

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202 <hr/> JULIE ANN MEADE, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE, Plaintiff,	DATE FILED: July 13, 2015 4:57 PM FILING ID: C89743615C5B8 CASE NUMBER: 2015CV32520
v. USA DISCOUNTERS, LTD d/b/a USA LIVING and d/b/a FLETCHER'S JEWELERS Defendant.	▲ COURT USE ONLY ▲
CYNTHIA H. COFFMAN, Attorney General DAVID B. SHAW, #40453* Assistant Attorney General Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, Colorado 80203 Phone Number: 720-508-6110 FAX Number: 720-508-6033 Email: david.shaw@state.co.us *Counsel of Record	Case No.: Courtroom:
COMPLAINT	

Plaintiff, Julie Ann Meade, Administrator, Uniform Consumer Credit Code (collectively the State), by and through the undersigned assistant attorney general, for her Complaint, alleges as follows:

NATURE OF THE ACTION

1. Defendant USA Discounters, LTD (“USAD”) is a consumer goods vendor that provides consumer credit financing to Colorado consumers. Under the Uniform Consumer Credit Code, C.R.S. §§ 5-1-101, *et seq.* (the “UCCC”), the Administrator of the UCCC has the right to examine USAD’s “loans, business and records without the issuance of a subpoena.” Pursuant to that right, the Administrator examined records in February 2011. As explained in detail below, the Administrator discovered various UCCC violations and demanded that USAD change its business practices, which actions USAD agreed to take. In December 2014, the Administrator again examined USAD’s records. As explained in detail below, USAD has committed some of the same and additional UCCC violations.

Therefore, the Administrator brings this action to enjoin USAD from further violating the UCCC and to seek damages, civil penalties, and other relief as necessary.

PARTIES

2. The Administrator is the duly appointed Administrator of the UCCC. She is authorized to enforce compliance with the UCCC, *see* C.R.S. §§ 5-6-101, *et seq.*, and may bring a civil action against those who make or collect charges in excess of those permitted by the UCCC. In such actions, the Administrator may seek injunctive relief to restrain persons from violating the UCCC, obtain consumer restitution, and collect civil penalties for UCCC violations. *See* C.R.S. §§ 5-6-111, 5-6-112, 5-6-113, and 5-6-114.

3. Defendant USAD, doing business as USA Living and/or Fletcher's Jewelers, is a foreign company organized under the Virginia law. USAD identifies its principal place of business as 6353 Center Drive, Bldg 8 Ste 101, Norfolk, Virginia 23502. Among other things, USAD makes consumer credits sales and charges or collects finance charges. Accordingly, USAD must comply with the UCCC. *See* C.R.S. § 5-6-201.

GENERAL ALLEGATIONS

A. USAD'S GENERAL BUSINESS PRACTICES

4. USAD sells consumer goods, meaning goods that are purchased primarily for personal, family, or household purposes.

5. USAD operates 31 USA Living retail store locations and an unknown number of Fletcher's Jewelers store across the United States.

6. USAD operates a Colorado retail store under the trade name USA Living that is located at 3001 S. Academy Blvd., Colorado Springs, CO 80916.

7. USAD operates another Colorado retail store under the trade name Fletcher's Jewelers located in the Citadel Mall at 750 Citadel Dr. East, Colorado Springs, CO 80909.

8. USAD first filed its notification, pursuant to C.R.S. § 5-6-202, that it was making consumer credit sales with the Administrator on August 5, 2009. USAD's notification number is 990311.

9. USAD targets consumers who are United States Armed Forces members. The www.usaliving.com website advertises "special programs available for military and government employees."

10. USAD has located its retail stores in close proximity to large military bases, and relies heavily upon sales to military members.

11. Consumers can pay in full for purchases at USAD. However, USAD's business model focuses on credit extension to finance consumers' purchases.

12. USAD's website contains a section titled "The USA Way." This section states, among other things, "Hassle-free credit approvals for those with low, no or even bad credit; military/government employees ALWAYS approved!"

13. USAD sells goods to consumers who are individuals, as opposed to business entities.

14. In connection with the sales, USAD has regularly extended credit to consumers by granting them the right to defer debt payment or to incur debt and defer its payment.

15. When USAD has extended credit to consumers in connection with a sale, the consumers' debt has been by written agreement payable in installments or a finance charge has been made. Such sales have included sales in which the amount financed did not exceed seventy-five thousand dollars.

16. USAD solicits or advertises its goods in Colorado.

17. USAD's sales of goods include sales to Colorado residents and include sales for which written agreements evidencing the consumers' obligations are received in Colorado.

B. THE ADMINISTRATOR'S INITIAL EXAMINATION OF USAD IN 2011

18. The Administrator employs financial credit examiners who, amongst other things, examine companies that make consumer credit transactions in Colorado.

19. In February 2011, the Administrator examined USAD.

20. The Administrator's examination identified practices by USAD that violated Colorado law, including, but not limited to, the following practices.

21. First, USAD charged fees to Colorado consumers for payments made by credit card over the phone.

22. The Administrator advised USAD that Colorado law did not permit such additional charges under C.R.S. § 5-2-202, and required USAD to refund or credit all such fees back to the Colorado consumers charged.

23. In July 2011, USAD self-audited its records and refunded/credited all

fees charged for credit card payments by phone. USAD also agreed not to charge such fees in the future.

24. Second, the Administrator's examination revealed that USAD was suing Colorado consumers in court for defaulting on their payment obligations under a loan agreement without first providing the consumers with the written notice regarding their right to cure their default, which notice is required by Colorado law.

25. In July 2011, USAD agreed to change its practices to ensure that it provided consumers with notices of their right to cure defaults, as required by Colorado law.

26. Third, USAD charged improper late fees to Colorado consumers because it did not first apply payments received to current installments due, as required by C.R.S. § 5-2-203(3).

27. The Administrator directed USAD to refund the improper late fees charged.

28. Fourth, USAD charged late fees to Colorado consumers where either the purchase contracts did not provide for such fees or USAD did not disclose the late charges.

29. The Administrator directed USAD to refund the late charges assessed/collected without having contracted for and/or disclosed the late fees.

30. Fifth, USAD assessed late charges on accounts that had already reached their maturity date.

31. The Administrator advised USAD to refund all late charges collected after an account's maturity date had passed.

32. Sixth, USAD assessed late fees to Colorado consumers without notifying the consumers of the charges.

33. The Administrator advised USAD to provide the required late-fee notices in the future and directed it to refund the late charges assessed without providing such notices.

34. Seventh, USAD extended additional credit on already-closed accounts without a new or refinanced agreement and while adding new finance charges.

35. The Administrator advised USAD that it must abide by the original contracts' terms for any recurring payments while also refunding any additional finance charges assessed/collected.

36. Eighth, the Administrator's examination revealed that when USAD sued Colorado consumers to recover money that was alleged to be past due, USAD charged fees to consumers such as court costs that could only be awarded by a court, but charged the fees prior to the entry of a court order awarding such fees.

37. The Administrator advised USAD that Colorado law prohibited USAD from charging the fees to consumers prior to the entry of a court order awarding such fees.

C. THE ADMINISTRATOR'S EXAMINATION OF USAD IN 2014

38. In December 2014, the Administrator examined USAD a second time.

39. The Administrator's examination revealed that, notwithstanding its assurances in 2011 that it would change its practices to address legal violations revealed in the Administrator's examination, USAD has continued to engage in some of the same violations of law that were identified in the Administrator's February 2011 examination. USAD has also engaged in new, additional violations. These violations are outlined below.

40. First, USAD charged excessive fees for its "debt cancellation" insurance that the UCCC does not permit.

41. Second, USAD has continued to charge Colorado consumers fees for payments made via electronic means. Specifically, USAD charged a fee for credit card or electronic debit transactions after a payment was returned for insufficient funds. This fee was in addition to an already contracted fee for payments returned for insufficient funds.

42. Third, USAD improperly calculated rebates according to the "Rule of 78" rather than the actuarial method required by C.R.S. 5-2-211(3)(b), resulting in under-funded rebates to Colorado consumers.

43. Fourth, USAD has continued to sue Colorado consumers in court for defaulting on their payment obligations under a loan agreement without first providing the consumers with a proper written notice regarding their right to cure their default. Specifically, USAD has provided a notice to cure, but advised Colorado consumers that the right-to-cure period is only 12 days instead of the 20 days required by statute.

44. Fifth, USAD included language in its agreements with Colorado consumers purporting to allow USAD to sue to collect unpaid debts arising from consumer credit sales in Virginia courts and pursuant to Virginia law. USAD appears to have incorrectly attempted to remedy this violation by advising Colorado consumers that, "if a suit is brought against you in Virginia and you prefer to have the matter heard in the jurisdiction in which the purchase was made, we will honor

that request.” However, this proviso does not remedy the violation of C.R.S. § 5-1-201(8)(a), which statutory provision prohibits contracts providing that “[t]he law of another state shall apply” and/or that “[t]he consumer consents to the jurisdiction of another state.” Because the UCCC applies here, Colorado law must apply and actions to enforce debt obligations must be brought in Colorado.

45. Sixth, the Administrator’s examination revealed that USAD has engaged in unconscionable conduct when seeking to collect debts from Colorado consumers. By way of example:

- a. USAD sued in Virginia courts to collect on loans made in Colorado or made to Colorado residents after appointing attorneys for those residents without their meaningful consent, for which USAD charged the residents the attorney’s fees.
- b. USAD sued Colorado consumers without providing consumers with required notices of right to cure, or allowing the full 20 days for consumers to cure defaults.
- c. USAD threatened garnishment of Colorado consumers’ wages, or attachment of Colorado consumers’ assets, before obtaining a judgment in a court of competent jurisdiction.
- d. USAD reported or threatened to report judgments against Colorado consumers to credit reporting agencies before obtaining a judgment in a court of competent jurisdiction.
- e. USAD has threatened to contact the commanding officer of a Colorado consumer who is in the United States Armed Forces regarding an unpaid debt. More broadly, USAD collectors have called or sent written communications to third party references, including service member consumers’ chain-of-command. By phone or in writing, USAD revealed the existence of service members’ debts and delinquencies and requested that the chain-of-command intervene so as to induce payments by subordinate debtor service members to USAD. By disclosing consumers’ debts to their military employers, USAD knew they would cause substantial injury to those consumers. For military members, consumer-credit problems can result in disciplinary proceedings, lead to loss of supervisory authority or promotion potential, tarnish a soldier’s reputation or honor, erode the trust of leadership, and trigger revocation of a security clearance. Buried in USAD’s credit contracts was a provision that purported to secure service members’ permission for USAD to contact the service members’ chain-of-command if they fell behind on payments. Such provision is an impermissible waiver of the Colorado consumers’ rights and/or an

unconscionable attempt to collect a debt.

- f. USAD has threatened to engage in “embarrassing collection activity” and “forceful collection activity” against Colorado consumers.

46. Seventh, the Administrator’s examination also revealed that USAD does not maintain required records regarding its business activities in Colorado. For example, USAD’s records regarding the payment history for individual Colorado consumers do not contain a complete listing of all refunds made on consumers’ accounts for any refunds (e.g., finance charges refunds, debt cancellation refunds, pre-payment refunds, etc.) made by USAD at the time of prepayment, refinance, or payoff.

FIRST CLAIM FOR RELIEF
(Excess Charges)

47. The State repeats and realleges paragraphs 1 through 47, above, as if alleged herein.

48. USAD has charged, assessed, collected, or received excessive finance charges for “debt cancellation” insurance that are not allowed under the UCCC.

49. USAD has charged, assessed, collected, or received fees for payments made via electronic means that are not allowed under the UCCC.

50. USAD has charged, assessed, collected, or received finance charges in connection with Colorado consumer credit transactions that exceed the finance charges authorized and allowable under C.R.S. § 5-2-201.

SECOND CLAIM FOR RELIEF
(Underfunding Rebates)

51. The State repeats and realleges paragraphs 1 through 51, above, as if alleged herein.

52. USAD has underfunded rebates to Colorado consumers by using the “Rule of 78” to calculate refund payments on pre-calculated accounts rather than the actuarial method.

THIRD CLAIM FOR RELIEF
(Unlawful Waiver of Rights)

53. The State repeats and realleges paragraphs 1 through 52, above, as if alleged herein.

54. With respect to consumer credit transactions, USAD has included and

continues to include terms in agreements with Colorado consumers that purport to waive or forego rights that consumers have under the UCCC, and has sought to enforce those terms, in violation of C.R.S. § 5-1-106(1).

FOURTH CLAIM FOR RELIEF
(Unlawful Choice of Law Provisions)

55. The State repeats and realleges paragraphs 1 through 54, above, as if alleged herein.

56. With respect to consumer credit transactions, USAD has included and continue to include terms in agreements with Colorado consumers that purport to provide that the law of a state other than Colorado applies, purport to require the consumer to consent to the jurisdiction of a state other than Colorado, and purport to fix venue, and has sought to enforce such terms, all in violation of C.R.S. § 5-1-201(8).

FIFTH CLAIM FOR RELIEF
(Failure to Provide Notice of Right to Cure)

57. The State repeats and realleges paragraphs 1 through 56, above, as if alleged herein.

58. With respect to consumer credit transactions involving Colorado consumers, certain consumers have defaulted on their obligations to USAD by failing to make a required payment.

59. After such a default by a Colorado consumer consisting only of the consumer's failure to make a required payment, USAD has accelerated the maturity of the unpaid balance of the consumers' obligations without first providing the consumers with a notice of the consumers' right to cure, in violation of C.R.S. § 5-5-111.

SIXTH CLAIM FOR RELIEF
(Failure to Maintain Required Records)

60. The State repeats and realleges paragraphs 1 through 59, above, as if alleged herein.

61. USAD is required to maintain certain records regarding their business operations involving Colorado consumers, as set forth in C.R.S. §§ 5-2-304 and C.R.S. §§ 5-3-109.

62. USAD has failed to maintain all records that are required to be maintained by C.R.S. §§ 5-2-304 and C.R.S. §§ 5-3-109.

SEVENTH CLAIM FOR RELIEF
(Unconscionable Agreements/Debt Collection)

63. The State repeats and realleges paragraphs 1 through 62, above, as if alleged herein.

64. USAD has offered and entered into unconscionable consumer credit agreements with Colorado consumers allowing USAD to sue service members in foreign jurisdictions and to contact their superior officers to collect debts, often with deleterious consequences.

65. USAD has engaged in unconscionable debt collection against Colorado consumers in violation of C.R.S. § 5-5-109(2), as described above in paragraph 46 (incorporated here fully by this reference).

PRAYERS FOR RELIEF

WHEREFORE, the State demands judgment, as follows:

1. Preliminarily and permanently restraining USAD, and its officers, directors, agents, servants, employees, attorneys, heirs, successors, and assigns, or otherwise committing any of the practices, acts, conduct, transactions, or violations described above, or otherwise violating the UCCC, together with all such other relief as may be required to completely compensate or restore to their original position all consumers injured or prevent unjust enrichment of any person, by reason or through the use or employment of such practices, acts, conduct, or violations, or as may otherwise be appropriate, including, without limitation, requiring USAD to disgorge to the State or make restitution to consumers of all amounts charged, assessed, collected, or received in violation of the UCCC;

2. For every consumer credit transaction as may be determined at trial or otherwise in which a consumer was charged an excess charge in violation of the UCCC, ordering USAD to refund to each such consumer the excess charge;

3. For every consumer credit transaction as may be determined at trial or otherwise in which a consumer was charged an excess charge, ordering USAD to pay to each such consumer a civil penalty determined by the Court not in excess of the greater of either the amount of the finance charge or ten times the amount of the excess charge;

4. Awarding consumers their actual damages sustained as a result of USAD's unconscionable debt collection;

5. Ordering USAD to pay to the State a civil penalty determined by the Court within the limits set forth by statute;

6. Awarding pre-and post-judgment interest to the State, as may be allowed by contract, law, or otherwise; and

7. Awarding the State the costs and disbursements of this action, including attorney's fees, together with all such further relief as the Court deems just.

Dated: Denver, Colorado
July 13, 2015

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s/ David B. Shaw

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