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Court: CO El Paso County District Court 4th JD

Judge: Thomas Kelly Kane

File & Serve

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Current Date: Mar 01, 2013

Case Number: 2012CV5439

Case Name: STATE OF COLORADO vs. SPRINGS TRANSMISSION AND AUTOMOTIVE et al

Court Authorizer: Kane, Thomas Kelly

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/s/ Judge Kane, Thomas Kelly



**SO
ORDERED**

The moving party is hereby **ORDERED** to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

Thomas K. Kane
District Court Judge

DATE OF ORDER INDICATED ON ATTACHMENT

DISTRICT COURT, EL PASO COUNTY, COLORADO
270 South Tejon Street
Colorado Springs, Colorado 80903

STATE OF COLORADO *ex rel.* John W. Suthers,
Attorney General,

Plaintiff,

v.

SPRINGS TRANSMISSION AND AUTOMOTIVE;
GREG EHNES, individually; and JESSICA WHITE,
individually.

Defendants.

Case No.: 2012cv5439

Div: 3

**[PROPOSED] ORDER OF DEFAULT JUDGMENT AND ENTRY OF PERMANENT
INJUNCTION AGAINST DEFENDANTS SPRINGS TRANSMISSION AND
AUTOMOTIVE AND GREG EHNES**

The Court, having reviewed the entire record in this matter, the pleadings, motions, including *Plaintiff's Motion for Default Judgment* and the supporting affidavits, and being fully advised in the premises,

FINDS and CONCLUDES that default judgment should be entered for Plaintiff the State of Colorado *ex rel.* John W. Suthers, Attorney General, against Defendants Springs Transmission and Automotive and Greg Ehnes.

1. This Court has subject matter jurisdiction in the matter presented herein by virtue of § 6-1-110(1), C.R.S. (2012). The Court has personal jurisdiction over Defendant Greg Ehnes, who was served process on behalf of himself. Through Defendant Ehnes service was also effectuated upon Defendant Springs Transmission and Automotive (“Springs Transmission”).

2. Defendants conducted a portion of transactions in violation of the CCPA in the County of El Paso during the relevant timeframe. Therefore, venue has been considered and is proper in the county of El Paso, Colorado, pursuant to § 6-1-103, C.R.S., and Colo. R. Civ. P. 98 (2012).

3. Pursuant to Rule 121 § 1-14, Defendant Greg Ehens is not a minor, incapacitated person, officer or agency of the state, nor in the military.

4. On November 15, 2012, Plaintiff filed a *Complaint* and *Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction*.

5. On November 16, 2012, the Court entered a Temporary Restraining Order and Preliminary Injunction.

6. On November 28, 2012 Defendant Greg Ehnes signed a *Stipulated Preliminary Injunction* on behalf of himself and Defendant Springs Transmission. That same day, the Court entered an *[Amended Proposed] Stipulated Preliminary Injunction* granting Defendants Ehnes and Springs Transmission's Stipulated Preliminary Injunction.

7. As of the date of this Order, Defendants Springs Transmission and Greg Ehnes have not filed an Answer.

8. Plaintiff is in compliance with C.R.C.P Rule 55, having served notice of its application for default judgment to Defendants as of the date of this Order.

A. PERMANENT INJUNCTION

9. This Court is expressly authorized to issue an injunction to enjoin ongoing violations of the CCPA by § 6-1-110(1), C.R.S (2012):

(1) Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this article, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

§ 6-1-110(1), C.R.S.

10. Plaintiff has shown to this Court probable cause that:

a) Defendants have routinely misled consumers as to the quality and timeliness of the repairs being performed on consumer vehicles;

b) Defendants have, on multiple occasions, allowed employees and associates to use consumer vehicles for personal use without permission from consumers; and

c) Defendants have, on multiple occasions, caused consumer vehicles to be crushed at local scrap yards without permission from consumers.

11. Plaintiff has shown and satisfied the necessary factors to obtain a permanent injunction: success on the merits; a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; lack of a plain, speedy, and adequate remedy at law; no disservice to the public interest; and balance of equities in favor of the injunction. *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004), citing *Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo.1982); see also, *Baseline Farms Two, LLP v. Hennings*, 26 P.3d 1209, 1212 (Colo. App. 2001), citing *Lloyd A. Fry Roofing Co. v. State Department of Air Pollution*, 191 Colo. 463, 553 P.2d 200 (1976) (supporting the proposition that when the Colorado Attorney General seeks an injunction to enforce state laws affecting the public interest, the Attorney General is not required to plead or prove immediate or irreparable injury).

12. Plaintiff has no adequate remedy at law and the remedy of a permanent injunction is appropriate in the circumstances of this case.

13. This Court further finds that Defendants will suffer no undue hardship by the entry of a permanent injunction since Defendants have no right to continue to engage in unlawful and deceptive trade practices in the State of Colorado or to collect money from consumers as a result of such unlawful and deceptive conduct in violation of the CCPA. Further, Defendants have no right to unjustly benefit from such deceptive trade practices. Without an injunction, Plaintiff will be unable to adequately protect the public from Defendants' unlawful activities.

14. Therefore, this Court ORDERS that Defendants Springs Transmission and Automotive and Greg Ehnes and any other person under their control or at their direction, including but not limited to any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who receives actual notice of the Order, are PERMANENTLY ENJOINED from operating, soliciting on behalf of, overseeing, or otherwise serving in any management position for any automotive repair or towing business in the State of Colorado. This expressly includes owning or operating a company based in Colorado that provides any automotive repair or towing service.

B. RESTITUTION, UNJUST ENRICHMENT, CIVIL PENALTIES, AND ATTORNEY FEES AND COSTS

15. The CCPA's broad legislative purpose is to "provide prompt, economical, and readily available remedies against consumer fraud." *Western Food Plan, Inc. v. District Court in and for the City and County of Denver*, 598 P.2d 1038, 1041 (Colo. 1979). Accordingly, the CCPA provides that this Court may make such judgments as may be necessary to "completely compensate or restore to the original position of any person injured by means" of a deceptive trade practice or "to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice." C.R.S. § 6-1-110(1).

16. This Court finds that Plaintiff's *Motion for Default Judgment* and accompanying affidavit of Investigator Leann Lopez adequately establishes the amount of restitution and unjust enrichment for which judgment should be entered. The Court finds that Defendant Greg Ehnes, as the registered agent and owner of Defendant Springs Transmission and Automotive, is liable for restitution and/or unjust enrichment in the amount of **\$248,914.40**.

17. The CCPA further provides for an award of civil penalties:

6-1-112 Civil penalties. (1) Any person who violates or causes another to violate any provision of this article shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation. For purposes of this subsection (1), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.

18. In determining the amount of a civil penalty award, this Court considers the following concepts: (a) The good or bad faith of the defendant; (b) the injury to the public; (c) the defendant's ability to pay; and (d) the desire to eliminate the benefits derived by violations of the Colorado Consumer Protection Act. *State v. May Dept. Stores Co.*, 849 P.2d 802 (Colo. App. 1992).

19. Based upon Plaintiff's *Motion for Default Judgment* and the accompanying affidavit of Investigator Lopez, the Court finds that at least 80 CCPA violations are directly attributable to Defendant Ehnes, as registered agent and owner of Defendant Springs Transmission and Automotive.

20. Based on the record, the Court finds that Defendants' violations of the CCPA were deliberate, knowing, done in bad faith, and repeated in nature. Defendant Ehnes instructed his employees to take "short-cuts" while repairing consumer vehicles; published multiple advertisements noting an "A+" rating with the Colorado Springs Better Business Bureau, knowing his rating was in fact a "F"; lied to consumers about the price, necessity, severity, and timeliness of repairs; allowed employees and other associates to use consumer vehicles for personal use without permission from consumers; and intentionally caused consumer vehicles to be crushed at local scrap yards without permission from consumers.

21. The Court finds that an award of civil penalties in the amount of **\$80,000** against Defendant Ehnes is proper in this case.

22. Plaintiff is not seeking its attorney's fees.

23. This Court therefore ENTERS final judgment in favor of Plaintiff in the amount of **\$328,914.40**. Such judgment shall be apportioned as follows:

- Defendant Greg Ehnes is obligated for the full amount of **\$328,914.40** (\$248,914.40 for restitution/unjust enrichment and \$80,000 for civil penalties).

Dated this ____ day of _____, 2013.

BY THE COURT:

District Judge