

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202</p> <p>STATE OF COLORADO, ex rel. PHILIP J. WEISER, ATTORNEY GENERAL</p> <p>Plaintiff,</p> <p>v.</p> <p>DEVUMI, LLC; BYTION, INC.; GERMAN CALAS, an individual; and BELLE CHARANEK, AKA BELLA CHARANEK, an individual</p> <p>Defendants.</p>	<p style="text-align: right;"><b>APPROVED BY COURT</b></p> <p style="text-align: right;"><b>09/19/2019</b></p> <p style="text-align: right;">DATE FILED: September 19, 2019 12:22 PM CASE NUMBER: 2019CV33619</p> <p style="text-align: center;"> <b>Andrew Mccallin</b> Judge</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General JAY B. SIMONSON, 24077* 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>FINAL CONSENT JUDGMENT</b></p>	

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. (2019) ("CCPA"). This Final Consent

Judgment shall apply to Defendants Devumi, LLC; Bytion, Inc.; German Calas; and Belle Charanek, AKA Bella Charanek (collectively, “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.* Philip J. Weiser, 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, which arose prior to this date and relating to or based upon the acts or practices that 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 based upon 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 that relates to the subject matter of the Complaint filed in this action.

1.3 Preservation of Law Enforcement Action. Nothing herein precludes the STATE from enforcing the provisions of this Final Consent Judgment, from pursuing any non-CCPA law enforcement action, 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.

1.4 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.

1.5 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.

1.6 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.

1.7 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.

1.8 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 as an endorsement of any conduct, past or present, by the DEFENDANTS.

1.9 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.

1.10 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 and all remedies provided under C.R.S. § 6-1-112(1)(b).

1.11 Execution in Counterparts. This Final Consent Judgment may be executed in counterparts.

1.12 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.

1.13 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.

1.14 Bankruptcy. In the event any of the DEFENDANTS file a petition for bankruptcy within one hundred days of their payments to the STATE and if the STATE must return any portion of the money it has collected pursuant to this Final Consent Judgment to the bankruptcy estate, then a judgment shall enter against the DEFENDANT who filed for bankruptcy, in the amount of one million dollars (\$500,000) in favor of the STATE.

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 to 550 Okeechobee Blvd. Apt MPH23, West Palm Beach, FL 33401. Any notice sent to the STATE pursuant to this Final Consent Judgment shall be sent to Mark T. Bailey, Senior Assistant Attorney General, 1300 Broadway, Ste. 700, Denver, Colorado 80203.

## II. DEFINITIONS

2.1 “Indicators of Social Media Influence” means any metrics used to assess an individual’s or entity’s social media influence, such as followers, friends, endorsements, connections, subscribers, views, plays, likes, reposts, and comments.

## III. PERMANENT INJUNCTION

3.1 **Ban Against Selling Social Media Influence.** Effective immediately, this Court PERMANENTLY ENJOINS DEFENDANTS and DEFENDANTS’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, from selling or assisting others in selling, Indicators of Social Media Influence to users of third-party social media platforms.

3.2 **Prohibition Against Misrepresentations Regarding Social Media Influence, Reviews, Connection, Affiliation, Association, or Endorsements.** Effective immediately, this Court PERMANENTLY ENJOINS DEFENDANTS and DEFENDANTS’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any product or service, from making any misrepresentation, or assisting others in making any misrepresentation, expressly or by implication:

- A. about the social media influence of any person or entity; or

B. in or about any review, connection, affiliation, association, or endorsement of any person, entity, product, or service.

#### IV. MONETARY PROVISIONS

4.1 This Court orders DEFENDANTS, jointly and severally, to pay a total amount of \$500,000 in fines, penalties, restitution, unjust enrichment, and costs and fees. DEFENDANTS shall make (a) an initial payment of \$10,000 within thirty days of entry of this Final Consent Judgment and (b) a second payment of \$40,000 within one year of entry of this Final Consent Judgment. The State agrees to suspend DEFENDANTS' payment of the remaining \$450,000 upon receiving the initial payment and the second payment unless any DEFENDANT violates any term of this Final Consent Judgment.

4.2 Failure to make the initial payment of \$10,000 under Section 4.1 will constitute contempt of this Court and, in addition to any contempt remedies the Court deems appropriate, will result in the entire \$500,000 (minus any amounts paid) being due and payable immediately by all DEFENDANTS, jointly and severally, without the need for trial, unless DEFENDANTS make the \$10,000 payment within seven days of receiving notice from the STATE of nonpayment. Failure to make the second payment of \$40,000 within one year of entry of this Final Consent Judgment will result in the entire \$500,000 (minus any amounts paid) being due and payable immediately by all DEFENDANTS, jointly and severally, without need for trial, unless DEFENDANTS make the \$40,000 payment within seven days of receiving notice from the STATE of nonpayment.

4.3 If the STATE receives evidence of a violation of any injunctive term of this Final Consent Judgment, the STATE may file a motion with this Court alleging a violation of this Final Consent Judgment. If the Court determines that any DEFENDANT violated any injunctive term of this Final Consent Judgment willfully, knowingly, or under such circumstances that the DEFENDANT should have known of the violation, the entire \$500,000 (less any payment previously made by DEFENDANTS) shall be due and payable immediately by that DEFENDANT. This remedy shall be in addition to any other remedy, including all remedies under the CCPA and/or for contempt, which the Court may deem appropriate.

4.4 All payments under this Part IV are to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for reimbursement of the State's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes. All payments shall be made payable to the Colorado Department of Law with a reference to "*State v. Devumi, et al.*" and shall be delivered to:

Chele Clark, Program Manager  
Consumer Fraud Unit  
1300 Broadway – 7th Floor  
Denver, Colorado 80203

## 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 laws, regulations or rules.

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 The STATE'S agreement to the suspension of part of the monetary term of this Final Consent Judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Calas' sworn financial statements and related documents (collectively, "financial representations") submitted to the STATE, namely:

- a) the Financial Statement of Defendant Calas signed on April 1, 2018, together with Attachments A through E and 24A through 24E;
- b) the representations and additional documentation submitted by Defendants' counsel Jeffrey Alberts to Senior Assistant Attorney General Mark T. Bailey on June 26, 2019.

The partial suspension of the judgment will be lifted if, upon motion by the State, the Court finds that Defendant Calas failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above. If the suspension of the judgment is lifted, the judgment becomes immediately due in the amount specified in Section 4.1, above, less any payment previously made, plus interest computed from the date of entry of this Order.

5.4 Defendants Calas, Devumi, LLC and Bytion, Inc. acknowledge that

they have thoroughly reviewed this Final Consent Judgment with their counsel. All DEFENDANTS acknowledge that they understand and agree to the terms of this Final Consent Judgement, and that they agree that it shall be entered as an Order of this Court.

5.6 In any action brought by the STATE to enforce this Final Consent Judgment, DEENDANTS consent to personal and subject matter jurisdiction in the District Court for the City and County of Denver.

**VI. EXECUTION**

6.1 This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed to be an original, and may be completed by exchange of counterparts. Signatures received via PDF scanned electronic file shall be deemed to be original signatures.

SO ORDERED and SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2019.

By the Court:

\_\_\_\_\_  
DENVER DISTRICT COURT  
JUDGE

Dated: \_\_\_\_\_

The Undersigned Parties enter into this Consent Judgment in this matter,  
*State v. Devumi, LLC*, et al..

In all respects, on behalf of Plaintiff,

PHILIP J. WEISER  
Attorney General



8/30/19

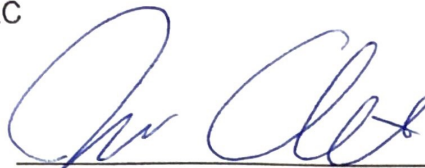
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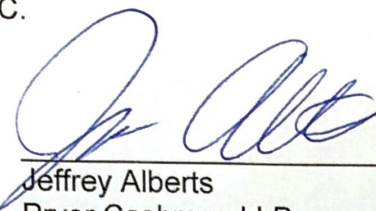
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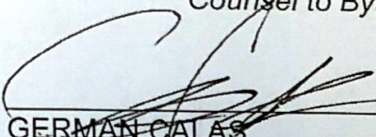


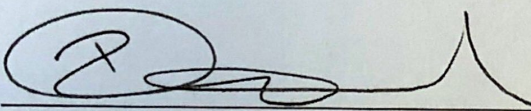
DEVUMI, LLC

By:  9/10/19  
Date  
Jeffrey Alberts  
Pryor Cashman LLP  
7 Times Square  
New York, NY 10036-6569  
Counsel to Devumi, LLC

BYTION, INC.

By:  9/10/19  
Date  
Jeffrey Alberts  
Pryor Cashman LLP  
7 Times Square  
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Counsel to Bytion, Inc.

  
GERMAN CALAS 9/10/2019  
Date

  
BELLE CHARANEK Sept, 10, 19  
Date