

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL,</p> <p>Plaintiff,</p> <p>v.</p> <p>BASAD, INC., PELEG FORMAN, individually, BATIA “BELLI” FORMAN, individually, SHARON BITON, individually, and MICHAEL BITON, individually,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General ALISSA HECHT GARDENSWARTZ, 36126* Assistant Attorney General alissa.gardenswartz@state.co.us JAY B. SIMONSON, 24077* First Assistant Attorney General jay.simonson@state.co.us 1525 Sherman Street, 4th Floor Denver, CO 80203 (303) 866-5079 (303) 866-4916 Fax *Counsel of Record</p>	<p>Case No.:</p>
<p>COMPLAINT</p>	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges as follows:

INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 through 115 (2007) (“CCPA”), to enjoin and restrain Defendants from engaging in unlawful deceptive trade practices, for statutorily mandated civil penalties, for disgorgement, restitution, and for other relief as provided in the CCPA.

PARTIES

2. Plaintiff John W. Suthers is the duly elected Attorney General of the State of Colorado and is authorized under Colo. Rev. Stat. § 6-1-103 (2007) to enforce the provisions of the CCPA.

3. Defendant Basad, Inc. (“Basad”) is a Colorado corporation with a principal place of business located at 7120 E. Orchard Road, Englewood, Colorado 80111.

4. Defendant Peleg Forman is an individual residing at 11384 E. Cimmaron Drive, Englewood, Colorado 80111. At all times relevant to this action, Mr. Forman was the President of Basad, and has formulated, directed, controlled, or participated in the alleged unlawful acts or practices of Basad.

5. Defendant Batia “Belli” Forman is an individual residing at 11384 E. Cimmaron Drive, Englewood, Colorado 80111. At all times relevant to this action, Ms. Forman was Secretary, Operations Manager and Financial Manager of Basad, and has formulated, directed, controlled, or participated in the alleged unlawful acts or practices of Basad.

6. Defendant Michael Biton is an individual residing at 5796 S. Jamaica Way, Englewood, Colorado, 80111. At all times relevant to this action, Mr. Biton was an Operations Manager of Basad, and has formulated, directed, controlled, or participated in the alleged unlawful acts or practices of Basad.

7. Defendant Sharon Biton is an individual residing at 11384 E. Cimmaron Dr., Englewood CO 80111. At all times relevant to this action, Mr. Biton was a manager of Basad, and specifically a manager of dispatchers, and has formulated, directed, controlled, or participated in the alleged unlawful acts or practices of Basad.

JURISDICTION AND VENUE

8. Pursuant to Colo. Rev. Stat. §§ 6-1-103 and 6-1-110(1) (2007), this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

9. The violations alleged herein were committed, in whole or in part, in Denver County, Colorado, and Defendants do business and affect commerce in the City and County of Denver and elsewhere in Colorado. Therefore, venue is proper in Denver County, Colorado pursuant to § 6-1-103, C.R.S. (2007) and Colo. R. Civ. P. 98 (2007).

RELEVANT TIMES

10. The conduct that gives rise to the claims for relief contained in this Complaint began in 2004 and continues through the present.

11. This action is timely brought pursuant to Colo. Rev. Stat. § 6-1-115 (2007) in that it is brought within three years of the date on which false, misleading, and deceptive acts or practices occurred and/or were discovered, and the series of false, misleading, and deceptive acts is continuing.

PUBLIC INTEREST

12. Through the unlawful practices of their business, vocation, or occupation, Defendants have deceived, misled, and financially injured consumers both within and outside Colorado. Specifically, Defendants have violated the CCPA by engaging in deceptive advertising and marketing of locksmith services, and intentionally misleading consumers about the price of locksmith services. Therefore, the Colorado Attorney General believes these legal proceedings are in the public interest and are necessary to safeguard citizens from Defendants' unlawful business activities.

GENERAL ALLEGATIONS

A. Business Structure

13. Basad was incorporated in Colorado on or about May 24, 2004. Basad also has registered approximately 73 trade names in Colorado from 2004 through the present.

14. Basad acts as a call center for locksmiths. Basad enters into Independent Contractor Agreements with locksmiths around Colorado and in other states. According to the Independent Contractor Agreement, Basad advertises and markets the locksmith's service under one or more of Basad's trade names, and the locksmith remits all service fees to Basad, who, in turn, gives 35-40% of those fees back to the locksmith.

15. Basad advertises locksmith services in several different states. When a consumer calls the phone number listed in these advertisements, the consumer's call is always routed to Basad's call center in Englewood, Colorado. The Basad dispatcher that receives the call then contacts a locksmith in the area from which the consumer has called.

16. Basad also lists several of its trade names with 411 information services in a number of states, including Colorado. If a consumer calls 411 looking for a locksmith, the consumer will be given the number for one of Basad's trade names, such as "A 24 7 Locksmith." The number goes to the Basad call center in Englewood, Colorado, where a dispatcher contacts a Basad-affiliated locksmith in the consumer's area.

B. Basad's Deceptive Advertising

17. Basad makes several misrepresentations in advertising and marketing locksmith services. First, Basad's advertisements suggest that Basad has several different locations, when, in fact, all calls are routed to the same call center in Englewood. For example, Basad's 2007 Dex Yellow Pages advertisement for "Ocean Locksmith" shows different phone numbers for consumers to call depending upon what part of Denver the consumer is calling from, *i.e.*, South Metro, North Metro, East Metro or West Metro. These separate listings mislead consumers into believing that they are contacting a locksmith close to them when they are calling a single call center that may be many miles away.

18. Basad falsely advertises the seal for the Associated Locksmiths of America ("ALOA") by implying that their contracted locksmiths are members. Basad does not require the individual locksmiths to be members of the ALOA. The only known Basad employee who was a member of the ALOA is Basad's President, Defendant Peleg Forman. His membership has lapsed and he is not a locksmith nor has he ever provided locksmith services. Additionally, Basad continues to deceptively advertise the ALOA seal. *See* www.locksmithdenver.com.

19. Basad falsely advertises that its locksmiths are "licensed." None of the states in which Basad does business require that locksmiths be licensed, and no governmental authority within those states has licensed any Basad locksmith.

20. Basad advertises that its locksmiths are "experienced," "professional," and "specializ(ed)" in complicated locksmith jobs. Basad, either expressly or impliedly represents that its locksmiths are highly skilled and trained and that they have long experience in locksmithing. Basad fails to disclose: That Basad fails to employ any locksmiths but rather contracts with "independent contractors" found through Craigslist and other job listing advertisements; That some of these "technicians" had no prior locksmithing experience prior to being hired by Basad; That some received only a couple of days of training by Defendants before proceeding to respond to calls.

21. Defendant Belli Forman was responsible for all of Basad's advertising and marketing. Upon information and belief all other individual Defendants have reviewed Basad advertisements and are aware of the above described deceptions.

C. Basad's Misrepresentations Regarding Price of Locksmith Services

22. Basad has consistently misrepresented the price of its locksmith services to consumers. Basad's pricing policies require that all consumers are charged a \$55 service fee as well as any additional fees that the locksmith charges for its services. Upon Defendants' own admission, the average locksmith service call results in a charge of more than \$100. However, Basad regularly misled its

consumers into believing that they would be charged only the \$55 for locksmith services.

23. Basad dispatchers, as per their training failed to disclose known additional charges likely to be charged and were instructed to say as little as possible about price when handling a consumer call. If a consumer insisted on knowing the price for locksmith services, dispatchers were instructed to mention only the \$55 service fee.

24. This deception resulted in consumers being charged significantly more than they were originally quoted. The deception also resulted in losses to legitimate locksmith services that quoted accurate prices and lost business to Basad.

25. In many cases, the Basad locksmith, after arriving at the consumer's location, would obtain the consumer's credit card information, perform the requested service, and charge two times the amount that the consumer was quoted by Basad. Consumers, often under the pressure of emergent circumstances, felt they had little choice but to pay the locksmith's fees. However, a large percentage of consumers refused to pay the undisclosed fees and were forced to have to begin anew in finding a locksmith.

26. Basad purposely avoided the inevitable fallout from this deception. When consumers called back to complain about being charged more than they were quoted, dispatchers were instructed to not give out any of the names of Defendants and to instead tell consumers that a manager named "Mitch" would call them back. Basad did not employ anyone named Mitch.

27. Defendants Belli Forman, Sharon Biton and Michael Biton were all responsible for training Basad dispatchers in how to answer the phones and how to interact with consumers. Defendant Peleg Forman, although not as involved in the day to day operations of the company as the three other Defendants, was aware of the misrepresentations made by Basad and failed to take appropriate action while profiting from the company's deceptive practices.

28. As a result of Defendants' deceptive business practices, numerous consumers both within and outside Colorado have lost thousands of dollars.

DEFENDANTS' ACTIVITIES IN VIOLATION OF THE CCPA

29. During the course of their business, vocation or occupation, Defendants violated sections 6-1-105(1)(c), (d), (l) and (u) of the Colorado Consumer Protection Act, and thereby committed fraud, by, among other things:

- a. Knowingly making a false representation as to affiliation, connection, or association with another;

- b. Using deceptive representations or designations of geographic origin in connection with goods or services;
- c. Making false or misleading statements of fact concerning the price of goods or services; and
- d. Failing to disclose material information concerning goods 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.

FIRST CLAIM FOR RELIEF

(Falsely Representing Affiliation, Connection, or Association with Another)

30. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 29 of this Complaint.

31. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have violated the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1)(c) (2007), by falsely representing that Basad locksmiths were affiliated with ALOA.

32. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers inside and outside Colorado.

SECOND CLAIM FOR RELIEF

(Using Deceptive Representations or Designations of Geographic Origin in Connection With Goods or Services)

33. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 32 of this Complaint.

34. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have violated the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1)(d) (2007), by falsely representing that consumers were calling a locksmith in their area rather than a single call center that was for most consumers outside of their state.

35. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous Colorado consumers.

THIRD CLAIM FOR RELIEF

(Making False or Misleading Statements of Fact Concerning the Price of Goods or Services or the Reasons for, Existence of, or Amounts of Price Reductions)

36. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 35 of this Complaint.

37. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have violated the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1)(l) (2007), by regularly misrepresenting the price of locksmith services to consumers.

38. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous Colorado consumers.

FOURTH CLAIM FOR RELIEF

(Failing to Disclose Material Information Concerning Goods Which Information Was Known at the Time of an Advertisement or Sale)

39. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 38 of this Complaint.

40. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have violated the Colorado Consumer Protection Act. § 6-1-105(1) (u) (2007), by representing to consumers that they would only be charged \$55 for locksmith services when Defendants knew consumers would be required to pay additional fees.

41. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous Colorado consumers.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against the Defendants and the following relief:

A. An order declaring Defendants' above-described conduct to be in violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1) (c), (d), (l) and (u) (2007).

B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with any Defendant with notice of such injunctive orders, from engaging in any

deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.

C. Appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.

D. For a judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to Colo. Rev. Stat. § 6-1-110(1) (2007).

E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado, civil penalties in an amount not to exceed \$2,000 per violation pursuant to Colo. Rev. Stat. § 6-1-112(1) (2007), or \$10,000 per violation pursuant to Colo. Rev. Stat. § 6-1-112(3) (2007).

F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to Colo. Rev. Stat. § 6-1-113(4) (2007).

G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated this 7th day of November, 2008.

JOHN W. SUTHERS
Attorney General

/s/

JAY B. SIMONSON, 24077*
First Assistant Attorney General
Consumer Protection Section
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CERTIFICATE OF SERVICE

This is to certify that on November 7, 2008, I have duly served, Plaintiff's Civil Cover Sheet, Summons, Complaint and Motion for Preliminary Injunction, upon all parties herein via Lexis-Nexis File and Serve and by Facsimile.

C. FORREST MORGAN, III, ESQ.
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/s/ Orlando H. Martinez

Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.