Aronowitz Defendants") and to Castle.

8. Operating with no checks and unrestrained by market principles by selling foreclosure services to themselves, the Aronowitz Defendants charge around $350 to $750 in unlawful costs per foreclosure by making false, misleading, and deceptive statements of costs to homeowners, servicers, investors, and the public on reinstatements, cures, bids, and invoices, as follows:

- $125 to $150 for each of the two required foreclosure postings for a total of $250 to $275 per foreclosure when the market rate for each posting is $25;

- $250 to $275 for title search reports when the market rate is $100;

- $400 to $500 in "cancellation fees" for foreclosure title commitments ordered by the law firm during the foreclosure;

- $100 for a one-page form document that can be completed in seconds and is already compensated in the allowable foreclosure fee;

- $35 for a tax search/tax certification when the actual cost is $10 or less;

- $25 for a bankruptcy search that costs $3 or less; and

- $10 to $25 for a military status search that is free.

9. Defendants' multimillion-dollar unjust enrichment came at a tremendous expense to the public. Not only does it harm desperate homeowners facing foreclosure and persons buying properties at auction, it reverberates to the public at large, as servicers hiring the law firm pass along these costs to taxpayer-funded investors or insurers. As Fannie Mae informed Aronowitz and other Colorado foreclosure law firms during a 2010 training, its credit losses are taxpayer-funded and every effort should be taken to reduce foreclosure costs because every dollar reduction in costs is significant when multiplied by a large volume of loans.

10. These inflated foreclosure costs also negatively impact housing and loan costs outside the foreclosure industry. Moreover, the law firm's use of affiliated businesses charging inflated costs has adversely affected competition from businesses that could provide foreclosure services at a much lower market rate.

11. The increased cost of foreclosures and negative impact on competition wrought by Aronowitz's and Castle's use of affiliated vendors charging above the market rate for foreclosure services was recently highlighted when Fannie Mae suspended Aronowitz and Castle from handling any Fannie Mae foreclosures. Fannie Mae began referring its files to new law firms using unaffiliated vendors, which provide postings at $25, not $125, and title searches at $85 to $105, not $275. This development has already significantly reduced the costs per foreclosure. These unaffiliated vendors—which were effectively cut out of the foreclosure market by Aronowitz's and Castle's affiliated vendors—have since substantially increased their volume of work by providing services to new law firms at actual market prices.

12. Defendants' conduct violates the Colorado Consumer Protection Act, the Colorado Antitrust Act of 1992, and the Colorado Fair Debt Collection Practices Act and harms homeowners and the public.

LEGAL AUTHORITY AND PARTIES

13. The State, pursuant to its law enforcement authority under the Colorado Consumer Protection Act, §§ 6-1-101–115, C.R.S. (2013) (CCPA), the Colorado Antitrust Act of 1992, §§ 6-4-101-122, C.R.S. (2013) (Colorado Antitrust

Act), and the Colorado Fair Debt Collection Practices Act, §§ 12-14-101–137, C.R.S. (2013) (CFDCPA), 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.

14. 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 *Western Food Plan, Inc. v. Dist. Court*, 598 P.2d 1038, 1041 (Colo. 1979)).

15. 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.

16. The CFDCPA 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).

17. With the Colorado Antitrust Act, the Colorado legislature has found and determined that competition is fundamental to the free market system and that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, and the highest quality commodities and services. C.R.S. § 6-4-102.

18. 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. He is authorized under C.R.S. § 6-4-111(1) to enforce the Colorado Antitrust Act, obtain civil penalties under C.R.S. § 6-4-112(1), and recover costs and attorney fees under C.R.S. § 6-4-111(4).

19. 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.

20. Defendant Aronowitz & Mecklenburg LLP ("Aronowitz") is a Colorado limited liability partnership with a principal place of business at 1199 Bannock Street, Denver, Colorado 80204.

21. Defendant Xceleron LLC ("Xceleron") is a Colorado limited liability company with a principal place of business at 1199 Bannock Street, Denver, Colorado 80204.

22. Defendant Assured Title Agency LLC ("Assured") is a Colorado limited liability company with a principal place of business at 1900 16th Street, Suite 950, Denver, Colorado 80202.

23. Defendant Stacey L. Aronowitz is an individual with a principal business address at 1199 Bannock Street, Denver, Colorado 80204. She has engaged in or caused another to engage in a deceptive trade practice. She is personally liable under the CCPA, the Colorado Antitrust Act, and the CFDCPA for the conduct of the law firm, Xceleron and Assured by approving, directing, participating, or cooperating in their conduct. Stacey Aronowitz 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.

24. Defendant Joel T. Mecklenburg is an individual with a principal business address at 1199 Bannock Street, Denver, Colorado 80204. He has engaged in or caused another to engage in a deceptive trade practice. He is personally liable under the CCPA, the Colorado Antitrust Act, and the CFDCPA for the conduct of the law firm, Xceleron and Assured by approving, directing, participating, or cooperating in their conduct. Joel Mecklenburg 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.

25. Defendant Robert J. Aronowitz is an individual with a principal business address at 1199 Bannock Street, Denver, Colorado 80204. He has engaged in or caused another to engage in a deceptive trade practice. He is personally liable under the CCPA, the Colorado Antitrust Act, and the CFDCPA for the conduct of the law firm, Xceleron and Assured, by approving, directing, participating, or cooperating in their conduct. Robert Aronowitz 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

26. This Court has jurisdiction to enforce the CCPA in actions by the Attorney General under §§ 6-1-103 and 6-1-110; the Antitrust Act under § 6-4-109; and the CFDCPA under § 12-14-135.

27. 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.

28. Under Colorado Antitrust Act § 6-4-109, venue is proper in the City and County of Denver because portions of the transactions involving the antitrust violations occurred in the City and County of Denver

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

TRADE AND COMMERCE

30. Defendants have transacted business in the state of Colorado. Defendants' unlawful activities alleged in this Complaint have occurred in and have had a substantial effect upon both intrastate and interstate commerce.

RELEVANT MARKETS-ANTITRUST CLAIM

31. For purposes of the antitrust violations alleged herein, the relevant product market is the market for foreclosure postings.

32. For purposes of the antitrust violations alleged herein, the relevant geographic market is the state of Colorado.

PUBLIC INTEREST

33. Through the deceptive trade practices of their businesses, vocations, or occupations, Defendants have defrauded tens of thousands of Colorado homeowners and members of 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 taxpayer-funded investors and insurers.

34. The deceptive trade practices have injured legitimate businesses because the law firm created affiliated businesses to provide foreclosure-related services at grossly inflated costs and then directed all, or substantially all, its foreclosure work to the law firm's affiliated businesses. This practice injured

competitors and destroyed or substantially lessened competition.

35. Defendants' conspiracy to restrain free and open competition in the provision of certain foreclosure services has corrupted our free market system to the detriment of competitors, consumers, and the public.

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

GENERAL ALLEGATIONS

I. INDUSTRY OVERVIEW

A. Residential Foreclosure Process in Colorado

37. 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.

38. 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 the fees and costs the law firm claims it incurred 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 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.

39. 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.

40. 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 that it charges for any foreclosure-related services.

41. 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

42. 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.

43. 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, currently $1,225 or $1,250, 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. In setting this maximum allowable fee, the investors 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.

44. 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.

45. 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

46. 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.

47. 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.

48. 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

49. Despite agreeing to perform foreclosures for a maximum allowable fee per file, the Aronowitz Defendants viewed this fee as insufficient. Accordingly, they devised a scheme to circumvent the maximum allowable fee by inflating foreclosure costs to make millions above and beyond the maximum allowable fee.

50. Specifically, the Aronowitz Defendants obtained unjust enrichment by (1) using affiliated vendors that they owned or controlled, which generated invoices containing fraudulently inflated costs for foreclosure services like postings and title products; and (2) claiming and inflating costs for services that were already compensated by the maximum allowable fee as separate and reimbursable.

51. Because Aronowitz has performed more than 50,000 foreclosures in Colorado since 2006, having its affiliated vendors perform foreclosure-related services at artificially high rates unrelated to its actual costs generated millions in profit for the Aronowitz Defendants. It also increased foreclosure and housing costs for the public and eliminated fair market competition.

52. Aronowitz's servicer clients did not verify whether the costs it charged for foreclosure services performed by affiliated vendors were related to 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, but not the actual cost incurred by the affiliated vendor or whether those charges were competitive. This superficial inquiry allowed the law firm to continue its unlawful conduct undetected because the Aronowitz Defendants controlled the affiliated vendors and directed their invoicing.

53. By insuring that its largest competitor, Castle, was charging similar costs for services, such as postings, Aronowitz facilitated the appearance to the servicers that the costs were competitive and the market rate.

54. The Aronowitz Defendants also fraudulently obtained additional compensation by billing for attorney work already included in the maximum

allowable fee as a separate cost or as part of an existing cost. For example, as discussed more fully below, the law firm charged $100 to prepare a statement of qualified holder—a form document taking seconds to prepare with no third-party cost. To avoid detection, the law firm simply invoiced this $100 as a "cost" and fraudulently earned $100 more per foreclosure file.

55. 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 got away with charges that were over and above the maximum allowable fee and greatly inflated above the actual costs.

56. As set forth in detail below, the Aronowitz Defendants intentionally circumvent the maximum allowable fee by making false, misleading, and deceptive statements about the actual costs they incur in processing a foreclosure to obtain millions of dollars in unjust enrichment, either through manipulating the invoicing of an affiliated entity or through misrepresentations of fees as costs.

III. THE FORECLOSURE POSTING SCHEME

A. The First Foreclosure Posting: Notice of Deferment

57. 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 provided 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.

58. 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.

59. Although this new law required that the law firm simply post a form notice and then sign and file a form affidavit with the public trustee confirming the posting—routine work similar to eviction postings—the Aronowitz Defendants immediately capitalized on the posting to gouge borrowers, investors/insurers, and servicers by designing and implementing a scheme to charge a minimum of $125 per posting instead of the $25 that unaffiliated companies were charging for eviction and deferment postings.

60. As a result, unaffiliated posting companies were largely shut out of the foreclosure posting business when Aronowitz and Castle, the two largest foreclosure firms in Colorado, formed or invested in their own affiliated posting vendors to do this work for a minimum of $125, and directed all the law firms' postings to their respective affiliated vendors.

B. Planning the Scheme

61. Realizing early in 2009 that HB 1276 was likely to pass, Aronowitz and Castle were already planning to make as much money as possible off the new foreclosure posting.

62. Aronowitz and Castle knew that they could not invoice for any legal work created by the new posting (e.g., contacting the posting company and filing the affidavit of service confirming the posting) as a "fee" because the maximum allowable fee already provided compensation for this work.

63. For example, Fannie Mae's guidelines state that the maximum allowable fee includes "[e]xecuting all steps necessary to obtain service of process on all persons entitled to notice, including review of process server affidavits and referral and tracking of published notices," and "[p]ublishing and posting the requisite notices as required by local foreclosure law."

64. Rather than seek approval from Fannie Mae or other investors for an increase in the maximum allowable fee for any legal work created by HB 1276, the law firms concealed additional revenue above the maximum allowable fee through inflated posting costs charged by "third-party vendors" that they controlled and from which they benefitted.

65. The Aronowitz Defendants created, and Castle invested in, affiliated entities to post the notices and to manufacture invoices for at least $125 to appear as actual "costs" of the posting charged to the law firm by the "third-party vendors."

66. These concerted steps taken by Aronowitz and Castle correlated with an email Stacey Aronowitz sent a Maryland foreclosure lawyer on March 6, 2009—the day HB 1276 passed the house chamber on the final reading, asking: "Question for you—how much do you all charge for your 'posting' in whatever stateof [sic] yours that changed the rules on that? CO is switching to this model and I am curious how much you get away with charging . . . . . ."

67. This lawyer responded that his state's law requires the law firm to make two good faith attempts at *personal service* of the foreclosure complaint, and only if personal service is unsuccessful should the law firm post it on the door and

mail it by regular mail and certified mail. He went on to state that:

> [M]ost of our work is done by a company that we own. That company charges us $75 per defendant, per address to complete service. If the new CO law just requires posting without any attempts at personal service, I think a reasonable charge would be less than that.

68. The lawyer continued, "In any event, the trick is to form a new posting company, owned by you and your dad (I'd leave Joel out for obvious reasons) and hire one good person to manage the company and hire his driver/posters. He or she negotiates the best flat fee deal he can with people around the state to post properties, and the company marks up that charge from there for a tidy profit and bills your law firm."

69. Likewise, Caren Castle looked at other states like California with a posting requirement, *not* to determine a reasonable or market rate, but rather to determine what the law firms could get away with charging.

C. Conspiring to Fix the Price of Foreclosure Postings

70. Central to the posting scheme were competitors Aronowitz and Castle—which dominate the foreclosure industry in Colorado—agreeing to set a minimum amount for the new posting that each firm's affiliated company charged.

71. Four months before HB 1276 passed, Castle began laying the groundwork for the posting cost and sent a memo to its servicer clients about HB 1276 being introduced in the legislature:

> The Bill will require the posting of a notice in the specified form within 15 days of delivering a complete foreclosure package to the public trustee. *We worked hard to avoid the requirement of personal service which would have been costly to you*, as well as we could not have insured that service would have been completed in the 15 day period. . . . *Our firm is already working to be able [to] ensure this requirement can be met on your behalf*.

(Emphasis added).

72. In a March 24, 2009 email, Stacey Aronowitz sent Caren Castle the following message with the subject line titled "HB 1276," which Caren Castle subsequently forwarded to Larry Castle, asking, "How do you want me to handle?"

> So I just wanted to follow up on our brief discussion about the posting/affidavits for this new bill.
>
> …
>
> *I just wanted our offices to try and get on the same page on what we are charging for all of this….*
>
> Let me know what you all are thinking of doing…..I will be in the office all week if its [sic] easier to talk about this over the phone.

(Emphasis added).

73. Caren Castle and Stacey Aronowitz had at least one conversation in which they agreed that Caren Castle, who had the most industry influence, would try to seek approval from Fannie Mae to obtain reimbursement of $125 as a third-party vendor's cost to post the foreclosure deferment notice.

74. In an April 28, 2009 email, Stacey Aronowitz wrote to Caren Castle:

> *Overall- I have no objection to our office charging $125* in total for the posting and certification to be sent (and arguably dealing with all the tracking that will be going on w/files [sic] that do in fact go on this 90 day time out).
>
> *Here is my question for you- its [sic] more to how our clients would look at this from a billing perspective.*
>
> *When you are talking about this $125 flat amount, are you saying that you would bill it as a flat 125 cost or would you separate it out into the cost for the posting and the fee for the certification/affidavit*? Just to put some numbers to this- lets [sic] say Kathleen is charging you 75 across the board for every posting in the state, leaving $50 for the certification. Technically since this certification is something that has to be signed by our offices, I would think that this is something that should be billed as a fee vs. cost. Where this would come into play I think is at least with Chase, and to a lesser extent, Countrywide, in our financial audits. Just from our experience, if we have

> an invoice from Kathleen saying the posting was 75, we are going to have issues on an audit explaining why we are including an additional 50 dollar amount that does not have an invoice in the "cost" section. I may be catastrophizing this, but if you have a solution to this- I would love to know what that would be!
>
> Maybe you guys were thinking of structuring this differently than what I was thinking, so if so, please feel free to fill me in. Also I know you have a lot of experience in other states, so you may have a better perspective on this that I am missing ;-)

(Emphasis added).

75. Aronowitz and Castle overcame any problematic billing issues, as noted above, by having an affiliated posting entity create an invoice with a minimum cost of $125, regardless of the actual cost or market rate, and directing the profits to the law firms' principals.

76. Once Aronowitz and Castle agreed to charge $125 for the deferment posting, Caren Castle allegedly informed Fannie Mae that the posting required by HB 1276 was similar to a California posting for which companies charged around $125, which was an overt misrepresentation, as the California charge encompasses services beyond a single posting at the foreclosed property.

77. Neither Aronowitz nor Castle received written approval from Fannie Mae to charge $125 for the posting. The lawyer at Fannie Mae to whom Caren Castle allegedly spoke about the posting had no recollection of approving the cost; he only vaguely recalled a conversation with Caren Castle in which she mentioned the posting rate in California.

78. Fannie Mae did no analysis of the claimed $125 cost, expecting that any vendor cost would comply with investor guidelines and the law.

79. Caren Castle then left Stacey Aronowitz a voice mail claiming that Fannie Mae approved the $125 cost.

80. On May 26, 2009, Stacey Aronowitz sent Caren Castle an email after the deferment bill passed the legislature and was awaiting the governor's signature:

> About FNMA [Fannie Mae] approving the $125.00 for the posting. Nice work!

> …
>
> Thanks again for talking to FNMA .... now all we need is for this bill to finally pass!!

81. Stacey Aronowitz did nothing to confirm whether Fannie Mae approved the cost or, if such approval were granted, to inquire as to what Caren Castle represented the cost would include, i.e., whether it would include $100 or more to "compensate" the law firm for any additional work caused by HB 1276.

82. Stacey Aronowitz claimed that her father Robert Aronowitz told her to "do whatever Caren [Castle] does."

83. Though fierce competitors for the market share of foreclosures, Aronowitz and Castle knew that the posting scheme would not work unless both firms agreed on the amount to charge. For example, Aronowitz made no attempt to compete for Castle's clients by undercutting the inflated $125 rate and offering a more cost-effective posting rate in order to attract more foreclosure referrals. To do so might have alerted servicers to the problems with the artificially inflated rate. In fact, Aronowitz charged *more* than Castle for the foreclosure postings initially, charging $150 per posting instead of $125.

84. Because Aronowitz and Castle account for approximately 75% of the residential foreclosures in Colorado and consequently, through their affiliated entities, 75% or more of the market for foreclosure postings, one firm could not have gotten away with charging at least $125 for foreclosure postings without the other firm agreeing to charge the same.

85. Stacey Aronowitz testified the Aronowitz Defendants did not consider charging a lower price for the postings than its biggest competitor, Castle, because "clients didn't care." She immediately corrected herself to state, "clients weren't focused on price competition."

D. Representations to Servicers

86. After HB 1276 was signed into law, Castle initiated two phone conferences with numerous servicers primarily to explain the deferment process, and secondarily to convey the new cost.

87. In anticipation of these conferences, Castle prepared and emailed a memo to the servicers dated June 2, 2009, regarding the new legislation. It stated:

> [T]he new legislation will require the posting of a specified form notice within 15 days of delivering a

> complete foreclosure package to the public trustee. In order to ensure compliance with this requirement we have worked with a 3rd party vendor who will be able to complete this new posting requirement throughout the State. The new additional cost for the posting will be a $125.00.

88. It continued, "We have also contacted the GSEs [government-sponsored enterprises] with respect to approval for the additional new cost associated with the posting. Fannie Mae has approved the cost of $125.00 based upon the costs that are currently approved for posting in other states."

89. Castle prepared and emailed a similar memo to servicer clients dated July 8, 2009, to represent: "We have worked with a 3rd party vendor who will be able to complete this new posting requirement throughout the State. . . . The new additional cost for the posting will be a $125.00. We have also contacted the GSEs with respect to approval for the additional new cost associated with the posting. FannieMae and FreddieMac has [sic] approved the cost of $125.00."

90. The Aronowitz Defendants allowed Caren Castle to convey this new "cost" to the servicers, knowing servicers would rely on her representation without verification of whether Fannie Mae or Freddie Mac actually approved it or whether it was reasonable.

E. Concealing $100 or More in Unreasonable Fees in Posting Costs

91. Neither the Aronowitz Defendants nor Castle disclosed to the investors or servicers that the market rate charged by unaffiliated posting companies for the foreclosure deferment notice was around $25—the same amount charged for eviction postings.

92. Neither the Aronowitz Defendants nor Castle disclosed to the investors or servicers that they inflated the posting cost to generate additional revenue for the law firms, the posting companies, and their principals.

93. Fannie Mae did not "approve" the $125 for posting. At best, Caren Castle informed Fannie Mae that third-party vendors would charge the law firm $125 for the posting requirement. The Aronowitz Defendants either misrepresented or failed to disclose information to the investors and servicers that they were going to add $100 or more to the posting charge that should have been $25, either as compensation to the law firm or to the posting company in which they had a financial interest.

94. While Aronowitz and Castle had already tacked $100 or more to the posting cost, allegedly for work related to the posting that was already covered by the maximum allowable fee, i.e., contacting the posting company and filing the affidavit of service with the public trustee, Aronowitz continued to represent to investors that it was not compensated for this work.

95. In a survey prepared by the Aronowitz Defendants in 2012 for Freddie Mac's review of whether to increase the allowable foreclosure fee, they stated that the law firm incurs an additional $125 in fees for HB 1276, explaining that "this would be for reviewing the file to see if it qualifies for 1276 and then provide the PT a statement regarding 1276 along with our office executing an affidavit that the work was complete."

96. When general counsel for Assured asked Stacey Aronowitz in January 2010, "Is there any way to quantify the cost to the lender for the foreclosure deferment procedure, a cost that largely goes to waste," she responded, "Yeah—the cost is $150.00 which covers the posting and the administrative work involved (getting an affidavit, getting it to the PT, etc.) . . . . ."

97. Additionally, in response to an inquiry by a HUD-approved counselor of why the posting cost so much, Stacey Aronowitz's instructed her staff to, "just tell him that it involves not only the costs to actually post, but also the law firms [sic] time in dealing with the affidavits and sending them to the Court or PT."

98. Representing that the cost to post a deferment notice was $125 or $150 is deceptive not only because the actual cost and the market rate by unaffiliated posting companies is $25, but because $100 of the $125 is allegedly designed to compensate the law firms and the principals. This amount is both disproportionate to the work performed and already compensated by the maximum allowable fee.

F. The Second Posting: Notice of Rule 120 Hearing

99. In March 2010, when the Colorado legislature was making minor amendments to the foreclosure deferment statute enacted the previous year, it inexplicably added a second, unrelated posting of a notice of Rule 120 hearing—the court proceeding authorizing the sale in every foreclosure. Previously, the notice of Rule 120 hearing was mailed to the borrower and interested parties.

100. Although the second posting is nearly identical to an eviction posting that costs $25 to $30, Aronowitz and Castle charged $125 for the Rule 120 posting—the same amount they set for the foreclosure deferment posting.

101. Aronowitz and Castle knew servicers would not question the $125 cost because the law firms had already succeeded in getting the first posting cost through, albeit under false representations, and that the servicers would merely rely upon whatever the law firms claimed a vendor charged for the cost.

102. Neither Aronowitz nor Castle obtained Fannie Mae's approval to charge $125 for the Rule 120 posting or explained why the additional posting would cost $125. They simply used the price agreed upon in 2009 for the first posting, and began charging it for the second posting.

103. When an Aronowitz billing manager asked Stacey Aronowitz by email dated May 7, 2010, how the firm came up with the $125 charge for the Rule 120 posting, Stacey Aronowitz wrote: "Cause 125 is what Castle is charging."

104. Beginning May 5, 2010 with HB 1240, nearly all foreclosures in Colorado would require two postings, adding $200 to $225 in unreasonable and inflated charges to each foreclosure in the roughly 28,000 foreclosures performed by Aronowitz since that time.

G. Market Rate of Foreclosure Postings

105. Since 2009, the fair market rate for foreclosure deferment and Rule 120 postings has been around $25 per posting in counties containing the vast majority of foreclosures in the state. For outer and distant counties, the fair market rate for postings has been around $40.

106. Aronowitz and Castle knew the fair market rate for postings because they both used and continue to use posting companies to post similar eviction notices at $25 to $30 per posting. The companies providing eviction postings were willing and able to post these similar foreclosure notices for the same price, but were largely shut out of competition when Aronowitz and Castle, which accounted for 75 percent of foreclosures, used their affiliated posting companies at a minimum of $125 per notice. These unaffiliated companies were relegated to distant counties, difficult postings, and smaller foreclosure firms that did not have affiliated vendors.

107. In fact, Xceleron contracted with an unaffiliated posting company for distant county postings, but then changed that company's $40 invoice to $150 or $125 to send to Aronowitz for reimbursement by borrowers, servicers, and investors. This unaffiliated posting company also charges $25 for metro area foreclosure postings but was not used by Aronowitz for this service.

H. Turning Posting into a Lucrative and Unlawful Profit Center

108. For most foreclosure postings, Xceleron pays its process servers $7 to $10, plus mileage, per posting, and then turns around to claim a cost of $125 that must be paid without challenge or inquiry.

109. Aronowitz hired one employee to handle everything related to the deferment posting, including handling the occasional borrowers who qualified and participated in the deferment program—less than three percent—and she is paid $15.30 an hour. Combining the payment to the process servers of $7 per posting, plus mileage, with this employee's salary to handle all the law firm's additional work means that substantially all Xceleron's multi-million dollar revenue was net profit and cost the law firm approximately $30,000 per year for this additional work.

110. Indeed, financial statements from Xceleron show that it distributed nearly $6 million to its owners – Stacey Aronowitz, Robert Aronowitz, and Joel Mecklenburg – since being formed in 2009.

111. The only reason that Aronowitz and Castle, and their affiliated vendors, could succeed in charging at least $125 per posting, while unaffiliated vendors charged around $25, is that their affiliated vendors were not restrained by market principles. They were able to sell their posting services to themselves, and used affiliated vendors to generate inflated invoices for reimbursement from borrowers, servicers, investors, and taxpayers.

112. As the two dominant firms and largest competitors in the foreclosure market, Aronowitz and Castle's contract, combination, and conspiracy in restraint of trade, in coordination with their affiliated vendors, dramatically increased the cost of such services to homeowners, investors, servicers, and taxpayers, depressed and stifled competition from unaffiliated vendors charging reasonable and true market rate costs, and created the false impression to servicers and investors that $125 was an actual, reasonable and market rate charge for this service.

IV. THE USE OF TITLE PRODUCTS TO OBTAIN UNJUST ENRICHMENT

A. Background

113. 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 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.

114. 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.

115. Many title search reports are straightforward, and reveal only the deed of trust in foreclosure and possibly one or two subsequent liens recorded prior to the foreclosure filing.

116. 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 liens are recorded before the foreclosure and one before sale to ensure no IRS tax liens are filed.

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

B. Overcharges on Fannie Mae Files for Title Search Reports

<u>Abuse of Fannie Mae's Maximum Allowable Title Search Cost</u>

118. In 2007, Fannie Mae realized that foreclosure law firms were abusing the title process by obtaining expensive and unnecessary title products, such as title commitments, for a foreclosure. Fannie Mae terminated this practice by imposing a cap on the amount spent for title products and by requiring the firms to obtain an uninsured title search report when it was less expensive than an insured product.

119. The Fannie Mae Servicing Guide requires that "title costs to confirm title and identify parties entitled to notice of the foreclosure must be kept at a minimum." Fannie Mae explained that an uninsured title search report reduces title expenses, minimizes the costs to borrowers reinstating their loans, minimizes credit losses, and reduces the cost of home ownership.

120. Fannie Mae determined that because it was exceedingly rare to

encounter post-foreclosure problems resulting from defective title searches, obtaining an insured title product during the foreclosure was largely unnecessary and simply resulted in additional revenue to the foreclosure law firms.

121. Fannie Mae knew that it was improper for law firms to use title fees to substitute for a perceived lack of compensation from the maximum allowable fee and attempted to curtail the practice.

122. 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 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.

123. Despite Fannie Mae's best efforts, the Aronowitz Defendants obtained millions in unjust enrichment above the allowable foreclosure fee first by marking up an unaffiliated company's title search report cost, and then by using Assured, an affiliated company, to significantly inflate the cost of a title search report on Fannie Mae files far above the market rate for those search reports.

124. From 2008 to 2011, Aronowitz obtained two-owner title search reports from unaffiliated title search companies in Colorado, who would charge Aronowitz anywhere from $100 to $125 for the report. 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.

125. 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, according to Fannie Mae, it expected would be lower than the maximum cost in many instances.

126. Accordingly, Aronowitz's actual cost in obtaining a title search was $100 to $125 per file, and that is the cost it should have invoiced to servicers and ultimately, to Fannie Mae.

127. However, because Fannie Mae had set a maximum allowable cost for title products at $275, Aronowitz fraudulently invoiced its clients $275 for the same search for which it paid $100 to $125, knowing it would go undetected.

128. Aronowitz's $275 claimed cost was neither the actual cost of the report nor the market rate; rather, it was what the law firm believed it could get away with charging, because Fannie Mae capped the *maximum* cost for title searches at

that amount. The Aronowitz Defendants abused this maximum cost, knowing that they could get away with charging $275 for every foreclosure regardless of the complexity of the title search or its actual cost.

129. Aronowitz did not add any value to the search report justifying an increased charge to its clients for these reports. While the Aronowitz Defendants claim that the additional charge is related to the review at the law firm of the report, Fannie Mae guidelines provide that review of title and exceptions is covered by the maximum allowable fee.

130. Fannie Mae's agreement with the law firms states: "Review of the title report is included in the allowable legal fee for the jurisdiction and should not be added to the title cost." Accordingly, any review of the title report by the law firm is already compensated by the maximum allowable fee.

131. The Aronowitz Defendants knew that title review and examination were included in the allowable fee. For example, in a 2012 survey response to an investor, Freddie Mac, Aronowitz wrote that its examination and review of the title report is part of filing the necessary documents in a foreclosure, which is covered by the allowable fee. Aronowitz also noted in a survey that it spends the following time on average for each task: Ordering Title – 2 min; Receiving Title – 5 min; Ordering updates – 2 min; Receiving and reviewing Updates – 2 min two minutes. Aronowitz claimed another ten minutes for an attorney review of title.

132. When Fannie Mae increased the maximum allowable cost for title searches from $250 to $275 for foreclosures referred after August 19, 2009, Stacey Aronowitz immediately wondered if Aronowitz should bill the additional amount on existing files, even though it was still only a maximum cap and needed to be an actual and reasonable cost and even though the cost of the title search from the unaffiliated vendor did not change:

> "Looks like we got a slight increase in the title for FNMA. Not sure if we should risk charging this on existing files. . . . or just keep it clean and say we can charge this on referrals we received on 8/19 forward. . . . . The title companies that are attached are just 'possibilities' of people we can use . . . we can still keep doing what we have been doing. . . . No issue on that front."

133. In a March 30, 2012 Fannie Mae audit, Aronowitz misrepresented to Fannie Mae that "[o]ur costs are billed only after they are incurred and if the maximum costs have not been incurred, we would never bill for the maximum cost."

134. In 2011, Aronowitz began using Assured for its title searches. As with Xceleron, Assured Title was owned by Robert Aronowitz, Stacey Aronowitz and Joel Mecklenburg.

135. When Assured expanded to provide Aronowitz with title search reports, Aronowitz continued to invoice its clients $275 per search report. However, Assured invoiced Aronowitz monthly for costs related to the Assured employees that generated search reports rather than generate individual invoices. Dividing the monthly invoiced amount by the number of searches Assured provided to Aronowitz in a month results in the per search cost being closer to $130 rather than $275.

136. Between August 19, 2009 and January 31, 2013, Aronowitz always charged the maximum cost of $275 for title search reports for Fannie Mae files, because that is what Fannie Mae would approve, not because the actual cost of the title search was $275.

137. In January 2013, Assured began generating individual invoices per title search for $250. This shift in pricing and procedure caused some confusion at Aronowitz. On February 7, 2013, Liz Tatem, the billing department manager for Aronowitz, sent Joel Mecklenburg an email inquiring why Assured would be entering $250 for title searches in their document tracking system when, "FNMA searches are $275 and that is what you advised me to continue invoicing for FNMA correct? We will need backup for the $275 if we continue to invoice this amount." Mecklenburg wrote back to Tatem advising to "just bill what is on the invoice" despite the Fannie allowable being higher.

138. In an investigative hearing by the State, Mecklenburg testified that they changed their invoicing in response to the State's investigation.

139. Mecklenburg also testified that the reason Assured charges $250 for its title searches when the unaffiliated vendors Aronowitz used had charged $100 was because the Assured product was far superior. He also testified that Aronowitz conducted the same review of the Assured reports as it did of the unaffiliated title companies' reports, thus begging the question of why Aronowitz was justified in marking up the unaffiliated search reports to $275, and why Assured charges $250 instead of the market rate charged by unaffiliated title search companies.

C. Title Commitment Cancellation Scheme: Non-Fannie Mae Files

140. When servicers or investors do not specify which title product should be obtained in a foreclosure, Aronowitz usually acquires a much more expensive "foreclosure title commitment" through in its role as a title agent. This lucrative practice results in a minimum of $400 to $500 per foreclosure in revenue, whether as a cancellation fee or some other fee, if the homeowner stops the foreclosure for any reason, or in excess of $900 per foreclosure in revenue as a policy premium, for an owner's policy, if the foreclosure proceeds to auction.

141. A foreclosure commitment converts into an insured owner's policy if the foreclosed property goes to sale and certain requirements are met. A foreclosure 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 with preparing 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's title agent.

142. If a foreclosed property goes to sale, Aronowitz, who acts as a title agent, charges the full premium amount for an owner's policy, which is filed as a rate of insurance with the Colorado Division of Insurance by the underwriter. Typically the filed rate for an owner's policy is between $900 and $1,400, which depends on the amount to be insured. As the title agent, Aronowitz retains 85 to 90 percent of the premium and only remits 10 to 15 percent to the underwriter.

143. If a foreclosed property does not go to sale and thus the commitment cannot turn into an owner's policy, Aronowitz charges a fee of $400 to $500, despite the fact that such fees are not required and do not reflect the actual work performed.

144. An underwriter must file its insurance rates with the Colorado Division of Insurance. Agents are then required to charge these filed rates, which are the insurance premiums, in issuing title products insured by the underwriter. By contrast, an underwriter's schedule of fees, including a foreclosure commitment cancellation fee or similar fee, is not an insured product or rate. The agent is therefore free to file a different fee than the underwriter.

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

146. As described above, Fannie Mae recognized that obtaining a title commitment during a foreclosure results in little benefit to the investor but enormous benefit to the law firm/title agent. Other investors and servicers have not yet followed suit to limit the law firm's ability to obtain title commitments during the foreclosure, allowing the Aronowitz Defendants to abuse this process by routinely preparing a title commitment for many non-Fannie Mae loan types immediately upon receipt of the foreclosure referral from the servicer.

147. Because the $400 or $500 fee for a cancelled foreclosure commitment obtained during a foreclosure is not a filed rate with the Colorado Division of Insurance, Aronowitz retains 100 percent of this fee. By contrast, the policy premium for an owner's policy is a filed rate and Aronowitz retains 85 to 90 percent of the premium. In either scenario, obtaining a title commitment on a foreclosure results in significant financial benefit to Aronowitz. However, for the homeowner who stops the foreclosure, it results in an unreasonable and excessive charge.

148. Regardless of whether a title commitment during the foreclosure is necessary or advisable, charging homeowners $400 to $500 for stopping a foreclosure for a cure or loan modification is deceptive and unreasonable given the actual cost incurred in preparing a commitment.

149. By converting the $100 title search report, which comprises most of the work, into a commitment, Aronowitz immediately claims a "cost" of $400 to $500.

150. Aronowitz also routinely claims on bid statements presented to the public the policy premium for an owner's policy, which must be paid by the person bidding on the property whether or not she needs or uses the policy.

151. Yet another stark illustration of the vastly higher costs charged for foreclosure versus non-foreclosure services is the fact that title agents preparing commitments for non-foreclosure transactions generally do not charge a cancellation fee at all, even though it is a similar product.

152. As an example, at least one underwriter in Colorado 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.

153. This discrepancy is the result of foreclosure law firm/agents having influence over the underwriters, which rely on agents for business.

154. Nevertheless, that the underwriter may allow for a cancellation or

other special foreclosure-related commitment fee does not mean the law firm acting as a title agent has to charge it—particularly when the cost is disproportionate to amount of work performed and is ultimately borne by the public.

V. MISREPRESENTATION OF FEES AS COSTS: STATEMENT OF QUALIFIED HOLDER AND OTHER MISCELLANEOUS SERVICES

155. Aronowitz also routinely charged as a "cost" $100, for the law firm's preparation of a simple document—the statement of qualified holder," which is filed in nearly all foreclosures and is already compensated by the maximum allowable fee. The law firm prepares this document simply by checking a few boxes on a form statement. Because it is the law firm that completes this work and there is no associated cost to it, any charge for a statement of qualified holder constitutes work that is covered by the maximum allowable fee.

156. However, knowing that charging a separate fee for this work would be prohibited by the maximum allowable fee and, more importantly, detected and potentially rejected by the automated billing system, Aronowitz misrepresented this charge of $100 as a "cost," and concealed it in its client invoices so that it would go undetected. This amount was then paid by borrowers, the public, and investors.

157. Thus, where the maximum allowable fee for the foreclosure by the investor was $875, Aronowitz would conceal another $100 as a cost to unilaterally increase the maximum allowable fee to $975.

158. There is no actual cost for a statement of qualified holder. Rather, it is one of a handful of documents the law firm uses to initiate a routine foreclosure.

159. The statute allowing for use of the statement of qualified holder went into effect January 1, 2008. It was intended to make foreclosures more cost effective by eliminating the need for original or certified copies of the loan documents, instead permitting the attorney to sign and file with the public trustee a simple document stating that the loan documents are true and correct copies.

160. Nevertheless, Aronowitz falsely, improperly, and deceptively charged a fee for this routine service above the maximum allowable fee, but concealed it by labeling it as a "cost" when submitting invoices to servicers, which are in turn paid by borrowers, investors, and insurers.

161. Aronowitz concealed this additional attorney fee income by labeling it "court costs: certified document" or "service costs: special process" and describing it as a "note certification."

162. In an October 4, 2010 email, an Aronowitz billing manager wrote to the firm: "We are no longer invoicing for CCDOT Certification or CCDOT Filing costs. We will however still invoice for the Note Certification. . . ."

163. When one servicer questioned an Aronowitz employee about the $100 charge, inquired why another law firm does not charge for this service, and offered to have the servicer do the certification itself to avoid this charge, Stacey Aronowitz shot back to her employee, "Just tell them that for now we won't charge them or something . . . whatever."

164. Like other "costs," Aronowitz charged for the statement of qualified holder as long as they could get away with it.

165. Aronowitz similarly charges inflated amounts for other services for which it incurred minimal costs.

166. Aronowitz would obtain a tax certificate, which is a county document showing the status of property taxes due and owing, from an unaffiliated third party either for around $10 or as part of a complete title search package for around $100. The law firm would then charge the borrower, servicer, and investor $35 for what it paid $10, or was already included in the title search package, despite there being no additional cost of the tax certificate and any possible review of the tax certificate, if even necessary, was attorney work intended to be compensated by the maximum allowable attorney fee.

167. Moreover, beginning around 2011 when Aronowitz stopped obtaining title searches from third parties and instead performed them in-house, it stopped obtaining tax certificates altogether. Instead, it obtained basic tax information from a third party unaffiliated with the county for about $5. But it still charged the borrower, servicer, and investor $35.

168. Aronowitz similarly charges $25 for a simple PACER search on the federal courts database to identify whether a borrower in foreclosure has filed for bankruptcy, though the actual cost or market rate of this service is $3 or less.

169. Aronowitz also frequently charges $10 to $25 to perform a search of the military database—available for free on the internet—to determine whether a borrower was in the military, though there is no actual cost.

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)

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

171. 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. posting foreclosure deferment notices;

b. posting Rule 120 notices of hearing;

c. title searches;

d. title commitment cancellation fees;

e. statements of qualified holder; and

f. other foreclosure-related charges.

172. 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, and obtained unjust enrichment as a result.

SECOND CLAIM FOR RELIEF

(Horizontal conspiracy to fix, raise, stabilize, and control prices for foreclosure-related postings in violation of Colorado's Antitrust Act , C.R.S. §§ 6-4-101-122)
(Defendants Aronowitz, Stacey Aronowitz, Joel Mecklenburg, Robert Aronowitz, and Xceleron LLC)

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

174. As set forth in detail above, the Aronowitz Defendants entered into a continuing agreement, understanding, and conspiracy with Caren Castle, Larry Castle and Castle in restraint of trade to artificially fix, raise, stabilize, and control

prices for foreclosure-related postings in Colorado. But for their agreement with Castle, the Aronowitz Defendants and Xceleron would not have been able to charge the agreed-upon minimum price of $125 for foreclosure-related postings in Colorado.

175. This conspiracy among and between horizontal competitors Aronowitz and Castle constitutes a per se violation of the Colorado Antitrust Act. Alternatively, the unlawful conspiracy caused anticompetitive effects that substantially outweigh any procompetitive justification, if any exist, in violation of the rule of reason analysis under the Colorado Antitrust Act.

176. By preventing the competitive pricing of foreclosure-related postings in Colorado, Defendants deprived homeowners, purchasers, investors, and taxpayers the benefits of the competition that the Colorado Antitrust Act was designed to promote, preserve, and protect.

177. As a direct and proximate cause of Defendants' unlawful conduct, unaffiliated process servers and posting companies have been injured in their ability to compete in the foreclosure posting marketplace.

178. As a direct and proximate cause of Defendants' unlawful conduct, homeowners, purchasers, investors/insurers, and taxpayers have been required to pay $125 per posting instead of the $25 amount that would have been available in the absence of the illegal collusion.

179. As a direct and proximate cause of Defendants' unlawful conduct, injury has been sustained by the general economy in the state of Colorado.

THIRD 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 Aronowitz, Stacey Aronowitz, Joel Mecklenburg, Robert Aronowitz)

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

181. 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:

a. posting foreclosure deferment notices;

b. posting Rule 120 notices of hearing;

c. title searches;

d. title commitment cancellation fees;

e. statements of qualified holder; and

f. other foreclosure-related charges.

182. As a result of Defendants' violations of section 12-14-107(1)(b)(I) of the CFDCPA, Plaintiffs are 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.

FOURTH CLAIM FOR RELIEF

(Violation of Colorado Fair Debt Collection Practices Act – Unfair Practices – C.R.S. §12-14-108(1)(a))

(Defendants Aronowitz, Stacey Aronowitz, Joel Mecklenburg, Robert Aronowitz)

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

184. 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:

a. posting foreclosure deferment notices;

b. posting Rule 120 notices of hearing;

c. title searches;

d. title commitment cancellation fees;

e. statements of qualified holder; and

f. other foreclosure-related charges.

185. 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.

186. As a result of Defendants' violations of section 12-14-108(1)(a) of the CFDCPA, Plaintiffs are 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 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, the Colorado Antitrust Act of 1992, C.R.S. §§ 6-4-101 – 6-4-122, 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)(l);

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. Any such further relief as this Court may deem just and proper to effectuate the purposes of the Colorado Consumer Protection Act;

I. An order that the Aronowitz Defendants and Xceleron's conduct violates the Colorado Antitrust Act, § § 6-4-101- 6-4-122.

J. An order pursuant to section 6-4-112(1) for the maximum civil penalties against the Aronowitz Defendants and Xceleron of not more than two hundred fifty thousand dollars for each violation of the Colorado Antitrust Act;

K. An order pursuant to section 6-4-111(4) requiring the Aronowitz Defendants and Xceleron to pay the costs and attorney fees incurred by the Attorney General;

L. An order pursuant to section 6-4-111 for an injunction or other orders or judgments against the Aronowitz Defendants and Xceleron;

M. Any such further relief as this Court may deem just and proper to effectuate the purposes of the Colorado Antitrust Act;

N. An order that Aronowitz Defendants' conduct violates the Colorado Fair Debt Collection Practices Act, section 12-14-107(1)(b)(I);

O. An order that the Aronowitz Defendants' conduct violates the Colorado Fair Debt Collection Practices Act, section 12-14-108(1)(a);

P. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act for an injunction against the Aronowitz Defendants 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;

Q. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act for civil penalties against the Aronowitz Defendants;

R. An order pursuant to section 12-14-135 of the Colorado Fair Debt Collection Practices Act against the Aronowitz Defendants for an award of reasonable costs and attorney fees; and

S. Any such further orders as the Court may deem just and proper to effectuate the purposes of the Colorado Consumer Protection Act, the Colorado Antitrust Act, and the Colorado Fair Debt Collection Practices Act.

Respectfully submitted this 14th day of July 2014,

JOHN W. SUTHERS
Attorney General

/s/ Alissa Gardenswartz

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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.