DISTRICT COURT, COUNTY OF DENVER **STATE OF COLORADO** **1437 Bannock Street** **Denver, CO 80202**	DATE FILED: September 13, 2018 11:50 AM CASE NUMBER: 2017CV31452
Plaintiff: **THE PEOPLE OF THE STATE OF COLORADO** **v.** **Defendants:** **MILE HIGH HEATING & COOLING, LLC; MILE HIGH HEATING AND COOLING, LLC; PIKES PEAK HEATING AND COOLING, LLC; KEVIN DYKMAN, an individual; and KASEY DYKMAN, an individual.**	**▲ COURT USE ONLY ▲** **Case Number: 2017CV31452** **Courtroom: 414**
AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER	

This matter is before me following a two-day bench trial that began on February 26, 2018 and concluded on February 27, 2018. Plaintiff, the State of Colorado (the "State"), *ex rel* Cynthia H. Coffman, Attorney General for the State of Colorado, appeared with its attorneys, Jeffrey M. Leake and David Coats, and student practice law intern Irina Grohne. Defendants Kasey Dykman and Mile High Heating and Cooling, LLC appeared with their attorney, Greg Rawlings. Defendant Kevin Dykman represented himself *pro se.* Defendants Mile High Heating & Cooling, LLC and Pikes Peak Heating and Cooling, LLC did not obtain counsel and therefore failed to appear. The parties called witnesses, presented testimony, and admitted evidence. Having reviewed the evidence, testimony, court file, arguments of the parties and applicable law, and being otherwise fully advised, I **FIND** the following and **ORDER**:

I. FINDINGS OF FACT

1. The State presented evidence against individual Defendants Kevin Dykman; Kacey Dykman; Mile High Heating & Cooling, LLC; Mile High Heating and Cooling, LLC; and Pikes Peak Heating and Cooling, LLC at the Preliminary Injunction hearing on September 21-22, 2017. Pursuant to Rule 65(a)(2), evidence presented at the preliminary injunction hearing~~,~~ that would be admissible at trial, is a part of the trial record, as to those Defendants.

2. The three limited liability company defendants, Mile High Heating and Cooling, LLC; Mile High Heating & Cooling, LLC; and Pikes Peak Heating and Cooling, LLC were all owned by Defendant Kevin Dykman.

3. Mile High Heating and Cooling, LLC was formed by Kevin Dykman and Kasey Dykman on April 18, 2012. Defendant Kasey Dykman filed the Articles of Organization under his name only due to Kevin Dykman's pending divorce. *See* Exhibit 35 at 26:6-29:18, 32:3-33:21*, Sworn Statement of Kevin Dykman.*

4. Kevin Dykman filed the Articles of Organization for Mile High Heating & Cooling, LLC and Pikes Peak Heating and Cooling, LLC on May 20, 2013. Kasey Dykman then dissolved Mile High Heating and Cooling, LLC on June 26, 2013. *Id.* at 33:4-35:19. *See* Exhibits 42, 43, 44.

5. The three business entities employed exactly the same business model and operated in identical fashion. The conversion of the business from Mile High Heating *and* Cooling, LLC to Mile High Heating *&* Cooling, LLC was simply a name change. Pikes Peak Heating and Cooling, LLC was simply the same business operating in Colorado Springs. *TT1* at 30:23-31:31*. See* Exhibit 14.

6. The three limited liability company Defendants all operated in identical fashion. The State's allegations of deceptive trade practices apply uniformly to all three companies. The three limited liability company Defendants are collectively referred to in this Order as "Mile High Heating & Cooling."

7. In his interrogatory responses, Kevin Dykman stated that, as of the time of production (April 7, 2016), his companies grossed the following amounts by year:

a.) Mile High Heating & Cooling, LLC

2012-$603,530.21
2013-$1,427,389.73
2014-$1,588,692.28
2015-$1,711,282.21
2016-$273,634.58

b.) Pikes Peak Heating and Cooling, LLC

2012-$0
2013-$234,237.60
2014-$258,739.55
2015-$2,461.75
2016-$0

See **Exhibit 14.**

8. At the preliminary injunction hearing, Defendant Kevin Dykman asserted his Fifth Amendment privilege against self-incrimination and did not testify at the preliminary injunction hearing. At the preliminary injunction hearing, the State admitted the sworn statement of Kevin Dykman from an investigative deposition in its entirety. At both the

preliminary injunction hearing and the trial, the State admitted additional statements made by Kevin Dykman, against his interest, through the State's investigator, Leann Lopez.

9. Denver Building Department Inspector Chris Dayton testified at the preliminary injunction hearing that he has worked for the City of Denver as a mechanical inspector for four years. As part of his duties with the City of Denver, Inspector Dayton inspects residential and commercial furnace and air conditioning installations. *See* September 21, 2017 hearing transcript ("*HT1*") for 17CV31452 at 55:8-57:8, 81:6-82:16.

10. Mr. Dayton testified that, pursuant to municipal ordinances, the City of Denver requires all contractors to pull a building permit prior to installing HVAC equipment in residential homes. Mr. Dayton testified that homeowners cannot waive the building permit requirement. Mr. Dayton explained that the purpose of the building permit is to ensure that the installation is safe and complies with applicable building codes. Mr. Dayton testified that in order to pull a building permit, the contractor must have a contractor's license from the City of Denver building department. Mr. Dayton testified that the fees for building permits are determined as a percentage of the total cost of the HVAC installation. *HT1* at 58:24-61:17.

11. Mr. Dayton testified that he reviewed a list of Denver addresses provided to him by Investigator Leann Lopez and he determined that no building permits had been pulled by Mile High Heating & Cooling for HVAC for installations at those residences. Mr. Dayton was later recalled to the witness stand to clarify that he had reviewed the Denver addresses on the invoices found in Exhibit 1, and no building permits had been pulled for HVAC installations by any contractor during the time period of Mile High Heating & Cooling's installations. *HT1* at 58:24-61:17; *recall testimony not available due to audio issues.*

12. Mr. Dayton testified that as part of his duties he went to the home of Denver resident Laura Hinde to inspect a fireplace installation. While he was in the home, Ms. Hinde asked if he could also inspect her recently installed furnace. Mr. Dayton determined that Mile High Heating & Cooling had installed the furnace and had not pulled a permit. He issued a correction notice on the basis of failure to pull a building permit. Mr. Dayton observed additional problems with the installation; specifically, the door to the furnace closet touched the furnace and this lack of clearance created a fire hazard. *HT1* at 57:9-66:18.

13. Laura Hinde testified that she was a customer of Mile High Heating & Cooling and that she called the company in February of 2016 to fix a problem with her hot water heater. Because the hot water heater vented into the furnace, the technicians recommended that they install a new furnace that operates separately. Ms. Hinde testified that Mile High Heating & Cooling installed the furnace without pulling a building permit. *See* September 22, 2017 hearing transcript ("*HT2*") for 17CV31452 at 4:18-19:4.

14. Ms. Hinde testified that she had a fireplace installed in her home by a contractor other than Mile High Heating & Cooling. Ms. Hinde testified that she learned from the

fireplace contractor that a building permit was required because the fireplace was connected to the gas line. Ms. Hinde testified that when Denver building inspector Chris Dayton came to her home to inspect the new fireplace installation, he issued a correction notice as to the furnace because Mile High Heating & Cooling did not pull a permit. Ms. Hinde testified that in May of 2016, Mile High Heating & Cooling told her that they would pull a building permit for the furnace installation, however, the company did not pull a building permit. Ms. Hinde testified that she attempted to contact Mile High Heating & Cooling regarding the permit issue, but no one returned her calls. Ms. Hinde testified that in July she had a new furnace installed by a company other than Mile High Heating & Cooling. *HT2* at 4:18-19:4.

15. City of Sheridan Chief Building Official Wayne Robinson testified at the preliminary injunction hearing that he has worked as the Chief Building Official for the City of Sheridan for nine years. *HT1* at 11:11-11:23. Mr. Robinson testified that in September of 2015, he went to the home of an elderly woman named Dorothy Bush, who lived at 3357 South Zuni Street, after receiving a report from the City of Sheridan fire department. The report indicated that Ms. Bush had to evacuate her home after it filled with carbon monoxide. *Id.* at 11:24-15:7. Mr. Robinson testified that he inspected the home's furnace and, after inspection, he determined that the home had filled with carbon monoxide due to an unsafe furnace installation. Mr. Robinson testified that his investigation revealed that Mile High Heating & Cooling installed the furnace and that the company did not pulled a building permit. Mr. Robinson testified that Mile High Heating & Cooling had improperly installed the furnace: the furnace was not affixed to the wall, the electrical wiring was not correctly connected, and the flue from the furnace was not connected to the flue leading to the outside of the house. He testified that the gap between the flues caused the combusted gases to fill the house. *Id.*

16. Mr. Robinson testified that contractors must obtain a contractor's license and pull a building permit with the City of Sheridan prior to the installation of furnaces, hot water heaters, boilers, and air conditioning units. Mr. Robinson testified that consumers cannot waive the building permit requirement. Mr. Robinson explained that after installing HVAC equipment, the contractor must notify the City of Sheridan and a building inspector will inspect the installation within 24 hours. In response to questions from Defendant Kevin Dykman about how often he comes across furnaces that have not been inspected, Mr. Robinson testified that "it doesn't happen often." *HT1* at 15:8-20:8, 28:1-28:6.

17. Donna Bush testified that she was present when Mile High Heating & Cooling installed a furnace in the home of her mother-in-law, Dorothy Bush, who lives in Sheridan and was 95 years old at the time. *HT1* at 31:1-39-4. Ms. Bush testified that two installers from Mile High Heating & Cooling installed the furnace. She testified that the installers acted like they had not installed this type of furnace before, that they "bumbled around" and repeatedly referred to the instructions. Ms. Bush testified that the installers took a long time to hook up the ventilation and that the installers had difficulty in connecting the electrical wiring. *Id.*

18. Ms. Bush testified that she was present when her mother-in-law Dorothy Bush wrote a check dated September 8, 2015, to Mile High Heating & Cooling for $3,652.49. Ms. Bush testified that the installers did not discuss a building permit with her or Dorothy Bush. *HT1* at 31:1-39-4.

19. Robert Bush testified that he is the son of Dorothy Bush and that his mother lives at 3357 South Zuni Street in Sheridan. Mr. Bush testified that his mother stayed at his home for about a week after being forced to evacuate her home due to Mile High Heating & Cooling's furnace installation. Mr. Bush testified that he called Mile High Heating & Cooling 6 to 8 times to see if they would come out to fix the furnace installation. He testified that the company never answered the phone or returned his calls. Mr. Bush testified that he filed a complaint with the Better Business Bureau on September 11, 2015. *HT1* at 40:22-44:6.

20. Dorothy Bush testified that she was 95 years old at the time Mile High Heating & Cooling installed a furnace in her home. She testified that she called Mile High Heating & Cooling to install her furnace because she thought they had installed her previous furnace. When asked to describe what happened when Mile High Heating & Cooling installed the furnace she testified: "[w]ell it didn't seem that they knew what they was [sic] doing." Dorothy Bush testified that later that evening her alarms went off and she called the Sheridan Police and the Sheridan Fire Department. Ms. Bush testified that the police and fire department had her stand outside while they opened the windows and attempted to get rid of the fumes; however, she ultimately had to evacuate her home. *HT1* at 48:1-53:13.

21. Adrian Ullrich testified that he worked for Mile High Heating & Cooling from June of 2012 until March of 2014. Adrian Ullrich testified that he had 10 years of HVAC experience prior to working at Mile High Heating & Cooling. Adrian Ullrich testified that companies are required by local ordinances to pull building permits when they install HVAC equipment in consumers' homes. Mr. Ullrich estimated that Mile High Heating & Cooling had installed approximately 1,000 pieces of HVAC equipment during the course of his employment. He testified that Mile High Heating & Cooling "very seldom" pulled building permits. He testified that one of the purposes of building permits is to "protect the consumer from faulty installations." He testified that he told Kevin Dykman that the company should be pulling building permits. He stated that Kevin Dykman did not want to pay the cost associated with building permits. Mr. Ulrich testified that Mile High Heating & Cooling only pulled building permits in situations where the consumer insisted one be pulled. Mr. Ullrich testified that he had numerous conversations with Kevin Dykman about pulling building permits and that Mr. Ullrich explained to Kevin Dykman both the reasoning for permits and that the company was legally obligated to pull building permits. Mr. Ullrich testified that Kevin Dykman was "adamant" about not pulling building permits. *HT1* at 132:9-135:10; 147:4-148:6.

22. Mr. Ullrich testified that he had concerns about the competency and expertise of the technicians and installers employed by Mile High Heating & Cooling. He testified that he observed a lot of work that was not performed correctly, and that raised concerns

about possible gas leaks or electrical problems. He described the work of these technicians as "below the standard of anybody that's in the field." *HT1* at 135:14-141:22.

23. Mr. Ullrich testified regarding an incident where a Mile High Heating & Cooling technician failed to tighten a gas line in a consumer's home, the home filled with gas and the fire department had to respond. Mr. Ullrich testified that based on his knowledge, training, and experience, a home filled with gas creates a potential explosion hazard. Mr. Ullrich testified that he conveyed these concerns to Kevin Dykman and that Kevin Dykman's response was "lackadaisical." *HT1* at 135:14-141:22.

24. Joe Ledkins testified that he worked as an operations manager at Mile High Heating & Cooling from May 2014 until September 4, 2015. Mr. Ledkins testified that he had 6 years of HVAC education from a school in California and that his education included the installation of furnaces, hot water heaters, boilers, and air conditioning units. Mr. Ledkins estimated that Mile High Heating & Cooling averaged at least one HVAC equipment installation per day while he worked there. *HT1* at 150:1-152:24; 154:11-155:7.

25. Mr. Ledkins testified that every jurisdiction in Colorado requires a building permit for HVAC equipment installation. Mr. Ledkins also testified that Kevin Dykman did not want to pull building permits and that Kevin Dykman stated that building permits were "just another way to give the government money." Mr. Ledkins testified that some of the Mile High Heating & Cooling technicians had "zero to no training at all," misdiagnosed equipment problems, and did not remember how to reassemble the equipment they were working on. *HT1* at 155:8-160:21.

26. Sherri Frantz testified at the preliminary injunction hearing that Mile High Heating & Cooling installed a furnace in her home on January 24, 2017. She testified that the furnace Mile High Heating & Cooling installed had water leaking from the exhaust pipe, improper drainage tubing, and was set up in a way that posed a trip hazard. Ms. Frantz testified that in August she saw a news report about the Attorney General's case against Mile High Heating & Cooling. Ms. Frantz testified that she then realized that Mile High Heating & Cooling did not pull a permit and that her furnace had not been inspected. Ms. Frantz testified that on August 28, 2017, she contacted the building department and paid $262 for a building permit. She explained that on August 29, 2017, an Aurora building inspector came to her home and issued a correction notice, citing among other things "furnace exhaust improper," "exhaust termination next to an operable window," and "vent piping improperly supported." Ms. Frantz testified that she was in the process of obtaining estimates to correct the problems with her furnace. *HT1* at 87:6-97:22.

27. Elizabeth Cannon testified at the preliminary injunction hearing that she hired Mile High Heating & Cooling for the installation of a furnace and hot water heater. She testified that Exhibit 28 is an invoice, dated March 2, 2016, that she received from Mile High Heating Cooling for the installation in the amount of $5,000. Ms. Cannon testified that Mile High Heating & Cooling did not discuss the need for a building permit with her. *HT1* at 111:1-112:19.

28. Kenneth Barnes testified that Exhibit 29 is an invoice, dated August 13, 2015, that he received from Mile High Heating & Cooling for the installation of a furnace in his home. Mr. Barnes testified that he lives in Denver. Mr. Barnes testified that Mile High Heating & Cooling's installers told him that permits were optional and that he could decline to have a building permit. Based on that information, Mr. Barnes wrote his initials on the invoice, next to the words "customer declined permit." *Transcript of testimony not available due to audio issues.*

29. Fate Price testified that Exhibit 26 is an invoice, dated January 13, 2015, for a furnace that Mile High Heating & Cooling installed in his home. Mr. Price testified that Mile High Heating & Cooling did not discuss the need for a building permit with him. *Transcript of testimony not available due to audio issues.*

30. Erica Alikchihoo testified that Exhibit 14 is a copy of a complaint she filed with the Better Business Bureau, dated July 5, 2012, about Mile High Heating & Cooling. Ms. Alikchihoo testified that Mile High Heating & Cooling contacted her partner through a cold sales call offering to perform a furnace/air conditioning tune-up for $54. She testified that after Mile High Heating & Cooling technicians serviced her furnace it did not work properly; she testified that a capacitor was not reinstalled, that the furnace filter had not been changed, and that an Xcel Energy technician later discovered that the pilot light gas tube was not properly tightened and was emitting gas. *Transcript of testimony not available due to audio issues.*

31. Cornerstone co-owner Joshua Sawyer testified that he has known Defendant Kevin Dykman for 15 years. Mr. Sawyer testified that he worked at Mile High Heating & Cooling as a dispatcher for nine months, ending in May of 2016. He testified that he formed his own HVAC company, Cornerstone Mechanical, after leaving Mile High Heating & Cooling. *See* February 26, 2018 Trial Transcript ("TT1") at 117:2-118:14.

32. Mr. Sawyer testified that Cornerstone Mechanical purchased Mile High Heating & Cooling's assets in return for shares of Cornerstone Mechanical on February 28, 2017. Mr. Sawyer testified that he owns 25% of Cornerstone, his father owns 25%, Kevin Dykman owns 26%, Kasey Dykman owns 12% and Kory Dykman owns 12%. Mr. Sawyer testified that Kevin Dykman acted as President of the company and was paid a salary of $115,000; Kasey Dykman was paid a salary of $80,000; Kory Dykman was a sales technician with a starting salary of $65,000. *TT1*. at 118:15-122:10.

33. Mr. Sawyer testified that after the temporary restraining order issued in this matter went into effect against Kevin Dykman, Kevin Dykman refused Cornerstone's offer to rescind the purchase of Mile High Heating & Cooling, LLC. Mr. Sawyer testified that he was in the process of closing Cornerstone due to financial problems. *TT1* at 123:4-125:24.

34. Mr. Sawyer testified that Kory Dykman's company, Grandview Heating & Cooling, was reaching out to Cornerstone's customers and soliciting business by stating that Grandview was the "true Mile High." *TT1* at 132:2-134:10.

35. Mr. Sawyer testified that when he worked at Mile High Heating & Cooling, Kevin Dykman described the building permit process as a "tax" from the government that didn't need to be paid. Mr. Sawyer testified that Kevin Dykman encouraged Mile High Heating & Cooling employees to dissuade consumers from requesting building permits by telling the customers that if they let the building inspector into their home, the building inspector would find other problems and the consumer would have to deal with those issues. Mr. Sawyer testified that he heard Kevin Dykman make these statements to the technicians, to the other Dykmans, and at company meetings. *TT1* at 134:12-135:20.

36. The State's investigator, LeAnn Lopez, testified at the preliminary injunction hearing regarding the State's document review and determination of the number of non-permitted HVAC installations. Ms. Lopez testified that during the investigation, Kevin Dykman provided the State with 13 banker boxes of unorganized documents in response to a subpoena issued by the State. Ms. Lopez testified that she was present at Defendant Kevin Dykman's deposition and that he admitted to deliberately shuffling these documents to make the State's investigation more difficult. *HT2* at 32:23-37:10.

37. Ms. Lopez testified that, at the time of the preliminary injunction hearing, she found and identified 95 invoices from the documents Kevin Dykman provided, she conferred with 23 local building departments and determined that Mile High Heating & Cooling had failed to obtain building permits for 88 of the 95 installations. *HT2* at 84:7-84:17. Ms. Lopez testified that that almost all of the Denver consumers whose names appeared on the 95 invoices were senior citizens over 65 years old. *Id.* at 49:3-50:19.

38. At trial, Ms. Lopez testified that the State had completed its review of Mile High Heating & Cooling's documents, a total of 31,164 documents. Ms. Lopez testified that from those documents, she found 890 HVAC installation related invoices. Ms. Lopez testified that she followed up with local building departments on 143 of the invoices and found that Mile High Heating & Cooling had failed to pull building permits for 126 of the 143 HVAC installations. *TT1* at 174:22-178:16.

39. Ms. Lopez testified that her investigation showed that Mile High Heating & Cooling operated its call center five days a week using the sales pitch found in Exhibits 16 and Exhibit 41. Ms. Lopez testified that Mile High Heating & Cooling opened for business on April 18, 2012 and stopped its operations on February 24, 2017. Ms. Lopez testified that excluding Good Friday, Easter, Christmas and federal holidays, Mile High Heating & Cooling would have made representations to consumers from its call center for a total of 1,213 days. *TT1* at 171:5-171:23.

40. Sherri Olsen testified that she was Kevin Dykman's spouse and began working at Mile High Heating & Cooling in August or September of 2012. She testified that she worked there until Mile High Heating & Cooling closed in February of 2017. She testified

that Kevin Dykman acted as owner/manager and set the policies and gave directions at Mile High Heating & Cooling. *TT1* at 146:8-149:5.

41. Ms. Olsen testified that she did all the data entry and the payroll. Ms. Olsen testified to the wage information show on W-2 forms in Exhibit 45. Ms. Olsen testified that she was the highest paid individual at the company, earning $103,113 in 2015; Kasey Dykman was the second highest paid individual at $99,500; Kevin Dykman received $27,600 in 2015. Ms. Olsen testified that Kory Dykman did not work the entire year and earned $25,918. She testified that Kasey Dykman's brother, Kody Dykman, earned $16,747 and worked as a helper. *TT1* at 148:13-149:21, 152:1-156:9.

42. Ms. Olsen testified that the documents in Exhibit 39 were Mile High Heating & Cooling invoices. *TT1* at 156:10-158:21.

43. Ms. Olsen testified that Mile High Heating & Cooling paid its cold-callers an hourly wage, plus commission. The number of cold-callers employed by the company ranged from as few as four or five, to as many as fifteen to twenty. She testified that the call center operated five days a week the whole time that she worked there and that the cold-callers called consumers informing that that they were from Mile High Heating & Cooling and offering safety tune-ups. *TT1* at 160:21-162:19.

44. At trial, the State called Defendant Kevin Dykman as a witness. Kevin Dykman invoked his 5th amendment right against self-incrimination and did not answer any questions from the State. *TT1* at 18:7-21:

45. At trial, Defendant Kasey Dykman testified that he filed the Articles of Organization for Mile High Heating and Cooling, LLC on April 18, 2012 and was an owner "on paper." Kasey Dykman testified that this company was formed under his name instead of under Kevin Dykman's name because Kevin Dykman was going through a divorce. He testified that he was a supervisor with Mile High Heating & Cooling, LLC. *TT1* at 25:14-26:14, 32:21-33:1. He testified that he had his own office at Mile High Heating & Cooling and his duties included supervising the technicians' paperwork. Kasey Dykman testified that the technicians were paid a commission of 25% for repairs and 11% for installations and that the installers who installed the HVAC equipment in consumers' homes were paid a flat rate for each installation. Kasey Dykman testified that he was not paid on commission. *Id.* at 101:1-101:4,100:6-100:8, 32:5-33:18.

46. Kasey Dykman testified that he taught the technicians how to complete the paperwork, including invoices. He testified that many of the Mile High Heating & Cooling invoices contained a section stating "Permit Fee" with a flat fee amount of $220.00 Kasey Dykman testified that building permit fee changes depending on the amount of the job and that is actually a percentage determined by the jurisdiction. Kasey Dykman testified that he could not explain why some of Mile High Heating & Cooling's invoices had a pre-printed flat fee amount for building permits. Kasey Dykman testified that he thought that customers could decline building permits. *TT1* at 37:21-42:22.

47. When asked about the purpose of building permits Kasey Dykman testified that it was for the "safety of the people," for whom the product was installed. Kasey Dykman agreed, however, that he had previously testified under oath that the purpose of building permits is "to give the government money." *TT1* at 43:2-44:4.

48. When asked why Mile High Heating & Cooling did not pull building permits, Kasey Dykman testified that "[i]t was Joe Ledkins' job. It would be a much better question for Joe Ledkins than me." *TT1* at 43:2-44:4. Reviewing a March 2016 invoice, Kasey Dykman admitted that Mile High Heating & Cooling continued to install HVAC equipment in consumers' homes after Joe Ledkins left the company in September of 2015. *Id.* at 42:23-43:7, 38:24-39:6.

49. Kasey Dykman testified that Mile High Heating & Cooling obtained its customers through cold-calling. He testified that Mile High Heating & Cooling's cold-callers used the pitch found in the Employee Training Packet: Exhibits 41 and 16. He explained that the cold-callers called consumers based on their zip codes, stating that they were from Mile High Heating & Cooling and were offering "a full 30-point safety inspection and tune-up" at a specific price. Along with the pitch, Kasey Dykman testified that Mile High Heating & Cooling provided the cold-callers with a rebuttal sheet that instructed the cold-callers that, if a consumer stated that a friend or family member did the inspections and tune-ups, the cold-caller should ask the consumer if the friend or family member doing the work was "certified." Kasey Dykman testified that the cold-caller was also instructed to inform the consumer that if the friend or family member was not certified they could be fined up to $10,000 for any contact with refrigerant. *TT1.* at 31:10-31:19, 44:5-50:14.

50. Kasey Dykman testified that if a consumer was interested in having the company perform the safety inspection and tune-up, the cold-caller scheduled an appointment for a technician to go out to their home. Kasey Dykman testified that the technicians received a 25% commission for the sale of repairs and an 11% commission for the sale of any new installations, such as the installation of a new furnace or air conditioning unit. Kasey Dykman testified that the installers performed the actual installation and collected payment from the consumer. *TT1* at 31:10-33:18, 37:21-42:17, 88:14-89:1; *See* Exhibit 29 (furnace installation invoices), *See* Exhibit 46 (Kasey Dykman technician/tune-up and sales estimates).

51. Regarding the rebuttal statement, Kasey Dykman testified that "certification" refers to EPA certification for the handling of refrigerants in air conditioning units, and is the one requirement for HVAC technicians in the state of Colorado. Kasey Dykman stated that all Mile High Heating & Cooling technicians were EPA certified. *Id.*

52. Later in his testimony, Kasey Dykman was asked to review an estimate that he gave to a consumer for an air conditioning unit repair. When asked whether he was EPA certified, Kasey Dykman admitted he was not EPA certified. *Id.* at 54:1-55:6. See Exhibit 46 (Kasey Dykman technician/tune-up and sales estimates).

53. Kasey Dykman testified that there was no difference in the way the business

operated after changing its name from Mile High Heating and Cooling, LLC to Mile Heating & Cooling, LLC. He testified that the business "just got bigger." *Id.* at 30:23-31:3.

54. Kasey Dykman testified that he had no formal HVAC training. He testified that he worked for three months at Colorado Heating and Cooling as an install helper and duct cleaner. He explained that after forming Mile High Heating and Cooling, LLC with his father, he acted as a technician for the company. He testified that after a couple of months, he began going into consumers' homes by himself. Kasey Dykman testified to an estimate, dated October 14, 2013, in which he carried out a furnace tune-up and installed a new part. *TT1* at 92:5-93:2, 23:10-24:1; 26:8-28:16. *See* Exhibit 37, *BBB complaint*. *See* Exhibit 46, *Kasey Dykman technician/tune-up and sales estimates.*

55. Kasey Dykman testified that Mile High Heating & Cooling closed in February of 2017 because Cornerstone, another HVAC company, wanted to merge the companies. Kasey Dykman testified that Cornerstone bought out Mile High Heating & Cooling, LLC in return for 50% ownership of Cornerstone. Kasey Dykman testified that Cornerstone received Mile High Heating & Cooling's customer list. *TT1* at 58:5-60:1.

56. Kasey Dykman testified that he was given stock in Cornerstone as part of the merger. Kasey Dykman testified that he owns 12% of Cornerstone, his father Kevin Dykman owns 26% of Cornerstone and his brother Kory Dykman owns 12%. He testified that he worked at Cornerstone and that his title was Chief Operating Officer. In describing his role, he testified that "[i]t was a lot of the same as at Mile High. I went into the field and I ran calls, and I helped with the sales and all of that." Kasey Dykman testified that he and his family decided to leave Cornerstone in September of 2017. *TT1* at 58:5-65:25.

57. Kasey Dykman testified that after leaving Cornerstone he went to work at Grandview Heating and Cooling, a company owned by his brother Kory Dykman. He testified that he is not currently being paid because they are trying to get the company "off the ground." Kasey Dykman testified that his role at Grandview Heating and Cooling, includes supervising and motivating the cold-callers and that he dispatches technicians. Kasey Dykman testified that between 8 to 10 people work at Grandview. When asked if Grandview Heating and Cooling pulls building permits, he testified that he did not know. *TT1* at 68:9-68:24.

58. Kasey Dykman testified that he was a "full-out technician" at the original company Mile High Heating and Cooling, LLC, and that he went into consumers' homes to perform safety inspections by himself. Reviewing the invoices in Exhibit 46, he testified that the invoices reflected that he installed a capacitor in a consumer's furnace on October 24, 2013. He testified that another invoice reflected that he quoted a consumer on an air conditioning repair on April 25, 2014. On cross-examination by Kevin Dykman, he testified that he was usually not alone, that he rode along with more experienced technicians, and that he rode along with them to simply ensure that that they completed the paperwork properly. On cross-examination by his counsel, Kasey Dykman testified that his role was "office help." *Id.* at 52:1-55:6, 26:8-28:16; 82:2-82:16; 97:5-97:9. *See*

Exhibit 46, *Kasey Dykman technician/tune-up and sales estimates.*

II. CONCLUSIONS OF LAW

Violations of the CCPA

59. The State has asserted three claims for relief against the Defendants, for violating three specific provisions of the Colorado Consumer Protection Act, C.R.S. § 6-1-101 *et seq.* (hereinafter "CCPA").

60. Under C.R.S. § 6-1-105(1), "A person engages in a deceptive practice when, in the course of the person's business, vocation, or occupation, the person:

> (e) Knowingly makes a false representation as to the characteristics, … benefits, … of a service. (State's Third Claim for Relief)
>
> (u) 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. (State's Second Claim for Relief)
>
> (z) Refuses or fails to obtain all governmental licenses or permits required to perform the services or to sell the goods, foods, services, or property as agreed to or contracted for with a consumer. (State's First Claim for Relief)

61. Under C.R.S. § 6-1-102, "'Person' means an individual, corporation, business trust, estate, trust, partnership, unincorporated association, or two or more thereof having a joint or common interest, or any other legal or commercial entity."

Remedies for CCPA Violations

62. Once a violation of the CCPA has been established, "[t]he Court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of *any* person injured by means of *any such practice* or to prevent any unjust enrichment by *any person* through the use or employment of any deceptive trade practice." C.R.S. § 6-1-110(1) (emphasis added). Courts have "considerable discretion in entering orders and judgment" to completely compensate injured consumers under C.R.S. § 6-1-101(1). *In re Jensen*, 395 B.R. 472, 485 (Bankr. Colo. 2008); *see also Showpiece Homes Corp. v. Assur. Co. of Am.*, 38 P.3d 47, 51 (Colo. 2001) ("[A]n expansive approach is taken in interpreting the CCPA in its entirety and interpreting the meaning of any one section by considering the overall legislative purpose.").

Civil Penalties

63. C.R.S. § 6-1-112(1)(a) of the CCPA provides the imposition of civil penalties in this action:

> Any person who violates or causes another to violate any provision of this article shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation. For purposes of this paragraph (a), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.
> C.R.S. § 6-1-112(1)(a).

64. Civil penalties are mandatory upon a finding that a defendant has violated or caused another to violate the CCPA. *May Dep't Stores Co., v. State ex rel. Woodard,* 863 P.2d 967, 972 (Colo. 1993). Further, "[i]n order to effectuate the broad remedial relief and deterrence purposes, the CCPA does not require proof of actual injury" for an award of penalties. *Id*. at 973.

65. A transaction-based CCPA violation is distinct from, and does not require proof of, consumer injury. *May Dep't Stores*, 863 P.2d at 972. "[C]onsumer injury is not a necessary element of a CCPA violation, nor is it an essential element to the award of civil penalties." *Id*. at 976.

66. A transaction-based violation occurs each time false and misleading information is disseminated, not just in the circumstances where the misleading information resulted in a sale to consumers. *May Dep't Stores*, 863 P.2d at 973.

67. Courts may infer that a company engaged in numerous uniform, material misrepresentations or omissions based on circumstantial evidence. *BP Am. Prod. Co. v. Patterson*, 263 P.3d 103, at 109-10 (Colo. 2011); see also *Garcia v. Medved Chevrolet, Inc.,* 263 P.3d 92, 94 (Colo. 2011). Circumstantial evidence indicating that a large number of uniform misrepresentations occurred does not necessarily need to take the form of a script which recited regularly and/or by routine. *Id*. at 112-13.

68. The following factors may be considered in determining an appropriate amount of civil penalties: (1) the good or bad faith of the defendant; (2) the injury to the public; (3) the defendant's ability to pay; and (4) the desire to eliminate the benefits derived by violations of the CCPA. *State ex rel. Woodard v. May Dep't Stores Co., 849 P.2d 802, 810 (Colo. App. 1992) aff'd in relevant part 863 P.2d 967 (1993).*

69. Under the CCPA, personal liability may be imposed on officers or agents who directly participated in the deceptive trade practices. *Hoang v. Arbes*s, 80 P.3d. 863, 870 (Colo. App. 2003). Direct participation may be shown in a number of ways, including conception or authorization of the deceptive conduct, cooperation in the conduct, specific

direction of the conduct or sanction of the conduct. *Id*. at 868.

Restitution

70. Under the CCPA, the term 'restitution' refers 'solely to a district court's orders or judgments . . . which may be necessary' to completely compensate or restore to the original position any person injured or to prevent any unjust enrichment." "Order of Judgment," April 20, 2011, *People v. Shifrin*, 342 P.3d 506, 522 (Colo. App. 2014) (citing *W. Food Plan, Inc.* 598 P.2d at 1039, n.1).

71. "The CCPA does not require the Attorney General to elicit testimony from every consumer who was harmed to prove a violation." *People v. Shifrin*, 342 P.3d 506, 515 (Colo. App. 2014). As such, restitution may be awarded to all consumers who suffered damages due to a deceptive trade practice, not just those who testified. *Id*

Permanent Injunction

72. An injunction is an extraordinary and equitable remedy that is intended to prevent future harm. *May Dep't Stores*, 863 P.2d at 978. Here, as in other consumer protection cases, the Court has a duty to ensure that the injunctive relief will effectively redress and prevent future violations. *See Id.*

73. Where the Court finds that there have been numerous, long-range, and repeated violations of the CCPA, the Court must "ensure that the injunctive decree will effectively redress the proven violations and prevent further ones." *May Dep't Stores Co*., 849 P.2d at 806.

74. When assessing injunctive relief, the Court must consider whether the relief adequately addresses the Defendants' violations of the CCPA and whether the relief will prevent future harm. *May Dep't Stores Co.* 863 P.2d at 978. Past conduct can dictate the breadth of injunctive terms: "the purpose [of the injunction] being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts…found to have been committed…in the past." *NLRB v. Express Publ'g Co*., 312 U.S. 426, 435-37 (1941).

Attorney Fees

75. Attorney fees and costs are mandatory pursuant to C.R.S. § 6-1-113(4) when the Colorado Attorney General successfully enforces the CCPA: "Costs and attorney fees *shall* be awarded to the attorney general . . . in all actions where the attorney general… successfully enforces this article." (emphasis added.) The recovery of fees for governmental prosecution should be calculated at market rate. *Balkind v. Telluride Mountain Title Co.*, 8 P.3d 581, 588 (Colo. App. 2000).

III. Order

76. All findings of fact and conclusions of law made herein are based on what I find to be a preponderance of the admissible, credible, persuasive evidence.

77. Since I sat as the factfinder in this case, in assessing credibility I have applied the same standards that jurors are permitted to apply as set forth in CJI, Civ. 3:17.

78. Beginning in 2012, the Defendants repeatedly violated C.R.S. § 6-1-105(1)(z) (Refuses or fails to obtain all governmental licenses or permits required to perform the services) by selling and installing HVAC equipment in consumers' homes without obtaining the required permits from local building departments. Companies that install HVAC equipment in consumers' homes are required to obtain, or "pull" building permits from local building departments. The purpose of the building permit is to ensure that the HVAC equipment is installed safely and according to local building code. When a company pulls a building permit, the local building department carries out a subsequent inspection.

79. I find the State investigator's testimony credible. Ms. Lopez testified that she conferred with local building departments and found that building permits were required by the local building departments and that Defendants had not pulled building permits for 126 of the 143 HVAC installation invoices that she reviewed.

80. I find that the testimony from Mile High Heating & Cooling's former operations managers was also credible. Mr. Ullrich and Mr. Ledkins testified that the Defendants did not want to pull the requisite building permits because of the cost and because they had an anti-regulatory attitude.

81. Additionally, I find it compelling that both Defendants Kevin Dykman and Kasey Dykman admitted that Mile High Heating & Cooling did not have any individuals capable of pulling permits after operations manager Joe Ledkins left the company on September 5, 2015. Defendants Kevin Dykman and Kasey Dykman continued to operate Mile High Heating & Cooling until February 24, 2017, despite not having the capability to obtain permits.

82. I find the testimony from the fourteen consumers to be credible. These consumers paid for the Defendants' services on the belief that that Mile High Heating & Cooling was providing them with competent technicians and services that complied with local ordinances.

83. I find the testimony from the two building inspectors (from the cities of Denver and Sheridan) to be credible. They testified that they came across Mile High Heating & Cooling HVAC installations as part of their regular duties and in both instances Mile High Heating & Cooling had failed to obtain the required building permit and that the HVAC installations were completed in a manner that created a dangerous condition for the consumers.

84. I find that Kevin Dykman and Kasey Dykman knowingly violated C.R.S. § 6-1-105(1)(z) by failing to obtain the building permits required by local ordinances for HVAC installations. Testimony presented at trial and during the preliminary injunction hearing established that Kevin and Kasey Dykman were aware that local ordinances required them to pull permits for HVAC installations; however, despite this knowledge Mile High Heating & Cooling's continued to install HVAC equipment in consumers' homes without pulling the required permits.

85. I find and conclude that Defendants violated C.R.S. § 6-1-105(1)(u) failing to disclose to consumers that building permits were required and 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. Defendants failed to disclose this information in effort to induce consumers to purchase HVAC services, equipment and installation from Mile High Heating & Cooling.

86. I find and conclude that Defendants violated the Colorado Consumer Protection Act, C.R.S. § 6-1-105(1)(e)(Knowingly makes a false representation as to the characteristics and benefits of a service).

87. Defendants violated this provision by knowingly representing that their service and installation technicians possessed a level of training, skill, and commitment to compliance with regulations that they did not indeed possess. Defendants further violated this provision by representing to consumers that their technicians had the skill level necessary to safely and correctly service and install HVAC equipment, when, in fact, Mile High Heating & Cooling's installation technicians lacked the requisite training, skill, and commitment to comply with regulations.

88. Defendant Kevin Dykman owned and controlled the three business entity Defendants, collectively referred to as Mile High Heating & Cooling. The evidence established that Defendant Kevin Dykman set Mile High Heating & Cooling's policy of not pulling building permits. The evidence also shows that Defendant Kasey Dykman adopted and promoted Kevin Dykman's antiregulatory belief system.

89. Kevin Dykman knowingly operated his businesses in violation of local ordinances that required building permits to protect consumers; meanwhile his employees cold-called consumers to offer safety inspections and tune-ups using a pitch that represented his company as experienced and focused on the safety of consumers.

90. Kevin Dykman asserted his Fifth Amendment privilege at the preliminary injunction hearing and at trial and refused to answer any and all questions related to the State's claims in this matter. The Fifth Amendment ***does not*** forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence

offered against them. *Asplin v. Mueller,* 687 P.2d 1329, 1332 (Colo. App. 1984). "Failure of a party . . . to answer questions based on the privilege against self-incrimination raises a strong inference that the answers would have been unfavorable and damaging to him, and comment to that effect is proper." *Id.* at 1332. I find and conclude that any truthful response to the questions the State asked Kevin Dykman at trial would have been unfavorable and damaging to him.

91. I find and conclude that the findings of facts listed above show Kevin Dykman was directly involved with the deceptive trade practices of Mile High Heating & Cooling and is personally liable for the CCPA violations committed by his companies.

92. I find and conclude that the findings of fact listed above show Defendant Kasey Dykman directly participated in and sanctioned Mile High Heating & Cooling's deceptive trade practices and is also personally liable for the CCPA violations committed by his companies.

93. I find and conclude that the evidence presented by the State at the preliminary injunction hearing and at trial is sufficient to support an inference that the Defendants disseminated false and misleading information and engaged in deceptive trade practices on a daily basis during the course of Defendants' business operations from the time that Mile High Heating and Cooling, LLC was formed on April 18, 2012, through the close of its business operations on February 24, 2017.

94. I find that the Defendants operated Mile High Heating & Cooling in bad faith through its deceptive cold-calling script, through its refusal to obtain the required building permits, through its faulty installations, and through its inexperienced technicians. Defendants advertised themselves as an experienced and safety-focused HVAC company; however, Defendants' incompetence created dangerous conditions in consumers' homes and the discovery of those dangerous conditions was delayed due to Defendants' refusal to obtain the required building permits.

95. I find that the Defendant's actions have caused injury to the public. The evidence shows that Defendants performed hundreds of HVAC installations in consumers' homes using technicians and installers who had minimal training or experience. The evidence shows that the Defendants conducted hundreds of installations without pulling building permits. The evidence shows that the Defendants rarely obtained building permits, which means that hundreds of consumers have an un-inspected and potentially hazardous HVAC installation in their home.

96. Regarding the Defendants ability to pay civil penalties and/or restitution, Defendant Kevin Dykman asserted his Fifth Amendment privilege against self-incrimination and refused to answer questions about his ability to pay civil penalties and/or restitution. I find that any truthful response to these questions would have been unfavorable and damaging to Kevin Dykman.

97. Defendant Kasey Dykman testified that, despite the fact he is working for his

brother's heating and cooling company, he has no current income and has fallen behind on his financial obligations. However, I do not find this testimony credible.

98. Defendant Mile High Heating and Cooling, LLC was dissolved in 2013. Defendants Mile High Heating & Cooling, LLC and Pikes Peak Heating and Cooling, LLC did not appear at the preliminary injunction hearing or trial. The owner of Cornerstone Mechanical testified that he purchased Mile High Heating & Cooling's assets and that Cornerstone is closing its business due to financial difficulties.

99. Despite Kasey Dykman's testimony stating that he is not earning any money working at Grandview Heating & Cooling with his brother, I find that the evidence shows he earned a significant salary when working for Mile High Heating & Cooling. *See ¶ ¶ 32, 41 above.* The evidence shows that the entity Defendants received significant financial benefits from their deceptive trade practices. *See ¶ 7 above.* As such, penalties are required in this matter to eliminate any benefits derived by the Defendants from their dangerous and deceptive business model.

Civil Penalties

100. Regarding the State's Third Claim for Relief, Mile High Heating & Cooling employed cold-callers and instructed them to use a deceptive pitch in advertising to potential customers. The sales pitch represented that the business was experienced, safety-focused and legally compliant, forming the crux of the State's claim that the Defendants knowingly made false representations as to the characteristics and benefits of their service.

101. I find and conclude that Mile High Heating & Cooling used this deceptive sales pitch in its cold-call advertising to consumers. Mile High Heating & Cooling operated its call center five days a week from the time it began operating on April 18, 2012, until the time it ceased operating on February 24, 2017. Excluding holidays, Mile High Heating & Cooling operated its call center and employed the same deceptive pitch over the course of 1213 days.

102. In line with the penalty calculations sanctioned by the Colorado Supreme Court in *May Department Store*, I find that each day that Mile High Heating & Cooling operated its call center using the deceptive pitch constitutes a violation. I find and conclude that the civil penalty maximum of $2,000 per violation of the CCPA is appropriate in this case. At $2,000 per violation times the number of days/violations (1,213), the statutory penalty for the violation would vastly exceed the statutory cap of $500,000 for any related series of violations.

103. Therefore, I hereby impose the statutory cap of $500,000 as to the civil penalty for the State's Third Claim for Relief.

104. Regarding the State's Second Claim for Relief, I hereby find that Mile High Heating & Cooling failed to disclose material information to consumers in order to induce the

consumer into purchasing Defendants' products and services.

105. Mile High Heating & Cooling failed to disclose that their 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. Mile High Heating & Cooling failed to provide accurate and truthful disclosures regarding building department permit requirements. Finally, Mile High Heating & Cooling failed to disclose to consumers the consequences of failing to obtain a building permit.

106. The evidence supports a finding that Mile High Heating & Cooling failed to disclose this material information on a daily basis and I hereby assign a penalty of $2,000 per day for each day that Mile High Heating & Cooling operated. At $2,000 per violation, times the number of days/violations (1,213), the statutory penalty for the violation would vastly exceed the statutory cap of $500,000 for any related series of violations.

107. Therefore, I hereby impose the statutory cap of $500,000 as to the civil penalty for the State's Second Claim for Relief.

108. As to the State's First Claim for Relief, Mile High Heating & Cooling's refusal and failure to obtain all governmental licenses or permits required to perform the services, I consider that the State identified 890 invoices in Mile High Heating & Cooling's documents. Out of the 890 invoices, the State conferred with the relevant building department as to 143 of those invoices and determined that no permit had been pulled for 126 of the installations. Based on this sampling, I find that Mile High Heating & Cooling failed to obtain building permits 88% of the time it sold and installed HVAC equipment. I find that this percentage is a low-end estimate because it does not consider the fact that Mile High Heating & Cooling did not pull any permits for all of the installations it conducted from the time operations manager Joe Ledkins left the company in September of 2015 to the time Mile High Heating & Cooling shutdown in 2017. Applying the 88% rate to the total number of installation invoices (890) supports a conclusion that Mile High Heating & Cooling failed to obtain building permits for approximately 783 installations.

109. The evidence supports a finding that Mile High Heating & Cooling failed to obtain the required building permits for 88% (or 783) of its HVAC installations. I hereby assign a penalty of $2,000 per violation. At $2,000 per violation, times the number of violations (783), the statutory penalty for the violation would vastly exceed the statutory cap of $500,000 for any related series of violations.

110. Therefore, I hereby impose the statutory cap of $500,000 as to the civil penalty for the State's First Claim for Relief.

Restitution

111. In this matter, the State identified 890 invoices in Mile High Heating & Cooling's documents. The State conferred with the relevant building department as to 143 of those

invoices and determined that no permit had been pulled for 126 of the installations, supporting a finding that Mile High Heating & Cooling failed to obtain building permits 88% of the time it sold and installed HVAC equipment. Again, in conducting its review, the State utilized a sampling of records that did not consider the fact that Mile High Heating & Cooling admitted that no building permits were pulled after operations manager Joe Ledkins left the company in September of 2015. Had it done so, it is likely that the percentage of non-compliant installations would have been greater. Applying the 88% rate to the total number of installation invoices (890) would suggest that Mile High Heating & Cooling failed to obtain building permits for 783 installations, I find this a reasonable number based on the admitted and credible evidence in this case.

112. In some of its invoice forms, specifically invoices from 2015 and 2016, Mile High Heating & Cooling represented to consumers a Permit Fee of $220. During the trial, Defendant Kasey Dykman testified that building permit fees were typically determined by a percentage of the total installation cost. During the preliminary injunction hearing, one of the consumers testified that she paid $5,600 for a furnace installed by Mile High Heating & Cooling. When she learned that Mile High Heating & Cooling had failed to pull a building permit, she went to her local building department and paid $262 to obtain the required permit.

113. I find that it is reasonable to order the Defendants to pay restitution towards the cost of building permits because consumers paid Mile High Heating & Cooling for HVAC installation services that presumptively included compliance with all local ordinances.

114. Nothing in this Order precludes a consumer from seeking full restitution and damages from the Defendants. Obtaining a building permit is just the first step that many consumers will have to take to remedy the situation. Many consumers will need to hire other contractors and/or purchase new equipment in order to fix the work Defendants performed.

115. On the basis that Defendants likely failed to obtain building permits for at least 783 consumers and each permit would have cost approximately $262, I hereby order restitution in the amount of $205,146.

116. In light of the following considerations, I hereby FIND and ORDER Defendant Kevin Dykman, Defendant Kasey Dykman, and Defendants Mile High Heating and Cooling, LLC; Mile High Heating & Cooling, LLC; and Pikes Peak Heating and Cooling, LLC, jointly and severally, to pay:

Civil penalties in the amount of **$1,500,000.00**

Restitution in the amount of **$205,146.00**

117. All payments under this Order shall be paid to the Colorado Department of Law to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for reimbursement of the State’s actual costs and

attorneys' fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.

Permanent Injunction

118. I find and conclude that the Defendants have engaged in numerous, long-term, and repetitive violations of the CCPA for which Defendants received financial benefit at the detriment of consumers. The evidence shows that the Defendants will continue this conduct if they are not permanently enjoined.

119. I find and conclude that a permanent injunction against the Defendants is necessary to protect the public.

120. I hereby enter the following permanent injunction:

Defendants Kevin Dykman; Kasey Dykman; Mile High Heating and Cooling, LLC; Mile High Heating & Cooling, LLC; and Pikes Peak Heating and Cooling, LLC and their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with them with notice of such injunctive orders, are permanently enjoined from:

1. Engaging in any activity related to the sale, or the solicitation for the potential sale, of any type of HVAC equipment, including furnaces, boilers, hot water heaters, air conditioning units, swamp coolers or any other type of HVAC equipment.

2. Engaging in any activity related to the installation, repair, servicing, maintenance, or inspection of, any type of HVAC equipment including furnaces, boilers, hot water heaters, air conditioning units, swamp coolers or any other type of HVAC equipment.

3. "Engaging in any activity" includes, but is not limited to, working as an employee, manager, contractor, or consultant for any company or individual who sells, installs, repairs, services, maintains, or inspects furnaces, boilers, hot water heaters, air conditioning units, or any other type of HVAC equipment.

4. "Engaging in any activity" also includes, but is not limited to, acting as a general manager, having contact with HVAC consumers, overseeing dispatch, overseeing tech managers, cold-calling consumers, overseeing telemarketers, driving employees, training employees, providing consulting or motivational training, purchasing or delivering parts or equipment on behalf of an HVAC company, performing administrative or office related work in support of any HVAC company, providing any form of service to an HVAC company.

5. "Engaging in any activity" includes, but is not limited to, owning or having any ownership or financial interest in any company that is in the business of selling, installing, repairing, servicing, maintaining, or inspecting furnaces, boilers, hot

water heaters, air conditioning units, or any other type of HVAC equipment.

Attorney Fees

121. I find and conclude that the Colorado Attorney General, on behalf of the State, has successfully enforced the CCPA against all Defendants and is entitled to all reasonable attorney fees and costs.

122. Any award of attorney fees or cost must be reasonable. *See Cherry Creek School Dist. No. 5 v. Voelker*, 859 P.2d 805, 813-14 (Colo. 1993). The reasonableness of attorney fees is based on the "lodestar" calculation, which represents the "the number of hours reasonably expended multiplied by a reasonable hourly rate." *Durbray v. Intertribal Bison Coop.*, 192 P.3d 604, 608 (Colo. App. 2008).

123. A reasonable hourly rate for governmental prosecution is established by the market rate in the community for comparable services by lawyers with similar skill and experience. *Anderson v. Pursell*, 244 P.3d 1188, 1197 (Colo. 2010); *Balkind v. Telluride Mountain Title Co.*, 8 P.3d 581, 588 (Colo. App. 2000). The "burden is on the fee applicant to provide satisfactory evidence - in addition to the attorney's own affidavit - that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonable comparable skill, experience and reputation." *Anderson*, 244 P.3d at 1197. Additionally, Colorado law recognizes that charges incurred by paralegals may be awarded as part of attorney fees. *See Morris v. Belfor USA Group, Inc.*, 201 P.3d 1253, 1261-63 (Colo. App. 2008).

124. I find and conclude that the lodestar calculation must be applied to determine the reasonableness of the total amount of attorney fees earned by the State in this case.

125. Attorney Jefferey M. Leake worked on this case with the assistance of fellow David Coats, a first-year lawyer hired for a term of one year, and paralegals Nettie Morano and Melissa Ball. Mr. Leake and Mr. Coats submitted affidavits with the State's Application as well as each attorney and paralegal's corresponding billing records.

126. I find and conclude that the hourly rate for Mr. Leake is $275, the hourly rate for Mr. Coats is $195, and the hourly rate for Ms. Morano and Ms. Ball's is $150. Each of these individuals' hourly rates is reasonable, based on his or her skill, experience, and the customary rate in the Denver metropolitan area for legal staff with comparable background, experience, and skills.

127. I find and conclude that the hours spent by the State are reasonable based on the factors set forth in Rule 1.5 of the Colorado Rules of Professional Conduct.

128. On the basis of the lodestar analysis, I hereby award the State attorneys fees in the amount of $196,521.00.

Costs

129. I find and conclude that C.R.C.P. 54 provides, in relevant part, that "costs shall be allowed as of course to the prevailing party unless the court otherwise directs." The award of costs is within the discretion of the trial court and the court's findings regarding reasonableness and amount of costs will not be disturbed on appeal absent an abuse of discretion. *Archer v. Farmer Bros. Co.,* 90 P.3d 228, 230 (Colo. 2004).

130. Costs associated with having a court reporter record the trial proceedings are generally considered reasonable and necessary costs incurred in litigation. *First Citizens Bank & Trust Company v. Stewart Title Guaranty Company*, 320 P.3d 406, 415 (Colo. App. 2014). The Colorado Court of Appeals declined to grant court reporter costs in *In re Estate of Fritzler*, 2017WL117176, because it was "unaware of whether there was some other available means to record the trial." *In re Estate of Fritzler,* acknowledges that it is within the trial court's discretion to award such costs and reasonableness varies on a "case-by-case" basis. *Id* at 40.

131. While courtroom 414 is equipped with an electronic recording device, the acoustics in the courtroom are such that, if one is not speaking directly into a microphone, it is difficult to hear (at best) and the electronic recordings are sometimes unintelligible. Considering the magnitude of this case and the occasional unreliability of the courtroom's electronic recording device, I cannot conclude that it was unreasonable for the State to hire a court reporter.

132. For the foregoing reasons, I hereby award the State $5,109.70 in costs associated with court reporter and transcription service fees.

133. Process fees may be awarded under C.R.S. § 13-16-122(1)(i), which provides, in part, that costs may include "any fees for service of process or fees for any required publications."

134. The State seeks to recover $558.45 in service of process fees for service of process to Defendants. In support of these costs, the State has provided invoices. Defendants do not oppose these costs.

135. I find and conclude that the State's service of process fees are reasonable and were necessarily incurred in this litigation.

136. Therefore, I hereby award the State $558.45 in process fees.

137. Costs that are incurred solely for the benefit of the litigation and are not commingled with any of the general costs of doing business cannot properly be termed "overhead" and may be included as costs so long as they are both reasonable and necessary. *Harvey v. Farmers Ins. Exchange*, 983 P.2d 34, 42 (Colo. App. 1998).

138. The State has produced invoices for maintenance and storage of electronic files on a document review platform.

139. I find and conclude that the costs of electronic document review and storage were limited to the present case and not associated with the general cost of doing business. I further find and conclude that such costs were reasonable in light of the fact-intensive investigation and litigation of this case

140. Therefore, I hereby award the State $1,976.95 in costs associated with electronic document review and storage.

141. In light of the foregoing considerations, I hereby FIND and ORDER Defendant Kevin Dykman, Defendant Kasey Dykman, and Defendants Mile High Heating and Cooling, LLC; Mile High Heating & Cooling, LLC; and Pikes Peak Heating and Cooling, LLC, jointly and severally, to pay:

Attorneys fees in the amount of **$196,521.00**

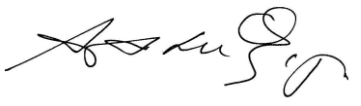
Costs in the amount of **$7,645.10**

142. All payments under this Order shall be paid to the Colorado Department of Law to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for reimbursement of the State's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.

143. The time for filing post-trial motions and/or a notice of appeal shall run from today, the date of entry of this, the final written judgment in this case.

Done this September 13, 2018

BY THE COURT:



Robert L. McGahey, Jr.
District Judge