

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>STATE OF COLORADO, ex rel. CYNTHIA H. COFFMAN, ATTORNEY GENERAL</p> <p>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,</p> <p>Defendants</p>	<p>DATE FILED: May 24, 2018 4:36 PM FILING ID: 1D104059B7256 CASE NUMBER: 2018CV31938</p> <p>▲ COURT USE ONLY ▲</p>
<p>CYNTHIA H. COFFMAN, Attorney General OLIVIA D. WEBSTER, 35867 Acting First Assistant Attorney General MARK T. BAILEY, 36861 Senior Assistant Attorney General Ralph L. Carr Judicial Center 1300 Broadway, 10<sup>th</sup> Floor Denver, CO 80203 Telephone: (720) 508-6000 FAX: (720) 508-6040 *Counsel of Record</p>	<p>Case No.</p> <p>Div.:</p>
<p><b>COMPLAINT</b></p>	

Plaintiff, the State of Colorado, upon relation of Cynthia H. Coffman, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges as follows:

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. (“CCPA”), to enjoin and

restrain Defendants from engaging in certain unlawful deceptive trade practices, for restitution to injured consumers, for statutorily mandated civil penalties, for disgorgement, and other relief as provided in the CCPA.

2. Defendants sell cable boxes and modems via mail order throughout the United States. Contrary to Defendants' advertisements, their products frequently do not work. Defendants routinely fail to honor the money-back guarantee they make to consumers, keeping consumers' money even after consumers have returned defective products in accordance with Defendants' refund policy.

### PARTIES

3. Cynthia H. Coffman is the duly elected Attorney General of the State of Colorado and is authorized under Colo. Rev. Stat. § 6-1-103 to enforce the provisions of the CCPA.

4. Defendant Jeffrey Bianchini currently resides at 224 Colorado Ave., Apt. 3, Pueblo, Colorado 81004.

5. Defendant Anthony Bianchini currently resides at 1930 Rose Lane, Pueblo, Colorado 81004.

6. Defendants Jeffrey and Anthony Bianchini (collectively, the "Bianchinis" or "Defendants") have done business under the trade names Thornton Cable, Broadway TV, DVR Cable Boxes, Jam Enterprises, and JAM Enterprises. They have used a variety another of other names as domain names for their website.

7. The Bianchinis actively participated and cooperated in, sanctioned, authorized, and approved the deceptive trade practices described herein. The Bianchinis also shared in the revenue generated from the deceptive trade practices.

8. The Bianchinis have operated their business from multiple addresses in Englewood, Thornton, and Denver, Colorado.

### JURISDICTION AND VENUE

9. Pursuant to Colo. Rev. Stat. §§ 6-1-103 and 6-1-110(1), 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, Colorado. Therefore, venue is proper in Denver County, Colorado, pursuant to C.R.S. § 6-1-103 and Colo. R. Civ. P. 98.

### RELEVANT TIMES

11. The conduct that gives rise to the claims for relief contained in this Complaint was ongoing as of at least March 2010 and continues through the present.

12. This action is timely brought pursuant to Colo. Rev. Stat. § 6-1-115 in that it is brought within three years of the date on which an ongoing series of false, misleading, or deceptive acts or practices occurred or were discovered.

### PUBLIC INTEREST

13. Through the unlawful practices of their business or occupation, Defendants have deceived, misled, and financially injured hundreds of consumers nationwide. Therefore, these legal proceedings are in the public interest and are necessary to safeguard citizens from Defendants' unlawful business activities. Defendants' actions have also injured businesses which operate legitimately and do not engage in deceptive and unfair business practices.

### GENERAL ALLEGATIONS

#### **I. Background**

14. Defendants sell refurbished, aftermarket television cable boxes and cable modems.

15. A cable box is a device that makes it possible to view cable channels on one's television. In older televisions, the cable box is necessary to convert the cable channel signal to a television channel.

16. The cable box also filters programming so that consumers only receive channels they pay for. In some newer televisions, the cable box includes a DVR (Digital Video Recorder), which allows the consumer to record shows and watch them at a later time. In some televisions, the cable box also provides access to pay-per-view programs.

17. Without a cable box or something like it, consumers cannot access cable programming.

18. For years, cable companies have leased cable boxes to consumers for a monthly fee.

19. Effective August 8, 2011, a Federal Communications Commission ("FCC") rule requires cable companies to make their programming available to consumers who purchase their own cable box, rather than leasing it from the cable company.

#### **II. Defendants' Business Operations**

20. Defendants sell cable boxes and modems via mail order throughout the United States.

21. Defendants sell a variety of cable boxes with prices ranging from \$75 to \$195. Defendants' modems range in price from \$25 to \$110.

22. Because consumers need a cable box for each television they own, many consumers purchase multiple cable boxes from Defendants. The State's review of Defendants' invoices from May 2015 through February 2018 shows that the amount consumers paid Defendants ranged from \$74 to \$1,156. The average consumer paid \$231.

23. Defendants market their cable boxes as a risk-free opportunity for consumers to save hundreds of dollars by purchasing their box rather than leasing it from the cable company.

24. The Bianchinis work together to post content on their website, which is their primary marketing tool. According to Defendants' website, if a consumer purchases a \$200 cable box from Defendants, the box will pay for itself in less than one year in lease fees.

25. Defendants portray themselves as consumer advocates fighting against greedy cable companies. According to Defendants' Website, after the cable box has "paid for itself," the consumer will be "PUTTING MONEY IN YOUR POCKET not giving it away to a company that is already taking enough from you each and every month."

26. Defendants' website assures consumers that their cable boxes are simple and easy to install, that the cable boxes will work, and that Defendants will provide any and all necessary technical assistance.

27. The home page of Defendants' website states,

What we do here is pretty simple, we help you save money on your Cable Bill. Whether that's replacing that expensive and often outdated cable box rental or cable modem, you WILL end up saving hundreds and sometimes thousands of dollars a year by doing something as simple as that. . . . Our cable boxes will work with any Cable company in the United States . . . .

28. The home page of Defendants' website contains a link that reads, "Will your boxes work and what's included?" When one clicks the link, a page opens that assures consumers that Defendants' cable boxes will work as long as the consumer has a television, electricity, and cable service. There is no disclosure that the boxes might not work.

29. Defendants' website also represents as follows:

After you have connected your set top cable box you can call the cable providers automated toll free activation phone number or go to their online automated website (if available). Follow the simple prompts and activation for your programming & services will be available in minutes.

30. Another page on Defendants' website bears the heading, "Our Activation Guarantee." This page states, "Every unit we sell is fully tested prior to shipping and ready for use. We provide a quick set up guide or you can request our activation department to help set up you digital converter."

31. The "Activation Guarantee" page also states, "We provide and guarantee our digital cable converters (hardware) and your service provider guarantees your programming & services (software)."

32. The home page of Defendants' website states, "With every purchase you also have a 30 Day Money Back Guarantee and a Full 1 year Replacement Warranty."

33. The home page contains a link to Defendants' warranties page. Until approximately June 2015, this page stated that the money back guarantee was good for fifteen days from the date of the purchase invoice. After approximately June 2015, this page stated that the guarantee was good for thirty days from the date of the purchase invoice.

34. Defendant Jeffrey Bianchini speaks directly with almost all of Defendants' customers. He routinely guarantees consumers that the boxes will work, that he will personally assist with installation and setup, and that Defendants' refund and replacement warranties will be honored.

35. With respect to refunds, Jeffrey Bianchini and others he authorizes to speak on behalf of the business inform consumers that the refund period begins to run on the date the customer receives the equipment, not, as stated on the website, the date of the invoice. (The invoice is created on the date of the order. Some consumers don't receive their equipment until several days or even multiple weeks after the date of the invoice.)

36. Notwithstanding Defendants' promises, setup and installation of their boxes is rarely fast, simple and easy, and their boxes frequently do not work.

37. In order to receive programming, the consumer needs a cable card, which must be inserted into the cable box and activated by the cable company.

38. The home page of Defendants' website represents that their cable boxes come with cable cards, but the great majority of customers will have to get a cable card from their cable company, either by visiting a branch office or requesting that the cable company deliver it (likely for a charge).

39. Even when consumers obtain cable cards from their cable company, Defendants' boxes frequently do not work. Defendants' modems also frequently do not work.

40. When consumers encounter problems with Defendants' products, Defendants frequently fail to provide the installation and setup support they promised. Defendants ignore multiple, repeated emails from consumers who seek assistance with installation and setup.

41. When consumers do get ahold of Defendants, Defendants assure the consumers that they will get the equipment working, and that they will honor the refund policy even after the expiration of the refund timeframe.

42. On information and belief, Defendants deliberately delay responding to service requests so that the refund period will expire.

43. Defendants' website states, "You must obtain a Return Authorization number (RMA) before any product can be returned." Defendants ignore or delay in responding to consumer requests for RMA's, which causes the refund timeframe to expire through no fault of the consumer.

44. Defendants routinely fail to honor their refund and replacement warranty, leaving consumers with hundreds of dollars in losses and none of the savings that Defendants promised.

45. In other cases, Defendants fail to ship products for which they have received payment or ship products that do not even turn on.

46. Defendants have failed to issue refunds to hundreds of consumers nationwide who should have received refunds under Defendants' refund guarantee. Along with losing the money they paid for the equipment, many of these consumers also lost the money they paid to ship equipment back to Defendants in reliance on Defendants' money back guarantee.

### **FIRST CLAIM FOR RELIEF**

(Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith in violation of C.R.S. § 6-1-105(1)(e))

47. Plaintiff incorporates herein by reference all allegations preceding and following this paragraph.

48. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have knowingly made false representations as to the characteristics, uses, and benefits of services and property in violation of C.R.S. § 6-1-105(1)(e).

49. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

### **SECOND 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(1)(i))

50. Plaintiff incorporates herein by reference all allegations preceding and following this paragraph.

51. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have advertised goods, services, or property with intent not to sell them as advertised.

52. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

### **THIRD 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(1)(u))

53. Plaintiff incorporates herein by reference all allegations preceding and following this paragraph.

54. 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, and property. Defendants knew of the undisclosed information and failed to disclose it with the intent of inducing consumers to enter into a transaction.

55. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

## **RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for judgment against Defendants and the following relief:

- A. An order that Defendants' conduct violates the Colorado Consumer Protection Act, including sections 6-1-105(1)(e), 6-1-105(1)(i), and 6-1-105(1)(u).;
- B. A judgment pursuant to C.R.S. § 6-1-110(1) against Defendants to completely compensate or restore to the original position of any person injured by means of Defendants' deceptive practices;
- C. An order pursuant to C.R.S. § 6-1-110(1) requiring Defendants to disgorge all unjust proceeds derived from their deceptive practices to prevent unjust enrichment;
- D. An order pursuant to C.R.S. § 6-1-110(1) for an injunction or other orders or judgments relating to deceptive practices;
- E. An order pursuant to C.R.S. § 6-1-112(1)(a) for civil penalties payable to the general fund of this state of not more than two thousand dollars for each such violation of any provision of the Colorado Consumer Protection Act with respect to each consumer or transaction involved not to exceed five hundred thousand dollars for any related series of violations;
- F. An order pursuant to C.R.S. § 6-1-112(1)(c) for civil penalties payable to the general fund of this state of not more than ten thousand dollars for each violation of any provision of the Colorado Consumer Protection Act with respect to each elderly person;
- G. An order pursuant to C.R.S. § 6-1-113(4) requiring Defendants to pay the costs and attorney fees incurred by the Attorney General; and
- H. Any such further relief as this Court may deem just and proper to effectuate the purposes of the Colorado Consumer Protection Act.

Respectfully submitted this 24<sup>th</sup> day of May, 2018

CYNTHIA H. COFFMAN  
Attorney General

*s/ Mark T. Bailey*\_\_\_\_\_

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