

STATE OF COLORADO
DEPARTMENT OF LAW

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF KOZLESKI CPAs, P.C.

This Assurance of Discontinuance (“Assurance”) is entered into between the State of Colorado, *ex rel.* Philip J. Weiser, Attorney General for the State of Colorado (“the State”), and Defendant Kozleski CPAs, P.C. (“Kozleski”). This Assurance is entered into pursuant to the Attorney General’s powers under Colo. Rev. Stat. section 6-1-110(2) and constitutes a complete settlement between the State and Kozleski (the “Parties”) regarding the State’s allegations as to Kozleski.

I. PARTIES

1. Philip J. Weiser is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act (“CCPA”), Colo. Rev. Stat. sections 6-1-101 through 6-1-1121.

2. Kozleski is a certified public accounting firm that provides tax and accounting services to hundreds of Colorado clients. Kozleski is a Colorado corporation with a principal office address of 210 N. Pine Street, Woodland Park, Colorado 80863.

II. DEFINITIONS

3. The term “Effective Date” shall mean the first date upon which both of the following events have occurred: (a) the Parties’ full execution and delivery of this Assurance and (b) Kozleski’s delivery of the first payment described in Section IV below.

4. Unless otherwise specified, all definitions found in C.R.S. §§ 6-1-105(1), 6-1-713(2), and 6-1-716(1) are incorporated herein by this reference, and any term defined in those sections shall have the same meaning when used in this Assurance.

III. STATE’S ALLEGATIONS AND KOZLESKI’S DENIAL

A. STATE’S ALLEGATIONS

Colorado’s Data Security Laws

5. In recent years, cybercrime and identity theft have posed an increasing threat to residents of Colorado. Recognizing this threat, Colorado law requires companies that maintain sensitive personal information to take reasonable steps to protect the information, to dispose of sensitive information when it is no longer needed, and to notify Colorado residents when their information is at risk of being misused by unauthorized third parties.

6. C.R.S. § 6-1-713 requires companies that maintain, own, or license paper or electronic documents containing personal identifying information to develop a written policy for the destruction or proper disposal of those paper and electronic documents when they are no longer needed.

7. C.R.S. § 6-1-713.5 requires companies that maintain, own, or license personal identifying information of Colorado residents to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the personal identifying information and the nature and size of the business and its operations.

8. C.R.S. § 6-1-716 imposes obligations on companies that experience security breaches or potential security breaches. When a company becomes aware that a security breach may have occurred, the company must “conduct in good faith a prompt investigation to determine the likelihood that personal information has been or will be misused.” *Id.* § 6-1-716(2). The company “shall give notice to the affected Colorado residents unless the investigation determines that the misuse of information about a Colorado resident has not occurred and is not reasonably likely to occur.” *Id.*

Kozleski Failed to Comply with Colorado’s Data Security Laws

9. Kozleski maintains, owns, or licenses highly sensitive information about its clients, including social security numbers, personal identification numbers, official state or government-issued driver’s license or identification card numbers, and financial account information. Kozleski stores this information in paper and computerized form in combination with the Colorado residents’ first name or first initial and last name.

10. Because of the sensitive data they maintain, CPA firms like Kozleski are ripe targets for cybercriminals and other nefarious actors. CPA firms must treat information security as essential elements of their business operations.

11. For years, federal regulators, as well as industry trade groups, have alerted CPA firms to the risks they face and their concomitant responsibility to protect the information they collect and maintain. For example, the Federal Trade Commission's Safeguards Rule requires tax preparers like Kozleski to develop, implement, and maintain a comprehensive, written information security program pursuant to the Rule's specifications, *see* 16 C.F.R. § 314.1, *et seq.* The American Institute of Certified Public Accountants ("AICPA") offers information and guidance to CPAs on best practices for data security.

12. From November 2015 through April 2019, Kozleski violated C.R.S. § 6-1-713 by failing to develop and maintain a written policy for the destruction or proper disposal of documents containing personal identifying information when such documents are no longer needed.

13. Kozleski's responsibility to implement reasonable procedures and practices to protect its clients' personal identifying information was codified into Colorado law, effective September 1, 2018, with the enactment of C.R.S. § 6-1-713.5.

14. From September 1, 2018 through April 2019, Kozleski violated C.R.S. § 6-1-713.5 by failing to implement and maintain reasonable security procedures and

practices that were appropriate to the nature of the personal identifying information maintained by Kozleski and the nature and size of Kozleski's business and its operations. C.R.S. § 6-1-713.5 required, at a minimum, that Kozleski comply with the Safeguards Rule, which Kozleski failed to do.

15. On two separate occasions, in March 2017 and August 2018, Kozleski was the victim of ransomware attacks. In responding to these attacks, Kozleski assumed that ransomware attacks pose no risk of misuse of personal information. Contrary to Kozleski's belief, ransomware is increasingly accompanied by malware that steals data from the affected system.

16. Kozleski incorrectly assumed that the March 2017 and August 2018 ransomware attacks posed no threat to the security, confidentiality, or integrity of the personal information Kozleski maintained, and Kozleski failed to conduct a prompt, good-faith investigation to determine the likelihood that personal information maintained by Kozleski was or was reasonably likely to be misused as a result of the ransomware attacks or the vulnerabilities that allowed them. Kozleski's failure to conduct the investigation violated C.R.S. § 6-1-716(2).

17. Kozleski made no improvements to its data security policies and practices following either incident.

18. At some point in late 2018 or early 2019, Kozleski lost a laptop computer that may have been configured for access to Kozleski's server and may

have contained or had access to personal information of Kozleski's clients. The computer was password protected, but Kozleski's passwords were typically weak and did not meet guidelines set forth by federal authorities and AICPA. After this laptop went missing, Kozleski failed to undertake a prompt, good-faith investigation to determine the likelihood that personal information was or was reasonably likely to be misused as required by C.R.S. § 6-1-716(2).

19. After the State contacted Kozleski about the matters that form the basis for this Assurance, Kozleski prepared written data-disposal and data-protection policies.

20. Each of Kozleski's violations of C.R.S. §§ 6-1-713, 6-1-713.5, and 6-1-716 constituted a deceptive trade practice under the CCPA. C.R.S. § 6-1-105(1)(x).

B. KOZLESKI'S DENIAL

21. Kozleski denies the State's allegations and anything else contained in this Assurance that asserts, or implies any wrongdoing on the part of Kozleski, its officers, or its employees. By agreeing to this Assurance, Kozleski is in no way admitting to any wrongdoing or illegal actions.

IV. LEGAL AUTHORITY

22. C.R.S. § 6-1-110(2) authorizes the Attorney General to accept a voluntary payment from Kozleski of the costs of the State's investigation and any action or proceeding by the Attorney General and any amount necessary to restore

to any person any money or property that may have been acquired by Kozleski by means of any deceptive trade practice. The Attorney General may also seek penalties under C.R.S. § 6-1-112.

V. CONSIDERATION

23. The Parties enter into this Assurance for the purpose of compromising and resolving disputed claims and to avoid further expense of protracted litigation.

24. The State has not previously pursued an enforcement action under C.R.S. §§ 6-1-713, 6-1-713.5, and 6-1-716 involving of ransomware and is mindful of that factor in entering into this Assurance.

25. Kozleski shall pay to the State \$15,000 on the following schedule: Kozleski shall pay \$5,000 within five days of the Parties' complete execution of this Assurance, \$5,000 on or before July 15, 2020, and \$5,000 on or before October 15, 2020. Payment shall be in the form of a certified check, cashier's check, or money order made payable to the "Colorado Department of Law," shall reference "In the Matter of Kozleski CPAs, P.C." and shall be delivered to:

Mechele Clark, Program Assistant
Consumer Protection Unit
Colorado Department of Law
1300 Broadway, 7th Floor
Denver, Colorado 80203

If Kozleski fails to deliver the initial \$5,000 payment within five days of the Parties' complete execution of this Assurance, the State may file a Complaint in the District

Court for the City and County of Denver alleging violations of this Assurance and violations of Colorado law in connection with the subject matter of this Assurance. If the State files such a Complaint, Kozleski consents to jurisdiction and venue in that Court and stipulates to a judgment in the amount of \$100,000 for the conduct covered by this Assurance and stipulates to an injunction consisting of the terms found in Section VII, below. If Kozleski fails to deliver the payment due July 15, 2020, the State may file a Complaint in the District Court for the City and County of Denver alleging violations of this Assurance and violations of Colorado law in connection with the subject matter of this Assurance. If the State files such a Complaint, Kozleski consents to jurisdiction and venue in that Court and stipulates to a judgment in the amount of \$10,000 and an injunction consisting of the terms found in Section VII, below. Regardless of whether such \$10,000 judgment enters, the payment due October 15, 2020 will still be required. If Kozleski fails to deliver the payment due October 15, 2020, the State may file a Complaint in the District Court for the City and County of Denver alleging violations of this Assurance and violations of Colorado law in connection with the subject matter of this Assurance. If the State files such a Complaint, Kozleski consents to jurisdiction and venue in that Court and stipulates to a judgment in the amount of \$5,000 and an injunction consisting of the terms found in Section VII, below. All payments under this paragraph 25 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.

VI. RELEASE

26. The State acknowledges by its execution hereof that this Assurance constitutes a complete settlement and release of all claims under the CCPA on behalf of the State against Kozleski with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted under the CCPA for the conduct described in this Assurance, that arose prior to the Effective Date and relating to or based upon the acts or practices which are the subject of this Assurance. The State agrees that, except as provided in the foregoing paragraph, it shall not proceed with or institute any civil action or proceeding under the CCPA against Kozleski for any conduct or practice prior to the Effective Date which relates to the subject matter of this Assurance.

27. Nothing herein precludes the State from enforcing the provisions of this Assurance, or from pursuing any law enforcement action under the CCPA with respect to the acts or practices of Kozleski not covered by this Assurance or any acts or practices of Kozleski conducted after the Effective Date.

VII. FURTHER ASSURANCES OF KOZLESKI

28. Kozleski, and any of its principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who have received actual notice of this Assurance, agree that:

29. Kozleski shall comply with the provisions of C.R.S. § 6-1-713.

30. Kozleski shall comply with the provisions of C.R.S. § 6-1-713.5.

Kozleski's compliance with this paragraph shall include the development, implementation, and maintenance of a comprehensive information security program that is written in one or more readily accessible parts and complies with the Federal Trade Commission's Safeguards Rule, 16 C.F.R. § 314.1, *et seq.* Pursuant to this comprehensive information security program, Kozleski shall:

- a. Designate an employee or employees to coordinate the information security program.
- b. Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of personal identifying information of Colorado residents that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such personal identifying information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, such a risk assessment should include consideration of risks in each relevant area of Kozleski's operations, including:

- (1) Employee training and management;
 - (2) Information systems, including network and software design, as well as information processing, storage, transmission and disposal; and
 - (3) Detecting, preventing and responding to attacks, intrusions, or other systems failures.
- c. Design and implement information safeguards to control the risks Kozleski identifies through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.
- d. Oversee service providers, by:
- (1) Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the personal identifying information at issue; and
 - (2) Requiring Kozleski's service providers by contract to implement and maintain such safeguards.
- e. Evaluate and adjust Kozleski's information security program in light of the results of the testing and monitoring required by subparagraph (c) of this paragraph 30; any material changes to Kozleski's operations or business arrangements; or any other circumstances that Kozleski knows or has

reason to know may have a material impact on Kozleski's information security program.

Compliance or non-compliance with this paragraph 30 will be determined, in part, with reference to the safeguards described in IRS Publication 4557, "Safeguarding Taxpayer Data: A Guide for Your Business," in its current form and as it may be amended, and the information security guidance provided by AICPA.

31. Kozleski shall comply with the provisions of C.R.S. § 6-1-716. Such compliance includes, but is not limited to, conducting in good faith a prompt investigation to determine the likelihood that personal information of Colorado residents has been or might be misused when Kozleski becomes aware that a security breach may have occurred. A security breach may occur when ransomware or other malware enters any system on which personal information of Colorado residents is stored. If, upon becoming aware of a possible security breach, Kozleski does not conduct the required prompt, good faith investigation, Kozleski shall give notice of the incident to all potentially affected Colorado residents as specified in C.R.S. § 6-1-716. If Kozleski does conduct the required prompt, good-faith investigation, Kozleski shall give notice to all potentially affected Colorado residents unless the investigation determines that the misuse of information about a Colorado resident has not occurred and is not reasonably likely to occur.

32. Kozleski shall maintain records of access to, and activity on, all Kozleski systems and files that store the personal identifying information of Colorado residents. Kozleski shall maintain such records for at least one year, on an ongoing basis.

33. Kozleski shall submit compliance reports, sworn under penalty of perjury by an individual or individuals with authority to bind Kozleski, on the first and third anniversaries of the Effective Date of this Assurance. The compliance reports must:

- a. Identify the primary postal and email address and telephone number, as designated points of contact, which the State may use to communicate with Kozleski in connection with this Assurance;
- b. Describe, in detail, the steps Kozleski has taken to comply with each paragraph of this Section VII.
- c. Describe the results of all regular testing and monitoring undertaken pursuant to paragraph 30, above, and describe all evaluations and any adjustments made pursuant to paragraph 30, above.
- d. Identify and describe all data security incidents or potential data security incidents that have occurred in the reporting period, including a detailed descriptions of all steps taken in any investigations Kozleski has undertaken.

- e. Describe all adjustments or improvements Kozleski has made as a result of any security incident or potential data security incident reported under paragraph 33(d), above.

Kozleski further agrees to cooperate with any proceedings or investigations arising out of the State's monitoring or investigation of compliance with this Assurance. This includes submission of additional compliance reports the State may request and promptly responding to reasonable requests for information made by the State.

VIII. ENFORCEMENT

34. The obligations set forth in this Assurance are of a continuing legal nature.

35. The Parties consent to venue and jurisdiction for any proceeding necessary to enforce the terms of this Assurance within the District Court, City and County of Denver, Colorado.

36. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA under C.R.S. § 6-1-110(2). Upon Kozleski's violation of any term of this Assurance, the State shall be entitled to file a civil action under the CCPA and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

37. In addition to any remedies provided under the CCPA, the State shall be entitled to apply for and seek an order converting this Assurance into a

permanent injunction against Kozleski upon a showing by the State of a violation by Kozleski of this Assurance. In such event, Kozleski agrees to waive any and all defenses and counterclaims that it may have had with respect to the subject matter of this Assurance.

IX. MISCELLANEOUS PROVISIONS

38. This Assurance is the final, complete, and exclusive statement of the Parties' agreement on the matters contained herein, and it supersedes, terminates and replaces any and all previous negotiations, agreements, and instruments as may exist between the Parties. Other than any representation expressly stated in this Assurance, the Parties have not made any representations or warranties to each other, and no Party's decision to enter into this Assurance is based upon any statements by any other Party outside of those in this Assurance. No change or modification of this Assurance shall be valid unless in writing and signed by all Parties. If any provision(s) of this Assurance 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.

39. This Assurance shall neither create nor waive or otherwise affect any private rights or remedies in any third parties nor waive any rights, remedies, or defenses of the Parties in respect to any third parties. Under no circumstances

shall this Assurance or the name of the Attorney General or any of the State's employees or representatives be used by Kozleski or any person under their direction or control in any way that suggests the State's endorsement of Kozleski's past, present, or future conduct.

40. Nothing herein relieves Kozleski of its duty to comply with all applicable laws, regulations, or rules of the State of Colorado nor constitutes authorization by the State for Kozleski to engage in acts and practices prohibited by such laws.

41. Kozleski acknowledges that it is the State's customary position that an agreement restraining certain conduct by a party 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 Effective Date 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 Assurance shall not be a defense to any such enforcement action.

42. The terms and provisions of this Assurance 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. Nothing herein precludes the Parties from enforcing the provisions of this Assurance pursuant to its terms, or the State from pursuing any law enforcement action under the CCPA with respect to any unrelated acts or practices of Kozleski not covered by the State's investigation and this Assurance or any acts or practices of Kozleski conducted after the Effective Date of this Assurance.

43. Pursuant to C.R.S. § 6-1-110(2), this Assurance shall be a matter of public record.

44. Kozleski acknowledges that it had a full opportunity to review this Assurance and consult with legal counsel regarding it. The undersigned representatives of Kozleski agree and represent that they have read and understood this Assurance, accept the legal consequences involved in signing it, and that there are no other representations, agreements, or understandings between the State and Kozleski that are not stated in writing herein.

45. This Assurance may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Assurance. Facsimile and electronic copies of this Assurance and the signatures hereto may be used with the same force and effect as an original.

X. Notice

46. All notices regarding this Assurance shall be sent by certified mail, return receipt requested or reputable overnight delivery service (e.g., FedEx, UPS) at the addresses set forth below unless any Party notifies the other Parties in writing of another address to which notices should be provided:

If to Kozleski CPAs:

Thomas N. Gearhart, Jr.
210 N. Pine Street
Woodland Park, CO 80863

With copies to legal counsel, Taft Gearhart, by email at taft@taftgearhart.com.

If to the State:

Colorado Attorney General
1300 Broadway, 7th Floor
Denver, Colorado 80203
Attn.: Program Assistant, Consumer Fraud Unit
Attn.: Jay Simonson, First Assistant Attorney General
jay.simonson@coag.gov
Attn: Mark Bailey, Senior Assistant Attorney General
mark.bailey@coag.gov

[Signatures appear on the following page(s)]

<p>STATE OF COLORADO:</p> <p>PHILIP J. WEISER, ATTORNEY GENERAL</p> <p>By: <u>MTB 5/16/20</u> Mark T. Bailey, Senior Assistant Attorney General – 36861*</p>	<p>KOZLESKI CPAs, P.C.</p> <p>By: <u>Thomas N. Gearhart, Jr.</u> Thomas N. Gearhart, Jr. <u>Taft Gearhart</u> Taft Gearhart, Counsel for Kozleski CPAs, P.C. – 50343.</p>
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