



**GRANTED**

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

**Dated: Jan 28, 2011**

**Michael A. Martinez**  
**District Court Judge**

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| DISTRICT COURT, DENVER COUNTY, COLORADO<br><br>1437 Bannock Street, Room 256<br>Denver, Colorado 80112   | DATE OF FILING IN THE COURT ATTACHMENT<br><b>COURT USE ONLY</b> |
| STATE OF COLORADO, ex rel. JOHN W. SUTHERS,<br>ATTORNEY GENERAL, LAURA E. UDIS,<br>ADMINISTRATOR, UNIFORM CONSUMER CREDIT<br>CODE,<br><br>Plaintiffs,<br><br>v.<br><br>AT THE BEACH, INC.<br><br>Defendant.                      |   |
| JOHN W. SUTHERS, Attorney General<br>JAY B. SIMONSON<br>First Assistant Attorney General, 24077*<br>1525 Sherman Street, 7 <sup>th</sup> Floor<br>Denver, CO 80203<br>(303) 866-5079<br>(303) 866-4916 Fax<br>*Counsel of Record | Case No.: 11 CV 651<br><br>Div: 259                             |
| <b>CONSENT JUDGMENT</b>  |   |

This matter is before the Court on the parties' Stipulation for Entry of a Consent Judgment. The Court has reviewed the Stipulation and the file and is otherwise advised in the grounds therefore. The Court concludes that good cause has been shown for entering this Consent Judgment.

Accordingly IT IS ORDERED that:

**GENERAL PROVISIONS**

1. Scope of Consent Judgment. The injunctive provisions of this Consent Judgment are entered pursuant to the Colorado Consumer Protection Act, § § 6-1-101 *et. seq.*, C.R.S. (2010) and the Colorado Uniform Consumer Credit Code, §§5-1-101 *et seq.*, C.R.S. (2010).

2. Release of Claims. The State acknowledges by its execution hereof that this Consent Judgment constitutes a complete settlement and release of all claims on behalf of the STATE OF COLORADO ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL and LAURA E. UDIS, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE (collectively “STATE”) against Defendant AT THE BEACH, INC., an Oklahoma corporation, its owner, employees, former employees, representatives, contractors and agents, (hereinafter referred to collectively as the “DEFENDANT,”) with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted prior to the this date under the above-cited consumer protection and consumer credit statutes and relating to or based upon the acts or practices which are the subject of the Complaint simultaneously filed in this action. The STATE agrees that it shall not proceed with or institute any civil action or proceeding based upon the above-cited consumer protection and consumer credit statutes against the DEFENDANT, 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 this date which relates to the subject matter of the Complaint filed in this action. Notwithstanding the foregoing, the STATE may institute an action or proceeding to enforce the terms and provisions of this Consent Judgment or to take action based on future conduct by the DEFENDANT. DEFENDANT is entering into this Consent Judgment to resolve complaints filed with the Colorado Attorney General and the Better Business Bureau.

3. Preservation of Law Enforcement Action. Except at subject to Paragraph 21 below, nothing herein precludes the STATE from enforcing the provisions of this Consent Judgment, or from pursuing any law enforcement action with respect to the acts or practices of DEFENDANT not covered by this Consent Judgment or any acts or practices of DEFENDANT conducted after the Effective Date of this Consent Judgment. Paragraph 21, however, precludes the STATE from pursuing any law enforcement action with respect to the acts or practices of DEFENDANT conducted before the Effective Date of this Consent Judgment with regard to consumer filing complaints subsequent to the date of this Consent Decree with either the Better Business Bureau or the Colorado Attorney General’s office alleging misrepresentation by Defendant as of the date of this Consent Decree.

4. Preservation of Private Claims and Relation to Private Settlements. Unless otherwise noted, nothing herein shall be construed as waiver of any private rights, causes of action, or remedies of any person against DEFENDANT with respect to the acts and practices covered by this Consent Judgment.

5. Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this 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 Consent Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof.

6. Contempt. The parties understand and agree that any violation of any term of this Consent Judgment shall give rise to the contempt remedies and penalties provided under C.R.C.P. 107.

7. Execution in Counterparts. This Consent Judgment may be executed in counterparts.

#### FACTUAL FINDINGS

8. John W. Suthers is the duly-elected Attorney General of the State of Colorado and is authorized under § 6-1-103, C.R.S. (2010), to enforce the provisions of the CCPA.

9. Laura Udis is the duly-appointed Administrator of the Uniform Consumer Credit Code (UCCC) as defined in § 5-6-103, C.R.S., and is authorized to enforce compliance with the UCCC and related laws and regulations incorporated therein, 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.

10. Defendant AT THE BEACH INC. is an Oklahoma company registered to do business in Colorado. 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 twenty-four stores in Colorado. Its main corporate office and its employee training office are located at 333 W. Hampden Avenue, Denver, Colorado.

11. Pursuant to §§ 5-6-111, 5-6-114, 6-1-103 and § 6-1-110(1), C.R.S. (2010), this Court has jurisdiction to enter these findings and orders.

12. Venue is proper in the county of Denver, Colorado, pursuant to §§ 5-1-203(1) and 6-1-103, C.R.S., and C.R.C.P. 98 (2010).

#### PERMANENT INJUNCTION

13. Defendant will install electronic monitoring systems in all its stores and will record all sales and will retain such recordings for eight months. Defendant will have six months to install electronic monitoring systems in 50% of its stores and will have installed electronic monitoring systems in all its stores within twelve months. Defendant's recordings will be used for monitoring of salespeople and will provide a record that can be used to resolve disputes arising from consumer complaints. Defendant will continue Secret Shopping programs in place to monitor salespeople in stores that have not transitioned to the electronic monitoring.

14. Defendant will maintain recordings of all sales and will be able to readily provide a recording of any specific sale upon request of the office of the Attorney General.

15. In addition to obtaining a consumer's signature on all contracts, Defendant will obtain a consumer's initials indicating that the consumer has read and understood the following:

- a. That this is a binding contract
- b. The length of the contract
- c. All costs and fees resulting from cancellation; and
- d. The documentation required to cancel in the event of a move

16. Defendant agrees to accept the following documentation as proof of a move for all consumers wishing to cancel their contract on account of moving further than twenty five miles from any Defendant store;

- a. new lease agreement or a new mortgage and
- b. a utility bill with the name of the consumer and the new address.

17. Defendant agrees that no automatic contract extension will result from a consumer's decision to upgrade his or her tanning package. Defendant agrees to continue its current practice of requiring consumers to enter into a new contract (with the disclosure above) for an upgrade to be effective.

18. To ensure that its employees are operating consistent with their training and company policies, Defendant consents to undercover purchases of tanning services by the Colorado Attorney General. Defendant agrees to refund the credit card purchases including purchases for term memberships related to such undercover purchases.

19. Defendant will ensure that as to Colorado consumers, its consumer credit contracts and the collection of such contracts, whether by it and by its related or affiliated entities, Aspen Sun Holdings I, Inc. dba Aspen Sun Financial and Aspen Sun Holdings II, Inc. dba Aspen Acceptance Group, fully comply with the Colorado Uniform Consumer Credit Code.

#### MONETARY RELIEF

20. Defendant will reimburse all monies paid by Colorado consumers who have filed a Complaint, as of the date of this Consent Decree, alleging misrepresentation. Defendant's reimbursement to such consumers will be limited to amounts actually paid to Defendant. Defendant will have sixty days to process these reimbursements. The following exceptions pertain to full reimbursement;

- a. In those complaints where the consumer signed a month to month contract (as opposed to a term contract), Defendant will reimburse that consumer for payments made from the date of his or her complaint.

- b. In those complaints where a consumer is alleging misrepresentations by Defendant as to their relocation cancellation policy, Defendant will reimburse that consumer for monies paid after the consumer moved.

c. In those complaints where a consumer explicitly acknowledges that they believed they were contracting for a set period (i.e. a three month contract), Defendant will reimburse the consumer all monies paid minus the cost of that set period.

21. In addition to the above reimbursement of Colorado consumers who have already filed written complaints, Defendant agrees to pay \$75,000.00 to be used to pay consumers filing complaints subsequent to the date of this Consent Decree. Any payments from this fund will be made at the discretion of the Colorado Attorney General. Any monies not paid from this fund will revert to the Colorado Attorney General and shall be held 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. Any consumer who receives reimbursement from the Attorney General's office pursuant to this agreement would be required to execute a release and waiver of any private right of action which they might have against Defendant and any of its related parties as defined in Paragraph 2 above. Defendant shall make this payment to the Colorado Attorney General's office in two equal installments payable on April 15, 2011 and July 15, 2011.

22. Defendant agrees to reimburse Colorado consumers for all amounts overpaid under the UCCC, whether the amounts were paid to Defendant or to its related or affiliated entities, Aspen Sun Holdings I, Inc. dba Aspen Sun Financial and Aspen Sun Holdings II, Inc. dba Aspen Acceptance Group. The amounts to be reimbursed to Colorado consumers for overpayments under the UCCC are payments for delinquency charges that exceeded \$15.00 or that were assessed sooner than the eleventh day after a payment was due; for return check or payment fee charges that exceeded \$25.00; for collection fees on delinquent accounts; for administrative fees for withdrawal from electronic payment arrangements; and for attorneys fees in amounts greater than 15% of the unpaid amount unless awarded by a court. Defendant has already made partial reimbursement of some of these amounts totaling approximately \$45,000. Defendant agrees to pay the remaining amounts due by checks payable to consumers by the date the Court approves this Consent Judgment accompanied by a cover letter explaining that the checks are reimbursements for overpayments due under Colorado's consumer credit laws. Within 30 days of the date the Court approves this Consent Judgment, Defendant agrees to provide the Administrator with a list of the amount of reimbursements made by UCCC category and consumer name and the total of all reimbursements made. Any checks not negotiated by consumers shall constitute unclaimed property pursuant to the Colorado Unclaimed Property Act, §38-13-101 *et seq.*, C.R.S. (2010).

23. Defendant agrees to pay \$75,000 pursuant to the Colorado Consumer Protection Act, § 6-1-112, C.R.S. (2010) and the Uniform Consumer Credit Code § 5-6-110 C.R.S. (2010). Defendant shall make this payment to the Colorado Attorney General's office in two equal installments payable on October 15, 2011 and December 15, 2011.

24. At the Beach agrees to pay \$37,500 to reimburse the State of Colorado for the attorney fees and costs incurred in its investigation.

25. The Colorado Attorney General acknowledges that, by this settlement, Defendant does not acknowledge, admit or confess to any violations of the Colorado Consumer Protection Act or the Uniform Consumer Credit Code, but rather expressly denies any wrongdoing. The Parties acknowledge and agree that Defendant's decision to enter into this Consent Judgment is, in part, the result of Defendant's desire to: (a) avoid the costs of litigation and (b) satisfy any past or current customers who claimed injury resulting from the alleged acts of Defendant's employees.

SO ORDERED, ADJUDGED AND DECREED THIS 28<sup>th</sup> DAY OF January, 2011.

BY THE COURT:



MICHAEL A. MARTINEZ  
DISTRICT COURT JUDGE

For the State of Colorado

/s/ Jay Simonson  
JAY SIMONSON, 24077\*  
First Assistant Attorney General  
Consumer Fraud Unit  
Consumer Protection Section  
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/s/ Brian Belt  
BRIAN BELT, for  
At the Beach, Inc.

Date: January 25, 2011

/s/ Laura E. Udis  
LAURA E. UDIS  
Administrator, Uniform Consumer Credit Code,

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.*

This document constitutes a ruling of the court and should be treated as such.

**Court:** CO Denver County District Court 2nd JD

**Judge:** Michael Anthony Martinez

**File & Serve**

**Transaction ID:** 35622319

**Current Date:** Jan 28, 2011

**Case Number:** 2011CV651

**Case Name:** SUTHERS, JOHN W et al vs. AT THE BEACH INC

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/s/ **Judge Michael Anthony Martinez**