

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>STATE OF COLORADO, ex rel. CYNTHIA H. COFFMAN, ATTORNEY GENERAL</p> <p>Plaintiff,</p> <p>v.</p> <p>MILE HIGH HEATING &amp; COOLING, LLC; MILE HIGH HEATING AND COOLING, LLC; PIKES PEAK HEATING AND COOLING, LLC; KEVIN DYKMAN, an individual; and KASEY DYKMAN, an individual.</p> <p>Defendants.</p>	<p>DATE FILED: April 20, 2017 1:59 PM FILING ID: 44C60D66B8B76 CASE NUMBER: 2017CV31452</p> <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>CYNTHIA H. COFFMAN, Attorney General JAY B. SIMONSON, 24077 First Assistant Attorney General JEFFREY M. LEAKE, 38338 ERICA L. KASEMODEL, 50223 Assistant Attorney(s) General Ralph L. Carr Judicial Center 1300 Broadway, 10<sup>th</sup> Floor Denver, CO 80203 Telephone: (720) 508-6000 FAX: (720) 508-6040 *Counsel of Record</p>	<p>Case No. Div.:</p>
<p><b>COMPLAINT</b></p>	

Plaintiff, the State of Colorado, upon relation of Cynthia H. Coffman, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges as follows:

INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, §§ 6-1-101 *et seq.*, C.R.S. (“CCPA”), to enjoin and restrain Defendants from engaging in certain unlawful deceptive trade practices, for

restitution to injured consumers, for statutorily mandated civil penalties, for disgorgement, and other relief as provided in the CCPA.

### PARTIES

2. Cynthia H. Coffman is the duly elected Attorney General of the State of Colorado and is authorized under Colo. Rev. Stat. § 6-1-103 to enforce the provisions of the CCPA.

3. Defendant Mile High Heating & Cooling, LLC is a limited liability company, organized on May 20, 2013 and upon information and belief, is located at 8671 Wolff Court, Suite 100, Westminster, CO 80030.

4. Defendant Mile High Heating and Cooling, LLC was a limited liability company, organized on April 18, 2012 and dissolved on June 26, 2013. Prior to its dissolution, the principal office street address was 7700 Depew, Apt. 1522, Arvada, CO 80003.

5. Defendant Pikes Peak Heating & Cooling, LLC is a limited liability company, organized on May 20, 2013, and has been in delinquent status with the Colorado Secretary of State since October 1, 2014.

6. Defendant Kevin Dykman is the owner and operator of Mile High Heating & Cooling, LLC, Pikes Peak Heating and Cooling, LLC, and was the owner of Mile High Heating and Cooling, LLC. Kevin Dykman is directly involved in every aspect of the companies and maintains control over all parts of the businesses, including but not limited to advertising, representations to consumers, services and installations, and hiring and training of employees. Kevin Dykman has knowledge of, participates in, and authorizes the practices of Mile High such that he is personally liable for the deceptive trade practices alleged herein.

7. Defendant Kasey Dykman (Kevin Dykman's son) is the manager of Mile High Heating & Cooling, LLC, and was the registered agent of Mile High Heating and Cooling, LLC. Kasey Dykman is directly involved in the operation of Mile High Heating & Cooling, including managing and training employee technicians. Kasey Dykman has knowledge of, participates in, and authorizes the practices of Mile High Heating & Cooling such that he is personally liable for the deceptive trade practices alleged herein.

### JURISDICTION AND VENUE

8. Pursuant to Colo. Rev. Stat. §§ 6-1-103 and 6-1-110(1), this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

9. The violations alleged herein occurred, in part, in Denver, Colorado. Therefore, venue is proper in Denver County, Colorado, pursuant to C.R.S. § 6-1-103 and Colo. R. Civ. P. 98.

### RELEVANT TIMES

10. The conduct that gives rise to the claims for relief contained in this Complaint began in 2012, and has been ongoing through the present.

11. This action is timely brought pursuant to Colo. Rev. Stat. § 6-1-115 in that it is brought within three years of the date on which false, misleading, or deceptive acts or practices occurred or were discovered and said practices are ongoing.

### PUBLIC INTEREST

12. Through the unlawful practices of their business or occupation, Defendants have deceived, misled, and financially injured hundreds of consumers. Therefore, these legal proceedings are in the public interest and are necessary to safeguard citizens from Defendants' unlawful business activities. Defendants' actions have also injured businesses which operate legitimately and do not engage in deceptive and unfair business practices.

### GENERAL ALLEGATIONS

#### **I. Company Background**

13. Mile High Heating & Cooling, LLC is owned by Defendant Kevin Dykman and his son, Defendant Kasey Dykman, and is a successor company to Mile High Heating and Cooling, LLC. Pike's Peak Heating & Cooling, LLC was owned by Defendant Kevin Dykman and operated from 2013 until 2014. Mile Heating & Cooling, LLC, Mile High Heating and Cooling, LLC and Pike's Peak Heating & Cooling, LLC all operated in similar fashion between 2012 and the present, and are hereafter collectively referred to as "Mile High Heating & Cooling."

14. Mile High Heating & Cooling advertises HVAC services (heating, ventilation, and air conditioning), primarily through cold-calling consumers and offering special rates such as \$59 for a full tune-up and 30 point safety inspection of their furnace or air conditioning unit. **Exhibit 1**, *Affidavit of Investigator LeAnn Lopez*; **Exhibit 2**, *Mile High Heating & Cooling Training Packet*.

15. Mile Heating & Cooling operates out of a business-type office space, which houses its call center. At different points in its existence, Mile High Heating & Cooling has employed as many as 20 call center representatives who cold-call consumers to schedule appointments. **Exhibit 4**, *G. Zapata, Tr. 30:11-32:20*; **Exhibit 6**, *Kevin Dykman, Tr. 101:16-102:2*.

16. Mile High Heating & Cooling’s technicians do not drive a company truck and must buy their own tools. The company does not have a warehouse, a work shop, or an inventory of spare parts. A former technician described Mile High Heating & Cooling’s operation as “fly-by-night.” **Exhibit 3**, *A. Ullrich, Tr. 46:4-47:8, 48:18-49:3*; **Exhibit 4**, *G. Zapata, Tr. 30:11-32:20*; **Exhibit 6**, *Kevin Dykman, Tr. 40:19-41:10*.

**II. In order to avoid government oversight, Defendants refuse to obtain required building permits prior to installing furnaces, air conditioners, and hot water heaters in consumers’ homes.**

17. Before installing heating or cooling equipment, HVAC companies are required by law to 1) hold or obtain a general or HVAC-related contractor’s license from the building department for the jurisdiction they are working in, and 2) to obtain a permit from the building department for each specific installation. **Exhibit 1**, *Affidavit of Investigator LeAnn Lopez*; **Exhibit 3**, *A. Ullrich, Tr. 26:9-21*; **Exhibit 5**, *J. Ledkins, Tr. 78:8-79:6*.

18. All of the various municipalities and counties in Colorado have adopted building codes which grant local building departments the authority to administer and enforce the building codes. **Exhibit 1**, *Affidavit of Investigator LeAnn Lopez*.

19. The City and County of Denver has adopted the “Denver Building Code.” Section 102 of the Denver Building Code gives authority for administering and enforcing the Code to the Manager of Community Planning and Development (the Agency), and grants the authority to appoint a Building Official. Section 130 of the Denver Building Code states that “No person, business, corporation, agency or public, private or governmental institution shall erect, construct, enlarge, remodel, alter, repair, move, improve, remove, convert, demolish or change the occupancy of any building, structure or utility, or perform any other work regulated by this Code, or cause the same to be performed, in the City, without first having obtained a permit from the Agency for the specific work to be performed.” City and County of Denver, CO., Mun. Code § 10-16, (2016 and years prior)(adopting the Denver Building Code); Denver Building Code, Sections 102 and 130.<sup>1</sup>

20. One purpose for the law requiring permits prior to the installation of a new furnace, hot water heater or air conditioning system is to allow the building department to do a subsequent inspection to ensure that the installation was done properly, and to require the installation company to remedy any faulty work or safety concerns. **Exhibit 1**, *Affidavit of Investigator LeAnn Lopez*.

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<sup>1</sup> Denver has adopted two building codes which are relevant to the facts in this Complaint. See City and County of Denver, CO., Mun. Code § 10-16 (2016 and years prior). The 2011 Amendments to the Denver Building Code apply to Denver installations after October 17, 2011 but before December 19, 2016. The 2016 Denver Building Codes apply to installations after December 19, 2016. Sections 102 and 130 are identical in both Codes.

21. Mile High Heating & Cooling, however, refuses to obtain these permits. **Exhibit 3**, *A. Ullrich*, *Tr. 26:2-8, 28:20-29:6*; **Exhibit 5**, *J. Ledkins*, *Tr. 87:25-88:4*; **Exhibit 4**, *G. Zapata*, *Tr. 41:15-42:4*.

22. By its own estimate, Mile High Heating & Cooling has installed approximately 1000 furnaces in the Denver metro area since it began operating in April of 2012. **Exhibit 3**, *A. Ullrich*, *Tr. 28:20-32:19, 43:19-44:2, 46:6-18*; **Exhibit 4**, *G. Zapata*, *Tr. 37:2-16, 54:18-56:14*; **Exhibit 5**, *J. Ledkins*, *Tr. 76:17-25*; **Exhibit 6**, *Kevin Dykman*, *Tr. 99:13-14, 103:7-23*.

23. As part of its investigation, the Attorney General's Office reviewed invoices related to 95 furnace, hot water heater and air conditioning unit installations and found that Mile High Heating & Cooling had failed to obtain the required permits for 88 of those installations. **Exhibit 1**, *Affidavit of Investigator LeAnn Lopez*.

24. Mile High Heating & Cooling's operations manager from 2012 until 2014 estimated that the company had only pulled permits for four or five of the thousand installations completed during that period. The operations manager, who holds a master mechanical contractor license, testified that Mile High Heating & Cooling owner Kevin Dykman instructed the technicians not to pull permits. **Exhibit 3**, *A. Ullrich*, *Tr. 28:20-29:6, 47:14-23*.

25. Mile High Heating & Cooling's subsequent operations manager, who worked at the company from 2014 until 2015, offered similar testimony. He stated that owner Kevin Dykman's refusal to pull permits stemmed from an anti-government attitude. **Exhibit 5**, *J. Ledkins*, *Tr. 23:11-24:9, 26:1-11, 51:14-22, 75:16-76:16*.

26. Mile High Heating & Cooling does not disclose to consumers that permits are required for all installations of heating and cooling equipment. Nor does the company tell consumers that it is unable and unwilling to obtain the required permit. **Exhibit 1**, *Affidavit of Investigator LeAnn Lopez*.

27. When consumers do ask about permits, Mile Heating & Cooling's owner Kevin Dykman has instructed his technicians to tell consumers that they can and should "waive" building permits. The technicians are instructed to warn consumers that allowing building department inspectors in their home, to inspect their furnace installation, will lead to the building inspector finding issues with other areas in their home. **Exhibit 4**, *G. Zapata*, *Tr. 42:14-44:15*; **Exhibit 5**, *J. Ledkins*, *Tr. 80:21-82:21*.

28. Mile High Heating & Cooling manager, Kasey Dykman, testified that he has minimal HVAC training and knowledge. As manager, Dykman dispatched and supervised Mile High Heating & Cooling's technicians in their interactions with consumers. Kasey Dykman testified that the purpose of the building permits was to

“give the government money,” that homeowners “don’t like” having building inspectors in their home, and that the majority of building inspectors he had spoken with “don’t know what they are doing.” **Exhibit 6**, *Kasey Dykman, Tr. 48:21-50:2*.

29. In at least one instance, a Mile High Heating & Cooling consumer requested and paid for a building permit, only later to learn that the company had not actually requested the permit. **Exhibit 8**, *Affidavit of BP, 20:10, 13*.

30. By not obtaining permits, Mile High Heating & Cooling engages in an unfair business practice that is both harmful to consumers as well as business competitors. Unlike its competitors, who comply with the law and incur the expense of a permit, Mile High Heating & Cooling avoids both the cost of the permit as well as additional costs associated with making corrections in response to issues spotted by the building inspectors. **Exhibit 5**, *J. Ledkins, Tr. 75:16-23*; **Exhibit 5**, *J. Ledkins, Tr. 82:17-21*.

### **III. Mile High Heating & Cooling’s non-permitted, non-inspected work performed by untrained technicians puts consumers at risk.**

31. Mile High Heating & Cooling advertises that it provides “expert service” and that its technicians are “certified.” In reality, Mile High Heating & Cooling is indiscriminate in who it hires to carry out the work. **Exhibit 9**, *Mile High Heating & Cooling Advertisement*; **Exhibit 2**, *Mile High Heating & Cooling Training Packet*; **Exhibit 5**, *J. Ledkins, Tr. 67:22-68:17*.

32. Mile High Heating & Cooling owner Kevin Dykman has no formal training in HVAC and holds no HVAC certifications or licenses. Prior to owning and operating Mile High Heating & Cooling, Mr. Dykman was employed as a call center customer service representative. **Exhibit 6**, *Kevin Dykman, Tr. 44:6-8*; **Exhibit 5**, *J. Ledkins, Tr. 68:18-69:5*.

33. Mile High Heating & Cooling’s former operations manager testified that owner Kevin Dykman had little regard for formal HVAC education and training. **Exhibit 5**, *J. Ledkins, Tr. 67:22-68:17*.

34. As a result, Mile High Heating & Cooling frequently employs unqualified service and installation technicians, often family friends, who are incapable of properly providing the consumers with the services advertised. **Exhibit 5**, *J. Ledkins, Tr. 74:17-24*.

35. One of Mile High Heating & Cooling’s former operations managers explained the problem with hiring inexperienced technicians:

[I]f somebody’s servicing a piece of equipment that is untrained and they do something wrong, you know, a homeowner can be susceptible to property

damage; carbon monoxide poisoning; gas leaks which can lead to fire, explosions.

**Exhibit 3, A. Ullrich, Tr. 17:17-22.**

36. When asked to provide specific examples of how untrained technicians had exposed consumers to potential harm, the former operations manager recounted:

A. For example, one of the technicians, one of the younger technicians, was at a homeowner's home and was -- he repaid a gas -- a flexible gas connection line to a furnace, and it was left hand tight. And the fire department was called because there was so much gas in the home, that the homeowner actually had to evacuate the home. And the owner of the company, Kevin Dykman, really didn't show a whole lot of concern about that. And, you know, that could have easily have killed the homeowner, a lot of property damage to the community, everything.

**Exhibit 3, A. Ullrich, Tr. 21:8-20.**

37. A former Mile High Heating & Cooling service technician, with prior training and experience, testified that when he started with the company, he was surprised and concerned about the other technicians' youth and lack of experience:

A couple of times I had to save the company's butt, if you will. We had a call that a lady kept hearing explosions in her basement. One of the gentleman -- or young gentleman didn't complete the job. Simplest of tasks. And he left a pilot assembly sitting on the deck at the bottom of the furnace instead of screwing it back, hand tightened everything. So when the furnace fills up with gas -- the pilot light was lit, of course, but it wasn't in the area to ignite the burners, if you will. And when it filled with gas, it would cause an explosion that could have caused death, you know.

**Exhibit 4, G. Zapata, Tr. 19:22-20:10.**

38. Mr. Dykman, upon learning of the above described incident, took no disciplinary action against the service technician or implementing any additional training or preventative measures for future jobs.

So [I] brought that to the management's attention. There was no rep -- I don't think he reprimanded anybody, just brought them into the office, talked to them, let them know what was going on, and that was it.

**Exhibit 4, G. Zapata, Tr. 20:11-15.**

39. As part of its investigation, the Attorney General's Office reviewed several complaints in which the consumer complained that Mile High Heating & Cooling may have deliberately tampered with their existing furnace or hot water heater, leaving wires or components unattached, as part of a scheme to sell them a new furnace or hot water. *See Exhibit 8, Consumer Affidavits.*

40. A former operations manager testified that these situations were likely the result of the incompetent technicians that Kevin Dykman insisted on hiring.

Q. Did you hear or see anything, while you were at Mile High, that suggested that ... some technicians may have engaged in tampering?

A. Often. Weekly, sometimes daily. Would I attribute that to nefarious conduct? No. Those technicians were not nefarious. They couldn't do the same thing twice to save their life.....They weren't competent enough to put a wire back on. They weren't diligent and thorough enough. Did they do it on purpose and nefariously? No. I have to tell you that. A lot of the guys I met, they just weren't trained. They couldn't do the same thing twice. So you're going to see a lot of that.

**Exhibit 5, J. Ledkins, Tr. 106:16-107:7.**

41. Because Mile High Heating & Cooling refuses to obtain building permits, and there are no follow-up inspections, it is impossible to know exactly how many consumers have been placed at risk due to non-compliant installations. In at least two incidences, however, local building departments have come across work performed by the company and determined that Mile High Heating & Cooling's installation placed the consumer in danger. **Exhibit 1, Affidavit of Investigator LeAnn Lopez.**

42. In the fall of 2015, consumer D.B. hired Mile High Heating & Cooling to install a new furnace. In the middle of the night following the installation, D.B.'s carbon monoxide alarms began to go off. D.B. called the fire department which immediately turned off her gas line due to safety concerns. **Exhibit 8, Affidavit of R.B., 7:2, 4.**

43. The following day, the City of Sheridan Building Department inspected the furnace and concluded that the installation was faulty. The building department reviewed its files and found that Mile High Heating & Cooling had not pulled a building permit. **Exhibit 8, Affidavit of R.B., 7:5.**

44. In February of 2016, consumer L.H. paid Mile High Heating & Cooling a total of \$5,314 for the purchase and installation of a new furnace. **Exhibit 8, Affidavit of L.H., 9:2-6.**



45. In May of 2016, L.H. hired a different company to install a gas fireplace in her home. A permit was pulled with the City and County of Denver and a building inspector came to LH's home to inspect the gas line. While conducting his inspection, the building inspector noticed significant problems with Mile High Heating & Cooling's furnace installation. **Exhibit 8, Affidavit of L.H., 9:7-8.**

46. The building inspector informed L.H. that Mile High Heating & Cooling were not licensed contractors and that the company had not pulled a permit. The building department issued a correction notice, identifying the following safety concerns:

- The furnace was pressed up against the door of the closet.
- The vent to the existing hot water heater was spliced in two, creating a combustion gas leakage.
- The cold air return vent was not connected.
- The system had insufficient gas pressure.

**Exhibit 8, Affidavit of L.H., 9:9-10.**

47. L.H. attempted to contact Mile High Heating & Cooling regarding the dangerous condition of their furnace and the illegal, unpermitted installation. Mile High Heating & Cooling failed to respond. **Exhibit 8, Affidavit of L.H., 9:12.**

48. In June of 2016, a different company replaced L.H.'s furnace. The replacement furnace cost L.H. an additional \$8,486. L.H. was never able to make contact with Defendants, and Defendants did not refund the \$5,314 L.H. had paid for the initial, faulty installation. **Exhibit 8, Affidavit of L.H., 10:13.**

49. The replacement installation, completed by a different heating and cooling company, was properly permitted through Denver's building department, and it passed the follow up inspection. **Exhibit 8, Affidavit of L.H., 10:14-15.**

50. Ultimately, Mile High Heating & Cooling has deceived, and continues to deceive, Colorado consumers by advertising that it provides "expert" HVAC service from "certified" technicians when in fact it is a dangerously out of compliance business.

#### FIRST CLAIM FOR RELIEF

(Refuses or fails to obtain all governmental licenses or permits required to perform the services, C.R.S. § 6-1-105(1)(z))

51. Plaintiff incorporates herein by reference all allegations set forth above.

52. Defendants have violated the Colorado Consumer Protection Act, C.R.S. § 6-1-105(1)(z), by refusing or failing to obtain the city permits required to install

heating or cooling devices and then installing heating or cooling devices in consumers' homes despite the lack of the required permits.

53. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from Colorado consumers.

#### SECOND CLAIM FOR RELIEF

(Fails to disclose material information concerning services which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction, C.R.S. § 6-1-105(1)(u))

54. Plaintiff incorporates herein by reference all allegations set forth above.

55. Defendants have violated the Colorado Consumer Protection Act, C.R.S. § 6-1-105(1)(u), by failing to disclose to consumers that Defendants do not obtain the required permits from the city prior to installing new equipment in consumers' homes. The failure to disclose this information was intended to induce consumers to enter into equipment installation transactions with Defendants.

56. Defendants have violated the Colorado Consumer Protection Act, C.R.S. § 6-1-105(1)(u), by failing to disclose that their service technicians and installation technicians lacked the technical knowledge, training, and expertise to conduct service checks, determine causes of and solutions to equipment defects, and properly install new equipment. The failure to disclose this information was intended to induce consumers to enter into transactions with Defendants.

57. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from Colorado consumers.

#### THIRD CLAIM FOR RELIEF

(Knowingly makes a false representation as to the characteristics and benefits of a service, C.R.S. § 6-1-105(1)(e))

58. Plaintiff incorporates herein by reference all allegations set forth above.

59. Defendants have violated the Colorado Consumer Protection Act, C.R.S. § 6-1-105(1)(e), by knowingly representing that the defendants' service technicians were qualified in training, experience, and expertise to conduct service calls and diagnose defects on various heating and cooling devices, when, in fact, they were not; and knowingly representing that the service technicians were providing those services in consumers' homes, when, in fact, they were not.

60. Defendants have violated the Colorado Consumer Protection Act, C.R.S. § 6-1-105(1)(e), by knowingly representing that the defendants' installation technicians were qualified in training, experience, and expertise to safely and correctly install various heating and cooling devices in consumers' homes, when, in fact, they were not.

61. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from Colorado consumers.

### RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against the Defendants and the following relief:

- A. An order declaring Defendants' above-described conduct to be in violation of the Colorado Consumer Protection Act, C.R.S. §§ 6-1-105(1)(z),(u),(e).
- B. An order permanently enjoining Defendants, their officers, directors, successors, assignees, agents, employees, and anyone in active concert or participation with Defendants with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.
- C. Additional appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.
- D. A judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to C.R.S § 6-1-110(1).
- E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado civil penalties in an amount not to exceed \$2,000 per violation pursuant to C.R.S. § 6-1-112(1)(a), or \$10,000 per violation pursuant to C.R.S. § 6-1-112(1)(c).
- F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to C.R.S. § 6-1-113(4).
- G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Respectfully submitted this 20<sup>th</sup> day of April, 2017.

CYNTHIA H. COFFMAN  
Attorney General

*s/ Erica L. Kasemodel*

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JEFFREY M. LEAKE, 38338\*  
JOHN FEENEY-COYLE, 44970\*  
ERICA L. KASEMODEL, 50223\*  
Assistant Attorneys General  
JAY B. SIMONSON, 24077\*  
First Assistant Attorney General  
Consumer Protection Section  
Attorneys for Plaintiff

\*Counsel of Record

**Plaintiff's Address**

1300 Broadway  
10<sup>th</sup> Floor  
Denver, Colorado 80203