

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL Plaintiff, v. SEABREEZE AIR, LLC, SEABREEZE AIR, QUALITY AIR, QUALITY AIR "LLC," FRESH AIR, LLC and ANDRE SHATYKO and ALEXANDER KURDYUKOV Defendants	
JOHN W. SUTHERS, Attorney General MARK T. BAILEY, 36861* Assistant Attorney General JAY B. SIMONSON, 24077* First Assistant Attorney General Ralph L. Carr Judicial Center 1300 Broadway, 7 th Floor Denver, CO 80203 Telephone: (720) 508-6000 FAX: (720) 508-6040 *Counsel of Record	Case No.
COMPLAINT	

INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, §§ 6-1-101 *et seq.*, C.R.S. (2013) ("CCPA"), to enjoin and restrain Defendants from engaging in certain unlawful deceptive trade practices, for statutorily mandated civil penalties, for disgorgement, restitution, and other relief as provided in the CCPA.

2. Defendants have deceived thousands of Colorado consumers through false and misleading advertisements that vastly understate Defendants' prices for air duct cleaning. Advertising prices as low as \$34.99, Defendants induce consumers to schedule appointments in their homes with Defendants' technicians. Upon arriving at consumers' homes, Defendants' technicians quote and charge prices that are far higher than the advertised price. Defendants also misrepresent the quality of their services and frequently do shoddy, incomplete work, routinely leaving consumers' homes in worse shape than before Defendants arrived.

PARTIES

3. John W. Suthers is the Attorney General of the State of Colorado and is authorized under C.R.S. § 6-1-103 to enforce the provisions of the CCPA.

4. Defendant Seabreeze Air, LLC is a Washington corporation that began doing business in Colorado in or around January 2010. Seabreeze Air, LLC's status with the Colorado Secretary of State is "Delinquent." The last mailing address that Seabreeze Air, LLC listed with the Colorado Secretary of State was 3090 S. Jamaica Ct., No. 303, Aurora, CO 80014. As of the date of this filing, this address is vacant.

5. Defendant Seabreeze Air is a Colorado corporation that was incorporated with the Colorado Secretary of State on or around July 26, 2011. On February 2, 2012, Seabreeze Air filed Articles of Amendment with the Colorado Secretary of State changing the company's name to Quality Air. That same day, the company filed another Articles of Amendment that changed the company's name from Quality Air to Quality Air "LLC."

6. Defendant Fresh Air LLC is a Colorado corporation that was incorporated with the Colorado Secretary of State on September 12, 2012.

7. On September 20, 2013, Quality Air "LLC" filed a change of address form with the Colorado Secretary of State, changing the address of the company to 31 Saint Jacques Ave., #3B, Agawam, Massachusetts 01001. For the address of its registered agent, Quality Air "LLC" listed 3090 S. Jamaica Ct., No. 303 – an address which, as noted above, is currently vacant.

8. Defendant Andre Shatyko owns and controls the business operations of the Corporate Defendants. Shatyko's last known address is listed as 27 Strawberry Hill Avenue, Stamford, CT 06902.

9. Defendant Alexander Kurdyukov owns and controls the business operations of the Corporate Defendants. 121 Towne Street, #611, Stamford, CT

06902.

ACTS OF AGENTS

10. Whenever reference is made in this Complaint to any act or practice of Defendants, such allegation shall be deemed to mean that the principals, owners, employees, independent contractors, agents, and representatives of such Defendants performed, directed, or authorized such act or practice on behalf of said Defendants, while actively engaged in the scope of their duties.

JURISDICTION AND VENUE

11. Pursuant to C.R.S. §§ 6-1-103 and 6-1-110, this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

12. The violations alleged herein occurred, in part, in Denver County, Colorado. Therefore, venue is proper in Denver County pursuant to C.R.S. § 6-1-103 and Colo. R. Civ. P. 98 (2013).

RELEVANT TIMES

13. The conduct that gives rise to the claims for relief contained in this Complaint began in or around January 2010 and continues through the present day.

14. This action is timely brought pursuant to C.R.S. § 6-1-115 in that it is brought within three years of the date on which the last in a series of false, misleading, and deceptive acts or practices occurred and/or were discovered.

PUBLIC INTEREST

15. Through the unlawful practices of their business or occupation, Defendants have deceived, misled, and financially injured consumers in Colorado and other States. Further, Defendants have taken market share from their competitors who do not engage in deceptive trade practices. Therefore, these legal proceedings are in the public interest and are necessary to safeguard citizens from Defendants' unlawful business activities.

PERSONAL LIABILITY

16. This action is brought against corporate Defendants Seabreeze Air, LLC, Seabreeze Air, Quality Air, Quality Air "LLC," and Fresh Air, LLC (the

“Corporate Defendants”). This action is also brought against Defendants Andre Shatyko and Alexander Kurdyukov, individually. At all relevant times, Defendants Shatyko and Kurdyukov conceived of, directed, participated in, and controlled the deceptive business practices alleged herein.

GENERAL ALLEGATIONS

I. Background on Defendants’ Business

17. Defendants provide residential air duct cleaning services in Colorado and in several other States.

18. The process of cleaning a residential air duct system involves work on several distinct parts of the home’s heating and cooling system. Attached hereto as **Exhibit A** is a depiction of a typical residential air duct system.

19. A home’s air duct system circulates air throughout the house through ducts and registers. *See* **Exhibit A**. The typical system contains at least one “supply” duct, which supplies warm air from the furnace to the registers that blow the warm air into the home. *See id.* Most homes contain ten or more warm-air registers. The typical system also contains at least one “return” duct. The return duct takes air from the home and circulates it back to the furnace, where it is heated up before being re-circulated through the supply duct as warm air. The return duct is fed by return registers, which, like main registers, open into the house. *See id.* Most single family homes contain multiple supply and return ducts.

II. Defendants’ Deceptive Trade Practices

20. Defendants’ business practices have generated over 230 consumer complaints through the Denver/Boulder Better Business Bureau (“BBB”) and the Attorney General’s consumer complaint intake system. The complaints reveal a pattern of false and misleading advertising and shoddy, incomplete work that frequently leaves consumers’ homes in worse shape than before Defendants arrived.

A. Defendants Charge Consumers Far in Excess of their Advertised Prices

21. Defendants have advertised through a variety of sources, including the Internet, “Valpak” coupon books that were mailed to consumers, and the online coupon company Groupon.

22. Defendants advertise prices that are far lower than the price they actually charge consumers. Below are a few examples of Defendants’ deceptive

coupons.

23. On “Valpak,” Defendants have offered a “Whole House Air Duct Cleaning Package” for \$34.95. The coupon stated that the regular price for this service is \$154.95. On the reverse side, the coupon stated that there were “no hidden charges.” A copy of this coupon is attached hereto as **Exhibit B**.

24. On Groupon, Defendants have offered “Air-Duct cleaning for the entire home, Including all Vents, One Main Duct, and One Return (a \$250 value)” for \$39 and \$69. Defendants also offered a “Complete Cleaning of All Vents, 1 Main Duct, and 1 Return” on Groupon for \$49.

25. As recently as October 23, 2013, through Groupon, Defendants advertised “air-duct cleaning for unlimited supply vents, one return vent, one main duct, and system analysis,” for \$39. The ad claims that this is “a \$299 value.”

26. The same October 23 Groupon advertisement advertised another package, which included “air-duct cleaning for unlimited supply vents, one return vent, one main duct, and system analysis, plus one dryer vent cleaning (a \$368 value).”

27. To use Groupon, consumers pay the price of the service up front to Groupon, and Groupon gives the consumer a voucher to present to the service provider, in this case Sea Breeze. Thus, those consumers who purchase “Groupons” for Defendants’ services had already paid money when Defendants arrived at their homes.

28. Defendants’ advertised prices are nothing more than a ploy to induce consumers to schedule an appointment for an air duct cleaning. Defendants instruct their technicians to come up with the highest possible estimate for each job – sometimes over \$1,000. If the consumer balks at the high price, Defendants negotiate with the consumer in an attempt to extract as much as the consumer will pay.

29. Defendants use a variety of methods to increase the price above the coupon price, including 1) pointing to misleading language in the coupon to claim that certain services aren’t covered by the coupon, 2) misrepresenting the size and structure of consumers’ air duct systems and the amount of work to be done, and 3) adding services beyond those listed in the coupons.

30. Further, the “regular prices” and “values” the coupons list – for example, \$154.95, \$250, and \$299 – do not refer to true “regular prices” that Defendants actually charge. Instead, these “regular prices” vary at the whim of

Defendants, who advertise them for the sole purpose of making consumers believe they will receive a complete air duct cleaning for a very low cost.

31. When consumers insist on paying no more than the coupon price, Defendants perform only a partial cleaning of the consumers' homes. Because air ducts are circulatory systems, a cleaning of one part of the system is essentially worthless, as dust and debris from the uncleaned portions will spread throughout the system the next time the furnace or air conditioner is turned on.

**B. Defendants Misrepresent the Quality of their Services,
Frequently Leaving Consumers' Homes Damaged and Dirty**

32. Defendants have advertised that their technicians were "certified" and that Defendants are "licensed."

33. While certification for air duct cleaning is available, none of Defendants' technicians have ever had any certification. Further, Defendants have not obtained any license for their work.

34. Defendants have advertised that they use "Powerful Truck Mounted Equipment."

35. However, consumers report that technicians arrived in their own vehicles and that Defendants' "cleanings" left dust and debris in their air duct systems. On information and belief, Defendants did not own or use "Powerful Truck Mounted Equipment."

36. Defendants have also advertised that their technicians are "reliable" and "trustworthy."

37. However, Defendants instruct their technicians to complete each job as quickly as possible, without regard to performing quality work. Defendants frequently leave consumers' systems full of dust and debris, blow dirt and dust into consumers' living areas, and sometimes damage consumers' ductwork, furnace and other parts of consumers' homes.

38. As recently as October 23, 2013, Defendants falsely advertised that their technicians were "insured."

39. As a result of Defendants' unprofessional, shoddy, and incomplete work, consumers have had to pay more reputable companies to redo the work that the consumers already paid Defendants to perform.

40. Further, consumers often seek air duct cleaning to deal with health issues, such as allergies and asthma. Shoddy work by Defendants can leave uncorrected the conditions that exacerbate these health issues.

C. Other Deceptive Trade Practices By Defendants

41. Defendants have also accepted payment from consumers through Groupon and other sources and failed to provide any service at all to these consumers.

42. Also, without doing any valid inspection, Defendants attempt to sell UV lights and other services that supposedly remediate mold, bacteria, and other potentially damaging substances in the home. Defendants charge anywhere from \$500 or more for these services, which Defendants' technicians are not qualified to provide. More often than not, these services are valueless.

III. Defendants Misled the State and a State Court About their Continued Colorado Operations

43. As detailed in the State's Motion for Preliminary Injunction, filed contemporaneously herewith, Defendants repeatedly told the State, including in a court filing, that they were no longer soliciting business in Colorado. The State recently discovered that these statements were false and that Defendants had simply changed their name to Fresh Air LLC and continued their deceptive trade practices under that name.

FIRST CLAIM FOR RELIEF

(Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions in violation of C.R.S. § 6-1-105(l))

44. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 43 of this Complaint.

45. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have knowingly made false or misleading statements of fact concerning the price of their goods and services and the existence of and amounts of price reductions.

46. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

SECOND CLAIM FOR RELIEF

(Employs "bait and switch" advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised or on terms other than those advertised and which is also accompanied by one or more [specified practices] in violation of C.R.S. § 6-1-105(n))

47. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 43 of this Complaint.

48. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have knowingly made advertisements accompanied by an effort to sell services other than those advertised and on terms other than those advertised, which conduct was accompanied by:

- Disparaging the advertised services or the terms of sale by claiming that additional services are necessary (C.R.S. § 6-1-105(n)(II))
- Showing or demonstrating defective services which are unusable or impractical for the purposes set forth in the advertisement ((C.R.S. § 6-1-105(n)(V))
- In the case of the Groupon and similar coupons, accepting a deposit for their services and subsequently switching the purchase order to higher-priced services ((C.R.S. § 6-1-105(n)(VI))

49. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

THIRD CLAIM FOR RELIEF

(Advertises goods, services, or property with intent not to sell them as advertised in violation of C.R.S. § 6-1-105(i))

50. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 43 of this Complaint.

51. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants advertised their services with intent not to sell them as advertised.

52. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

FOURTH CLAIM FOR RELIEF

(Fails to disclose material information concerning goods, services, or property 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 in violation of C.R.S. § 6-1-105(u))

53. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 43 of this Complaint.

54. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have failed to disclose material information concerning goods, services, or property at the time of sale. Such failures to disclose material information were intended by Defendants to induce consumers to enter into a transaction with Defendants.

55. After stating and implying, through coupons, internet advertisements, and other media, that they would clean consumers' air duct systems for a specified price, Defendants failed to disclose on their advertisements and coupons that consumers would incur substantial additional charges.

56. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

FIFTH CLAIM FOR RELIEF

(Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property in violation of C.R.S. § 6-1-105(b))

57. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 43 of this Complaint.

58. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants knowingly made false representation as to the certification and licensure of their technicians.

59. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

SIXTH CLAIM FOR RELIEF

(Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another in violation of C.R.S. § 6-1-105(g))

60. Plaintiff incorporates herein by reference all allegations contained in

paragraphs 1 – 43 of this Complaint.

61. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have represented that their services and goods were of a particular standard, quality or grade, and Defendants knew or should have known that their services and goods were of another.

62. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

RELIEF REQUESTED

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

A. An order declaring Defendants' above-described conduct to be in violation of the CCPA, C.R.S. § 6-1-105 (1), (b), (g), (i), (l), (n), and (u).

B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with Defendants 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. Additional appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.

D. A judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to C.R.S. § 6-1-110(1).

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 C.R.S. § 6-1-112(1), or \$10,000 per violation pursuant to C.R.S. § 6-1-112(3).

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 C.R.S. § 6-1-113(4).

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

Dated this 14th day of November, 2013.

JOHN W. SUTHERS
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