

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	DATE FILED: July 21, 2014 10:47 AM CASE NUMBER: 2014CV32765  <p style="text-align: center;"><b>⚠ COURT USE ONLY ⚠</b></p>
<b>Plaintiff(s)</b> STATE OF CO EX REL JOHN W SUTHERS et al. v. <b>Defendant(s)</b> ARONOWITZ AND MECKLENBURG LLP et al.	
Case Number: 2014CV32765 Division: 259                      Courtroom:	
<b>Order Approving Final Consent Judgment</b>	

The motion/proposed order attached hereto: APPROVED.

THE WITHIN MATTER having come on by the stipulated Final Consent Judgment and, having reviewed the Final Consent Judgment, and being otherwise fully advised, the Court now APPROVES the Final Consent Judgment and adopts the same as an Order of this Court.

BY THE COURT:

Issue Date: 7/21/2014



MICHAEL ANTHONY MARTINEZ  
 District Court Judge

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
STATE OF COLORADO <i>ex rel.</i> JOHN W. SUTHERS, ATTORNEY GENERAL FOR THE STATE OF COLORADO; and JULIE ANN MEADE, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE,  Plaintiffs,  v.  ARONOWITZ & MECKLENBURG, LLP; XCELERON, LLC; ASSURED TITLE AGENCY LLC; STACEY L. ARONOWITZ; JOEL T. MECKLENBURG; and ROBERT J. ARONOWITZ,  Defendants.	▲ <b>COURT USE ONLY</b> ▲
	Case No.:  Courtroom:
<b>[PROPOSED] FINAL CONSENT JUDGMENT</b>	

This matter is before the Court on the parties' Stipulation for Entry of a Final Consent Judgment. The Court has reviewed the Stipulation, the Complaint and is otherwise advised in the grounds therefore. As all Parties have approved and agreed to entry of this Consent Judgment by their authorized signatures below, the Court, after being fully advised in this matter, **FINDS, CONCLUDES AND ORDERS:**

That it has jurisdiction over the Parties and subject matter of this suit under the grounds alleged in the Complaint;

That venue in the City and County of Denver is proper; and

That Defendants shall be subject to the following injunctive and monetary provisions:

## I. GENERAL PROVISIONS

1.1 Scope of Final Consent Judgment. The injunctive provisions of this Final Consent Judgment are entered pursuant to 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”). This Final Consent Judgment shall apply to Defendants Aronowitz & Mecklenburg, LLP (“A&M”); Xceleron, LLC (“Xceleron”); Assured Title Agency, LLC (“Assured”); Stacey L. Aronowitz (“S. Aronowitz”); Joel T. Mecklenburg (“Mecklenburg”); and Robert J. Aronowitz (“R. Aronowitz”) (hereinafter, collectively “Aronowitz Defendants” or individually by name or as “Aronowitz Defendant”), and any person employed by a Foreclosure Related Business under the direction or control of any of the Aronowitz Defendants, including but not limited to, any principals, officers, directors, agents, employees, representatives, and subsidiaries.

1.2 Release of Claims. The State of Colorado (“State”), ex rel. John W. Suthers, Attorney General (“Attorney General”), and Julie Ann Meade, Administrator, Uniform Consumer Credit Code (“Administrator”), agree and acknowledge that entry of this Final Consent Judgment constitutes a complete settlement and release of all claims under the CCPA, Colorado Antitrust Act, or the CFDCPA on behalf of the State against the Aronowitz Defendants, and their agents, officers, managers, employees, heirs, administrators, executors, successors and assigns, which were asserted or could have been asserted under the CCPA, the Colorado Antitrust Act, or the CFDCPA in the Complaint, that arose prior to the Final Consent Judgment Date and relate to or are based upon the acts or practices which are the subject of the Complaint or which were encompassed by the AG’s investigation into the foreclosure, title, title insurance, and posting practices, including the amount invoiced for various fees and costs, of the Aronowitz Defendants. The State agrees that it shall not proceed with or institute any civil or criminal actions in addition to this action, arising from or related to any of the allegations contained in the Complaint, including but not limited to action based upon the CCPA, the Colorado Antitrust Act, or the CFDCPA against the Aronowitz Defendants seeking restitution, disgorgement, injunctive relief, fines, penalties, attorneys’ fees, or costs for any conduct or practice prior to the Final Consent Judgment Date which relates to the subject matter of the Complaint filed in this action.

1.3 Non-Referral. To the extent consistent with their ethical obligations, neither the State, the Administrator, nor the Attorney General shall refer for civil or criminal prosecution to any law enforcement authority or agency of any State or the United States any claim based on conduct encompassed by the Release of Claims embodied in paragraph 1.2. Nothing in this paragraph shall prevent the State, the Administrator or the Attorney General from issuing public statements

regarding the Complaint and this Final Consent Judgment, and nothing in this paragraph shall prevent the State, the Administrator, or the Attorney General from responding to compulsory process from another law enforcement agency regarding the subject matter of the Complaint.

1.4 Liability. All parties are entering into this Final Consent Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further litigation. None of the statements made in this document shall be deemed to be factual or legal admissions for purposes of other proceedings except in a proceeding to enforce this Final Consent Judgment.

1.5 Preservation of Law Enforcement Action. Nothing herein precludes the State: (A) from enforcing the provisions of this Final Consent Judgment; (B) from pursuing any non-CCPA law enforcement action; (C) from pursuing any law enforcement action under the CCPA, Colorado Antitrust Act, or the CFDCPA with respect to the acts or practices of the Aronowitz Defendants not covered either by: (i) this lawsuit, (ii) the Final Consent Judgment; or (iii) the claims released in paragraph 1.2; or (D) from pursuing actions based on any acts or practices in which the Aronowitz Defendants engaged after the entry of this Final Consent Judgment.

1.6 Compliance with and Application of State Law. Nothing herein relieves the Aronowitz Defendants of their duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the State for the Aronowitz Defendants to engage in acts and practices prohibited by such laws. This Final Consent Judgment shall be governed by the laws of the State of Colorado.

1.7 Non-Approval of Conduct. Nothing herein constitutes approval by the State of the Aronowitz Defendants' past, present or future business practices. The Aronowitz Defendants shall not make any representation contrary to this paragraph.

1.8 No Third-Party Beneficiaries Intended. This Final Consent Judgment is not intended to confer upon any person any rights or remedies, including rights as a third-party beneficiary. This Final Consent Judgment is not intended to create a private right of action on the part of any person or entity, whether to enforce this Final Consent Judgment or otherwise, other than the Parties hereto.

1.9 Preservation of Private Claims and Relation to Private Settlements. Unless otherwise provided, nothing herein shall be construed as waiver of any private rights, causes of action, or remedies of any person against the Aronowitz Defendants with respect to the acts and practices covered by this Final Consent Judgment.

1.10 The Kemp Class Action. Neither the State, the Attorney General, nor the Administrator shall object to any provisions of the settlement in the case of

*Roderick Kemp, et al. v. Aronowitz & Mecklenburg, et al.*, District Court, City and County of Denver, Colorado, CASE NUMBER: 13CV033468, except that the Attorney General and the Administrator reserve any right they may have to object to the award of attorneys' fees.

1.11 Use of Settlement as Defense. The Aronowitz Defendants acknowledge that it is the State's customary position that an agreement restraining certain conduct on the part of a defendant does not prevent the State from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the State's enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the State from taking enforcement action to address conduct occurring after the entry of this Final Consent Judgment that the State believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Final Consent Judgment shall not be a defense to any such enforcement action.

1.12 Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Final Consent Judgment to apply to the Court at any time for any further orders which may be necessary or appropriate for the construction, modification or execution of this Final Consent Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof.

1.13 Contempt. The parties understand and agree that a finding of any violation of any term or provision of this Final Consent Judgment as set forth in Section 5.4 and Part VII and below shall give rise to all contempt remedies available to the Court.

1.14 Execution in Counterparts. This Final Consent Judgment may be executed in counterparts.

1.15 Severability. If any provision(s) of this Final Consent Judgment is held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

1.16 Successors in Interest. The terms and provisions of this Final Consent Judgment may be enforced by the current Attorney General, and by any of his duly authorized agents or representatives, as well as by any of his successors in interest, and by any of his successors in interest's agents or representatives. Similarly, the terms and provisions of the Final Consent Judgment apply to, bind, and may be enforced against any successor to the current Attorney General or the current Administrator.

1.17 Bankruptcy. In the event any of the Aronowitz Defendants file a voluntary petition for bankruptcy within one hundred days of their payments to the State, and if the State must return any portion of the money it has collected pursuant to this Final Consent Judgment to the bankruptcy estate, then a judgment shall enter against the Aronowitz Defendant who filed for bankruptcy in the amount of the money the State was required to return plus an additional 20% of that amount.

1.18 Amendment. This Final Consent Judgment may be amended solely by written agreement signed by the State and by the Aronowitz Defendants, and with the approval of the Court.

## **II. DEFINITIONS**

2.1 “Affiliated Vendor” means any entity or person in which any principal, member, owner, partner, agent, employee, or family member (including, but not limited to, in-laws) of any principal, member, owner, partner, agent, or employee of A&M has any direct or indirect financial interest, ownership, control, or decision-making authority, or who receives any financial consideration or benefit from A&M except for products or services actually provided.

2.2 “Foreclosure-Related Business” means any entity that primarily provides services related to processing a foreclosure in the State of Colorado, including, but not limited to, legal and posting services. For purposes of this Final Consent Judgment, Assured shall not be considered a Foreclosure-Related Business, and its operations shall not be considered Foreclosure-Related Business operations, for any purpose whatsoever.

2.3 “Ownership Interest” means a direct or indirect financial interest in a business that confers Managerial Control.

2.4 “Managerial Control” means having a position with a business that allows the individual to have control in managing the finances of the business, including but not limited to, determining fees and costs that the entity will charge for products or services offered by the business.

2.5 “Final Consent Judgment Date” means the date that this Final Consent Judgment is entered as an Order of the Court.

## **III. INJUNCTIVE RELIEF – CURRENT OPERATIONS**

3.1 The Aronowitz Defendants agree to dissolve or transition the operations of A&M and Xceleron in Colorado within six (6) months of the Final Consent Judgment Date. Provided however, that nothing in this Final Consent Judgment shall prohibit any Aronowitz Defendant from providing foreclosure

related services as an income or non-equity partner, shareholder or member, or as an associate, employee, consultant, of counsel, or other similar position, in or to a law firm or other entity that constitutes a Foreclosure Related Business, so long as they do not have an Ownership Interest or Managerial Control of such firm or entity.

3.2 When the Aronowitz Defendants dissolve both A&M and Xceleron, such dissolution shall be done in accordance with the Colorado law prescribing the procedures and requirements for the dissolution and winding up of such an entity, and the Aronowitz Defendants shall engage in such winding up operations as are necessary to assure compliance with the law. These winding up operations may include defending litigation, which the Aronowitz Defendants remain free to do. In the event of a conflict between the law and the provisions of this Final Consent Judgment, the law shall govern. Should such a conflict materialize, the Aronowitz Defendants will promptly notify the Attorney General of the nature of the conflict and of how the Aronowitz Defendants are proceeding in view of it.

3.3 The Aronowitz Defendants shall provide written notice to the Attorney General at the address set forth in paragraph 5.6 below of the transition of operations or the dissolution of A&M and Xceleron within ten (10) business days of the transition or dissolution of such entity.

3.4 During the pendency of its remaining operations, A&M shall observe the following guidelines in providing and charging for foreclosure-related services.

**A. Foreclosure Postings**

3.5 Other than winding up outstanding orders and paying invoices for work completed or in process, A&M shall not use any Affiliated Vendor to post or serve any notices or documents during a foreclosure or eviction proceeding.

3.6 A&M shall charge a borrower, servicer, investor, or third party only the actual cost to A&M of those services and products provided by third party vendors for posting or service of any notice or document during a foreclosure or eviction proceeding.

3.7 A&M shall not charge a borrower, servicer, investor, or third party any amounts above the actual cost to A&M for the posting of any notice or document during a foreclosure or eviction proceeding, including, but not limited to, any compensation for expenses or time by the Aronowitz Defendants in connection with any posting service provided by an outside vendor.

3.8 The Parties agree that the market rate charged by a third party vendor for posting of any notice or document during a foreclosure or eviction proceeding, as of the Final Consent Judgment Date, is between \$25 and \$35 for

postings in the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and between \$25 and \$45 in the counties of El Paso, Larimer, Mesa, and Pueblo, and between \$25 and \$95 in other counties. The Aronowitz Defendants shall invoice these amounts charged by third party vendors for foreclosures and evictions for the remainder of their operations. Should the Aronowitz Defendants determine that the market rate for posting is more than these amounts, that the needed service may not be obtained at these amounts (such as same day delivery), or that the quality of work required cannot be obtained at these amounts, A&M shall procure the necessary work at the best price reasonably and practically obtainable under the circumstances, and notify the Attorney General within five (5) days that it has done so, providing along with such notice the documents supporting its determination.

## **B. Title Products**

3.9 Other than winding up outstanding orders and paying invoices for work completed or in process, A&M shall not use any Affiliated Vendor or act as a title agent to prepare, issue, or otherwise provide title products, including a title search, foreclosure guarantee, or title commitment, during a foreclosure, from receipt of the foreclosure referral through the foreclosure auction resulting in issuance of a confirmation deed.

3.10 Unless specifically prohibited by a client or law, A&M, on all files, shall obtain from a third party vendor, and charge only the actual cost of, a title search and updates to identify parties entitled to notice of the foreclosure proceeding under Colorado law; provided, however, that A&M may procure and provide title guarantees for Freddie Mac and title commitments for the FHA/VA, unless and until those entities instruct A&M otherwise. A&M may procure and provide other title products through a third party title agent when requested or approved by the client (such as title commitments and title guarantees). In no event, however, may any Aronowitz Defendant receive any financial consideration from the title product, including any referral fees.

3.11 A&M shall not add to the actual cost invoiced to A&M of the title search and updates beyond the applicable actual cost for any reason, including, but not limited to, reviewing title and exceptions and examination.

3.12 The Parties agree that the market rate charged by third party vendors for this title search and updates is, as of the Final Consent Judgment Date, at or around \$105 for the counties Adams, Arapahoe, Boulder, Broomfield, Delta, Denver, Douglas, Eagle, El Paso, Fremont, Jefferson, Larimer, Mesa, Montrose, Morgan, Otero, Ouray, Pueblo, Teller and Weld; at or around \$115 for the counties Alamosa, Archuleta, Bent, Chaffee, Clear Creek, Costilla, Elbert, Garfield, Gilpin, Grand, Huerfano, Lake, Las Animas, La Plata, Lincoln, Logan, Moffat, Park, Pitkin,



Prowers, Rio Blanco, Rio Grande, Routt, San Miguel, Summit and Washington; and at or around \$150 for the counties Baca, Cheyenne, Conejos, Crowley, Custer, Dolores, Gunnison, Hinsdale, Jackson, Kiowa, Kit Carson, Mineral, Montezuma, Phillips, San Juan, Saguache, Sedgwick and Yuma. The Aronowitz Defendants shall invoice these amounts for title searches for the remainder of their operations. If the Aronowitz Defendants need to order additional updates, they will charge their clients only the invoiced cost to them. Should the Aronowitz Defendants determine that the market rate for title searches or other title products is more than these amounts, that the needed service may not be obtained at these amounts (such as same day delivery), or that the quality of work required cannot be obtained at these amounts, A&M shall procure the necessary work at the best price reasonably and practically obtainable under the circumstances, and A&M shall notify the Attorney General within five (5) days that it has done so and provide documents supporting their determination.

3.13 The title search and updates at the current market rate, set forth above, include: Two Owner Search; Title Search Updates; Tax Certificate; Legal Description; Parcel Number; Owner(s) Name(s); Effective Date; Client's order number; County; Owner's property address; List of liens attached to the property; and Errors and Omissions coverage of no less than \$500,000 per occurrence.

3.14 If A&M orders a tax search, tax certificate or comparable service on a foreclosure file, A&M shall not charge any more than the actual cost assessed to A&M by the third party performing the service.

### **C. Miscellaneous Tasks and Charges**

3.15 Other than the flat fee, A&M shall not charge for any routine legal work in a foreclosure performed by A&M, and agree that said work is compensated by the maximum allowable attorneys' fee set by the investor. This work includes, but is not limited to, ordering title, reviewing title reports and exceptions, preparing all necessary legal papers including a statement of qualified holder, recording and filing all documents, executing all steps necessary to obtain service of process or postings; publishing and posting notices; preparing all documents necessary to conduct the foreclosure sale; preparing all documents necessary to convey title to the holder, investor, or third-party bidder; and preparing all conveyance documents to complete any repurchase or to convey to any mortgage insurance company. Provided, however, that A&M may perform and charge for other work as specifically requested by the client, and charge such reasonable and necessary fees as the client may agree to pay.

3.16 A&M will not charge any amount above the maximum allowable attorneys' fee set by its client for any overhead including, but not limited to, technology or invoice fee.

3.17 A&M shall not charge for preparing the statement of qualified holder.

3.18 Should A&M need to perform a PACER search for a foreclosure file, it shall only charge for the actual third-party costs associated with that search, i.e., PACER charges to the Law Firm.

3.19 A&M shall not charge any amounts for Service Members Civil Relief Act searches on a foreclosure file.

#### **IV. PERMANENT INJUNCTION**

4.1 R. Aronowitz shall not have an Ownership Interest in any Foreclosure-Related Business in the State of Colorado for nine (9) years from the date that A&M and Xceleron cease operations as set forth in Part III of this Final Consent Judgment. If R. Aronowitz acquires or assumes a position of Ownership Interest in any Foreclosure-Related Business in the State of Colorado subsequent to nine (9) years after the Final Consent Judgment Date, he shall provide notice to the Attorney General of said interest(s) at the address set forth in paragraph 5.6 below.

4.2 S. Aronowitz shall not have an Ownership Interest in any Foreclosure-Related Business in the State of Colorado for nine (9) years from the date that A&M and Xceleron cease operations as set forth in Part III of this Final Consent Judgment. If S. Aronowitz acquires or assumes a position of Ownership Interest in any Foreclosure-Related Business in the State of Colorado subsequent to nine (9) years after the Final Consent Judgment Date, she shall provide notice to the Attorney General of said interest(s) at the address set forth in paragraph 5.6 below.

4.3 Mecklenburg shall not have an Ownership Interest in any Foreclosure-Related Business in the State of Colorado for nine (9) years from the date that A&M and Xceleron cease operations as set forth in Part III of this Final Consent Judgment. If Mecklenburg acquires or assumes a position of Ownership Interest in any Foreclosure-Related Business in the State of Colorado subsequent to nine (9) years after the Final Consent Judgment Date, he shall provide notice to the Attorney General of said interest(s) at the address set forth in paragraph 5.6 below.

#### **V. MONETARY PROVISIONS**

5.1 The Court orders the Aronowitz Defendants, jointly and severally, to pay a total amount of \$10 million in disgorgement, restitution, penalties, and the State's attorneys' fees and costs. The Aronowitz Defendants shall make one payment to the State of \$8 million within thirty (30) days of the Final Consent Judgment Date and then shall make one payment of \$1 million each: one payment one year after the Final Consent Judgment Date, and one payment two years after the Final Consent Judgment Date.

5.2 The first \$8 million paid by the Aronowitz Defendants to the “Colorado Department of Law” is to be held, along with any interest thereon, in trust by the Attorney General to be used for reimbursement of the State’s actual costs and attorneys’ fees, the payment of restitution, if any, and for future consumer education, consumer fraud, or antitrust enforcement purposes. The remaining \$2 million (of the total \$10 million) shall be deemed civil penalties pursuant to § 6-1-112(1), C.R.S.

5.3 The parties recognize that A&M faces serious logistical problems in changing the amount it invoices its clients for various foreclosure-related costs and charges on existing files. For every file on which A&M has already ordered a foreclosure posting from Xceleron or title searches performed by Assured (or another vendor), and/or title commitments produced by A&M acting as a title agent at the time of the filing of the motion for entry of the Final Consent Judgment (“Effective Date”), but has not yet invoiced the client, and on which the borrower either reinstates or cures the foreclosure or the foreclosure is withdrawn for any reason, the Aronowitz Defendants, at their expense, will pay the borrower the amounts set forth below, which represent the difference between the amounts invoiced to A&M and the amounts as contemplated in this Final Consent Judgment:

- \$100 for each statutory posting (depending on the county and the applicable market rate for that county);
- \$120 for a title search;
- \$300 for a title commitment cancellation fee when AM had discretion to select the title product for the foreclosure file (see Section 3.10 for a description of files where A&M does not have discretion for ordering tile products);
- Any amount charged for a tax search or tax certificate over and above the actual third-party cost associated with the search or certificate;
- Any amount charged for a PACER search over and above the actual third-party cost associated with that search;
- Any amount charged for a Service Members Civil Act Relief search.

Such payment is contingent on A&M receiving payment from its client, and shall be sent to the borrower no later than December 31, 2014. No later than December 31, 2014, A&M shall also send the Attorney General an accounting of the invoices involved, the amounts charged for the covered services and products, the amounts received from its clients for those services and products, and the amounts paid to borrowers. After December 31, 2014, if there are borrowers eligible for the payments under this paragraph that have not yet received payments, the Aronowitz

Defendants shall remit payments to those borrowers regardless of whether A&M received payment from its client on the borrower's file.

The amount that the Aronowitz Defendants pay to borrowers under this paragraph shall offset their last \$2 million payment obligations to the State as set forth in paragraphs 5.1 and 5.2 above, to be set off first against the first \$1 million payment, and, if necessary, then the second.

The State, the Attorney General and the Administrator agree that it is not a violation of the Final Consent Judgment for the Aronowitz Defendants to invoice their clients after the Effective Date regardless of the amounts for work performed by A&M as a title agent, Assured or Xceleron on orders that were opened prior to the Effective Date so long as A&M complies with this Section 5.3. Further, the State, the Attorney General and the Administrator agree that if a client or servicer requests the Aronowitz Defendants to resubmit an invoice previously submitted prior to the Effective Date, such re-submission after the Effective Date of any invoice shall not be a violation of this agreement.

5.4 The Aronowitz Defendants, jointly and severally, shall pay an additional \$3 million in civil penalties to the State pursuant to § 6-1-112(1), C.R.S. Payment of these additional penalties shall be suspended so long as the Aronowitz Defendants, and each of them, remain in substantial compliance with this Final Consent Judgment, and such additional \$3 million shall be paid only in the event of an uncured material breach. Violations of this Final Consent Judgment shall be determined through the procedure set forth in Part VII below.

5.5 Section 5.4 shall remain in effect for nine (9) years after the Final Consent Judgment Date.

5.6 All payments shall be made payable to the "Colorado Department of Law" with a reference to "*State v. Aronowitz & Mecklenburg et al. Settlement*," and shall be delivered to:

Alissa Hecht Gardenswartz  
First Assistant Attorney General  
Antitrust, Tobacco, and Consumer Protection Unit  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway – 7<sup>th</sup> Floor  
Denver, Colorado 80203

5.7 All notices to the Aronowitz Defendants shall be sent to:

Richard B. Benenson  
Brownstein Hyatt Farber Schreck  
410 Seventeenth Street  
Suite 2200  
Denver, Colorado 80202

5.8 Failure to make any payment under Section 5.1 will constitute a violation of this Final Consent Judgment and contempt of this Court. In the event the Aronowitz Defendants fail to make any payment under Section 5.1, the State shall provide the Aronowitz Defendants written notice of default and provide the Aronowitz Defendants with 30 days to cure the default without penalty. If the Aronowitz Defendants fail to cure the default within 30 days, a 10% late fee will be added to that payment, and the Aronowitz Defendants will be given an additional 30 days to pay. If the Aronowitz Defendants do not cure the default within this additional 30-day period, the State may petition the Court alleging a violation of this Final Consent Judgment as set forth in Part VII below.

## **VI. REPRESENTATIONS AND WARRANTIES**

6.1 Except as expressly provided in this Final Consent Judgment, nothing in this Final Consent Judgment shall be construed as relieving the Aronowitz Defendants of their respective obligations to comply with all state and federal laws, regulations or rules, or granting permission to engage in any acts or practices prohibited by such law, regulation or rule.

6.2 Due to the public-interest nature of the State's claims in this matter, the Aronowitz Defendants hereby specifically agree and stipulate that the last payment of \$2 million to be made by the Aronowitz Defendants, as set forth in paragraph 5.2 (but that payment only), constitutes a debt for a fine, penalty or forfeiture payable to and for the benefit of a governmental unit, is not compensation for actual pecuniary loss, and is specifically non-dischargeable under 11 U.S.C. § 523(a)(7).

6.3 The Aronowitz Defendants acknowledge that they have thoroughly reviewed this Final Consent Judgment with their counsel, that they understand and agree to its terms, and that they agree that it shall be entered as an Order of this Court.

6.4 Each of the non-Court signatories to this Final Consent Judgment warrants and represents that he or she has authority to agree to this Consent Judgment on behalf of the specified parties.

6.5 Upon receipt of reasonable notice, the Aronowitz Defendants agree to cooperate with all investigations and other proceedings that the State has brought or may bring in connection with the State's investigation of foreclosure law firms and this Final Consent Judgment, including any proceeding arising out of this Final Consent Judgment and any litigation against third parties involving the allegations in the Complaint. Such cooperation includes:

- a. Appearing at the request of the State for hearings, depositions, and trial, and providing testimony in any form. All such testimony shall be truthful;
- b. Producing all non-privileged documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the State; and
- c. Accepting a subpoena to appear or produce from the State without need for service of process.

Nothing in this Section 6.5 shall restrict, preclude, or prevent any of the Aronowitz Defendants from the exercise of their Constitutional rights to counsel and against self-incrimination under Article II, Sections 16 and 18 of the Colorado Constitution, and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

## **VII. VIOLATIONS OF INJUNCTIVE TERMS OF CONSENT JUDGMENT**

7.1 In the event the State receives evidence that any of the Aronowitz Defendants have violated this Final Consent Judgment, the State shall provide the relevant Aronowitz Defendant(s) written notice of said violation within fourteen (14) days of discovering the violation, and provide the Aronowitz Defendant(s) fourteen (14) days to cure the violation. If the Aronowitz Defendant(s) fail to cure the violation, the State may petition the Court alleging a violation and seeking payment of civil penalties under Section 5.4 of this Final Consent Judgment.

7.2 Following notice and hearing on the State's petition and a finding by the Court that the Aronowitz Defendant(s) have violated the Final Consent Judgment, the Court may impose the penalties set forth in Section 5.4. Such a finding shall constitute a *prima facie* violation of the CCPA under § 6-1-110(2), C.R.S.

7.3 Upon a finding by this Court that any Aronowitz Defendant has violated any of the terms of this Final Consent Judgment, in addition to being entitled to the penalties set forth in Section 5.4, the State shall be entitled to seek an injunction or other appropriate order from the Court to enforce the provisions of this Final Consent Judgment against such Aronowitz Defendant.

7.4 In any action brought by the State under this Part VII, the Aronowitz Defendants consent to personal and subject matter jurisdiction in the District Court for the City and County of Denver.

SO ORDERED and SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2014.

BY THE COURT:

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District Court Judge

Attachment to Order - 2014CV32765

This Final Consent Judgment Concerning Aronowitz & Mecklenburg LLP; Xceleron, LLC; Assured Title Agency, LLC; Stacey L. Aronowitz; Joel T. Mecklenburg; and Robert J. Aronowitz, signed and agreed to this 14<sup>th</sup> day of July, 2014.

s/Alissa Hecht Gardenswartz

ALISSA HECHT GARDENSWARTZ, 36126

First Assistant Attorney General

Consumer Protection Section

1300 Broadway, 7<sup>th</sup> floor

Denver, CO 80203

As to Plaintiffs the State of Colorado, *ex rel.*

JOHN W. SUTHERS, Attorney General,

and Julie Ann Meade, Administrator,

Uniform Consumer Credit Code

s/Richard B. Benenson

RICHARD B. BENENSON, 32566

JASON R. DUNN, 33011

Brownstein Hyatt Farber Schreck LLP

410 Seventeenth Street, Suite 2200

Denver, Colorado 80202

As to Defendants Aronowitz & Mecklenburg  
LLP

Xceleron, LLC, and Assured Title Agency,  
LLC

s/Stacey L. Aronowitz

STACEY L. ARONOWITZ

Aronowitz & Mecklenburg LLP

1199 Bannock Street

Denver, Colorado 80204

individually and on behalf of Aronowitz  
Mecklenburg LLP

s/Joel T. Mecklenburg

JOEL T. MECKLENBURG

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1199 Bannock Street

Denver, Colorado 80204

individually and on behalf of Assured  
Title Agency, LLC

s/Robert J. Aronowitz

ROBERT J. ARONOWITZ

Aronowitz & Mecklenburg LLP

1199 Bannock Street

Denver, Colorado 80204

individually and on behalf of Xceleron



*s/Michael L. Bender*

MICHAEL L. BENDER, 3479  
Perkins Coie LLP  
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*s/Chad D. Williams*

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Attachment to Order - 2014CV32765