

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 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>AIR DUCT EXPERT, LLC <i>dba</i> AIR DUCT EXPERT and DTD AIR DUCT CLEANING; and ROMAN AYLYAROV, Individually and STAN AYLYAROV, Individually</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General Jeffrey M. Leake, 38338 Assistant Attorney General JAY B. SIMONSON, 24077* First Assistant Attorney General Ralph L. Carr Judicial Center 1300 Broadway, 7<sup>th</sup> Floor Denver, CO 80203 Telephone: (720) 508-6000 FAX: (720) 508-6040 *Counsel of Record</p>	<p>Case No.</p>
<p><b>COMPLAINT</b></p>	

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 began operating an air duct cleaning business in August of 2012. Advertising air duct cleaning packages for as low as \$29.99, Defendants induced consumers to schedule appointments in their homes with Defendants' technicians. Upon arriving at consumers' homes, Defendants' technicians quoted and charged prices that were 9 to 10 times higher than the advertised price, with the typical consumer paying approximately \$300.00.

### PARTIES

3. John W. Suthers is the duly appointed 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 Air Duct Expert, LLC. ("Air Duct Expert") is a Colorado Limited Liability Company formed on August 10, 2012, with a principal place of business at 867 S. Naples Way, Aurora, CO 80017, United States.

5. DTD Air Duct Cleaning is a trade name owned by Air Duct Expert, LLC. Air Duct Expert, LLC registered the trade name with the Colorado Secretary of State on January 21, 2013.

6. Defendant Roman Aylyarov is the registered owner of Air Duct Expert, LLC. Mr. Aylyarov currently resides at 10150 East Harvard Avenue Denver, CO 80231.

7. Defendant Stan Aylyarov manages Air Duct Expert and is responsible for its advertising and website. Mr. Aylyarov currently resides at 10150 East Harvard Avenue Denver, CO 80231.

### ACTS OF AGENTS

8. 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

9. 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.

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

## RELEVANT TIMES

11. The conduct that gives rise to the claims for relief contained in this Complaint occurred between October 2012 and the present. 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 Defendants engaged in false, misleading, and deceptive acts which violate the CCPA, and the Defendants continue to engage in false, misleading acts and practices which violate the CCPA.

## PUBLIC INTEREST

12. Through the unlawful practices of their business or occupation, Defendants have deceived, misled, and financially injured consumers in Colorado. Further, Defendants have taken market share from companies 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

13. This action is brought against corporate Defendant Air Duct Expert, LLC. This action is also brought against Defendants Roman Aylyarov and Stan Aylyarov, individually. At all relevant times, Defendants Roman Aylyarov and Stan Aylyarov conceived of, directed, participated in, and controlled the deceptive business practices committed by Air Duct Expert, LLC.

## GENERAL ALLEGATIONS

### **I. Background on Defendants' Business**

14. Defendants advertise that they perform residential air duct cleaning services throughout the Denver metropolitan area.

15. The process of cleaning a residential air duct system involves work on several distinct parts of the home's heating and cooling system.

16. A home's air duct system circulates air throughout the house through ducts and registers. 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. 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. These return registers take cool air from the house and return it to the furnace. Many homes contain additional supply and return ducts.

17. Air duct cleaning companies are not required to follow a set of standards for their work, however, an industry-related group, the National Air Duct Cleaners Association ("NADCA") does set standards for air duct cleaning.

18. The Attorney General and the Denver/Boulder Better Business Bureau have received numerous complaints about certain companies presenting themselves as air duct cleaning companies and using bait and switch advertising tactics to deceive consumers. Consumers have responded to advertising which offers air duct cleaning for prices as low as \$29.99 and then find that that they will have to pay 9-10 times that amount to actually have their air ducts cleaned. The companies that have been investigated by the Attorney General, including Air Duct Expert, perform shoddy work and do not follow any industry standards. These companies use inferior equipment that does not adequately clean and routinely damage consumers' heating and cooling systems.

## **II. Defendants' Deceptive Trade Practices**

19. The Attorney General has investigated consumer complaints about certain air duct cleaning companies, reviewed those companies' invoices, interviewed consumers and confirmed that those companies were employing bait and switch advertising tactics. During the course of these investigations, the Attorney General became aware that Air Duct Expert was advertising "Whole House" air duct cleaning packages for \$29.99. This price was approximately \$6.00 less than the prices advertised by other companies already under investigation.

20. The Attorney General subpoenaed and reviewed Air Duct Expert's

invoices. The Attorney General also contacted the consumers listed on the invoices. The consumers uniformly reported that they felt deceived by Air Duct Expert's advertising.

21. Air Duct Expert, LLC's invoices showed that its customers were responding to advertising in the form of 1) coupons offering cleaning packages for \$29.00, and 2) online websites, such as Groupon and Crowdsavings, in which consumers actually purchased "vouchers" for air duct cleaning packages for approximately \$35.00.

22. While Air Duct Expert advertised these special prices, the majority of Air Duct Expert's customers actually paid 9-10 times the advertised price. The typical consumer paid approximately \$300.00 for air duct cleaning.

23. Although Air Duct Expert's advertisements stated certain limitations, consumers reported that they did not anticipate that the total charges would be 9-10 times the amount of the advertised price shown on the coupon or voucher. The advertising led consumers to believe that the advertised price covered the majority of potential services and costs.

24. Additionally, the limitation language in the advertisements itself was misleading. Defendant's advertisements stated that the price included "1 main and 1 return." When cleaning "1 main and 1 return" Defendants only cleaned the return register and return ductwork. Thus, even the smallest house, with the most basic heating and cooling system, exceeded the coupon's limitations. At minimum, the customer would be told that the supply air ductwork needed to be cleaned.

25. Additional costs, such as \$100.00 to clean a supply duct, \$50.00 to cut access panels, quickly inflated consumer's potential costs. Consumers were told that there was no benefit to receiving the coupon-only package.

26. Defendants' advertisements imply that their air duct cleaning services will allow consumers to "stop suffering from asthma, allergies, bronchitis, throat irritations and headaches." There is no basis for these claims. The Environmental Protection Agency has stated that there is no proven medical benefit to air duct cleaning. Consumers were told that the advertised coupon cleaning package alone would not provide these benefits, if additional cleaning was not performed.

27. Air Duct Expert's technicians work as "independent contractors" and are paid completely on commission. Air Duct Expert's technicians receive a

25% commission based on the total invoice. Thus, Defendants give their technicians a financial incentive to inflate the cost to consumers.

28. Additionally, Defendants' website makes false and misleading statements about Defendants' services, compliance with non-existent federal standards and the qualification of their technicians.

29. Defendants' websites for Air Duct Expert and/or DTD Air Duct Cleaning claim that the company cleans to "EPA standards." No government agency, including the Environmental Protection Agency, sets standards for air duct cleaning companies.

30. Air Duct Expert's website claims that that the company has 20 years of experience. In fact, the company has been in business less than one year, the company's owner and manager have no experience, and its primary service technician has approximately six years of air duct-related experience.

31. Air Duct Expert's technicians routinely cut into consumers' air ducts to create "access panels" as part of its normal work procedures. NADCA standards require air duct cleaners to cover these access panels with overlapping sheet metal and to fasten the sheet metal with metal fasteners, 4" on center. Air Duct Expert used only tape to fasten the access panels.

32. Defendants have deceived 169 Colorado consumers during an eight-month period of operation through false and misleading advertisements that vastly understate Defendants' prices for air duct cleaning and misrepresent their qualifications.

### **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))

33. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 32 of this Complaint.

34. 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.

35. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from Colorado 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))

36. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 35 of this Complaint.

37. 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:

- Disparagement in any respect of the advertised services or the terms of sale (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 vouchers, accepting a deposit for their services and subsequently switching the purchase order to higher-priced services ((C.R.S. § 6-1-105(n)(VI))

38. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from Colorado 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))

39. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 38 of this Complaint.

40. 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.

41. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from Colorado 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))

42. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 41 of this Complaint.

43. 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.

44. 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.

45. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from Colorado 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))

46. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 45 of this Complaint.

47. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants knowingly made false representation involving supposed compliance with federal standards and false representations as to the experience of its company and its technicians.

48. By means of the above-described conduct, Defendants have

deceived, misled, and unlawfully acquired money from Colorado 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))

49. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 48 of this Complaint.

50. 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.

51. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from Colorado 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)(l), (n), (i), (u), (b), (g) and (z).

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 § 6-1-110(1), C.R.S. (2012).

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 \$2000

per violation pursuant to § 6-1-112(1), C.R.S. (2012), or \$10,000 per violation pursuant to § 6-1-112(3), C.R.S. (2012).

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 § 6-1-113(4), C.R.S. (2012).

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

Dated this 9<sup>th</sup> day of July, 2013.

JOHN W. SUTHERS  
Attorney General

*Jeffrey M. Leake*

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