

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	DATE FILED: September 25, 2014 11:32 AM CASE NUMBER: 2013CV35020 <p style="text-align: center;">⚠ COURT USE ONLY ⚠</p>
Plaintiff(s) ST OF COLO v. Defendant(s) SEABREEZE AIR LLC et al.	
Stipulated Consent Judgment	

Case Number: 2013CV35020
 Division: 280 Courtroom:

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 9/25/2014



CATHERINE A LEMON
 District Court Judge

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>STATE OF COLORADO ex rel. JOHN W SUTHERS, ATTORNEY GENERAL</p> <p>Plaintiff v.</p> <p>SEABREEZE AIR LLC, SEABREEZE AIR, QUALITY AIR, QUALITY AIR "LLC," FRESH AIR, LLC, and ANDRE SHATYKO and ALEXANDER KURDYUKOV, Individually</p> <p>Defendants.</p>	
<p>Attorneys for Petitioners: JOHN W. SUTHERS, Attorney General MARK T. BAILEY*, Assistant Attorney General, Reg. No. 36861 JAY SIMONSON*, First Assistant Attorney General, Reg. No. 24077 1300 Broadway, 7th Floor Denver, CO 80203 (720) 508-6000 (720) 508-6040 *Counsel of Record</p>	<p>Case No.: 2013CV35020 Div: 280</p>
<p>STIPULATED CONSENT JUDGMENT</p>	

This matter is before the Court on the parties' Stipulation for Entry of a Final Consent Judgment. The Court has reviewed the Stipulation, the Complaint and is otherwise advised in the grounds therefore. The Court concludes that good cause has been shown for entering this Final Consent Judgment.

Accordingly, IT IS ORDERED that:

I. GENERAL PROVISIONS

1.1 Scope of Final Consent Judgment. The injunctive provisions of this Final Consent Judgment are entered pursuant to the Colorado Consumer Protection Act, §§ 6-1-101, *et seq.* C.R.S. (2014) (“CCPA”). This Final Consent Judgment shall apply to DEFENDANTS SEABREEZE AIR, LLC, SEABREEZE AIR, QUALITY AIR, QUALITY AIR “LLC”, FRESH AIR, LLC, ANDRE SHATYKO AND ALEXANDER KURDYUKOV (collectively, “DEFENDANTS”), and any person under the direction or control of any DEFENDANT, including but not limited to any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who has received actual notice of this Court’s Order.

1.2 Release of Claims. The State of Colorado, *ex rel.* John W. Suthers, Attorney General (hereinafter the “STATE”), acknowledges by its execution hereof that this Final Consent Judgment constitutes a complete settlement and release of all claims under the CCPA on behalf of the STATE against the DEFENDANTS, their owners, employees and former employees, with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted under the CCPA in the Complaint, that arose prior to this date and relating to or based upon the acts or practices which are the subject of the Complaint filed in this action. The STATE agrees that it shall not proceed with or institute any civil action or proceeding under the CCPA against the DEFENDANTS for any conduct or practice prior to the date of entry of this Final Consent Judgment which relates to the subject matter of the Complaint filed in this action.

1.3 Liability. Both parties are entering into this Final Consent Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further litigation.

1.4 Preservation of Law Enforcement Action. Nothing herein precludes the STATE from enforcing the provisions of this Final Consent Judgment, or from pursuing any law enforcement action under the CCPA with respect to the acts or practices of the DEFENDANTS not covered by this lawsuit and Final Consent Judgment or any acts or practices of the DEFENDANTS conducted after the entry of this Final Consent Judgment.

1.5 Compliance with and Application of State Law. Nothing herein relieves the DEFENDANTS of their duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the STATE for the DEFENDANTS to engage in acts and practices prohibited by such laws. This Final Consent Judgment shall be governed by the laws of the State of Colorado.

1.6 Non-Approval of Conduct. Nothing herein constitutes approval by the STATE of the DEFENDANTS' past or future business practices. The DEFENDANTS shall not make any representation contrary to this paragraph.

1.7 Preservation of Private Claims and Relation to Private Settlements. Unless otherwise noted, nothing herein shall be construed as a waiver of any private rights, causes of action, or remedies of any person against the DEFENDANTS with respect to the acts and practices covered by this Final Consent Judgment.

1.8 Use of Settlement as Defense. The DEFENDANTS acknowledge that it is the STATE's customary position that an agreement restraining certain conduct on the part of a defendant does not prevent the STATE from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the STATE's enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the STATE from taking enforcement action to address conduct occurring after the entry of this Final Consent Judgment that the STATE believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Final Consent Judgment shall not be a defense to any such enforcement action.

1.9 Use of Settlement in Business Activity. Under no circumstances shall this Final Consent Judgment or the name of the Attorney General or any of the STATE's employees or representatives be used by the DEFENDANTS or any person under their direction or control in any way that suggests an endorsement of DEFENDANTS' conduct, past, present, or future. However, nothing in this paragraph shall prohibit the DEFENDANTS from otherwise commenting on or quoting this Final Consent Judgment, changes to their business practices or the resolution of this case.

1.10 Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Final Consent Judgment to apply to the Court at any time for any further orders which may be necessary or appropriate for the construction, modification or execution of this Final Consent Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof.

1.11 Contempt. The parties understand and agree that a finding of any violation of any term or provision of this Final Consent Judgment may give rise to all contempt remedies available to the Court, including those provided under C.R.S § 6-1-112(1)(b) and C.R.C.P. Rule 107.

1.12 Execution in Counterparts. This Final Consent Judgment may be executed in counterparts.

1.13 Severability. If any provision(s) of this Final Consent Judgment is held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

1.14 Successors in Interest. The terms and provisions of this Final Consent Judgment may be enforced by the current Colorado Attorney General, and by any of his duly authorized agents or representatives, as well as by any of his successors in interest, and by any of his successors in interest's agents or representatives.

1.15 Bankruptcy. In the event any of the DEFENDANTS file a petition for bankruptcy within one hundred days of their payments to the STATE and if the STATE must return any portion of the money it has collected pursuant to this Final Consent Judgment to the bankruptcy estate, then a judgment shall enter against the DEFENDANT who filed for bankruptcy, in the amount of \$1 million (\$1,000,000) in favor of the STATE.

1.16 Amendment. This Final Consent Judgment may be amended solely by written agreement signed by the STATE and the DEFENDANTS.

1.17 Notice. Any notices sent to DEFENDANTS pursuant to this Final Consent Judgment shall be sent Andrii Shatyko 111 Towne Street #110 Stamford, CT 06902 and to Alexander Kurdyukov 31 St. Jacques Avenue #3 Agawam, MA 01001.

II. PERMANENT INJUNCTION

2.1 DEFENDANTS, and any person under the direction or control of any DEFENDANT, including but not limited to, any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who has received actual notice of this Court's Order, are hereby PERMANENTLY ENJOINED from:

- a) Soliciting, advertising or providing air duct cleaning services in Colorado;
- b) Accepting payment from any Colorado consumer in connection with air duct cleaning services;

- c) Accepting payment for air duct cleaning services in Colorado from any entity that offers prepayment for services, including but not limited to Groupon and Living Social;
- d) Operating, controlling, or receiving payment from any air duct cleaning company that has any presence in the State of Colorado.

III. MONETARY PROVISIONS

3.1 This Court orders DEFENDANTS, jointly and severally, to pay a total amount of \$916,000. The STATE agrees to suspend DEFENDANTS' payment of \$766,000 of this amount pending full compliance with all injunctive terms and full payment of the remaining \$150,000. DEFENDANTS shall make an initial payment of \$2,500 immediately upon entry of this Final Consent Judgment, followed by monthly payments of \$1,000 starting November 1, 2014 and continuing for one hundred forty seven (147) months for a total of \$147,000 and a final monthly payment of \$500.

3.2 The payments provided for in ¶ 3.1 shall be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for attorney fees and costs, restitution, if any, and for future consumer education and for consumer enforcement.

3.3 All payments shall be made payable to the Colorado Department of Law with a reference to "*State v. Seabreeze et al.*, 2013CV35020, and shall be delivered to:

Kyle Odegaard, Program Assistant
Consumer Fraud Unit
Colorado Department of Law
1300 Broadway
Denver, Colorado 80203

3.4 Failure to make the initial payment of \$2,500 will constitute contempt of this Court and result in the entire \$916,000 being due and payable immediately, without the need for trial. In the event DEFENDANTS fail to make any subsequent monthly payment under ¶ 3.1, the STATE shall provide the DEFENDANTS written notice of default and provide the DEFENDANTS with 30 days to cure the default without penalty. If the DEFENDANTS fail to cure the default within 30 days, the entire \$916,000 (minus any payments previously made by DEFENDANTS) shall be due and payable immediately, without the need for trial.

3.5 In the event DEFENDANTS fail to make any payment under ¶ 3.1 or violate any injunctive term of this Final Consent Judgment, DEFENDANTS agree to waive and accept service of C.R.C.P. Rule 69(d) Interrogatories through their counsel, Robert Driscoll.

IV. REPRESENTATIONS AND WARRANTIES

4.1 Except as expressly provided in this Final Consent Judgment, nothing in this Final Consent Judgment shall be construed as relieving the DEFENDANTS of their respective obligations to comply with all state and federal laws, regulations or rules, or granting permission to engage in any acts or practices prohibited by such law, regulation or rule.

4.2 The DEFENDANTS acknowledge that they have thoroughly reviewed this Final Consent Judgment with their counsel, that they understand and agree to its terms, and that they agree that it shall be entered as an Order of this Court.

4.3 Each of the non-Court signatories to this Final Consent Judgment warrants and represents that he or she has authority to agree to this Consent Judgment on behalf of the specified parties.

V. VIOLATIONS OF THIS CONSENT JUDGMENT

5.1 Any violation of any injunctive term of this Consent Judgment shall constitute contempt of this Court and result in the entire \$916,000 (minus any payments previously made by the TRUJILLO DEFENDANTS) being due and payable immediately, without the need for trial, and any further remedies that the Court deems appropriate.

5.2 In any action brought by the STATE to enforce this Final Consent Judgment, the DEFENDANTS consent to personal and subject matter jurisdiction in the District Court for the City and County of Denver.

SO ORDERED and SIGNED this ____ day of _____, 2014.

BY THE COURT:

Catherine A. Lemon
District Court Judge

This Consent Judgment concerning the DEFENDANTS, signed and agreed to this ____ day of September, 2014.

In all respects, on behalf of Defendants Seabreeze Air, LLC, Seabreeze Air, Quality Air, Quality Air "LLC", Fresh Air, LLC

In all respects, on behalf of Defendant Andre Shatyko

Robert Driscoll
DRISCOLL LAW FIRM
455 Sherman Street, Suite 110
Denver, CO 80203

Andrii Shtyko

In all respects, on behalf of Defendant Alexander Kurdyukov

In all respects, on behalf of the Plaintiff the State of Colorado, *ex rel.*
JOHN W. SUTHERS, Attorney General

Alexander Kurdyukov

MARK T. BAILEY*, Reg. No. 36861
Assistant Attorney General
JAY SIMONSON*, Reg. No. 24077
First Assistant Attorney General
Consumer Fraud Unit
Consumer Protection Section
Office of the Colorado Attorney General
Attorneys for Plaintiff

*Counsel of Record