

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	DATE FILED: May 30, 2014 11:14 AM CASE NUMBER: 2013CV32628 <p style="text-align: center;">⚠ COURT USE ONLY ⚠</p>
Plaintiff(s) ST OF COLO v. Defendant(s) FINEST DUCT CLEANING INC et al.	
Final Consent Judgment	

Case Number: 2013CV32628
 Division: 280 Courtroom:

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 5/30/2014



CATHERINE A LEMON
 District Court Judge

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	
STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL Plaintiff, v. THE FINEST AIR DUCT CLEANING, INC; AMERICA'S FINEST DUCT CLEANING, INC.; AMERICA'S FINEST DUCT CLEANING, INC. and VACHAGAN GASPARYAN and KRISTINE PETROSYAN, Individually Defendants.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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: 720-508-6200 FAX: 720-508-6040 *Counsel of Record	Case No. 2013cv32628 Div: 280
FINAL CONSENT JUDGMENT	

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 VACHAGAN GASPARYAN, THE FINEST DUCT CLEANING, INC., AMERICA’S FINEST DUCT CLEANING, INC., AMERICAN AIR DUCT CLEANING, INC. (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 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 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 communication disseminated prior to this date which relates to the subject matter of the Complaint filed in this action or 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. DEFENDANTS expressly deny the allegations in the STATE’s Complaint and the parties agree that DEFENDANTS’ agreement to enter into this judgment is not an admission of fault.

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. 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 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. However, nothing in this paragraph shall prohibit DEFENDANTS from otherwise commenting on this Consent Judgment, changes to their business practices or the resolution of this case. 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 Vachagan Gasparyan, 380 Avenue U, Apartment 1C, Brooklyn, NY 11223 with a copy to Shannon M. Bell, Grund, Dagner & Jung, P.C., 1660 Lincoln Street, Suite 2800, Denver, Colorado 80264.

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's June 12, 2013 Order Granting Motion for Temporary Restraining Order, Preliminary Injunction and Asset Freeze (as extended in the form of a Preliminary Injunction by this Court's June 28, 2013 Order) is hereby VACATED.

3.2 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. Representing or implying that they will complete a residential air duct cleaning for a certain price, unless such price is equal to or greater than the average price they charged for air duct cleanings in the six months immediately preceding the advertisement. It is understood and agreed that DEFENDANTS have not conducted air duct cleanings in Colorado since mid-2013 and are considering resuming. If that occurs, until any DEFENDANT has been in business for six consecutive months, "six months immediately

preceding the advertisement” shall refer to the average price charged by DEFENDANT THE FINEST DUCT CLEANING, INC. from June 1 through December 31, 2012;

- b. Advertising an air duct cleaning “package” consisting of specific services, unless DEFENDANTS’ records for the six months immediately preceding the advertisement reflect that a majority of DEFENDANTS’ air duct cleaning customers received only the services listed in the advertisement and no additional air duct cleaning services. It is understood and agreed that DEFENDANTS have not conducted air duct cleanings in Colorado since mid-2013. If any DEFENDANT begins conducting air duct cleaning in Colorado, until such DEFENDANT has been in business for six consecutive months, “six months immediately preceding the advertisement” shall refer to the services provided by The Finest from June 1 through December 31, 2012;
- c. Representing or implying that DEFENDANTS are offering a price reduction, unless such price reduction is a reduction from a verifiable original price they have routinely charged in the past;
- d. Making any false or misleading statement relating to the prices of their services;
- e. Representing or implying that they are, or have technicians that are certified or licensed, unless all of their technicians are certified or licensed by a third party authorized by law or an industry-recognized entity to issue such certification or license;
- f. Making false or misleading representations about the quality or characteristics of their equipment, including their service vehicles and duct cleaning tools and devices;
- g. Making false or misleading representations about the quality or characteristics of their services or false or misleading representations about the specific services included in any air duct cleaning “package”;
- h. Making false or misleading statements about their experience in the air duct cleaning or Heating, Ventilation, and Air Conditioning

("HVAC") industry, including but not limited to advertising they have a number of years of experience that exceeds the years of experience actually held by them;

- i. Making, quoting, or referring to any claim about health effects of dust, debris, or contaminants in ductwork, unless DEFENDANTS have verified that such claim has a valid scientific basis or such claim is supported by a reference to a source generally recognized as having expertise in air quality;
- j. Representing that any particular consumer's home contains mold, microbes, bacteria, or other health-endangering contaminants, unless such representation is supported by an industry recognized, scientific test for identifying such contaminants.

3.3 Effective immediately, the Court ORDERS DEFENDANTS:

- a. For a period of six (6) months, to clearly and conspicuously disclose that their technicians are not HVAC certified (unless all of technicians are certified by a third party authorized by law or recognized by the industry to issue such certification);
- b. For each and every residential air duct cleaning job, to meet the industry standards set by the National Air Duct Cleaning Association ("NADCA") and specifically described in the most recent publication of "The NADCA Standard." A copy of "The NADCA Standard" for 2013 is attached hereto as **Exhibit A**. Compliance with this paragraph includes, but is not limited to, meeting each and all of The NADCA Standard's requirements for equipment, tools, procedures, services, and protocols.

IV. MONETARY PROVISIONS

4.1 This Court orders DEFENDANTS, jointly and severally, to pay a total amount of \$125,000 in fines, penalties, restitution, damages and costs and fees. DEFENDANTS shall make an initial payment of \$1,000 within fourteen (14) days of execution by the parties of this Consent Judgment; \$5,000 to be paid on or before July 31, 2014; \$5,000 to be paid on or before September 31, 2014; followed by monthly payments of \$1,000.00 starting October 31, 2014 and continuing for one hundred fourteen (114) months until the \$125,000 is paid in full.

4.2 The Payments shall be paid by the DEFENDANTS to the Colorado Department of Law to be held along with any interest thereon in trust by the Attorney General to be used first for reimbursement of the State's actual costs and attorney fees and, second, to be held along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud, or antitrust enforcement actions. C.R.S. § 6-1-110.

All payments shall be made payable to the Colorado Department of Law with a reference to "*State v. The Finest Duct Cleaning, et al.*, 2013CV32628," 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 \$125,000 (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, penalty or forfeiture 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 for the City and County of Denver.

DATED this ____ day of May, 2014.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Catherine A. Lemon
District Court Judge

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY

PLAINTIFF, THE STATE OF COLORADO

By: _____ Date: 05/29/14

MARK T. BAILEY, 36861*
Assistant Attorney General
Consumer Fraud Unit
(720)508-6200 and
mark.bailey@state.co.us

JOHN SUTHERS
Colorado Attorney General

DEFENDANTS VACHAGAN GASPARYAN, THE FINEST AIR
DUCT CLEANING, INC., AMERICA'S FINEST DUCT CLEANING, INC.
AMERICAN AIR DUCT CLEANING, INC.

By: _____ Date: _____

Shannon M. Bell
GRUND, DAGNER & JUNG, P.C.
1600 Lincoln, Suite 2800
Denver, CO 80264

By: _____ Date: _____

VACHAGAN GASPARYAN, individually
and on behalf of Defendants THE FINEST
AIR DUCT CLEANING, INC.,
AMERICA'S FINEST DUCT
CLEANING, INC., and AMERICAN
AIR DUCT CLEANING, INC.