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| <p>DISTRICT COURT, MESA COUNTY, COLORADO 125 North Spruce, P.O. Box 20,000-5030 Grand Junction, CO 81502</p> <hr/> <p>STATE OF COLORADO, <i>ex rel.</i> CYNTHIA H. COFFMAN, Attorney General,</p> <p>Petitioner,</p> <p>v.</p> <p>JONES & ASSOCIATES LAW GROUP, LLC, a Georgia limited liability company,</p> <p>Respondent.</p> | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> |
| <p>CYNTHIA H. COFFMAN, Attorney General JENNIFER H. HUNT, #29964* First Assistant Attorney General JENNIFER MINER DETHMERS, #32519* Senior Assistant Attorney General ERICA L. KASEMODEL, #50223 Assistant Attorney General Fellow COLORADO DEPARTMENT OF LAW Consumer Protection Section Ralph L. Carr Colorado Judicial Center 1300 Broadway, 7th Floor Denver, CO 80203 *Counsel of Record</p> | <p>Case No:</p> <p>Courtroom:</p> |
| <p style="text-align: center;">APPLICATION FOR RELIEF UNDER C.R.S. § 6-1-109 FOR FAILURE TO RESPOND TO CIVIL LAW ENFORCEMENT INVESTIGATIVE SUBPOENA</p> | |

Petitioner, the State of Colorado, by and through Cynthia H. Coffman, Attorney General (the “Attorney General” or the “State”), respectfully applies for an order pursuant to C.R.S. § 6-1-109 enforcing the investigative subpoena served on Respondent Jones & Associates Law Group, LLC (“Jones & Associates”) on October 27, 2016. For such application, the State states as follows:

INTRODUCTION

Under the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101, *et seq.* (2016), the Attorney General may issue pre-filing investigative subpoenas to require the attendance of witnesses or the production of documents whenever she has cause to believe that any person has engaged or is engaging in a deceptive trade practice. C.R.S. § 6-1-108(1). After receiving several complaints from consumers and public trustees, the Attorney General became aware that Jones & Associates has sent direct mail solicitations targeting Colorado consumers that appear to be deceptive. Because reasonable cause exists to believe that Jones & Associates has engaged and is engaging in deceptive trade practices in violation of the CCPA, the State personally served a subpoena on Jones & Associates on October 27, 2016. Jones & Associates has refused to respond to the subpoena, has not produced any documents responsive to the subpoena, and has ignored the State's attempts to communicate. Therefore, the State seeks an order requiring Jones & Associates to cooperate with the Attorney General's investigation, comply with the subpoena, and prohibit it from advertising, entering contracts, or providing services until it fully complies with the subpoena. The State also seeks an order requiring Jones & Associates to pay its reasonable attorneys' costs and fees in making this application.

VENUE

Venue is proper in Mesa County, Colorado. Jones & Associates has sent direct mail solicitations to consumers in Mesa County, and the Mesa County Public Trustee has complained that the solicitations are deceiving, inaccurate, and have

misled consumers. The CCPA provides that “actions instituted pursuant to [the CCPA] may be brought in the county where an alleged deceptive trade practice occurred.” C.R.S. § 6-1-103. Therefore, because the State alleges that Jones & Associates engaged in deceptive trade practices in Mesa County, venue is proper in Mesa County.

BACKGROUND

Identity of Respondent

Jones & Associates is a Georgia limited liability company with a principal place of business at 3366 Montauk Hill Dr., Buford, Georgia 30519. Ken Jones organized Jones & Associates, is listed as an attorney on its website, and upon information and belief, is the owner. *See* Ex. 1, Aff. of Jamie Sells (“Sells Aff.”) ¶ 13; Ex. 1-F, Jones & Assocs. Website Pages (“Website”) at 3. Jones & Associates has two offices in Atlanta: one at One Alliance Center, 3500 Lenox Rd., Suite 500, Atlanta, Georgia 30326, and the other at 3355 Lenox Rd., Suite 750, Atlanta, GA 30326. *Id.* at 14. In addition, Jones & Associates has numerous satellite offices around the country, including a Colorado office located 3773 Cherry Creek Dr. N, Suite 575, Denver, Colorado 80209.¹ *Id.* at 16.

Jones Webb Law Group, LLC (“Jones Webb”) was a Georgia limited liability company with a principal office address of One Alliance Center, 3500 Lenox Rd., Suite 500, Atlanta, Georgia 30326, which is the same address as Jones &

¹ Jones & Associates also has satellite offices in Chicago, Illinois; Cincinnati, Ohio; Dallas, Texas; Jacksonville, Florida; Nashville, Tennessee; New Brunswick, New Jersey; New Orleans, Louisiana; Philadelphia, Pennsylvania; and Seattle, Washington. Ex. 1-F, Website at 2, 6, 8, 10, 12, 14-19.

Associates. Jones Webb was administratively dissolved on December 31, 2015, for failure to file its annual registration.

Jones & Associates' Deceptive Trade Practices

On its website, Jones & Associates purports to offer various services to consumers who are in foreclosure or who are having trouble making their mortgage payments, such as foreclosure defense, mortgage modification, short sale, and similar services. Ex. 1-F, Website. Jones & Associates claims that its primary goal with each client is to “IMMEDIATELY stop the foreclosure process.” *Id.* at 7. The website represents that its team expertly navigates the process of stopping foreclosure sale dates and has an “EXTREMELY high” success rate. *Id.* Jones & Associates also offers to help homeowners obtain a mortgage modification or short sale. *Id.* As a law firm, it claims that it is “held to a higher ethical standard than other businesses,” and that it is “personally invested in each of [its] clients and work[s] tirelessly to save your home and put you back on the road to affordable home ownership.” *Id.* at 2, 6, 8-10, 12, 19. Jones & Associates advertises that it has “years of experience in working with every lender in the country,” which gives it an advantage in negotiating cases. *Id.*

Jones & Associates targets its advertising to Colorado consumers. It lists a Colorado office on its website and has been affiliated with at least two licensed Colorado attorneys. Ex. 1, Sells Aff. ¶¶ 3-4, 6-7, 9, 12; Ex. 1-F, Website at 16. Additionally, the State received complaints that the company sent misleading and deceptive direct mail solicitations to Colorado homeowners. Ex. 1, Sells Aff. ¶¶ 3-9,

14; *see also* Exs. 1-A, 1-B, 1-C, 1-D, & 1-E. The envelopes of these solicitations note that the contents contain a “LEGAL NOTICE” or refer to an “IMPENDING ACTION.” Ex. 1-B at 1, 3; Ex. 1-D at 3; Ex. 1-E at 3. The envelopes also refer to either an “AUCTION DATE POSTPONEMENT” or “POSTPONEMENT REQUEST” and explain that a person who interferes with or obstructs delivery of the letter may be subject to fines and/or imprisonment. Ex. 1-B at 4 & Ex. 1-D at 4. The solicitations, which are in the form of letters addressed to homeowners, appear to be from either the law firm handling the foreclosure or the public trustee’s office. Ex. 1, Sells Aff. ¶¶ 4-7; Ex. 1-B at 1; Ex. 1-D at 3 & Ex. 1-E at 3. Indeed, because the return address appeared to be the public trustee’s office, the U.S. Post Office returned several undeliverable solicitations to public trustees. Ex. 1, Sells Aff. ¶ 5-6; *see also* Ex. 1-D at 1.

The letters cite to various Colorado laws and inform the homeowner of a pending foreclosure sale or auction date of his or her property. Ex. 1-A at 2, Ex. 1-B at 2; Ex. 1-D at 2; Ex. 1-E at 4. The letters do not mention that foreclosure sale dates often are continued or postponed for any reason deemed by the public trustee or sheriff to be good cause, by written request of the holder of the evidence of debt, or due to a bankruptcy proceeding. *See* C.R.S. § 38-38-109(1) & (2). In at least one instance, neither the homeowner who received the letter nor the property referenced in it was in foreclosure. Ex. 1-B at 1; Ex. 1-C. In another instance, the foreclosure sale date was wrong. Ex. 1-C. And, in another instance, the property did

not go to sale on the date mentioned in the letter because the homeowner cured the default and the foreclosure had been withdrawn. *Id.*

The letters caution that if “the property is not vacant” at the time of sale or transfer, the homeowner may be evicted immediately and physically removed from the property by the county sheriff. Ex. 1-A at 2; Ex. 1-B at 2; Ex. 1-D at 2; & Ex. 1-E at 4. These representations are misleading and deceptive. Pursuant to Colorado law, title does not vest until all redemption periods have expired or, if there are no redemption periods, upon the close of business eight business days after the sale – not immediately after the sale. *See* C.R.S. § 38-38-501(1). These false statements caused at least one homeowner to vacate the property and incur unnecessary housing expenses. Ex. 1, Sells Aff. ¶ 3; Ex. 1-A at 1; Ex. 1-B at 1.

The letters then claim that “**IT IS NOT TOO LATE TO SAVE YOUR HOME**” and indicate the recipient may be a “candidate for mortgage negotiation, settlement and/or modification,” which may include a principal reduction, interest rate reduction, loan term extension, payment reduction, balance forgiveness, and/or waiver of late fees and penalties. Ex. 1-A at 2; Ex. 1-B at 2; Ex. 1-D at 2; & Ex. 1-E at 4. Jones & Associates asserts that its attorneys and loan negotiators have helped homeowners “**STOP** the foreclosure process and reduce their monthly mortgage payments by hundreds of dollars.”² *Id.* The letters encourage homeowners who have been turned down for loan modification or other loss mitigation options to contact the firm, because their “outstanding debt and [] monthly payments may be reduced

²Letters dated in 2014 and 2015 claim that Jones & Associates has helped “thousands” of homeowners stop the foreclosure process and reduce their mortgage payments. Ex. 1-A at 2 & Ex. 1-B at 2. This claim was revised in later letters.

or eliminated.” *Id.* The letters list various attorneys affiliated with Jones & Associates, including attorneys in Colorado, and explain that the homeowner has “legal rights under current Colorado [or State] and Federal Law that may be exercised.” *Id.* The letters encourage homeowners to call immediately for a free case evaluation and reference a foreclosure case number. *Id.* This foreclosure case number, however, does not match the foreclosure number of the local public trustee. Ex. 1, Sells Aff. ¶ 4; Ex. 1-A at 1; Ex. 1-B at 1. Thus, the “Foreclosure Case #” referenced in the solicitations is nothing more than a fiction created by Jones & Associates.

The Attorney General is aware of at least one Colorado consumer, Kevin Henry, who entered into a retainer agreement with Jones & Associates after receiving a direct mail solicitation. Ex. 1, Sells Aff. ¶¶ 7, 9; *see* Ex. 2, Limited Legal Services Retainer Agreement (“Retainer Agreement”). Among other things, the retainer agreement states that the attorney will request a postponement or cancellation of foreclosure sale date; prepare an application for a loan modification, repayment plan, principal reduction, and/or short sale; submit a loan proposal to the lender; obtain the appointment of a mitigator or loss negotiator by the lender; follow-up with the lender regarding the status of any modification request; review any loan modification agreement or other documents; and assist in negotiating a loan modification. Ex. 2, Retainer Agreement at 1. The retainer agreement required a fixed fee of \$3,000, of which Mr. Henry paid \$1,500. *Id.* at 2; Ex. 1, Sells Aff. ¶ 8; Ex. 1-E at 1. *See also* Ex. 3, Compl., *Henry v. Jones & Assocs. Law Group, LLC*,

Case No. 16S00805 (Denver County Court). Jones & Associates assured Mr. Henry that it had “a 90%+ success rate and verbally guaranteed they would stop the sale.” Ex. 1-E at 1. Despite these promises, Jones & Associates did nothing to stop the foreclosure sale, and his home was sold on July 20, 2016. *Id.*; Ex. 3, Compl. When it failed to refund Mr. Henry’s \$1,500 as promised, he filed a lawsuit against Jones & Associates for its “fail[ure] to engage in any meaningful activity which would lead to the sale being stopped or beginning loan modification discussion with the lender.” *Id.* Ms. Cavin, who signed the retainer agreement with Mr. Henry, represented Jones & Associates in the lawsuit. Ex. 2, Retainer Agreement at 5; Ex. 4, Joint Stip. To Dismiss with Prejudice (“Stip. to Dismiss”), *Henry v. Jones & Assocs.*, Oct. 28, 2016. Mr. Henry had never communicated with to Ms. Cavin prior to filing his complaint and did not receive a copy of the countersigned agreement. Ex. 1, Sells Aff. ¶ 9. Upon information and belief, Ms. Cavin did not provide any legal services to Mr. Henry. *Id.*; Ex. 3, Compl. Jones & Associates and Mr. Henry settled their dispute and agreed to dismiss the action with prejudice. Ex. 4, Stip. to Dismiss; *see also* Ex. 1, Sells Aff. ¶ 10.

Based on the States’ preliminary investigation, Jones & Associates has made misleading and deceptive statements to Colorado consumers, obtained money from Colorado consumers without providing the services for which they contracted, caused Colorado consumers to incur unnecessary expenses, and created confusion among Colorado consumers. Through its subpoena, the State is attempting to further investigate Jones & Associates’ business practices in Colorado.

Jones Webb's Deceptive Trade Practices

The State is unsure of the relationship between Jones & Associates and Jones Webb. Both entities have addresses of One Alliance Center, 3500 Lenox Rd., Suite 500, Atlanta, Georgia 30326 and feature "Jones" as part of the law firm name. Nevertheless, Jones Webb has sent direct mail solicitations to Colorado consumers that are very similar to those sent by Jones & Associates; indeed, some paragraphs of the solicitations are identical. *Compare* Ex. 1-A at 2 to Ex. 1-B at 2. Moreover, at least one attorney, William Patrick Thurman, has been affiliated with both entities. *Id.* As will be discussed below, the State's subpoena requests information on the relationship, if any, between Jones & Associates and Jones Webb.

Jones & Associates' Refusal to Respond to the Subpoena

On October 27, 2016, the State personally served a subpoena for the production of documents on Jones & Associates through its registered agent, Caezairoa Jones. Ex. 5-A, Aff. of Service & Subpoena, Oct. 27, 2016. The subpoena seeks records and information from June 1, 2013, to the present relating to:

- A description of the services offered by Jones & Associates, and which, if any, of the services are legal in nature.
- The identities of all employees and agents affiliated with Jones & Associates and whether each has a professional license, such as loan mortgage originator or an attorney license.
- The identities of all third-party vendors who assist in performing Jones & Associates' business services and activities.
- The relationship, if any, between Jones & Associates and Jones Webb.
- Documents related to the formation and organization of Jones & Associates and Jones Webb.

- Documents related to advertising, solicitations, or other marketing efforts to persons or properties located in Colorado.
- Documents related to agreements and communications that Jones & Associates had with any person in Colorado or about any property located in Colorado.
- An accounting of monies received from transactions with persons located in Colorado or related to any property located in Colorado, and monies given to any person located in Colorado.
- Documents relating to every attorney-client relationship established with a person in Colorado or relating to a property located in Colorado.
- Documents supporting Jones & Associates' advertised claim that its "success rate is EXTREMELY high for stopping sale dates."
- All complaints received from consumers located in Colorado or relating to properties located in Colorado, including Jones & Associates' response and any resolution.
- Documents identifying when Jones & Associates was successful in obtaining a loan modification, payment reduction, principal reduction, loss mitigation, short sale, or foreclosure sale date postponement for a person or property located in Colorado.
- Documents identifying when Jones & Associates was not successful in obtaining a loan modification, payment reduction, principal reduction, loss mitigation, short sale, or foreclosure sale date postponement for a person or property located in Colorado.
- Documents related to all legal costs paid on behalf of clients located in Colorado or relating to properties located in Colorado.

Id., Subpoena, at 6-8.

Jones & Associates' response to the subpoena was due on November 30, 2016.

Id. at 1. When Jones & Associates failed to respond by that date, the State sent a letter to Ken Jones and Caezairoa Jones via FedEx® on December 13. Ex. 5-B.

Letter from J. Dethmers to K. Jones, Dec. 13, 2016. The State requested a response

within five business days of receipt of the letter. *Id.* Mr. Jones left a voice mail for the State's attorneys in December, and the State returned the call on January 4, 2017. Mr. Jones did not respond to attempts to contact him until January 17, at which time he indicated that Jones & Associates planned to comply with the subpoena and requested an extension of time to respond. The State granted the request and provided a new response deadline of January 31, 2017. Ex. 5-C, Letter from J. Dethmers to K. Jones, Feb. 7, 2017. When Jones & Associates failed to respond or communicate with the State by the extended deadline, the State left a voicemail with Mr. Jones on February 6 and sent a letter on February 7 via FedEx® and facsimile. *Id.* Mr. Jones and Jones & Associates ignored these communications. In a final attempt to obtain compliance with the subpoena without court intervention, the State sent Mr. Jones a letter on March 6 via FedEx® and facsimile. Ex. 5, Letter from J. Dethmers to K. Jones, March 6, 2017. The State indicated that, unless it received full compliance with the subpoena by March 10, it would file an application under C.R.S. § 6-1-109 and request a court order requiring Jones & Associates to comply with the subpoena and to pay its attorneys' fees and costs. *Id.* at 2. Neither Mr. Jones nor any other representative of Jones & Associates has responded. Thus, Jones & Associates has refused to comply with the subpoena, failed to produce any of the requested documents despite an extension of time, and is on notice that the State would file this application absent prompt compliance.

ARGUMENT

I. The Attorney General Has Statutory Authority to Issue and Enforce the Subpoena.

The CCPA prohibits deceptive trade practices. C.R.S. § 6-1-105. When the Attorney General has cause to believe that any person has engaged or is engaging in any deceptive trade practice she may (1) examine any property, record, document, account, or paper she deems necessary, and (2) issue subpoenas to require the attendance of witnesses or the production of documents in aid of any investigation. C.R.S. § 6-1-107(1) & -108(1); *see also* C.R.S. § 6-1-103 (granting the Attorney General authority to investigate deceptive trade practices). As set forth above and in the attached affidavit and exhibits, the State's preliminary investigation of complaints about Jones & Associates indicates that the company has engaged in and is currently engaging in deceptive trade practices.

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

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

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

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

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

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

II. Reasonable Grounds Exist to Believe that Enforcing the Subpoena is Necessary to Terminate or Prevent Deceptive Trade Practices.

The State has a reasonable basis to believe that Jones & Associates may have violated or is violating various provisions of the CCPA, including but not limited to, §§ 6-1-105(1)(a), (b), (e), (g), (i), (u), (z), (uu), (xx), (aaa), (bbb), and C.R.S. § 6-1-1001 CCPA by (1) knowingly passing off services as those of another; (2) knowingly making false representations as to the source, sponsorship, approval, or certification of services; (3) knowingly making false representations as to the characteristics, uses, or benefits of services; (4) representing that services are of a particular standard, quality, or grade if the person making the representation knows that they are of another; (5) advertising services with intent not to sell them as advertised; (6) failing to disclose material information concerning services, which was known at the time of advertisement, with the intent to induce consumers into a transaction; (7) refusing or failing to obtain mortgage loan originator licenses required to perform mortgage loan originator services; (8) violating C.R.S. § 38-40-105, which prohibits acts by mortgage loan transaction participants; (9) violating the Colorado Foreclosure Protection Act (“CFPA”), C.R.S. § 6-1-1101, *et seq.*, concerning foreclosure consultants; (10) violating C.R.S. § 12-61-904.5, which imposes a duty of good faith and fair dealing on mortgage loan originators; (11) violating C.R.S. § 12-61-905.5, which prohibits various acts and practices of mortgage loan originators; and (12) violating C.R.S. § 6-1-1001, which sets forth restrictions in using the trade name of a lender in solicitations. *See Am. Banco Corp.*, 570 P.3d at 831 (holding

hearsay evidence admissible to support whether reasonable grounds exist to enforce compliance with subpoena).

The documents sought by the subpoena are relevant to the State's investigation, which must determine whether Jones & Associates and Jones Webb engaged in deceptive trade practices in violation of the CCPA and CFPA. The subpoena is directed at learning more about Jones & Associates' business activities in connection with its advertising and contracting with Colorado consumers and its relationship, if any, to Jones Webb. The subpoena is not unduly burdensome because it is limited to the time period between June 1, 2013, and the present, and it is narrowly tailored to issues relevant to Jones & Associates' activities targeted to Colorado consumers.

Accordingly, reasonable grounds exist to enforce the subpoena. Jones & Associates' failure to comply has already delayed the State's investigation. This failure should not allow Jones & Associates to continue to engage in deceptive trade practices or evade liability for past CCPA and CFPA violations.

RELIEF REQUESTED

The State respectfully requests that this Court enter an order against Jones & Associates requiring the company to:

1. Refrain from advertising services or entering into contracts with consumers until it complies with the State's subpoena pursuant to C.R.S. § 6-1-110(1)(a) & (c);

2. Produce all documents responsive to the State's subpoena within seven days pursuant to C.R.S. § 6-1-109(1)(b); and
3. Pay the State's reasonable attorneys' fees and costs in connection with this application pursuant to C.R.S. § 6-1-113(4).

Respectfully submitted this 13th day of March, 2017.

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