

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1427 Bannock Street, Room 256 Denver, Colorado 80202</p>	<p>COURT USE ONLY</p>
<p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, LAURA UDIS, Administrator of the Uniform Consumer Credit Code,</p> <p>Plaintiffs,</p> <p>v.</p> <p>AT THE BEACH, INC Defendant.</p>	
<p>JOHN W. SUTHERS, Attorney General JAY B. SIMONSON First Assistant Attorney General, 24077* 1525 Sherman Street, 7th Floor Denver, CO 80203 (303) 866-5079 (303) 866-4916 Fax *Counsel of Record</p>	<p>Case No.:</p> <p>Div:</p>
<p style="text-align: center;">COMPLAINT</p>	

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, by and through undersigned counsel, state and allege as follows:

INTRODUCTION

1. Plaintiffs, the State of Colorado, upon relation of John Suthers, Attorney General, and Laura E. Udis, Administrator of the Uniform Consumer Credit Code for the State of Colorado, by and through the undersigned counsel, brings this action pursuant to the Colorado Consumer Protection Act, § 6-1-101, et seq., C.R.S. 2010, C.R.S., and the Uniform Consumer Credit Code, § 5-1-101, et seq., C.R.S. 2010, to enjoin wrongs which threaten or cause injury to the health, safety and welfare of persons and property in the State of Colorado. Plaintiffs seek, among other things: a permanent injunction, and an order compelling Defendants to pay restitution to borrowers, civil penalties, and attorneys' fees and costs.

PARTIES

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

3. Laura Udis, the Administrator of the Uniform Consumer Credit Code (UCCC) as defined in § 5-6-103 C.R.S., is authorized to enforce compliance with the UCCC and related laws and regulations incorporated therein, including the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., to seek remedies under the UCCC, to seek injunctive relief to restrain persons from violating the UCCC, and to collect civil penalties for violations of the UCCC under § § 5-6-110 to 114, C.R.S.

4. At the Beach, Inc. is an Oklahoma company registered to do business in Colorado. At the Beach lists its principal place of business as 1603 W. Memorial Road, Oklahoma City, Oklahoma 73134. At the Beach began operations in 1990 in Oklahoma and expanded to Kansas and Colorado in 2006. In February of 2006, At the Beach began to open stores in Colorado. At the Beach operates fifty-three indoor tanning salons including twenty-four in Colorado. Its main corporate office and its employee training office are located at 333 W. Hampden Avenue, Denver, Colorado. At the Beach is solely owned by Brian Belt.

JURISDICTION AND VENUE

5. Pursuant to the CCPA, §§ 6-1-103 and 6-1-110(1) C.R.S. and the UCCC §5-1-203(1), this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

6. At all times relevant to this action, Defendant companies have maintained their principal executive office in Denver County, Colorado. Accordingly, venue is proper under § 6-1-103 C.R.S., and C.R.C.P. 98.

RELEVANT TIMES

7. The conduct that gives rise to the claims for relief contained in this Complaint began in 2006 and continued at least through November of 2009. The company has taken measures to end these sales practices outlined herein.

8. This action is timely brought pursuant to § 6-1-115 C.R.S. 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 and practices may be continuing in nature. It is timely brought pursuant to §5-6-114(1)(d) C.R.S. in that it is brought within four years of the date of the last scheduled payments on Defendant's consumer credit transactions.

PUBLIC INTEREST

9. Through the unlawful practices of their business, Defendant has deceived, misled, and financially injured consumers in Colorado and throughout the United States. In addition, through unlawful practices and unfair competition, Defendant has harmed legitimate and honest businesses in Colorado and throughout the United States.

10. Therefore, the Attorney General believes these legal proceedings are in the public interest and are necessary to safeguard Colorado citizens from the Defendants unlawful business activities.

STATUTORY BACKGROUND

11. The Colorado Consumer Protection Act (CCPA) prohibits deceptive trade practices as set forth in the statute. *Id.* § 6-1-105 (2010). Violators of the Act are subject to fines, payment of restitution, disgorgement, and payment of attorney fees and costs necessary for the investigation and filing of this action. The Act also provides broad injunctive powers to this Court to remedy and to prevent further violations.

GENERAL ALLEGATIONS

12. Over the past three years Colorado consumers have filed over 300 complaints with the Better Business Bureau and the Colorado Attorney General's office concerning At the Beach. Within these complaints are repeated allegations that At the Beach misrepresented its cancellation policy, contract terms, contract duration, and requirements for canceling a contract when changing addresses.

13. In addition to these formal written complaints, ex-employees of At the Beach state that consumers often complained directly to them about the same pattern of misrepresentations outlined above.

14. Defendants heavily incentivize their commission-based sales staff. At the Beach salespeople risk losing their jobs if they do not meet required sales numbers. A salesperson's income varies greatly based on the number of long term contracts sold.

15. Having implemented this commission-based sales model, Defendant failed to effectively monitor its sales staff to prevent misrepresentations and unfair sales practices. Defendant knew or should have known that its commission-based sales model could result in salespeople crossing the line into deceptive sales practices. Defendant failed to take adequate measures to detect, punish, and deter deceptive sales practices.

16. Furthermore, Defendant had notice of reoccurring deceptive sales. Defendant knew of the large volume of consumer complaints and was aware of the pattern of deceptive sales outlined in those complaints. Defendant had notice of deceptive sales from internal complaints of sales staff. Defendant failed to detect, punish, and deter these deceptive sales practices.

17. Ex-employees state that At the Beach management, including corporate trainers, encouraged and condoned the deceptive sales practices outlined in consumer complaints. Employees who engaged in deceptive practices were allowed to continue working for At the Beach, and some were even promoted.

18. The most common complaint from consumers was that they were told by At the Beach representatives that they could cancel the contract at any time. When they attempted to exercise their cancellation right they were unable to cancel without incurring significant cost.

19. When misrepresenting that consumers “can cancel at any time,” Defendant failed to disclose in their verbal representations that a consumer who cancels must pay fifty percent of the remaining contract obligation.

20. At least one hundred consumers complained they were misled into signing long-term contracts thinking they were signing up for a trial period, a month-to-month contract, or for a contract of a duration less than represented. Consumers subsequently discovered that they entered into a longer term than originally agreed.

21. More than eighty consumers complain that they continued to be charged even after the expiration of their contract. Consumers complain they were not made aware of At the Beach’s auto-renewal and automatic draft policy or that they continued to be charged despite notifying At the Beach of their desire to end their contract.

22. Defendant failed to adequately disclose that upon the end of a contract term a consumer will continue to be charged unless the consumer takes affirmative steps to cancel their contract. Consumers reasonably believed that the end of their contract term would bring an end to their contractual obligation. However, At the Beach routinely charges consumers after the expiration of their initial contract term.

23. Consumers complain that even if they take affirmative steps to avoid any further charges, Defendant makes it difficult to do so by failing to answer the phone, failing to return messages, and failing to confirm that a consumer’s cancellation request will be honored.

24. Over sixty consumers complained of difficulties in cancelling despite At the Beach representations that they’d be able to cancel if they moved more than twenty-five miles from any At the Beach store. Consumers’ requests to cancel were routinely denied unless the consumer could provide a new state driver’s license and three additional forms of proof of their move.

25. Defendant failed to disclose what proof would be required in the event of a move. Defendant uses the term “required documentation” in their sales contract without defining it, either verbally or in writing. Defendant fails to disclose that in order to cancel their contract a consumer must change their driver’s license address, and provide three separate pieces of mail with the new address. (Sampling of Consumer Affidavits – Attachment A)

At the Beach’s Secret Shopper Program

26. The secret shopper program used by Defendant is ineffective, by design and implementation, in preventing and punishing misrepresentations by its sales staff. Of the estimated sixty questions asked by a secret shopper, only one or two concern the cancellation policy and these questions were ineffective in detecting and deterring the misrepresentations complained of by consumers.

27. The secret shopper program was not designed to uncover sales misrepresentations. Instead, it was designed to improve sales through improved sales techniques. Secret shoppers are concerned about sales presentation and customer service and not about uncovering misrepresentation. At the Beach employees claim that they could easily spot a secret shopper, in large part because secret shopper are required to pay in cash and can only sign up for a one time tan.

“You Can Cancel At Any Time”

28. The most common consumer complaint is that At the Beach employees tell consumers that they can cancel their memberships at any time and that salespeople fail to disclose any consequences that arise from doing so (i.e. the fifty percent buy-out clause). An example of this practice can be seen in an undercover investigation performed in May of 2009 Fox News reporter Heidi Hemmat. The transcript of this investigation (Attachment B) shows that Heidi Hemmat, posing as a consumer, was told three times she could cancel her membership at any time.

29. Management for At the Beach condoned these deceptive misrepresentations. At The Beach District Managers Lissa Jackson and Jennifer Zurga, and At the Beach Regional Manager Shanda Keys, trained salespeople to misrepresent the contract in this way. After reviewing the transcript of the Fox investigation, neither Jackson nor Keys found any fault with the misrepresentations caught on tape.

30. When asked whether the sales representations recorded in the undercover investigation violated company policy Lissa Jackson stated, “not from my review of the transcript.”

31. During the Civil Investigative Demand hearing of Shanda Keys, when asked whether or not the sales associates violated company policy, Ms. Keys stated that “[the salesperson] did not do anything incorrectly inside that store.” Only after consulting with counsel did Ms. Keys

acknowledge that the salesperson should have disclosed the fifty percent buyout clause when addressing the right to cancel.

32. According to Jennifer Zurga, a District Manager for At the Beach, Brian Belt was highly critical of her if she disclosed the fifty percent buyout charge and did not want her to mention the length of the contract. Belt told Zurga to “do it Shanda’s way.” Zurga “understood that I would lose my job if I wasn’t willing to do it Shanda’s way.” (Affidavit of Jennifer Zurga-Attachment C)

33. Belt regularly attended sales staff training sessions. While attending one of Zurga’s training sessions, Belt pulled Zurga outside and criticized her for disclosing the terms of the contract and for disclosing that the consumer would have to pay if they canceled.

34. Former At the Beach salesman, Michael Dant, claims he was trained by Belt, Keys, and Zurga to convince consumers that the contract was not a contract and that the consumer could get out of it at any time. Dant claims At the Beach trained its salespeople to tell consumers “This (the contract) is just to lock you into a price. You can cancel at any time.” (Affidavit of Michael Dant-Attachment D).

35. Dant claims that salespeople were discouraged from mentioning that the consumer would be required to pay fifty percent of the remainder of their contract if the consumer decided to cancel. And according to Dant and other ex-employees, consumers came in to At the Beach stores on a daily basis to cancel claiming they had been told they could. Dant explains that he was trained to give complaining consumers the toll free number to At the Beach’s corporate office. Consumers complained repeatedly that they were unable to speak with anyone at that number. Dant’s personal experience was the same. When he tried to call the corporate number on different occasions no one picked up and the message indicated that the voice mailbox was full.

36. Former At the Beach salesperson, Sara Brady, states she was trained by her district managers to tell consumers “You can cancel at any time.” Brady was told that most customers were not going to read the contract and would not discover that it would cost to cancel. According to Brady, customers regularly came into the store and complained that they thought they could cancel. (Affidavit of Sara Brady-Attachment E)

37. Brady states she was trained not to disclose what paperwork would be required if a consumer moved more than twenty-five miles from an At the Beach store and wanted to cancel. The contract simply stated that “appropriate documentation” would be required. However, nowhere was it disclosed that At the Beach would require three documents showing the new address along with a change of address on the consumer’s driver license. Brady further states that salespeople were trained not to disclose to consumers that their contracts would renew to the full term if the consumer changed their tanning plan.

38. Former salesperson Megan Dale, was trained by Shanda Keys. The training left Dale with the impression that an annual contract could be cancelled at no cost. She was surprised when consumers came in and complained they were unable to cancel. (Affidavit of Megan Dale- Attachment F).

Uniform Consumer Credit Code

39. Defendant did not always disclose the cost of credit including the amount financed, finance charge, annual percentage rate, total of payments, and other information.

40. Defendant or entities acting on its behalf contracted for, disclosed, or collected a delinquency charge exceeding \$15.00 and may have collected as much as \$17.50. In addition, delinquency fees were assessed within ten days after a payment was due rather than after ten days with no payment (on or after eleven days). No written notice of the imposition of the delinquency fee was sent to consumers before the due date of the next scheduled payment.

41. Defendant or entities acting on its behalf contracted for, disclosed, or collected return check or payment fees exceeding \$25.00 and may have collected as much as \$27.50.

42. Defendant or entities acting on its behalf contracted for, disclosed, or collected collection fees on delinquent accounts of as much as 20% or \$75.96.

43. Defendant or entities acting on its behalf contracted for, disclosed, or collected administrative fees of as much as \$10 per month for withdrawal from a pre-arranged electronic payment arrangement.

44. Defendant or entities acting on its behalf accelerated the balances due after default consisting of failure to make required payments without sending written notices of right to cure default.

45. Defendant or entities acting on its behalf contracted for, disclosed, or collected attorneys fees that may have exceeded 15% of the unpaid debt after default.

FIRST CLAIM OF RELIEF

(False representations as to the characteristics and benefits of services)

46. Plaintiffs incorporate herein by reference all of the allegations contained in Paragraphs 1 through 45 of this Complaint.

47. Through the above-described conduct in the course of their business, Defendant made false representations as to the characteristic or benefits of their services in violation of § 6-1-105(e), C.R.S. (2010).

48. By means of the above-described unlawful deceptive trade practices, Defendant deceived, misled, and unlawfully acquired money from consumers from Colorado.

SECOND CLAIM OF RELIEF

(Advertising services with the intent not to sell them as advertised)

49. Plaintiffs incorporate herein by reference all of the allegations contained in Paragraphs 1 through 45 of this Complaint.

50. Through the above-described conduct in the course of their business, Defendant advertised services with intent not to sell them as advertised in violation of § 6-1-105(i), C.R.S. (2010).

51. By means of the above-described unlawful deceptive trade practices, Defendant deceived, misled, and unlawfully acquired money from consumers from Colorado.

THIRD CLAIM OF RELIEF

(False or misleading statements of fact concerning the price of services or goods)

52. Plaintiffs incorporate herein by reference all of the allegations contained in Paragraphs 1 through 45 of this Complaint.

53. Through the above-described conduct in the course of their business, Defendant made false or misleading statements of fact concerning the price of services or goods in violation of § 6-1-105(l), C.R.S. (2010).

54. By means of the above-described unlawful deceptive trade practices, Defendant deceived, misled, and unlawfully acquired money from consumers from Colorado.

FOURTH CLAIM OF RELIEF

(Failure to disclose material information)

55. Plaintiffs incorporate herein by reference all of the allegations contained in Paragraphs 1 through 45 of this Complaint.

56. Through the above-described conduct in the course of their business, Defendant failed to disclose material information in violation of § 6-1-105(u), C.R.S. (2010).

57. By means of the above-described unlawful deceptive trade practices, Defendant deceived, misled, and unlawfully acquired money from consumers from Colorado.

FIFTH CLAIM FOR RELIEF
(Violations of the Uniform Consumer Credit Code)

58. Plaintiffs incorporate herein by reference all of the allegations contained in Paragraphs 1 through 45 of this Complaint.

59. Through the above-described conduct in the course of their business, occupation or vocation, Defendant has violated the Uniform Consumer Credit Code by:

- a. Failing to disclose to consumers the information, disclosures and notices required by the federal Truth in Lending Act and regulations required thereunder in violation of §5-3-101(2), C.R.S.;
- b. Failing to comply with the provisions on delinquency charges including the permitted amounts, timing of delinquency fees, and required notice of imposition of delinquency fees in violation of §5-2-203, C.R.S.;
- c. Failing to comply with the provisions on the amount of fees for return or dishonor of a check or other instrument tendered as payment on a consumer credit transaction in violation of §5-2-202(1)(e)(II), C.R.S.;
- d. Failing to comply with the provisions on default charges by charging collection costs upon default when such charges are not authorized by the UCCC in violation of §5-3-302, C.R.S.;
- e. Failing to comply with the provisions on additional charges by charging fees not specifically authorized by the UCCC for withdrawing from pre-arranged electronic payment arrangements in violation of §5-2-202, C.R.S. ;
- f. Failing to comply with the provision on right to cure default by accelerating balances prior to sending required written notices in violation of §§5-5-110 and 5-5-111, C.R.S.; and
- g. Failing to comply with the provisions on attorneys fees on consumer credit transactions in violation of §5-5-112, C.R.S.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for judgment against the Defendant and the following relief:

A. An order declaring Defendant's above-described conduct to be in violation of the Colorado Consumer Protection Act, § 6-1-105(e), (i), (l) and (u) C.R.S., and the Uniform

Consumer Credit Code;. § § 5-2-202, 5-2-203, 5-3-101(2), 5-3-302, 5-5-110, 5-5-111, and 5-5-112 C.R.S.

B. An order permanently enjoining Defendant, its officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with Defendant with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and the UCCC as set forth in this Complaint.

C. Appropriate orders necessary to prevent Defendant's 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 §§ 6-1-110(1), 5-5-201 and 5-5-205 C.R.S..

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

F. An order requiring Defendant to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiffs' attorney fees, pursuant to § 6-1-113(4) and §5-6-114(3), C.R.S.

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

Dated this 27th day of January 2011.

JOHN W. SUTHERS
Attorney General

s/ Jay B. Simonson

JAY B. SIMONSON
First Assistant Attorney General, 24077
1525 Sherman Street, 7th Floor
Denver, CO 80203
(303) 866-5079
(303) 866-4916 Fax
Attorneys for Plaintiffs

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.