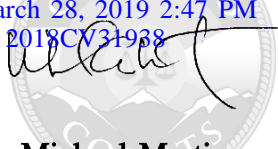


<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>STATE OF COLORADO, ex rel. PHILIP J. WEISER, ATTORNEY GENERAL Plaintiff,</p> <p>v.</p> <p>JEFFREY BIANCHINI, an individual, and ANTHONY BIANCHINI, an individual, d/b/a Thornton Cable, Broadway TV, DVR Cable Boxes, JAM Enterprises, Jam Enterprises, Defendants.</p>	<p style="text-align: center;"><b>GRANTED BY COURT</b> <b>03/28/2019</b></p> <p>DATE FILED: March 28, 2019 2:47 PM CASE NUMBER: 2018CV31938</p> <p style="text-align: center;"> Michael Martinez Judge</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case No. 2018CV31938 Div.:259</p>
<p><b>[PROPOSED] ORDER OF JUDGMENT</b></p>	

THE COURT, having reviewed the record in this matter, including *Plaintiff's Motion for Default Judgment* and the accompanying evidence and argument, having received evidence in a damages hearing on February 22, 2019, and being fully advised of the premises:

FINDS and CONCLUDES that default judgment should be entered for Plaintiff, the State of Colorado, *ex rel.* Philip J. Weiser, Attorney General, in the above-captioned matter against Defendants Jeffrey Bianchini, Anthony Bianchini, d/b/a Thornton Cable, Broadway TV, DVR Cable Boxes, JAM Enterprises and Jam Enterprises (collectively, "Defendants").

1. This Court has subject matter jurisdiction in this action by virtue of C.R.S. §§ 6-1-103 and 6-1-110(1). The Court has personal jurisdiction over Defendants, who were properly served with process on May 25, 2018.

2. Some of Defendants' deceptive trade practices took place in the City and County of Denver. Therefore, venue has been considered and is proper in the County of Denver, Colorado, pursuant to C.R.S. § 6-1-103 and C.R.C.P. 98.

3. Pursuant to Rule 121 § 1-14, no Defendant is a minor, incapacitated person, officer or agency of the state, or in the military.

4. Defendants failed to answer the State's complaint within the timeframe set by the Colorado Rules of Civil Procedure, and they were in default as of June 19, 2018. The Court directed the Clerk to enter Defendants' default on August 16, 2018.

5. The State is in compliance with C.R.C.P. 55, having provided notice of its motion for default judgment to Defendants on the date of filing. Further, on October 11, 2018, the State filed Returns of Service establishing that Defendants were personally served with the State's *Motion for Default Judgment* and the Court's October 2, 2018 *Order Entering Default Judgment Against Defendants*.

6. This order resolves the present action as to all Defendants and claims.

7. Defendant Jeffrey Bianchini appeared telephonically at the February 22, 2019 damages hearing. Defendant Anthony Bianchini did not appear at the damages hearing.

8. The Court heard testimony and received exhibits from investigators Kenneth King and Jamie Sells. Investigators King and Sells testified about a pattern they identified in the more than 140 consumer complaints that were filed against Defendants with the Better Business Bureau and the Colorado Attorney General's Office. The pattern was that Defendants' products frequently did not work as advertised, consumers were unable to reach Defendants for information on technical support and Defendants' refund process, and Defendants refused to honor their money-back guarantee.

9. Investigators King and Sells identified screenshots from Defendants' website in the years 2015 and 2018, which were marked, respectively, as Exhibits 33 and 10. One thousand seventy-seven days passed between the taking of these two screenshots. The websites were nearly identical at the time of the screenshots and both contained the same misrepresentations about the functionality of Defendants' products, the technical support Defendants would provide, and Defendants' money-back guarantee.

10. The Court heard testimony and received exhibits from consumers John Clisti, Richard Linderman, and Michael Draikowicz. The testimony of these representative consumers corroborated the pattern the State's investigators identified in the consumer complaints. All three consumers testified that Defendants' products did not work (in contradiction to the assurances made by Defendant Jeffrey Bianchini) and that Defendants failed to respond to multiple attempts to contact them about technical

support and the consumers' desire to return the products for refunds. This included requests for Return Merchandise Authorizations ("RMA"), which Defendants required consumers to obtain prior to returning products for a refund. The consumers described their monetary loss, which included not just the price they paid for Defendants' products but also the money they spent to ship them to Defendants in accordance with Defendants' refund policies.

11. The Court heard testimony from Misti Dickey, who conducted sales and responded to consumer inquiries for Defendants during the timeframe 2007-2016. Ms. Dickey testified that the sales pitch Jeffrey Bianchini trained her to employ made her uncomfortable because a number of warranties and waivers were omitted from the sales pitch. Ms. Dickey testified that she communicated to Jeffrey Bianchini the complaints she heard from consumers about the products not working and Defendants' failure to provide technical support and refunds.

12. Defendants were on further notice of the wrongfulness of their conduct based on the inquiries and investigations to which they were subject by the Better Business Bureau, the Thornton Police Department, the Englewood Police Department, and the Attorneys General of Colorado and Arizona.

13. Based on the evidence before it, the Court concludes that Defendants routinely and intentionally refused to honor their money-back guarantee.

14. Jeffrey Bianchini cross examined every witness and provided sworn testimony in his defense. Jeffrey Bianchini testified that Defendants only warrantied the cable boxes, and not the programming. The Court finds that this is inherently deceptive because the consumers' entire purpose in purchasing equipment from Defendants was to be able to access cable programming without paying monthly fees to cable companies. Jeffrey Bianchini pointed to the restrictions and limitations on Defendants' website, but these were not prominent enough to constitute meaningful disclosures, particularly in light of the express representations that Defendants made that contradicted these restrictions and limitations.

15. At different periods, Defendants offered a 15-day and a 30-day money back guarantee. Consumers Clisti and Linderman returned their boxes within the applicable timeframe. Consumer Draikowicz made every effort to do so but was unsuccessful due to the delays created by Defendants. The evidence showed that it was very difficult, and sometimes impossible, for consumers to comply with these timeframes because of the steps consumers had to take to attempt to activate the equipment (i.e., securing a cable card,

working with their cable company to activate the boxes) along with Defendants' delays in responding to requests for technical support and RMAs.

16. Defendants' misrepresentations and omissions violated C.R.S. §§ 6-1-105(1)(e), (i), and (u).

### PERMANENT INJUNCTION

17. Under C.R.S. § 6-1-110(1), this Court has express authority to issue an injunction to enjoin ongoing violations of the Colorado Consumer Protection Act, C.R.S. § 6-1-110, *et seq.* ("CCPA")

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.

C.R.S. § 6-1-110(1).

18. Plaintiff has no adequate remedy at law to prevent the Bianchinis from deceiving consumers in the future. For the reasons described herein, there is a danger of real, immediate and irreparable injury which may be prevented by an injunction, the granting of an injunction will not disserve the public interest, and the balance of equities favors the injunction. *See Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo. 1982).

19. The 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 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.

20. Therefore, in order to prevent the continued use or employment by Defendants of the above-described deceptive trade practices, this Court ORDERS that Defendants Jeffrey Bianchini and Anthony Bianchini are PERMANENTLY ENJOINED from marketing, advertising, and selling cable boxes.

### **RESTITUTION, UNJUST ENRICHMENT, CIVIL PENALTIES, AND ATTORNEY FEES AND COSTS**

21. The CCPA's broad legislative purpose is to "provide prompt, economical, and readily available remedies against consumer fraud." *Western Food Plan, Inc. v. Dist. Court*, 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).

22. During the State's investigation, Defendant Jeffrey Bianchini testified that he had "processed" \$60,000 in refunds, but claimed that he did not have the money to issue the refunds. He characterized this \$60,000 as money "[t]hat I should refund." *See Testimony of Jeffrey Bianchini*, April 20, 2018, at 87:14-88:15 (attached as Exhibit C to the State's May 24, 2018 Motion for Temporary Restraining Order and Preliminary Injunction). The State cited to this testimony in its September 4, 2018 *Motion for Default Judgment*. In the February 22 damages hearing, Jeffrey Bianchini acknowledged, and did not dispute, the \$60,000 restitution figure. The Court finds that Defendants Jeffrey Bianchini and Anthony Bianchini are jointly and severally liable for restitution and/or unjust enrichment in the amount of **\$60,000**.

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

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 paragraph (a), 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.

C.R.S. § 6-1-112(1)(a).

24. Once a violation of the CCPA has been established, a civil penalty is mandatory and is designed to “punish and deter the wrongdoer and not to compensate the injured party.” *May Dep’t Stores Co. v. State ex rel. Woodard*, 863 P.2d 967, 972 (Colo. 1993). “[T]he CCPA does not require proof of an actual injury or loss before a civil penalty can be awarded.” *Id.* at 973.

25. Defendants’ series of violations of C.R.S. §§ 6-1-105(1)(e), (i), (u) may be calculated on a “per consumer” basis or “per transaction” basis. *See May Dep’t Stores*, 863 P.2d at 973-74.

26. 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 ex rel. Woodard v. May Dep’t Stores Co.*, 849 P.2d 802, 810 (Colo. App. 1992).

27. The Court finds that Defendants’ violations of the CCPA were knowing, intentional, repeated in nature, and in bad faith. The injury to the public is significant, as 1,476 consumers paid an average of \$231 each to Defendants from the time period May 2015 through February 2018. *See Damages Hearing Testimony of Jamie Sells; Exhibit 32.* The State established that Defendants generated \$348,678.16 in revenue from May 2015 through February 2018, which indicates that they have the ability to pay a substantial penalty. *See id.* For their part, Defendants have put forth no substantive evidence establishing their inability to pay a substantial penalty. *See People v. First Fed. Credit Corp.*, 128 Cal Rptr. 2d 542, 548 (Cal. Ct. App. 2002) (“[T]he People were not required to present evidence of defendants’ wealth in order to obtain the penalties mandated by [California’s Consumer Protection Act] . . . [T]he issue of defendants’ financial condition was a matter the defendants could raise in mitigation.”). Finally, with respect to the fourth factor, the penalty should eliminate the benefits derived by violations of the CCPA.

28. The State has established that the misrepresentations that violated C.R.S. §§ 6-1-105(1)(e), (i), (u) were on Defendants website for 1,077 days. *See Damages Hearing Testimony of Kenneth King and Jamie Sells; Exhibits 33 and 10.* The State has further established that from May 2015 through February 2018, Defendants received \$231 from each consumer who purchased their products. Applying the *May Dep’t Store* factors, the Court determines that a penalty of \$248,787 (1,077 X \$231) is appropriate.

29. The Attorney General is entitled to costs and attorney fees pursuant to C.R.S. § 6-1-113(4). Based on the affidavits of attorneys Mark T. Bailey and Natalie R. Klee, the Court finds that an award of fees in the amount of **\$121,676.40** and costs in the amount of **\$1,393.97** is appropriate.

20. Any moneys received under this payment shall be allocated first to the \$60,000 in restitution to be disbursed to consumers.

21. The Court therefore ENTERS final judgment in favor of Plaintiff and against Defendants Jeffrey Bianchini and Anthony Bianchini, jointly and severally, in the amount of **\$431,857.37**, as itemized below:

Restitution/Unjust Enrichment:	\$60,000
Penalties:	\$248,787
Fees	\$121,676.40
Costs:	\$1,393.97
<b>Total:</b>	<b>\$431,857.37</b>

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Honorable Michael Anthony Martinez  
Chief District Court Judge