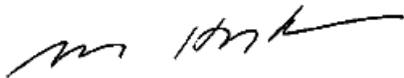


DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 Sixth Street P.O. Box 4249, Boulder, CO, 80306-4249	DATE FILED: September 3, 2014 1:14 PM CASE NUMBER: 2013CV31431  <p style="text-align: center;"><b>⚠ COURT USE ONLY ⚠</b></p>
<b>Plaintiff(s)</b> STATE OF COLORADO v. <b>Defendant(s)</b> LEAMINGS INC et al.	
<b>Order: Order - Final Consent Judgment</b>	

The motion/proposed order attached hereto: APPROVED.

Issue Date: 9/3/2014



ANDREW HARTMAN  
 District Court Judge

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO  Boulder County Justice Center  1777 Sixth Street. Boulder CO 80302</p> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS,  ATTORNEY GENERAL</p> <p>Plaintiff,</p> <p>v.</p> <p>LEAMINGS INC. D/B/A TOBACCO KING, SANG  LEAMING, INDIVIDUALLY</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General  JAY B. SIMONSON, 24077*  First Assistant Attorney General  JEFFREY M. LEAKE, 38338  SARAH PAGE JACKSON, 45212  Assistant Attorneys General  Ralph L. Carr Judicial Center  1300 Broadway, 10<sup>th</sup> Floor  Denver, CO 80203  Telephone: (720) 508-6000  FAX: (720) 508-6040  *Counsel of Record</p>	<p>Case No. 2013cv31431  Div.: 5</p>
<p><b>FINAL CONSENT JUDGMENT</b></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. (2013) ("CCPA"). This Final Consent Judgment shall apply to DEFENDANTS LEAMINGS, INC. d/b/a TOBACCO KING, and SANG

LEAMING, INDIVIDUALLY (hereinafter “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 have 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 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 DEFENDANTS, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys’ fees, or costs, 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. All 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 DEFENDANTS not covered by this lawsuit and Final Consent Judgment or any acts or practices of DEFENDANTS conducted after the entry of this Final Consent Judgment.

1.5 Compliance with and Application of State Law. Nothing herein relieves DEFENDANTS of their duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the STATE for 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 DEFENDANTS’ past or future business practices. 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 DEFENDANTS with respect to the acts and practices covered by this Final Consent Judgment.

1.8 Use of Settlement as Defense. 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 DEFENDANTS or any of their employees, representatives, or agents in conjunction with any marketing or other business activity, including in responses to consumer complaints or as an endorsement of any conduct, past or present, by DEFENDANTS. A violation of this paragraph constitutes a knowing and willful violation of this Final Consent Judgment.

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).

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

1.16 Notice. Any notices sent to DEFENDANTS pursuant to this Final Consent Judgment shall be sent to Sang Leaming, 1100 E. 17<sup>th</sup> Ave., Apt. H-103, Longmont, Colorado, 80504.

## **II. DEFINITIONS**

2.1 Unless otherwise stated herein, all terms herein that are defined in the CCPA shall be given the definition provided by the CCPA.

## **III. PERMANENT INJUNCTION**

3.1 Effective immediately, this Court PERMANENTLY ENJOINS DEFENDANTS and any other person under their control or at their direction who receives actual notice of this Order from

- a. selling products with labeling that misrepresents the known or intended use of the product.
- b. selling products with unverified claims of legal conformance or governmental endorsement.
- c. selling products designed for human consumption that do not comply with U.S. Food and Drug Administration rules and regulations regarding disclosure of ingredients.

## **IV. MONETARY PROVISIONS**

4.1 This Court orders DEFENDANTS, jointly and severally, to pay a total amount of \$100,000 in civil penalties under § 6-1-112(1)(a). DEFENDANTS shall make an initial payment of \$5,000 to be paid on or before September 1, 2014; followed by monthly payments of \$2,000.00 starting October 1, 2014 and continuing until the \$100,000 is paid in full.

4.2 The Payments shall be paid by the DEFENDANTS to the Colorado Department of Law to be paid to the general fund of the State of Colorado, as a civil penalty, pursuant to 6-1-112 (1)(a).

All payments shall be made payable to the Colorado Department of Law with a reference to "*State v. Leamings Inc., et al., 2013CV31431*," and shall be delivered to:

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

4.3 In the event DEFENDANTS fail to make any payment under Section 4.1, the STATE shall provide the DEFENDANTS written notice of default and provide DEFENDANTS with 30 days to cure the default without penalty. If the DEFENDANTS fail to cure the default within 30 days, the entire \$100,000 (minus any payments previously made by DEFENDANTS) shall be due and payable immediately, without the need for trial.

4.4 The State agrees not to serve Rule 69 discovery for so long as the DEFENDANTS remain in compliance with all terms of this Final Consent Judgment.

## V. REPRESENTATIONS AND WARRANTIES

5.1 Except as expressly provided in this Final Consent Judgment, nothing in this Final Consent Judgment shall be construed as relieving 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.

5.2 Due to the public-interest nature of the STATE's claims in this matter, DEFENDANTS hereby specifically agree and stipulate that the monetary obligation imposed hereunder constitutes a debt for a fine or penalty payable to and for the benefit of a governmental unit, is not compensation for actual pecuniary loss and is specifically non-dischargeable under 11 U.S.C.A. § 523(a)(7).

5.3 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.

5.4 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.

5.5 Upon receipt of reasonable notice, DEFENDANTS agree to cooperate with any contempt or other proceeding arising out of this Final Consent Judgment. Such cooperation includes:

- a. Producing documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the STATE; and
- b. Accepting a subpoena to appear from the STATE without need for formal service.

**VI. VIOLATIONS OF CONSENT JUDGMENT**

6.1 Any knowing violation of any injunctive term of this Consent Judgment shall constitute contempt of this Court.

6.2 In any action brought by the STATE to enforce this Final Consent Judgment, DEFENDANTS consent to personal and subject matter jurisdiction in the District Court, Boulder County, Colorado.

DATED this \_\_\_\_ day of September, 2014.

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

\_\_\_\_\_  
**Andrew Hartman**  
**District Court Judge**

Attachment to Order 2013CV31431

JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY

PLAINTIFF, THE STATE OF COLORADO ex. rel. JOHN SUTHERS  
Colorado Attorney General

By: \_\_\_\_\_ Date: \_\_\_\_\_

JEFFREY M. LEAKE  
Assistant Attorney General  
Colorado Department of Law  
Ralph L. Carr Judicial Center  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203

(720)508-6201  
Jeffrey.leake@state.co.us

DEFENDANTS LEAMINGS, INC. d/b/a TOBACCO KING, and SANG LEAMING,  
INDIVIDUALLY

By: \_\_\_\_\_ Date: \_\_\_\_\_

Jeremy T. Hildebrand, Of Counsel  
The Burnham Law Firm, PC  
212 Wells Street, Suite A  
Erie, CO 80516  
(303) 990-5308  
jeremy@burnhamlaw.com

By: \_\_\_\_\_ Date: \_\_\_\_\_

SANG LEAMING, individually  
and on behalf of Defendants Leamings, Inc.  
d/b/a Tobacco King.