

STATE OF COLORADO  
ATTORNEY GENERAL'S OFFICE  
CONSUMER PROTECTION SECTION

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IN RE: COLT HOLDINGS, LLC, a limited liability company; and JORDAN HEAD, an individual.

Respondents.

CYNTHIA H. COFFMAN, Attorney General  
JENNIFER MINER DETHMERS, Reg. No. 32519  
Senior Assistant Attorney General  
Colorado Department of Law  
Consumer Protection Section  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 7th Floor  
Denver, CO 80203

**ASSURANCE OF DISCONTINUANCE UNDER C.R.S. § 6-1-110(2)**

This Assurance of Discontinuance (“Assurance”) is entered into by and between the State of Colorado, *ex rel.* Cynthia H. Coffman, Attorney General for the State of Colorado (“Attorney General” or “State”), and Respondents Colt Holdings, LLC and Jordan Head (collectively, “Respondents”). This Assurance is entered into pursuant to the Attorney General’s powers under C.R.S. § 6-1-110(2) and is a settlement between the Attorney General and Respondents regarding the following allegations.

**I. PARTIES**

1. Cynthia H. Coffman is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101, *et seq.* (CCPA), including the Colorado Foreclosure Protection Act, C.R.S. §§ 6-1-1101 through -1121 (CFPA).

2. Respondent Colt Holdings, LLC (“Colt Holdings”) is a Colorado limited liability company with a principal office street address of 11066 West Rowland Ave., Littleton, CO 80127. Janet Head is a manager and a fifty percent member of Colt Holdings. Jeff Head is a fifty percent member of Colt Holdings.

3. Respondent Jordan Head is an individual residing at 11066 West Rowland Ave., Littleton, CO 80127. Head is a manager of Colt Holdings and the son of Janet and Jeff Head.

## II. STATUTORY FRAMEWORK

4. A person engages in deceptive trade practices when, among other things, in the course of that person’s business, vocation, or occupation, the person knowingly passes off goods, services, or property as those of another; knowingly makes a false representation as to the affiliation, connection, or association with another; knowingly makes a false representation as to the characteristics or benefits of goods, services, or property; or fails to disclose material information concerning goods, services, or property that was known at the time of an advertisement or sale if the failure to disclose was intended to induce the consumer to enter into a transaction. *See* C.R.S. § 6-1-105(1)(a), (c), (e), and (u).

5. The CFPA was enacted to prevent deceptive and unconscionable business practices designed to dispossess or strip equity from homeowners who are in financial distress. C.R.S. § 6-1-1102. The Colorado General Assembly has declared that there is a

compelling need to curtail and to prevent the most deceptive and unconscionable of these business practices, to provide each home owner with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers, to provide certain minimum requirements for contracts between such parties, including statutory rights to cancel such contracts, and to ensure and foster fair dealing in the sale and purchase of homes in foreclosure.

6. Under the CFPA, an “equity purchaser” is a person who acquires title to a residence in foreclosure, except that the term does not include a person who acquires title by a sheriff’s or public trustee’s deed as a result of a foreclosure sale. C.R.S. § 6-1-1103(2).





7. A “residence in foreclosure” is a residence or dwelling

that is occupied as the home owner’s principal place of residence, is encumbered by a residential mortgage loan, and against which a foreclosure action has been commenced or as to which an equity purchaser otherwise has actual or constructive knowledge that the loan is at least thirty days delinquent or in default.

C.R.S. § 6-1-1103(8)(b).

8. All contracts between a homeowner and equity purchaser must be in writing and “fully completed, signed, and dated by the home owner and equity purchaser prior to the execution of any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.” C.R.S. § 6-1-1111. In addition, equity purchasing contracts must comply with applicable provisions of the CFPA, which include, but are not limited to, a three-day right to cancel and notification thereof; a clear and conspicuous disclosure of whether or not the equity purchaser will be assuming any of the home owner’s financial or legal obligations; and a prohibition on facilitating or engaging in any unconscionable conduct. C.R.S. §§ 6-1-1111 through -1117(1).

9. C.R.S. § 6-1-1117(2) prohibits an equity purchaser from doing the following until the time within which the home owner has to cancel the transaction has fully elapsed:

- a. Accept from a homeowner an instrument conveying any interest in the residence in foreclosure or induce a homeowner to execute such instrument;
- b. Record with the county recorder any document signed by the homeowner, including any instrument of conveyance;
- c. Transfer or encumber, or purport to transfer or encumber, an interest in the residence in foreclosure to a third party; or
- d. Pay the homeowner any consideration.

In addition, the CFPA prohibits an equity purchaser from making any untrue or misleading statement of material fact concerning the sale of the residence in foreclosure. C.R.S. § 6-1-1117(4).

10. Neither an equity purchaser nor an associate may facilitate or engage in an unconscionable transaction. C.R.S. § 6-1-1119.

11. Any violation of the CFPA is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

### III. FACTUAL ALLEGATIONS

#### Respondents' Business Activities

12. Respondents acquire title to properties whose owners are delinquent in making unit owners' association ("association")<sup>1</sup> payments and are facing foreclosure. Respondents acquire title in various ways, including but not limited to, acting as an equity purchaser, purchasing the property by making the winning bid at a sheriff's sale, or obtaining an assignment of lien from the association or its attorneys. While Respondents take title to the property subject the first mortgage loan and other liens, if any, they usually pay far less than the property's fair market value.

13. After obtaining title, Respondents renovate and attempt to sell the property.

14. Respondents evict the homeowners, come to an agreement where the homeowners leave voluntarily, or rent the property back to the homeowners. As the mortgage loans are still in the homeowners' names, Respondents typically request that homeowners sign third party authorizations allowing them to access homeowners' mortgage loan accounts. Many homeowners agreed to execute these third party authorizations with the understanding that Respondents needed the information to either make the monthly mortgage payments or to pay off the homeowners' mortgage loans.

15. Respondents did not disclose, and homeowners did not understand, that Respondents would pay off the mortgage loan only when they sold the property to a third party. Many homeowners believed that, once they signed the third party authorizations, Respondents would pay off the mortgage loan immediately by assuming or refinancing the mortgage loan or by selling the property to a third property. In reality, even though Respondents held title to the properties, the homeowners remained on the loan until the property was sold, which could take many months.

16. During the time they owned the properties, Respondents did not always make the monthly mortgage loan payments because the bank would

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<sup>1</sup> Unit owners' associations are commonly referred to as homeowners' associations or HOAs.



not accept payment or they were unable to arrange for payment prior to a payment deadline, which led to the homeowners incurring late fees and going into default. Because these homeowners understood that Respondents would be making their mortgage payments or paying off their mortgages, some of them were confused when they received past due notices.

17. Despite the fact that they obtain and use personal identifying information in the course of their business, neither Respondent has a policy for destroying or properly disposing of paper documents that contain such information.

18. For several years, Head publicly represented that he was a real estate broker with Re/Max Professionals, despite the fact that he has never had a real estate broker license and has never worked at Re/Max.

19. In at least two situations, Head obtained an assignment of liens from an association prior to the sale date. In exchange for stopping the foreclosure sale, Head required the homeowners to pay substantially more than the amount of the liens.

## **Overbid Funds**

20. In at least four instances, Respondents were involved in transactions with Po Luxe Homes, LLC (“Po Luxe”) and Paola Mendez Altamirano aka Paola Mendez that involved overbid funds. An “overbid” is “the amount a property is sold for at a foreclosure sale that is in excess of the written or amended bid amount executed by the holder of the evidence of debt secured by the deed of trust or other lien being foreclosed.” C.R.S. § 38-38-100.3(17.3). After payment to all lienors and the holder entitled to receive a portion of the overbid, any remaining overbid shall be paid to the homeowner. C.R.S. § 38-38-111(2).

21. After Respondents had made the winning bid at a sheriff’s sale, Respondents, Mendez, and/or Po Luxe would offer to assist the homeowner in obtaining the overbid. The homeowners granted Head a power of attorney to file motions and take other actions to secure a release of overbid funds. The power of attorney imposed legal duties on Head, including but not limited to, the duty to act in good faith, act loyally for the homeowner’s benefit, and avoid conflicts that would impair his ability to act in the homeowner’s best interest.

22. Respondents, Mendez, or Po Luxe either did not return the overbid funds to the homeowner or did so after a lengthy delay. Three of the overbid funds transactions are described below:

Overbid Funds #1

23. In one instance, a homeowner owed \$8,541.60 in unpaid assessments, late charges, attorney fees, and other costs at the time the association filed its complaint for judicial foreclosure. Over a year after filing its complaint, the association filed a motion for default judgment. The court granted the motion and entered judgment for \$13,600.45 in favor of the association on October 8, 2015.

24. The association submitted an initial bid of \$18,974.09 before the sheriff's sale. Head and Mendez purchased this property at the sale with a winning bid of \$27,000 on September 8, 2016. Head and Mendez obtained title to the property through a sheriff's deed dated September 28, 2016. This sale resulted in an overbid of \$8,025.91.

25. On November 18, 2016, the homeowner granted Head a power of attorney to secure the release of overbid funds. Head hired an attorney, Tammy Alcock, to file a motion for release of overbid funds. Alcock filed the motion on December 1, 2016. The court granted the motion, and the clerk forwarded the overbid of \$8,025.91 to Head on or about December 27, 2016.

26. Less than one month after obtaining the power of attorney, Head filed a Complaint in Forcible Entry and Detainer to begin eviction proceedings against the homeowner.

27. In April 2017, the association filed a statement of lien against Head and Mendez due to their failure to pay required assessments. The association released the lien in early May.

28. Head and Mendez quitclaimed the property to Head in August 2017. He sold the property to a third party on August 24, 2017, for \$197,000 and received \$102,634.62 in proceeds.

29. At the time of this sale, the payoff on the first mortgage was less than \$83,000. Additionally, there was a past due owners' association assessment of \$942, indicating that Head and Mendez did not pay the required assessments for several months.



30. Around the time he sold the property in August 2017, Head sent the overbid funds less attorney's fees in the amount of \$7,378.41 to the original homeowner. He waited nearly eight months after he received the overbid funds to forward the funds to the homeowner.

### Overbid Funds #2

31. In another instance, a homeowner owed \$17,186.36 in unpaid assessments, late charges, interest, attorney fees and costs at the time the association filed its complaint for judicial foreclosure. Approximately two and a half months after the complaint was filed, the court granted the association's motion for default judgment and order and decree for judicial foreclosure and entered judgment for \$18,198.30 in favor of the association.

32. The association submitted an initial bid of \$22,023.28 before the sheriff's sale. Head and Mendez purchased this property at the sale with a winning bid of \$138,000 on November 10, 2016. They obtained title to the property through a sheriff's deed dated December 22, 2016. This sale resulted in an overbid of \$115,976.72. There was no mortgage loan on this property.

33. The day after the sheriff's sale, Head and Mendez placed a note on this homeowner's door, requesting that the homeowner contact Head and indicating that they would be starting the eviction process at noon the next day. Head and Mendez did not have title to the property at this time.

34. On December 17, 2016, which was before the sheriff executed the sheriff's deed, Head and Mendez entered an agreement with the homeowner to lease the property back to him. The lease expired on March 31, 2017. At the end of the lease, Head and Mendez agreed to sell the property back to the homeowner for \$185,000. They also agreed to help assist the homeowner obtain overbid funds.

35. The homeowner granted Head a power of attorney to secure the release of overbid funds on December 17, 2016.

36. Head and Mendez hired an attorney, Sami Ragab, to file a motion for release of overbid funds. Ragab filed the motion on March 6, 2017, almost *three months* after Head and Mendez agreed to assist the homeowner obtain the overbid and after the homeowner did not make payments pursuant to the lease. The court granted the motion on April 14, 2017, and the clerk subsequently forwarded Head the overbid of \$115,976.72.



37. In the meantime, Head and Mendez filed a notice to quit on March 24, 2017, and obtained possession of the property. They sold the property to a third party on October 20, 2017, for \$222,000. Head and Mendez received \$208,728.17 in proceeds.

38. Head claims that he is unable to return the overbid funds to this homeowner because he cannot locate him. Head still possesses the \$115,976.72 in overbid funds.

### Overbid Funds #3

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39. In another instance, a homeowner owed \$4,866.49 in unpaid assessments and late charges plus interest, costs, and expenses at the time the association filed its complaint for judicial foreclosure. The court granted the motion for default judgment and decree of foreclosure and entered judgment for \$9,662.27 in favor of the association on February 8, 2016.

40. The association submitted an initial bid of \$10,058.34 before the sheriff's sale. Head and Mendez purchased this property at the sale with a winning bid of \$65,000 on August 11, 2016. Head and Mendez obtained title to the property through a sheriff's deed dated August 29, 2016. This sale resulted in an overbid of \$54,941.66.

41. Head and Mendez served a notice to quit on this homeowner on August 11, 2016, the day of the sheriff's sale and prior to obtaining title to the property.

42. The homeowner granted Head a power of attorney to secure the release of overbid funds on September 9, 2016.

43. Head hired Alcock to file a motion for release of overbid funds on September 20, 2016. The court granted the motion, and the clerk forwarded the overbid of \$54,941.66 to Head on or about September 27, 2016. Head forwarded the entire amount of the overbid to Mendez.

44. Head and Mendez sold the property to a third party on February 23, 2017, for \$225,000. They received \$116,586.58 in proceeds. At the time of this sale, the payoff on the first mortgage was less than \$91,000. Additionally, there was an owners' association account balance of \$1,043, indicating that Head and Mendez did not pay the required assessments for several months.

45. Neither Head nor Mendez has given any of the overbid funds to this homeowner.

## Equity Purchasing Activities

46. In at least three instances, Colt Holdings acquired title to a residence in foreclosure shortly before the residence was to be sold at a foreclosure sale. The homeowners transferred title of these properties to Colt Holdings via a warranty or quitclaim deed. Thus, Colt Holdings was an “equity purchaser” as defined by C.R.S. § 6-1-1103(2). Head negotiated these transactions on behalf of and in association with Colt Holdings and, therefore, was an “associate” of an equity purchaser as defined by C.R.S. § 6-1-1103(1).

47. In one instance, there was no written agreement as required by the CFPA. As such, the agreement did not contain the terms, disclosures, and language required by C.R.S. §§ 6-1-1111 through -1117(1). Prior to the expiration of the three-day right to cancel, the homeowner transferred title of the property to Colt Holdings via quitclaim deed, Colt Holdings accepted and recorded this quitclaim deed, and Colt Holdings paid the homeowner \$500. Colt Holdings paid the homeowner’s debt to the association, and the property was not sold at the foreclosure sale.

48. After the homeowner moved out of the property, Colt Holdings rented the property for \$1525 per month. The monthly mortgage, insurance, and association payments are approximately \$666 per month.

49. This homeowner believed that Colt Holdings would assume her mortgage or otherwise refinance the mortgage into its name and executed a third party authorization allowing Colt Holdings to access her mortgage loan information. While Colt Holdings has been making monthly mortgage, insurance, and association payments since obtaining title, it has not assumed or refinanced the mortgage. The mortgage remains in the homeowner’s name even though she has not owned the property since November 12, 2015, and she moved out of the property in August 2016.

50. In two other instances, Colt Holdings entered into agreements titled “Agreement for Conveyance” with homeowners, which did not contain the terms, disclosures, and language required by C.R.S. §§ 6-1-1112 through -1117(1). Prior to the expiration of the three-day right to cancel, these homeowners transferred title of the property to Colt Holdings via warranty deeds, Colt Holdings accepted and recorded these deeds, and Colt Holdings paid consideration to the homeowners.



51. The State alleges that Colt Holdings and Head engaged in prohibited conduct in violation of C.R.S. §§ 6-1-1117 and -1119 with respect to these equity purchases.

#### IV. INJUNCTIVE RELIEF

52. Respondents assure the Attorney General that they, as well as any principals, officers, directors, members, agents, employees, representatives, successors, affiliates, contractors, consultants, or any person acting on their behalf will comply with all provisions of the CCPA and CFPA, as now constituted or as may hereafter be amended.

53. Respondents agree to develop a policy for destroying or properly disposing of paper documents containing personal identifiable information (PII) in accordance with C.R.S. § 6-1-713 within 30 days of the Effective Date of this Assurance.

54. Respondents agree to cease and refrain from obtaining powers of attorney for homeowners in the course of their business, occupation, or vocation.

55. Respondents agree to cease and refrain from obtaining or assisting, or offering to assist homeowners in obtaining overbid funds on behalf of any homeowner or other person entitled to receive overbid funds.

56. If Respondents request that homeowners enter into third-party authorizations to allow them access to homeowners' mortgage loan accounts or other financial information, they agree to explain fully the reasons they are requesting such access and to comply with the terms of the authorization.

57. Respondents agree to make accurate statements in court filings, to public authorities such as public trustees and sheriffs' offices, to homeowners, to prospective sellers of properties, and to renters.

58. Respondents agree not to post a notice to quit or take steps to evict homeowners until after they obtain legal title to real property.

#### V. MONETARY RELIEF

59. Respondents jointly and severally agree to pay \$193,800 to the Colorado Department of Law to resolve this investigation within 10 days of the Effective Date of this Assurance.



60. All payments shall be made by electronic funds transfer according to written payment processing instructions provided by the State with a reference to “*Colt Holdings, LLC/Head Settlement.*” Respondents shall provide written notice to the State at or around the time that they initiate the electronic funds transfer.

61. All payments will be held, along with any interest thereon, in trust by the Attorney General to be used for reimbursement of the Attorney General’s actual costs and attorneys’ fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement actions, or to support consumer education and public welfare.

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## VI. GENERAL PROVISIONS

62. Scope of Assurance. Unless otherwise provided, this Assurance shall apply to Respondents and their officers, directors, agents, servants, employees, affiliates, subsidiaries, successors, and assigns, together with the other parties described in C.R.C.P. 65(d).

63. Effective Date. The Effective Date of this Assurance shall be the date of signature of the last signatory to this Assurance.

64. Release of Claims.

1. Subject to the conditions in paragraph 64.2, the State agrees and acknowledges that execution of this Assurance is a complete settlement and release of all claims that the State could have asserted through the Effective Date against Respondents for violations of the CCPA and CFPA that arise from or relate to the conduct described in the Factual Allegations.
2. The State will release all existing monetary claims not otherwise paid upon full and timely completion of payments in accordance with paragraph 59; provided, however, that if Respondents fail to fully and timely complete such payments, or if any Respondent files bankruptcy within 91 days after the full and timely completion of such payments, no release shall be granted and Respondents shall remain liable for the full unpaid balance of the State's claim. That amount may be asserted by the State in any subsequent proceeding to enforce this Assurance, whether through execution, garnishment, or other legal proceedings, or through a proof of claim in any bankruptcy proceeding filed by any Respondent.

65. No Admission of Liability. All parties are entering into this Assurance for the purpose of compromising and resolving the investigation and to avoid the expense of further litigation. It is expressly understood that nothing contained in this Assurance shall be construed as an admission by Respondents for any purpose.

66. Preservation of Law Enforcement Action. Nothing herein precludes the State from enforcing the provisions of this Assurance or from pursuing any non-released claims, including instituting any law enforcement action with respect to any acts or practices of Respondents not covered by this Assurance or any acts or practices in which Respondents engage after entry of this Assurance.

67. Compliance With and Application of State Law. Nothing herein relieves Respondents of their duty to comply with applicable laws of the state of Colorado nor constitutes authorization by the State for Respondents to engage in acts and practices prohibited by such laws. This Assurance shall be governed by the laws of the state of Colorado.

68. Non-Approval of Conduct. Nothing herein constitutes approval by the State of any of the Respondents' past, present, or future business practices, and Respondents shall not make any representation to the contrary.

69. Preservation of Private Claims. Nothing in this Assurance shall limit, constrain, abridge, abrogate, waive, release, or otherwise prejudice any private rights, causes of action, or remedies of any person against Respondents with respect to the acts and practices covered by this Assurance.

70. No Third-Party Beneficiaries Intended. This Assurance is for the benefit of the parties only and does not create or confer rights or remedies upon any other person, including rights as a third-party beneficiary. This Assurance does not create a private right of action on the part of any person or entity, whether to enforce this Assurance or otherwise, other than the parties hereto.

71. Execution in Counterparts. This Assurance may be executed in counterparts, each of which is an original and all of which are one and the same.

72. Severability. If any provision of this Assurance 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.

73. Amendment. This Assurance may be amended solely by written agreement signed by the State and Respondents or their authorized representatives.

74. Complete Agreement. This Assurance represents the entire agreement between the parties hereto and a complete merger of prior negotiations and agreements. No other written or oral terms or agreements exist except for those contained in this Assurance.

75. Attorneys' Fees and Costs. Except as otherwise provided herein, each party shall bear its own attorneys' fees and costs in connection with this matter.

76. Public Record. Pursuant to C.R.S. § 6-1-110(2), this Assurance shall be a matter of public record.

77. Voluntary Agreement. Respondents acknowledge that they have had an adequate opportunity to review this Assurance and consult with legal



counsel in connection with the negotiation, drafting, and execution of this Agreement. Each party and signatory to this Agreement represents that he, she, or it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

78. Assurance Jointly Drafted. For purposes of construing this Assurance, this Assurance shall be deemed to have been drafted jointly by both parties and, in the event of any dispute arising out of this Assurance, shall not be construed against or in favor of any party.

~~79. Entire Agreement. Respondents agree and represent that they have read and understand this Assurance, accept the legal consequences involved in signing this Assurance, and that there are no other representations, agreements, or understandings between Respondents and the Attorney General that are not stated in writing herein.~~

80. Violation. A violation of any term of this Assurance shall constitute a prima facie violation of the CCPA under C.R.S. § 6-1-110(2).

1. Upon Respondents' violation of any term of this Assurance, the Attorney General shall be entitled to file a civil action under the CCPA and the CFPFA in any court of competent jurisdiction and seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.
2. In addition to any remedies provided under the CCPA and the CFPFA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against any Respondent as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General that such Respondent(s) violated this Assurance. In such event, each Respondent agrees to waive any and all defenses and counterclaims that they may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

81. Notice. All notices to the State shall be sent to the following:

Jennifer Miner Dethmers  
Senior Assistant Attorney General  
Colorado Department of Law  
Consumer Protection Section

Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 7<sup>th</sup> Floor  
Denver, CO 80203  
Email: [jennifer.dethmers@coag.gov](mailto:jennifer.dethmers@coag.gov)

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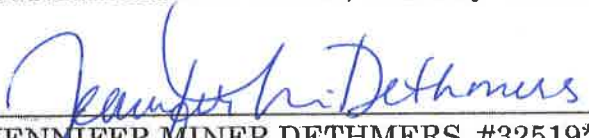
All notices to Respondents shall be sent to the following:

Donald C. Sisson  
Elkus & Sisson, P.C.  
501 S. Cherry St., Suite 920  
Denver, CO 80246  
Email: [dsisson@elkusandsisson.com](mailto:dsisson@elkusandsisson.com)

82. Signatures. Facsimiles of signatures and signatures provided by portable document format (".pdf") shall constitute acceptable, binding signatures for all purposes of this Agreement.

For the State


STATE OF COLORADO, *ex rel.*  
CYNTHIA H. COFFMAN, Attorney General

  
\_\_\_\_\_  
JENNIFER MINER DETHMERS, #32519\*  
Senior Assistant Attorney General  
Colorado Department of Law

Dated: 12.27.18

For the Respondents

Colt Holdings, LLC

  
\_\_\_\_\_  
Print Name:  
Title: *Managing Member*

Dated: 12/19/18

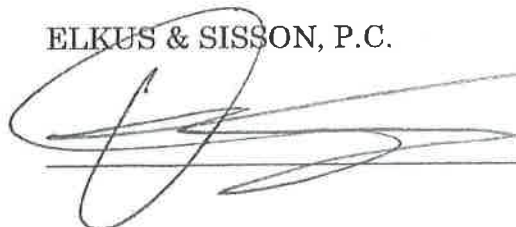
Jordan Head, individually

  
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Dated: Dec 19, 2018

Attorney for Respondents

ELKUS & SISSON, P.C.

  
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Dated: 12/21/18



Donald C. Sisson, Esq.

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