

<p>DISTRICT COURT, DENVER CITY AND COUNTY, COLORADO 1437 Bannock Street Denver, Colorado 80202</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, and LAURA E UDIS, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE,</p> <p>Plaintiffs,</p> <p>v.</p> <p>CLAIM SPECIALISTS INTERNATIONAL, INC. d/b/a CSI, a/k/a CLAIMS SPECIALISTS INTERNATIONAL, INC. a/k/a Claim Specialists, Inc., a Colorado For-Profit Corporation; GLENN JESSEN, individually and as officer thereof; MELISSA KING, individually and as an officer thereof; MARK BAKER, individually and as an officer thereof; and ROBERT DOWNEY, individually and as an officer thereof; Star II Roofing and Construction Company d/b/a K2 Roofing and Construction Company, a/k/a K2 Construction and Roofing, LLC, a Nevada Limited Liability Company,</p> <p>Defendants.</p>	<p>EFILED Document CO Denver County District Court 2nd JD Filing Date: May 3 2011 10:08AM MDT Filing ID: 37367431 Review Clerk: Ashley Landis</p> <p>▲ COURT USE ONLY ▲</p>
	<p>Case No.: 09CV8366</p> <p>Courtroom 269 (FKA Courtroom 2)</p>
<p>FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER</p>	

THIS MATTER came before the Court on a Trial to the Court, which commenced on February 7, 2011. The Court heard testimony from February 7 to 11 and from February 14 to 17. The presentation of evidence concluded on February 17, and counsel presented closing arguments on February 23. Thereafter, the parties presented written proposed findings of fact and conclusions of law. The Court, having reviewed the entire record and court file in this matter, including testimony and legal argument over the course of a ten-day trial to the Bench, and otherwise being fully advised in the premises herein, makes the following findings and orders:

1. Plaintiffs, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, and Laura Udis, Administrator of the Uniform Consumer Credit Code (hereinafter the "State" or "Plaintiffs"), brought this action against Claim Specialists International ("CSI"), Star II Roofing and Construction Co. d/b/a K2, Glenn Jessen, Mark Baker, Robert Downey, and Melissa King for alleged violations of the Colorado Consumer Protection Act ("CCPA"), C.R.S. §§ 6-1-101 *et seq.*, and the

Uniform Consumer Credit Code (“UCCC”), *id.* §§ 5-1-101 *et seq.* arising from their operations CSI and K2.

2. This Court entered a Final Consent Judgment against Melissa King on August 5, 2010, and against Robert Downey and Mark Baker on September 27, 2010. This Court also granted partial summary judgment on Plaintiffs’ Eighth, Ninth, and Tenth Claims for Relief in their Complaint, against Defendant Glenn Jessen on September 20, 2010. This Court entered a final default judgment against CSI and K2 on October 12, 2010. The Order herein addresses findings of fact, conclusions of law, and damages for all of Plaintiffs’ claims against Defendant Jessen.

3. This Court incorporates herein without restating all of the findings of fact and conclusions of law articulated in the Court’s *Order(s) Re: Plaintiffs’ Motion for Partial Summary Judgment on Eighth, Ninth and Tenth Claims for Relief (Jessen Only)*, entered as orders of this Court on September 20, 2010.

4. These Findings of Fact, Conclusions of Law, and Order, address Plaintiff’s First through Fifth, and Seventh through Eighth Claims for Relief (C.R.S. § 6-1-105(1) (b), (c), (i), (l), (n), (u) & (z)).¹

FINDINGS OF FACT

5. This Court incorporates herein without restating all of the Stipulated Facts in the Amended Trial Management Order, entered as an order of this Court on February 4, 2011.

The Name “CSI” Misled Consumers.

6. Defendant Jessen does not dispute that he and six other individuals founded CSI in April 2007. Beginning in February 2008, the partner and owners of CSI were Defendant Jessen, Melissa King, Robert Downey, and Mark Baker. Defendant Jessen stipulates that he served as the company’s president between April 2007 and mid-November 2008, and that he left the company in January 2009, which is the timeframe in which Plaintiffs allege Jessen engaged in deceptive trade practices in his operation of CSI. Defendant Jessen testified that he deliberately chose the name Claims Specialists International, Inc. because it would yield the acronym CSI. He admitted when confronted with his prior testimony from a civil investigative demand hearing in January 2009 that there was a “natural link” in consumers’ minds between CSI employees and government officials due to several television shows with “CSI” in their names that dramatize the crime scene investigation activities of government law enforcement officials. Defendant Jessen also admitted that he had knowledge that some consumers were confused as to whether CSI employees were actually affiliated with government agencies based on his attendance at, and participation in, CSI sales meetings.

¹ Plaintiffs’ Sixth Claim for relief alleged a violation of C.R.S. § 6-1-101(1)(p) of the CCPA, however no evidence in support of that claim was presented at trial. Post-trial, Plaintiffs expressly withdrew their Sixth Claim for Relief against Defendant Jessen.

CSI's Sales, Tracking, and Billing Procedures.

7. The Defendant stipulates that CSI solicited door-to-door to consumers in Denver and Colorado Springs and offered its "roofing consultant" services. (See Exs. 10, 18, 28, and 35.) CSI sales teams stated and consumers understood "roofing consultant" to mean that CSI would act as a middleman between homeowners and their insurance companies, as well as between homeowners and roofing contractors who actually performed the roof replacement work. CSI represented that it would act as an advocate on behalf of homeowners and that it would look out for homeowners' best interests. (See Ex. 19.)

8. Former CSI partner and sales manager Mark Baker testified that Defendant Jessen trained him and CSI's other sales manager, Robert Downey, while the three were previously employed at Home Front Roofing. Mr. Baker passed along the sales method to CSI's sales teams, which included scripts that instructed the sales teams to offer "free roof inspections" and that CSI has been "getting the insurance companies to buy [] roofs" after hail storms. (See Ex. 68.) CSI dispatched sales teams comprised of canvassers wearing bright orange vests who knocked on consumers' doors and offered consumers a free roof inspection; "jumpers" who jumped on consumers' roofs, took pictures, and informed consumers that they had roof damage due to hail or wind; and "closers" who presented CSI's sales contract to consumers, obtained their signature, and called in the claim to the consumers' insurer. Frequently, three different CSI salesmen comprised teams, other times two or even one person performed all of the foregoing jobs to sell CSI's services.

9. After a consumer signed CSI's sales contract and called in their claim, they were instructed by CSI to coordinate a time for a CSI claims specialist to meet with the insurance adjuster to negotiate the scope of damage and the amount of the insurance claim. If the claim was approved, the consumer received insurance paperwork that indicated the Replacement Cost of the roof, which was broken down into two costs on the claim: Actual Cash Value ("ACV") and Recoverable Depreciation Value ("Depreciation").

10. The Court heard testimony from Tom Hall and other witnesses who have worked in the insurance and roof repair industry for several years. Mr. Hall explained that the insurance companies typically pay on roof repair claims in two payments. The first insurance payment represents the ACV and arrives before the work is commenced. The ACV payment is, in theory, to be used to purchase materials and labor for the particular job. The second insurance payment represents the Depreciation of the roof and arrives after the roof repair is completed and an inspection is passed. The ACV payment is typically 50 percent or more of the entire insurance claim amount.

11. It is undisputed that Defendant Jessen was the partner who supervised the accounts receivable ("AR") department at CSI, which was responsible for collecting the ACV, Depreciation, and deductible checks on signed CSI sales contracts. It is also undisputed that Defendant Jessen's ex-wife and mother of his child, Marci Boothe, also managed the AR department. The Court heard testimony from former employee Brandi Oletski that AR maintained a whiteboard to track the pickup of insurance checks and the scheduling of CSI's adjusters who routinely met with consumers' insurance adjusters. If a first insurance check (ACV) needed to be picked up, it was labeled in blue marker on

the AR board; if a back-end insurance check (Depreciation) needed to be picked up, it was labeled in red marker on the AR board.

12. Ms. Boothe, Ms. Oletski, Mr. Hall, and Defendant Jessen testified that CSI's procedure for creating and handling client files was as follows: Sales teams submitted signed sales contracts to CSI's AR department, which then created a file for the client and scheduled an adjustor from Summit Claims to meet with the client's insurance adjustor. If the claim was approved, Ms. Oletski would then add the Summit Claims adjustor's drawing of the roof to the file and give the file back to AR for collection of the first check (ACV) and insurance claim paperwork from the insurer, which included a general claim summary as well as the insurance adjustor's summary detailing the exact costs for any work to be done. (See Ex. 30.) The AR "girls," as Defendant Jessen and other former employees referred to them, would indicate on the whiteboard using a blue marker that the client's first check was scheduled to be picked up. Once the first check was picked up, a copy of it was made and placed in the client's file. Only Defendant Jessen or Ms. Boothe would deposit the checks into CSI's State Farm bank account. Ms. Boothe, as AR manager, would review the client's file for completeness, and then walk the entire file over to the pre-production department managed by Mr. Hall. Mr. Hall worked as a partner and pre-production manager of CSI from April 2007 through October 2008 when he resigned; while Ms. Boothe worked for the company from mid-2007 through January 2009.

13. After receiving the client files from AR, Mr. Hall and his staff would conduct a pre-cost analysis of each job to determine the cost of supplies and labor and profit to CSI based on the total insurance claim amount. The profit margin goal for each CSI job was to have 20 percent of the total insurance claim amount leftover after the actual cost of supplies, labor, and a premium to the subcontractor had been paid. If the pre-cost analysis determined that a job would be profitable to CSI, Mr. Hall would then assign the roof repair job to one of the subcontractors who previously agreed to do business with CSI. Mr. Hall testified that during the entire time he managed CSI's pre-production department he never assigned a roofing job to a subcontractor for which the client's first insurance check had not already been collected by CSI. Mr. Hall maintained a magnetic board in his office to track each client file as it arrived from AR to when it was assigned to a subcontractor for completion, and finally, to when the roofing job was completed and a final invoice for billing had been sent to the insurance company. As the client file progressed through the pre-production and production process, Mr. Hall would move the magnet that represented the client's file across the production board. Mr. Hall testified that the production board could hold approximately 500 magnetic files at a time.

14. Once Mr. Hall's department billed the insurance company, it sent the consumer file back to AR to collect the second insurance check (Depreciation) on the job and any deductible payments from the consumer. AR would indicate on the whiteboard in the color red that the consumer's second (Depreciation) check needed to be picked up.

CSI Ramps-up Sales but Reduces the Number of Roof Repairs or Replacements.

15. The Court heard testimony from Mr. Baker that Defendant Jessen wanted to ramp-up sales and make more money in the spring of 2008. In April of 2008 Mr. Baker hired 25 salespeople, which was a sharp increase in the number of salespeople employed at that time, and continued to hire additional salespeople into the summer of 2008. By the summer of 2008, CSI had a total sales force of 50, which included all

canvassers, jumpers, and closers. This resulted in a drastic increase in the number of CSI sales contracts signed by consumers. Mr. Baker testified that CSI went from obtaining 40 signed contracts each week in April 2008 to more than 100 signed contracts each week in June 2008. Plaintiffs' own review of CSI consumer files produced in response to an investigative subpoena bore out figures consistent with Mr. Baker's testimony.

16. At trial, Mr. Hall and Ms. King testified that in the early summer of 2008 Defendant Jessen instructed Mr. Hall to limit the number of roofs that CSI assigned to subcontractors for completion each week to 25 because of cash flow issues. However, Mark Baker testified that during the same time period Defendant Jessen instructed him to make sure that the sales department continued to sell at least 60 to 70 new sales contracts each week or else CSI would not be able to collect enough money to "stay afloat." Defendant Jessen's instruction to Mr. Baker was a tacit admission that CSI was using money obtained from clients' first insurance checks to pay for CSI's overhead expenses, and not to pay for roofing supplies and labor for those clients' roofing jobs. Mr. Baker further testified that he would frequently talk with Defendant Jessen about the skyrocketing sales each week and ask if the company was able to handle the increase. Defendant Jessen's response was that yes, everything was fine because the company had 4 to 5 subcontractors to "take care of it." Mr. Baker assumed this meant that CSI had a sufficient number of subcontractors to do the repair work, and CSI would get caught up.

17. The Court heard from Maiko Williams, the owner of Over the Top Roofing ("OTT"), a subcontractor for CSI since mid-2007. In 2007, OTT received 4 to 5 jobs per week. By February 2008, CSI fell behind in paying OTT. By July 2008, CSI owed OTT \$400,000. Mr. Williams testified that CSI would send numerous consumer files to his company in the spring and early summer of 2008, but he had to wait until he received the "green light" from CSI to order supplies and schedule crews to do the work. Once he received the "green light," he understood it to mean that CSI had enough money to do the job. Mr. Williams testified that he was only given approval to work on fewer than 10 roofs each week in the summer of 2008, and that in the fall of 2008 he was not given approval to go forward on any of the client files previously assigned to OTT by CSI. Mr. Williams also testified that he deliberately increased the number of roofing crews that worked for OTT in the spring of 2008 based on Defendant Jessen's representation that CSI anticipated assigning many more roofing jobs to OTT on a weekly basis once sales increased. Although CSI's sales steadily increased throughout the summer of 2008, CSI did not increase the number of roofing jobs assigned to OTT on a weekly basis.

CSI's Cash Flow Problems.

18. Defendant Jessen had actual knowledge of CSI's cash flow problems beginning in approximately July 2007 and continuing through January 2009. David Nicodemus, a former partner of CSI who acted as CSI's office manager, accountant, payroll supervisor, and accounts payable manager from April of 2007 through September of 2007, testified that in May 2007 CSI began paying \$1000 a week to each of the original six partners as a partnership distribution. When CSI's bank account balances were low, Mr. Nicodemus informed Defendant Jessen that he did not feel that CSI was financially able to pay each of its six partners \$1000 per week in partnership distributions while still being able to satisfy the company's financial obligations to its subcontractors, but Defendant Jessen instructed Mr. Nicodemus to keep paying the partners at that rate. By the summer of

2008, CSI's overhead had grown to over \$100,000 each month. Salaries, bonuses, and partnership distributions alone comprised 80%—\$80,000—of the monthly overhead. Defendant Jessen testified that CSI paid \$100 to the canvasser and \$100 to the closer for each signed initial sales contract regardless of whether the contract resulted in an approved insurance claim. During the summer of 2008, CSI took steps to chargeback any commissions paid to salespeople for signed contracts that did not result in approved insurance claims. Ms. King testified that when chargebacks were assessed that salespeople would complain to Defendant Jessen who would override the chargeback. Defendant Jessen testified that he created the bonus system for the employees of CSI's AR department that awarded a \$100 bonus each week to each AR employee whenever AR collected \$100,000 during the week, a \$200 bonus each week to each AR employee whenever AR collected \$200,000 during the week, and so on. Marci Boothe testified that CSI consistently paid bonuses to AR employees through November 2008, and that employees were only notified that the regular practice of awarding bonuses would be ended in a CSI "Inter Office Company Memo" dated December 4, 2008. (See Ex. 48.)

19. Defendant Jessen had actual knowledge of CSI's cash flow problems beginning in the summer of 2007 and continuing through January 2009 because he knew of CSI's failure to pay subcontractors for completed roofing jobs. Mr. Nicodemus testified that subcontractors frequently presented invoices to CSI for roofing jobs that had been completed for which CSI did not have the funds to pay. Mr. Nicodemus reported the shortfall in CSI's bank accounts to Defendant Jessen who told him not to worry because he would obtain more time for CSI to pay the subcontractors. CSI's primary subcontractor was Mr. Williams' company, OTT. Mr. Williams knew Defendant Jessen from prior working relationships at Homestreet Roofing and Home Front Roofing. Defendant Jessen was Mr. Williams' point of contact at CSI regarding any written agreements between OTT and CSI, as well as regarding payments from CSI to OTT pursuant to the terms of any written agreements. Mr. Williams testified that he would go directly to Defendant Jessen when CSI either failed to pay OTT for completed roofing jobs on a timely basis, or when CSI wrote checks to OTT for completed roofing jobs that were returned for insufficient funds—two problems that occurred repeatedly from the summer of 2007 through the winter of 2008. It was no different in the summer of 2008 when CSI failed to pay more than \$350,000 owed to OTT for the cost of roofing supplies, labor, and the subcontractor's premium for CSI roofing jobs that OTT had completed. Mr. Williams testified that he approached Defendant Jessen concerning the debt in June 2008, which resulted in a renegotiated contract between CSI and OTT in July 2008. (See Ex. 56, at 1 (Bates No. CSI04235).) Under the new terms, OTT would no longer order materials from its supplier for CSI jobs and CSI would make lump sum payments to OTT of up to \$25,000 per week to pay off the \$350,000 debt that OTT owed to its supplier for completed CSI roofing jobs.

20. Once CSI was no longer able to rely on Mr. Williams to purchase materials for CSI's roofing jobs using OTT's credit with its suppliers, CSI obtained a line of credit with Allied Roofing Supplies ("Allied") and within a few months quickly surpassed the original credit limit and violated the repayment terms. Slate Baker, the branch manager for Allied's Denver office, testified that he and other Allied representatives met with Defendant Jessen and other CSI representatives in November 2008 to discuss the fact that CSI's debt to Allied had grown to over \$300,000, of which nearly \$100,000 was past due. Mr. Baker also testified that he was surprised when the Defendant introduced himself as Glenn Jessen at the November 2008 meeting because to Mr. Baker that name was "heavily associated" with a debt owed to Allied by Home Front Roofing, yet

Mr. Baker had not known until the November 2008 meeting that Defendant Jessen was associated with CSI. Mr. Baker further testified that Home Front Roofing owed Allied \$450,000, which he characterized as the “worst bad debt” he had seen in all his years in the roofing supply industry, and that CSI’s bad debt owed to Allied of over \$350,000 was the second worst. Defendant Jessen admitted to being present at the November 2008 meeting with Allied representatives, and admitted to having knowledge that CSI’s debt owed to Allied was over \$300,000.

21. Mr. Hall, Mr. Williams, and Peter Kruse, the owner of AVI Roofing & Gutters (“AVI”), another subcontractor to CSI, each consistently testified that insurance companies’ estimates for settlement of each roofing insurance claim include an amount to cover the actual cost of roofing supplies for that claim, an amount to cover the actual cost of labor for that claim, and an amount of profit over and above the actual costs of supplies and labor for that claim. Defendant Jessen agreed with this testimony and admitted having knowledge of the same. Mr. Hall and Defendant Jessen testified that the industry standard amount of profit included in most roofing insurance claims averages between 30 and 35 percent of the total insurance claim amount. Defendant Jessen further testified that he has seen profits as high as 45 to 60 percent on roofing insurance claims. Mr. Hall testified that it was CSI’s goal to keep at least 20 percent of the 30–35 percent profit margin as its share for each job and to pay subcontractors the remainder as a premium for actually completing the roofing work. Mr. Hall’s testimony was corroborated by Mr. Kruse who testified that AVI received a subcontractor’s premium of 14 percent of the total amount of the insurance claim for each completed roofing job and that he understood CSI’s profit margin goal to be 20 percent of the total insurance claim amount. Mr. Williams also testified that beginning in February 2008, OTT received a subcontractor’s premium of 14 percent of the total amount of the insurance claim for each completed roofing job. (See Ex. 56, at 2 (Bates No. CSI04603).) For each approved claim, the collected front-end insurance check was sufficient to pay for the labor and materials for each job. Mr. Hall testified that there were only 10 to 15 contracts that he rejected at CSI because they were not profitable.

22. Plaintiffs presented a series of summaries and charts at trial that depicted the result of Defendant Jessen’s directives to CSI in 2008. Beginning in June 2008, CSI was bringing in over 100 contracts, sometimes 150 contracts each week. Of those contracts, more than half resulted in approved insurance claims. CSI completed roof repairs of approximately 80 percent of the approved claims that it sold in May and June of 2008. Then, beginning in July 2008, after the sales spiked in June, CSI’s rate of completed roof repairs of approved claims dropped to 50 percent, then 30 percent, and finally to 10 percent in November 2008. Plaintiffs’ analysis shows a snowball effect brought on by Defendant Jessen’s deliberate effort to drastically increase sales while at the same time knowingly maintaining a cap on the number of roofing jobs assigned to CSI’s subcontractors each week because of cash flow shortages.

23. Ms. King, who was the partner who managed accounts payable, testified that CSI routinely brought in \$100,000 and sometimes \$200,000 or even \$300,000 each week in consumers’ insurance checks. Ms. Oletski testified that the AR whiteboard showed more client files written in blue marker than in red marker in the late summer of 2008, which would inform anyone looking at the board, including Defendant Jessen who supervised that department, that more front-end insurance checks rather than back-end insurance checks were being collected. This also means that CSI consistently was generating new sales far in excess of the number of completed roof repairs on an ongoing basis.

Defendant Jessen admitted that he knew there was “more blue” on the board and that he knew more first checks rather than final checks were being collected by AR.

24. Defendant Jessen, however, attributed the presence of “more blue” on the board to a delay in submission of final billing to insurance companies for completed roofs by Mr. Hall’s pre-production department. The Court received no credible evidence to support this reasoning. Mr. Hall was on the stand for several hours and no testimony was elicited on cross examination to demonstrate that Mr. Hall and his staff failed to properly bill insurance companies for completed roofs. Defendant Jessen did not offer evidence at trial of any actual CSI client files, or a summary of such files, that proved that delays occurred in the submission of final billing after completion of clients’ roofing jobs. Furthermore, even assuming that such delays occurred, Defendant Jessen admittedly would immediately have had actual knowledge of a problem by observing “more blue” on the board, and should have taken immediate steps to correct the problem as an owner, manager, and officer of CSI.

CSI’s Insurmountable Backlog.

25. This court heard testimony from Mr. Hall and Ms. Oletski that Ms. Boothe failed to transfer a large number of new client files for which first insurance checks (ACV) had been collected and deposited into CSI’s accounts to Mr. Hall’s pre-production department in accordance with CSI’s standard operating procedure. Ms. Oletski testified that in August 2008, while searching for client files to insert diagrams received from Summit Claims, she discovered at least 200 client files in Ms. Boothe’s office that contained signed initial sales contracts, insurance claim approval paperwork, and copies of first insurance checks which, according to CSI’s protocol, should have been in production so that Mr. Hall and his staff could assign the roofing jobs to subcontractors for completion. Mr. Hall’s testimony corroborated Ms. Oletski’s account of her discovery of 200 client files. Ms. Oletski further testified that as soon as she discovered the 200 client files in Ms. Boothe’s office, she reported this discovery to Mr. Hall and Defendant Jessen. Mr. Hall testified that at the time the 200 client files were discovered he thought there may have been a miscommunication between him and Ms. Boothe regarding the procedure for transferring files from the AR department to the pre-production department. Mr. Hall further testified that he instructed Ms. Boothe that going forward she was to always bring any files ready for pre-production and production to his department as soon as they were ready, and that he installed an in-box on the wall beside his office door for Ms. Boothe’s use when transferring files. Mr. Hall also testified that he informed Defendant Jessen concerning the discovery of 200 client files in Ms. Boothe’s office. Mr. Hall testified on direct examination and Ms. Oletski testified on cross-examination that Ms. Boothe was the only individual at CSI who was responsible for transferring client files from the AR department to the pre-production department. Two months later, on a Friday in early October 2008, Mr. Hall searched Ms. Boothe’s office for client files after the clients had left telephone messages with CSI complaining that their roof repairs had not been done. This time, Mr. Hall discovered 350 client files, containing copies of first insurance checks and the required paperwork, which Ms. Booth should have already transferred to the pre-production department. Mr. Hall testified that many of the 350 client files were months old. Mark Baker testified that he spoke with Mr. Hall concerning the discovery of 350 client files in Ms. Boothe’s office and characterized Mr. Hall’s demeanor as “livid.” Mr. Hall testified that he confronted Defendant Jessen about the 350 client files the day after he discovered them in Ms. Boothe’s office. Defendant Jessen did not appear to be upset about this substantial backlog of roofing

jobs, and Hall thereupon resigned from CSI because he believed that a second discovery of withheld client files demonstrated intentional misconduct on the part of Ms. Boothe. Defendant Jessen admitted that Mr. Hall confronted him about the discovery of 350 client files in Ms. Boothe's office, and testified that he did not get upset over the incident because he felt that "no reaction" was the best reaction.

26. By the time the first set of files were held up in Ms. Boothe's office in August 2008, CSI owed its primary subcontractor, OTT, \$400,000. OTT refused to pay for the roofing materials, requiring CSI to purchase them. In addition, CSI was required to pay down its back debt to OTT plus pay for any new roofing jobs it contracted with OTT to perform. By August 2008, exacerbated even more so by October 2008 when Mr. Hall discovered 350 additional files held-up in Ms. Boothe's office, CSI lacked the funds to pay suppliers and the subcontractors to perform the roof replacements. Defendant Jessen, as head of the AR department, had knowledge of the checks coming into the company. The reasonable and logical inference is that Defendant Jessen wanted to retain the files in AR to prevent disclosure of the severity of the backlog—especially to Mr. Hall. The only reasonable, or fair and legal response to the backlog was to stop all partner compensation, drastically reduce overhead, and refund checks to homeowners. But Defendant Jessen failed to take any of these remedial measures.

27. By early November 2008, CSI was behind in production by close to 500 jobs. Gretchen Trimm, who was hired to take over as pre-production manager after Mr. Hall resigned, testified that she rearranged the magnets on the production board from oldest to newest contracts, that the client files represented on the board spanned all the way back to February 2008, and that the production board was "full." Ms. Trimm testified that she continued to receive new contracts as she assigned the oldest contracts to subcontractors for completion. Ms. Trimm further testified that in the fall and early winter of 2008 she assigned numerous roofing jobs to AVI, which Mr. Kruse corroborated. Mr. Kruse further testified that many of the client files assigned to AVI by CSI during that time period were months old based on his review of initial sales contracts that were contained in the files and based on complaints that AVI received from CSI clients when it called to schedule the roofing work. CSI did not allocate additional money to pay for completion of the old roofing jobs. Instead, Defendant Jessen, the president of CSI, continued to receive partnership distributions, and he never once halted bonuses paid to the AR girls, money paid to Summit Claims' adjustors even when insurance claims were denied, and money paid to salespeople even when their sales contracts resulted in denied insurance claims.

28. Remarkably, Defendant Jessen and the other CSI partners never tracked the Company's revenues and expenses. As Mark Baker testified, these partners *never* prepared or reviewed any financial statements, including any internal statements of revenues and expenses. Such financial statements would have clearly shown that the Company's expenses (including exorbitant salaries, bonuses, and Company automobiles, as well as amounts owed suppliers and subcontractors) greatly exceeded revenues received on signed contracts.

29. The evidence shows that Defendant Jessen was more concerned with bringing in new sales and collecting front-end checks rather than the actual repair of consumers' roofs. Ms. Trimm testified that Defendant Jessen was present at CSI's offices on a regular basis during December 2008, and that she often heard him instructing CSI employees to "sell, sell, sell," and to "collect, collect, collect." Ms. Trimm testified that

Defendant Jessen never once asked her whether CSI pre-production department was making progress on the backlog of roofing jobs during December 2008.

30. The summary evidence presented by the Plaintiffs shows that 488 Colorado consumers paid \$3,500.00 on average, sometimes much more, from their front-end insurance check to CSI and received no roof repairs. Many of these same consumers lost the back-end insurance check due to their claim tolling beyond the 180 days allowed for completion of the roof repair/replacement by their insurance policy. Each of the 488 homeowners entered into initial sales contracts with CSI that represented that there was “No Risk to Homeowner” and that the “Insured’s only out of pocket expense is limited to the insurance policy deductible amount for the scope of insurance approved work.” (See, e.g., Exs. 10, 18, 28 & 35.)

31. The Court heard testimony from several consumer victims, some of whom were over the age of 60, who testified that they had to pay thousands of dollars out-of-pocket later for a new roof or, in the case of Willhelmina Shmer, still do not have a new roof because she cannot afford to pay out-of-pocket, and now faces losing her homeowner’s insurance coverage.

Customers Were Misled.

32. These same consumers testified that they were confused and misled by CSI’s sales tactics that were authorized and condoned by Defendant Jessen. Mark Baker and Clarence Judkins, a closer for CSI from the spring of 2008 through December 2008, testified that sales meetings were held once a week, at which time salespeople were paid for the contracts they had signed up in the previous week. Mr. Judkins testified that Defendant Jessen routinely attended 2 to 3 sales meetings each month, and that Defendant Jessen was present at sales meetings when scripts, the wording on sales contracts, the number of sales made the previous week, roofing production delays, and customer complaints were discussed. Mr. Baker testified that Defendant Jessen was present at sales meetings when salespeople picked up or dropped off bright orange and yellow safety vests that they wore during door-to-door sales visits. Mr. Judkins characterized the safety vests worn by certain CSI employees as similar to those worn by an employee of the water company or a construction worker. Defendant Jessen characterized the safety vests worn by certain CSI employees as similar to those worn by individuals working on road repair crews, and admitted that CSI salespeople wore safety vests because consumers were more likely to open their doors to an individual in a safety vest than to one who was not wearing such a vest. Mr. Judkins testified that Defendant Jessen was present at a sales meeting in August 2008 in which Mr. Judkins stated that while re-canvassing the Green Mountain neighborhood he was approached by CSI clients that he personally had signed up at least four months prior who complained about not having new roofs. Mr. Judkins further testified that he knew the complaints to be accurate by simply looking at the clients’ roofs which were still covered in visually distinctive T-Lock shingles that had been discontinued and which should have been completely replaced with different shingles if CSI had actually performed the contracted-for roof replacement.

33. Mr. Judkins testified that the CSI partners, including Defendant Jessen, instructed CSI salespeople to respond to the Green Mountain clients’ complaints by representing that there was a shortage of shingles due to hurricanes in other parts of the country. However, Mr. Judkins testified that he knew this excuse to be untrue because

he observed other roofing companies' signs in the front yards of Green Mountain homes where roofs had been repaired or replaced. Mr. Judkins also testified that he personally observed roofing crews at work on homes in the Green Mountain neighborhood that worked for other roofing companies such as Metro Roofing and Total Home Exteriors. Mr. Judkins further testified that Defendant Jessen never instructed him or CSI's other salespeople to slow sales.

34. Defendant Jessen had knowledge of and did nothing to correct inaccurate completion timeframe representations made by CSI salespeople to consumers. Mr. Judkins testified that he consistently told consumers that their roofs would be repaired within 4–6 weeks during his door-to-door sales visits. Mr. Judkins testified that the only instruction he ever received from either Mr. Baker or Defendant Jessen as to how to respond when consumers inquired about the timeframe for completion of their roofing job was to represent to the consumer that it would take 4 to 6 weeks.

35. Ms. Oletski testified that as a receptionist for CSI in the early summer of 2008, she handled telephone calls from consumers who complained that they had not received their roof repair within the 4–6 week timeframe. She would tell Defendant Jessen when she received such calls. Defendant Jessen admitted that he handled consumer complaints submitted directly to CSI, and that he also handled consumer complaints against CSI that had been submitted to the Better Business Bureau (“BBB”). In fact, according to testimony from the Attorney General's investigator Rebecca Wild and consumer witness Joy Smith, Defendant Jessen's name was listed as “president” on the BBB's page for CSI.

36. It was also in July 2008 that the Attorney General's investigator Rebecca Wild called Defendant Jessen and notified him that her office had received complaints from elderly consumers who were under the misimpression that CSI salespeople were working for the City or some other governmental body because of the safety vests that they wore. These consumers also complained that they did not realize they were signing a binding contract to do business with CSI, but rather, they believed they were signing a waiver for the salesperson to jump on their roof. Defendant Jessen admitted having knowledge that some consumers were confused as to whether the initial sales contract was, in fact, a legally binding contract, or just a permission slip authorizing CSI's jumper to inspect their roof.

37. Investigator Wild also informed Defendant Jessen that CSI's sales contracts did not conform to the requirements of the Federal Trade Commission's (“FTC”) Cooling Off Rule, which is discussed in depth in this Court's *Order Re: Partial Summary Judgment on the Ninth and Tenth Claims for Relief*.

38. Consumer testimony from Ms. Schmer and Barbara Berns shows that CSI's canvassers' safety vests gave the misimpression of a government official, inspector, or utilities employee, and caused homeowners to open their doors when they would not otherwise do so for a solicitor. The use of the word “agreement” instead of “contract” gave consumers the misimpression that they were not bound to do business with CSI and that they were only signing a permission slip for the roof inspection. The glossing over of the sales contract's 20 percent cancellation fee also caused homeowners to let down their guard because they did not understand that the 20 percent would come out of insurance money paid to them which might result in the homeowner paying out of pocket if they chose to go with another contractor. Finally, the statement in the sales contract

stating “the work to proceed immediately” if the consumer waived their three-day right to rescind, induced consumers to waive their three-day right to rescind by creating the misimpression that work on their roofing job would begin within three days in violation of the FTC’s Cooling Off Rule.

39. It is clear from the record that Defendant Jessen knew that CSI salespeople were representing 4 to 6 week timeframes when CSI was not able to perform the contracted-for roofing work within that timeframe. Despite having such knowledge, the testimony indicates that Defendant Jessen did not curtail sales or authorize CSI staff to fully refund a client’s first insurance check when the client complained about not receiving their roof repair for several months, which was a common complaint handled by CSI staff. Instead, according to testimony from Ms. Oletski and Ms. Trimm, Defendant Jessen instructed staff to impose the 20 percent cancellation fee stated in the sales contract if a client demanded to be released from their contract because of CSI’s failure to perform roof repair or replacement within the originally represented timeframe.

No Public Adjustor’s License.

40. In its September 20, 2010 *Order regarding Plaintiffs’ Motion for Partial Summary Judgment Eighth Claim for Relief (Jessen only)*, this Court concluded based on the undisputed facts that Defendant Jessen, in the course of providing insurance claim adjustment services to consumers, including negotiating with consumers’ insurers the extent of damage to consumers’ roofs and hiring and directing other individuals to do the same, clearly provided public insurance adjustor services without a public insurance adjustor’s license.

41. Defendant Jessen admitted to having knowledge of the State of Colorado’s licensing requirement for public insurance adjustors as early as the spring of 2008. In spite of his knowledge of the licensing requirement, Defendant Jessen never required CSI claims adjustors to obtain licenses and, at no time, did Defendant Jessen modify the representation made by CSI’s sales contracts with respect to obtaining licensed and approved public adjustors. (See Exs. 10, 18, 28 & 35.) Despite admitting to having received a Cease and Desist Order from the Colorado Division of Insurance, Defendant Jessen testified that in his opinion a public insurance adjustor license was not necessary to perform the services offered by CSI.

42. Mr. Nicodemus testified that he and Defendant Jessen attended at least two meetings with an attorney in the spring of 2007 in which the issue of whether CSI needed to obtain a public insurance adjustor license was discussed. The attorney informed Mr. Nicodemus and Defendant Jessen that based on their description of CSI’s business model, the company would be offering the services of a public insurance adjustor and, therefore, needed to be properly licensed to legally do so. Mr. Nicodemus testified that Defendant Jessen ignored the advice of counsel, failed to obtain his own public insurance adjustor license, and failed to ensure that all of the individuals who performed insurance claims adjustments for CSI, whether as employees of CSI or employees of Summit Claims, had obtained public insurance adjustor licenses. Defendant Jessen also approved of and ratified the language in CSI’s initial sales contract that promised consumers that “CSI will assist as required in obtaining insured, licensed & approved claim specialists, public adjustor, attorneys & other experts as deemed necessary by CSI for claim documentation.” (See Exs. 10, 18, 28 & 35.) Mark

Baker, one of CSI's sales managers, testified that this contractual representation remained unchanged throughout CSI's existence.

The Price Increase Excuse Fails.

43. The Court heard from Defendant Jessen and Ms. Boothe, the AR supervisor at CSI, and Defendant Jessen's ex-wife and mother of his child. Defendant Jessen's defense that the cost of petroleum products increased so drastically between May and August of 2008 that CSI was unable to meet the demand created by his own deliberate effort to increase CSI's sales is not compelling because it is unsupported by any credible evidence in the record; nor does the defense explain why CSI failed to either perform the contracted-for roof repairs for less or no profit to the company, or to issue full refunds to clients who had already turned over their initial insurance checks to CSI for the purchase of roofing supplies for their particular roofing jobs if the price increases truly made it impossible for CSI to do the job.

44. Defendant Jessen presented evidence of this defense at trial that consisted of letters from roofing product manufacturers regarding price increases of roofing materials dated between February and September 2008. The Court has reviewed the 2008 price increase letters and finds that they were dated well in advance of the actual price increase, and in some cases gave 6 weeks lead time for the recipient to "plan accordingly." Ms. Boothe and Defendant Jessen testified that Mr. Williams at OTT faxed the 2008 price increase letters to them at their new company, Colorado Roof Exchange, in February 2009 (which matches the fax transmission information at the top of each letter) in order to train them on how to perform a pre-cost analysis for a roofing job.

45. Ms. Boothe further testified that the 2008 price increase letters admitted into evidence were of the same type that would have been received by CSI in 2008; however, she admitted that she had no knowledge as whether all or any of the admitted letters were actually received by CSI in 2008. Mr. Booth also testified that she never personally received the same type of price increase letters from Defendant Jessen while she was employed at CSI in 2008, but that she would sometimes see the same type of price increase letters in clients' files when the files were transferred back to the AR department from the pre-production department for collection of the back-end insurance check, but that she "didn't really look at them." Ms. Boothe opined and Defendant Jessen agreed that someone at CSI would have needed to call and notify the insurance companies about the price increases so that a client's entire insurance claim amount could be renegotiated before any work was performed on the client's roof, but that neither she nor any of the other AR employees was tasked with doing so.

46. Defendant Jessen's testimony at trial as to whose job it was to call the insurance company to renegotiate the insurance claim amount—either Ms. Boothe's and the AR department employees', or Mr. Hall's and the pre-production department employees'—conflicted with the prior sworn testimony Defendant Jessen gave at his deposition in June 2010. At trial, Defendant Jessen testified that he sometimes found the same type of price increase letters as those admitted into evidence lying on his office chair at CSI during 2008. Defendant Jessen further testified at trial that he was "surprised" to hear Mr. Hall testify that neither he, nor any of the pre-production department employees, undertook the task of notifying insurance companies about price increases in order to renegotiate a client's entire insurance claim amount before assigning client's jobs to one of CSI's subcontractors. Defendant Jessen testified at trial that he assumed that the pre-

production department was handling the renegotiation task in 2008, and that Mr. Hall's failure to do so caused CSI to lose a significant amount of profit on completed jobs which contributed to CSI's cash-flow problems. In direct contradiction of his testimony at trial, Defendant Jessen admitted on cross-examination that during his deposition in June 2010 he testified at length and in detail that the task of renegotiating insurance claim amounts for CSI clients whose roofing jobs were affected by 2008 price increases was handled exclusively by AR department employees and that Ms. Boothe was responsible for transferring any client files for which the insurance claim amounts had been successfully renegotiated from the AR department to the pre-production department. (See Tr. Dep. of Glenn C. Jessen, dated June 23, 2010, vol. II, at 232–35.) Mr. Hall testified at trial and was subject to lengthy cross-examination, but he was never directly questioned by Defendant Jessen about whether he received the same type of price increase letters while working at CSI during 2008 as those depicted in Exhibits A-X. Indeed, Defendant Jessen was the only individual who testified at trial to having received the same type of price increase letters as those admitted while working at CSI during 2008. Therefore, the record supports the finding that the AR department employees would have had the necessary information to handle the task of renegotiating insurance claim amounts—namely, a copy of any price increase letter obtained from Defendant Jessen and a copy of the client's insurance claim approval paperwork which contained an insurance adjustor summary detailing the exact costs of any roofing supplies needed to perform the work. (See Ex. 30.) Furthermore, Defendant Jessen failed to introduce any evidence at trial to prove the effect of the 2008 price increases on even a single CSI client file, much less on numerous CSI client files.

47. Plaintiffs stipulated that the cost of roofing supplies increased during 2008. Slate Baker, who manages Allied's Denver branch and routinely deals with roofing supply manufacturers, testified that price increases occur every year in the roofing business. Mr. Baker testified that he would often reduce Allied's prices on materials to his customers, like CSI, in order to combat the manufacturers' price increases. Likewise, Mr. Kruse testified that when AVI performed roofing work on CSI jobs that he purchased roofing supplies for those jobs from AVI's suppliers at a discount due to the volume of materials AVI ordered annually, and that he passed along his supply discount to CSI. Mr. Kruse testified that he believed the supply discount that AVI passed on to CSI would have offset any 2008 price increases. Additionally, Mr. Judkins testified that the cost of roofing supplies decreased at least once during 2008, and that in his professional experience after leaving CSI he learned that the cost of roofing supplies decreases from time to time. Specifically, Mr. Judkins testified that Defendant Jessen instructed him and other CSI salespeople to stop canvassing in the Montbello neighborhood because the insurance claim amounts were too small for the jobs to be profitable to CSI. Mr. Judkins further testified that Defendant Jessen later authorized him and other CSI salespeople to start canvassing in the Montbello neighborhood again because the cost of roofing supplies had decreased so that the jobs would be profitable to CSI.

48. Defendant's evidence in support of his defense that price increases prevented him from putting on nearly 500 roofs for consumers who had paid thousands of dollars in first insurance checks neither explains nor excuses such a failure. Based on the evidence presented at trial regarding the delays in production and the old files found in Ms. Booth's office, this Court can only infer that the price increases mattered at all because CSI oversold and under-produced to such an extent that the 2008 price increases would have had a cumulative and compound effect on CSI's clients. This Court heard testimony from Mr. Williams regarding how OTT deals with price increases

on materials. He testified that if a job was completed in a timely manner, a single price increase would either have no effect on the cost to do that job or very little effect, so that a profit could still be derived from the job. In instances where there were hundreds of jobs that had languished, multiple price increases would have a cumulative and compound effect that would impact a company's overall profitability but it should not cause the company's repair/replacement production to ground to a halt.

49. Defendant Jessen and Ms. Boothe testified that the pre-production department's failure to submit final invoices in a timely manner to insurance companies for completed roofing jobs cost the company hundreds of thousands of dollars and somehow prevented it from putting on nearly 500 roofs for which CSI had already collected clients' first insurance checks. Again, the Court did not hear any testimony elicited from Mr. Hall to support such a theory. And, again, the Court does not find the evidence that was presented compelling to either excuse or explain why CSI, under Defendant Jessen's control and direction, oversold hundreds of roof repair jobs, collected over one million dollars in insurance money, and failed to deliver anything to nearly 500 consumers.

50. Furthermore, any credible price increase in roofing supplies would have reduced CSI's 20 percent profit built-in on each job—it would not have caused CSI to wholly fail to perform 40 percent of the contracted and paid-for roof replacements. Under Defendant Jessen's direction and with his knowledge, CSI continued to increase sales, build-up a huge backlog of unfulfilled orders, and incur massive debt to suppliers and subcontractors, yet Defendant Jessen took no actions to address the problems, such as limit sales, reduce compensation, or cut staff.

Defendant Jessen's Personal Liability Under the CCPA.

51. Individual liability of corporate officers and agents is proper under the CCPA. See C.R.S. § 6-1-102(6); *Hoang v. Arbess*, 80 P.3d 863, 870 (Colo. App. 2003). "At a minimum," individual liability attaches to a corporate officer or manager who was directly involved in the wrongful conduct through "conception or authorization." *Id.* at 868. Furthermore, "[o]ther direct involvement, such as active participation or cooperation, specific direction," or sanction of the wrongful conduct is also a sufficient basis for liability. *Id.*

52. The evidence at trial establishes that Defendant Jessen is personally liable for the deceptive trade practices alleged and proven by the State. Defendant Jessen conceived of and implemented CSI's business model in April 2007, which involved CSI offering its "roofing consultant" services to Colorado consumers during door-to-door sales visits. Defendant Jessen does not dispute that he deliberately and significantly increased the number of salespeople and office workers employed by CSI, beginning in the spring and continuing into the summer of 2008, or that he expanded CSI's office space to accommodate the growth. Defendant Jessen does not dispute that CSI used insurance monies collected from homeowners for purposes other than installing roofs for homeowners. Defendant Jessen does not dispute that he knew he could not deliver to consumers the number of roof repair jobs he authorized CSI to sell. Defendant Jessen does not dispute that he never halted or limited sales of roofing jobs and instead hired more sales persons and encouraged sales teams to sell more, without disclosing the delayed production times to salespeople or clients.

53. The record supports and testimony at trial further established that Defendant Jessen's day-to-day duties included managing CSI's AR department, through which he:

- Supervised the entry of any "Roofing Production Contract" and "Insurance Policy Deductible Payment Agreement" between CSI and consumers;
- Supervised the collection of front-end insurance checks, back-end insurance checks, and deductible payments from consumers;
- Monitored the number of front-end checks collected versus the number of back-end checks collected;
- Determined the amount of compensation received by AR employees;
- Set target amounts of money for AR employees to collect on a weekly basis in order to receive a bonus;
- Supervised the scheduling of claims adjustments with insurance adjustors;
- Supervised the flow of approved insurance claims from the AR department to the pre-production department, where the job would be assigned to a subcontractor for completion of roof repairs/replacement work;
- Directed CSI salespeople and office staff as to how to respond to complaints by consumers regarding delays in completion of roof repair/replacement work; and
- Personally handled consumer complaints submitted directly to CSI, as well as those submitted directly to the BBB about CSI.

54. Testimony at trial from former partners Tom Hall, Dave Nicodemus, Melissa King, and Mark Baker, and from former employees such as Brandi Oletski, Gretchen Trimm, and Eddie Judkins, as well as sworn testimony and affidavits submitted with Plaintiffs' Motions for Partial Summary Judgment, support a finding that Defendant Jessen was the head supervisor of CSI. Jessen designed CSI's business model. He participated in the company's day-to-day operations, which included attending partner and sales meetings approximately two times each month, managing AR, gathering and depositing all insurance checks collected by AR, coordinating payments to subcontractors and suppliers, and determining the amount of salaries, bonuses, and partnership distributions.

55. Consumers started to complain directly to Jessen in the summer of 2008 regarding the sales tactics of the sales teams. Consumer witness Joy Smith, a senior citizen, testified at trial that she talked directly with Defendant Jessen in June 2008 about a CSI salesperson who pressured her ill husband who was home alone into signing a sales contract, which he did not understand was, in fact, a binding contract. The "no solicitation" sign and the "oxygen in use" signs posted outside of Mrs. Smith's front door did not stop CSI's salesmen from knocking repeatedly on her front door until her husband answered it, thinking someone outside was hurt and needed help. Mrs. Smith requested that Defendant Jessen let her and her husband out of the contract because they did not want a roof replacement, but he refused.

56. Defendant Jessen knew that sales at CSI peaked during the summer of 2008, while at the same time he was aware that CSI was experiencing greater and greater delays in completing contracted-for roof repairs/replacements as the summer progressed to fall. Defendant Jessen received regular distributions of company monies throughout his ownership of CSI, even after CSI began to fall behind in completion of roof repair/replacement. In fact, Defendant Jessen testified that throughout most of 2008 he and CSI's other partners each received a total of \$2,000 per week before taxes in

salary and partnership distributions. Mark Baker and Mr. Judkins testified that Defendant Jessen never instructed CSI's salespeople to slow the rate of new sales during the summer of 2008.

57. Shortly after Mr. Hall resigned, Defendant Jessen approved the purchase and lease of three Toyota Sequoia sport-utility vehicles by CSI for use as company cars, and knew that CSI paid \$40,000 as a down-payment on the vehicles. Defendant Jessen admitted that he drove one of the Toyota Sequoias through mid-January 2009. During the fall and early winter of 2008, Defendant Jessen had actual knowledge that CSI was experiencing serious cash-flow issues, and had specific knowledge that CSI owed over \$300,000 to a roofing supplier and over \$300,000 to a subcontractor, that multiple checks written to suppliers and subcontractors were rejected for insufficient funds, and that payroll checks were also rejected for insufficient funds.

58. Defendant Jessen left CSI in mid-January 2009. CSI salespeople continued to enter into initial sales contracts with consumers as late as January 30, 2009, and into roofing production contracts as late as February 25, 2009.

59. Defendant Jessen stipulated that more than 400 consumers paid money to CSI in the form of a first insurance check (ACV) averaging \$3400 each and received no roof repair or replacement work. Plaintiffs' investigator received nearly 200 written complaints from consumers and determined after reviewing CSI's client files that 288 additional victims existed. The total amount of money that these 488 consumers lost is over \$1.7 million.

Defendant's Continuation of Business Model and Potential Harm.

60. Plaintiffs presented evidence through Mr. Nicodemus, Mr. Williams, Mark Baker, and Defendant Jessen himself showing that Defendant Jessen worked for two businesses with models nearly identical to CSI's prior to starting CSI in April 2007. After leaving CSI in January 2009, Defendant Jessen started Colorado Roof Exchange ("CRE") with Ms. Boothe, which operated under the same business model as CSI. In August 2009, Defendant Jessen assisted Ms. Boothe in purchasing SJC Building, Inc. ("SJC") and, according to Ms. Boothe's testimony, Defendant Jessen worked for the company and contemplated becoming a partner. Mr. Williams testified that when he spoke with Defendant Jessen in September 2009, Defendant Jessen told him that he was continuing CRE through the purchase of an established company with a good BBB rating; that he intended to keep the company's name (SJC) a secret; and he was doing so in order to hide his involvement in SJC from the Attorney General's Office.

61. Plaintiffs submitted a *Verified Ex Parte Motion for Issuance of Contempt Citation* on February 4, 2011. In that motion, Plaintiffs provided sworn affidavit testimony that supports their contention that Defendant Jessen was in violation of the *Stipulated Preliminary Injunction* entered against him on October 15, 2009. According to affidavits submitted by Plaintiffs, subsequent to CSI, Defendant Jessen continued to provide unlicensed public insurance adjustor services to consumers in violation of C.R.S. § 6-1-105(l)(z) and paragraphs 7-8 of the *Stipulated Preliminary Injunction*. Plaintiffs also presented evidence that Defendant Jessen failed to deposit \$1,000 into the established escrow account to be used to compensate CSI consumers in this case. Defendant has not submitted any written response to Plaintiff's *Motion for Issuance of Contempt Citation*.

62. The Court's permanent order herein will supersede the preliminary injunction order in place during the pendency of this case and prior to a final judgment on the merits. The Court takes into consideration any evidence of Defendant Jessen's behavior post-CSI that was offered at trial and provided within Plaintiffs' motion for contempt in its determination of permanent injunctive relief.

CONCLUSIONS OF LAW

This Court CONCLUDES the following:

63. A consumer protection claim under CCPA § 6-1-105(1)(b), (c), (e), and (u), requires that a defendant act "knowingly." The allegations here that Defendant Jessen "knew or should have known" his representations were false, is sufficient to state a claim that he "[k]nowingly ma[de] a false representation as to the characteristics, . . . uses, [or] benefits' of his services. This conduct, if proven, constitutes a deceptive practice." *Martinez v. Lewis*, 969 P.2d 213, 222 (Colo. 1998) (alterations in original) (citation omitted) (quoting § 6-1-105(e)). Plaintiffs also claim that Defendant Jessen violated CCPA § 6-1-105(1)(i), (l), (n), and (z), which do not require the defendant to have "knowingly" made false representations or to have "known" that his or her representations were false.

64. Defendant Jessen knowingly made false representations as to the approval and certification of CSI's insurance claims adjustment services in violation of C.R.S. § 6-1-105(1)(b).

65. Defendant Jessen knowingly made false representations as to CSI's affiliation, connection, or association with government agencies through his deliberate choice of the name Claims Specialists International, Inc. because it yielded the acronym CSI, and through his approval and sanction of the sales tactic whereby CSI salespeople wore bright orange safety vests during initial door-to-door sales visits in violation of C.R.S. § 6-1-105(1)(c).

66. Defendant Jessen advertised to consumers that their roofing work would be completed within 4 to 6 weeks, and that they would receive insurance claims adjustment by a licensed adjustor. During CSI's door-to-door sales visits and through CSI's initial sales contracts, such advertisements were made with the intent not to sell such services as advertised, in violation of C.R.S. § 6-1-105(1)(i).

67. Defendant Jessen made false or misleading statements of fact concerning the price of services offered during CSI's door-to-door sales visits and through CSI's initial sales contracts, in violation of C.R.S. § 6-1-105(1)(l).

68. Defendant Jessen failed to deliver roof repair/replacement services within a reasonable time and refused to refund consumers, in violation of C.R.S. § 6-1-105(1)(n)(VII).

69. Defendant Jessen failed to disclose material information which he knew at the time—such as the existence of a longer timeframe for the actual completion of roofing jobs than the represented timeframe, and CSI's inability to complete the contracted-for

roofing work at all due to cash-flow problems—in order to induce consumers to enter into a transaction with CSI, in violation of C.R.S. § 6-1-105(1)(u).

70. Defendant Jessen failed to obtain or require CSI's employees and subcontractors to obtain the necessary governmental licensure in order to provide services as public insurance adjusters and roofing contractors, in violation of C.R.S. § 6-1-105(1)(z).

71. Defendant Jessen violated C.R.S. § 5-1-301(11)(a)(12) and (32), and § 5-3-101(2), and the UCCC's "Buyer's Right to Cancel" and "Form of Agreement or Offer—Statement of Buyer's Right" provisions in C.R.S. §§ 5-3-402(5) and 5-3-403(2).

This Court further CONCLUDES the following with respect to the Court's power to enter a permanent injunction against Defendant Jessen:

72. This Court is empowered by the CCPA to permanently enjoin a person who has engaged or is engaging in any deceptive trade practice "from continuing such practices, or engaging therein, or doing any act in furtherance thereof." C.R.S. § 6-1-110(1). The Court's power under the CCPA is broad; and when assessing injunctive relief, it must consider whether the relief adequately addresses the Defendant's violations of the CCPA and prevents future harm. See *May Dep't Stores Co. v. State ex rel. Woodard*, 863 P.2d 967, 978 (Colo. 1993). "If there have been numerous, long-range, and repeated violations of law, the court has a duty to ensure that the injunctive decree will effectively redress the proven violations and prevent further ones." *State ex rel. Woodard v. May Dep't Stores Co.*, 849 P.2d 802, 806 (Colo. App. 1992). In the *May* case, the Colorado Supreme Court affirmed the Court of Appeals holding that the district court's injunctive relief did not go far enough to prevent the continuation of the defendant's violation of the law and future harm. In order to address May's deceptive pricing scheme, the district court required May to include disclosures in its advertisements. The Court of Appeals—and ultimately the Colorado Supreme Court—determined that disclosures were not sufficient to address May's deceptive ads. The appellate courts decided that in addition to properly drafted disclosures in the advertising, "the trial court should have also enjoined the underlying fraudulent practices." *Id.* at 807.

73. Where the proven facts support an order to permanently enjoin a defendant from future involvement in a certain business or industry, courts will issue such final orders. See, e.g., *People by Koppell v. Empyre Inground Pools Inc.*, 642 N.Y.S.2d 344 (N.Y. App. Div. 1996) (upholding trial court's order permanently enjoining defendants from engaging in the home improvement and door-to-door sales businesses in New York, and from engaging in any business dealing with consumers until a \$100,000 performance bond was filed with the Attorney General's Office where the trial court found that defendant repeatedly deceived consumers in the course of his business); *People by Abrams v. Helena VIP Pers. Introductions Servs. of New York, Inc.*, 608 N.Y.S.2d 58 (N.Y. App. Div. 1993) (upholding trial court's order to permanently enjoin defendants from the social referral business within the State of New York).

74. In federal consumer protection cases, the court conducts the same analysis when imposing permanent injunctions. See *Fed. Trade Comm'n v. Think Achievement Corp.*, 144 F. Supp. 2d 1013 (N.D. Ind. 2000) (upholding permanent injunction based on federal courts' broad authority to restrain acts which are of the same class or type as the unlawful acts defendant has committed), *aff'd in relevant part, rev'd in part on other grounds*, 312 F.3d 259 (7th Cir. 2002). The breadth of the injunction must depend upon

the circumstances of the particular case, “the purpose 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, 436–37 (1941). Courts may enjoin otherwise lawful conduct to ensure that the final relief ordered is effective. See *United States v. Loew's, Inc.*, 371 U.S. 38, 53 (1962) (“Some of the practices which the Government seeks to have enjoined with its requested modifications are acts which may be entirely proper when viewed alone. To ensure, however, that relief is effectual, otherwise permissible practices connected with the acts found to be illegal must sometimes be enjoined.”). A “court's power to grant injunctive relief survives discontinuance of the illegal conduct,” and because the “purpose is to prevent future violations,” injunctive relief is appropriate when there is a “cognizable danger of recurrent violation, something more than the mere possibility.” *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953); see also *Old Homestead Bread Co. v Marx Baking Co.*, 117 P.2d 1007 (Colo. 1941) (“If the practice ‘has been abandoned in good faith for all time, an injunction can do the defendant no harm, and it is a protection to which we deem the plaintiff entitled.’”).

75. In a 2009 New Jersey consumer protection law enforcement action against the president of a business that deceptively advertised and sold refund anticipation loans, the court permanently enjoined the president defendant from “(1) managing or owning any business organization within New Jersey that offers Refund Anticipation Loans . . . and (2) offering . . . or selling . . . Refund Anticipation Loans.” Order for Final Judgment at 3–4, *State v. Malqui Financial Group, Inc.*, No. C-39-07 (N.J. Super. Ct. Ch. Div. Apr. 14, 2009). The Court based its order on the broad remedial provision set out in the New Jersey Consumer Fraud Act, *id.* at 2, that states the “court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any prohibitive practices,” N.J.S.A. 56:8-8. The court made findings of the proven egregious behavior of the president defendant and the gross harm of a vulnerable population within the state. See Order for Final Judgment at 2–3, *Malqui Financial Group, Inc.*, No. C-39-07.

76. Colorado district courts routinely exercise their authority under the CCPA to order defendants to cease practicing in the industry in which they were engaging in deceptive trade practices. See, e.g., Stipulated Consent Judgment with Robert Downey, *State v. Claim Specialists International, Inc.*, No. 09CV8366 (Denver Dist. Ct. Sept. 27, 2010); Stipulated Consent Judgment with Mark Baker, *Claim Specialists International, Inc.*, No. 09CV8366; Stipulated Consent Judgment with Melissa King, *Claim Specialists International, Inc.*, No. 09CV8366; see also Order of Judgment and Permanent Injunction, *State v. Legal Aid*, No. 09CV1372 (Denver Dist. Ct. Mar. 3, 2010); Consent Judgment Concerning Charles Doucette and Deborah Stilson, *State v. Stilson*, No. 09CV5071 (El Paso Dist. Ct. Apr. 16, 2010).

77. Here, in addition to the findings of fact outlined herein, this Court further finds and concludes that Defendant Jessen in the course of his ownership and operation of CSI, convinced hundreds of Coloradans, many of whom were elderly and vulnerable, to assign thousands of dollars in insurance claim funds to CSI in order to receive “roofing consultant” services and, ultimately, a new or repaired roof. At least 400 Coloradans received their insurance check (on average \$3,500) and paid it over to CSI and received no new or repaired roof. Many more homeowners waited upwards of a year to receive a new or repaired roof from CSI. Jessen failed over the course of two years to employ properly licensed individuals to conduct claims adjustments for CSI's consumers. Jessen

employed deceptive and illegal means to “lock” consumers into doing business with them, in violation of the UCCC. Even after Jessen became aware of the enormous consumer harm, he operated CSI without sufficient capital to fund existing contracted-for roof repairs, and refused to let consumers out of their contracts or else face a non-refundable cancellation fee of 20 percent of the claim. Even after Jessen became aware of the enormous consumer harm and enormous backlog of roof repair jobs, he continued to authorize CSI to sell new roof repair jobs without adequately modifying its completion timeframe and with the intent to use the money from new jobs to pay first, for CSI owners’ excessive salaries, employee bonuses, company cars, and only if there were funds remaining and available for supplies and subcontractors, to pay for backlogged roof repair jobs. Finally, based on the record, Defendant Jessen has not in good faith abided by the Stipulated Preliminary Injunction and, in all probability, will continue the same deceptive scheme that he engaged in through CSI unless strong action is taken by this Court.

Accordingly, this Court ORDERS the following injunctive relief against Defendant Jessen:

78. This Court permanently enjoins Defendant Jessen from owning, operating, or working for any business in Colorado that solicits or offers door-to-door construction or home repair services and assistance with consumer’s insurance claims to cover the home construction or repair services performed. This Court further permanently enjoins Defendant Jessen from owning, operating, or working for any business in Colorado that solicits or offers any type of insurance claim process services, including but not limited to assisting insureds with claims, advocating on behalf of insureds, or representing insureds during the insurance claim process. These injunctive provisions apply regardless of whether Defendant Jessen works for or receives compensation directly from this business, or this business pays another business for which Defendant Jessen works and which, in turn, pays Defendant Jessen.

This Court further ORDERS the following monetary relief:

79. The CCPA’s broad legislative purpose is to “provide prompt, economical, and readily available remedies against consumer fraud.” *Western Food Plan, Inc. v. Dist. Court* in quod pro *City & County of Denver*, 198 Colo. 251, 255, 598 P.2d 1038, 1041 (1979). The CCPA provides that this Court “may make such orders or judgment as may be necessary 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).

80. This Court has reviewed the entire record and has received evidence that shows the number of Colorado consumers who signed contracts with CSI for roof repair, assigned a portion or all of their insurance claim proceeds to CSI, and received no roof repair in return. The State’s summary of consumer loss lists 488 Colorado consumers who fall into the foregoing category. Each consumer lost, on average, \$3400 in insurance money for roof repair work to CSI. None of the consumers listed received refunds from CSI. The total amount lost by Colorado consumers is **\$1,736,732.41** less the **\$19,117.75** reduced by the State for one erroneous entry in Plaintiff’s Exhibit 9, Consumer Complaint List. Defendant Jessen acted as the president of CSI and maintained control over the refund process at CSI.

81. Accordingly, based on the Complaint and the evidence presented at trial, the Court orders Defendant Jessen to pay **\$1,717,614.66** in consumer restitution.

82. The CCPA also provides the following monetary remedies in law enforcement actions:

(1)(a) 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 subsection (1), 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*.

* * *

(1)(c) Any person who violates or causes another to violate any provision of this article, where such violation was committed against an elderly person, shall forfeit and pay to the general fund of the state a civil penalty of not more than ten thousand dollars for each such violation. For purposes for purposes of this paragraph (c), a violation of any provision of this article shall constitute a separate violation with respect to each elderly person involved.

C.R.S. § 6-1-112 (emphasis added). An “elderly person” is defined by the Act as anyone 60 years or older. See *id.* § 6-1-102(4.4).

83. In determining the amount of a civil penalty award, this Court considers the following concepts: (a) The good or bad faith of the defendant; (b) the injury to the public; (c) the defendant’s ability to pay; and (d) the desire to eliminate the benefits derived by violations of the Colorado Consumer Protection Act. *State ex rel. Woodard v. May Dep’t Stores Co.*, 849 P.2d 802, 806 (Colo. App. 1992).

84. Based on the record, the Court finds that Defendant’s violations of the CCPA were deliberate, knowing, and done in bad faith. Because the CCPA is intended to proscribe deceptive acts and not the consequences of those acts, the CCPA does not require proof of an actual injury or loss before a civil penalty may be awarded. *People ex rel. Dunbar v. Gym of America, Inc.*, 177 Colo. 97, 113, 493 P.2d 660, 668 (1972). Additionally, “[c]ivil penalties serve several important functions, one of which is as a deterrent against future unlawful practices.” See *May Dep’t Stores Co. v. State ex rel. Woodard*, 863 P.2d 967, 972 (Colo. 1993).

85. The Court orders Defendant Jessen to pay the maximum civil penalty of \$500,000 for any related series of violations. See C.R.S. § 6-1-112(1). Based on a calculation of the First through Fifth and the Seventh through Eighth claims for relief in the State’s Complaint, the civil penalties total **\$3,500,000**. Additionally, based on the State’s summary of consumer loss which identifies the age of the consumer, the Court finds that Defendant Jessen committed violations of the CCPA against 72 elderly

consumers, and therefore orders Defendant Jessen to pay an additional civil penalty in the amount of **\$720,000**.

86. The Attorney General is entitled to costs and attorneys fees totaling \$639,001.74 pursuant to C.R.S. §§ 5-6-114(3) and 6-1-113(4), for which a calculation was submitted by Plaintiffs in their Affidavit in Support of Attorneys Fees and Costs.

87. This Court orders a total monetary judgment of **\$5,937,614.66** in restitution and civil penalties against Defendant Jessen. This Court further orders that Defendant Jessen shall pay Plaintiffs' attorneys fees and costs in the amount of \$639,001.74.

SO ORDERED this 3rd day of May, 2011

BY THE COURT:



Ann B. Frick
Ann B. Frick
District Court Judge