

<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</p> <p>Plaintiff,</p> <p>v.</p> <p>DENVER CUSTOM FOOD TRUCKS, LLC; DENVER CUSTOM FOOD TRUCKS & R.E.D.; BROTHERS CUSTOM FOOD TRUCKS LLC; CUSTOM MOBILE KITCHEN COLORADO, LLC; RESTAURANT EQUIPMENT DENVER #2; LARRY PEREZ, an individual, and RUDY MARTINEZ, an individual,</p> <p>Defendants.</p>	<p>DATE FILED: December 9, 2021 4:42 PM FILING ID: D8C547A669EC8 CASE NUMBER: 2018CV34469</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General ABIGAIL M. HINCHCLIFF, 24077* First Assistant Attorney General OLIVIA D. WEBSTER, 35867* Senior Assistant Attorney General Ralph L. Carr Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203 Telephone: (720) 508-6000 FAX: (720) 508-6040 Libby.webster@coag.gov Abigail.hinchcliff@coag.gov *Counsel of Record</p>	<p>Case No. 2018cv34469</p> <p>Div.:414</p>
<p>PLAINTIFF’S MOTION FOR CONTEMPT AGAINST LARRY PEREZ, MANUEL PEREZ, AND DENVER RESTAURANT EQUIPMENT, CORP.</p>	

Plaintiff, the State of Colorado, upon relation of Philip J. Weiser, Attorney General for the State of Colorado, hereby moves, pursuant to C.R.C.P. 107, for an order requiring defendant Larry Perez (“L. Perez”), his father, Manuel Perez (“M.

Perez”), and Denver Restaurant Equipment, Corp.¹ to appear and show cause why they should not be held in indirect contempt for their failure to comply with the Court’s Stipulated Order for Permanent Injunction issued on February 26, 2019 (“Permanent Injunction”).

NOTICE OF COMPLIANCE WITH C.R.C.P. 121 § 1-15(8)

Under Colorado Rule of Civil Procedure 107(c), the Court “may *ex parte* order a citation to issue to the person so charged.” This Rule does not mandate a conference with opposing counsel before filing a motion for an indirect contempt citation, *In re Marriage of Cyr & Kay*, 186 P.3d 88, 96 (Colo. App. 2008). The State, however, notified L. Perez, M. Perez and Denver Restaurant Equipment, Corp. by email on December 8, 2021, via counsel who represented them during the State’s investigation. After learning that L. Perez was no longer represented, undersigned called and advised him of the filing. Undersigned also called and spoke with counsel for M. Perez and Restaurant Equipment, Corp. who agreed to accept service.

INTRODUCTION

Less than six months after L. Perez agreed, in open court and in writing, to never again “*as much as screw in a screw in a food truck or hold up a window to assist someone else on a food truck,*” he was back in business building and selling food trucks. *Transcript of 12/12/2018 hearing*² at 7:4-8:20, attached hereto as Exhibit 1;

¹ Contemporaneously with this filing, the State has filed a Complaint against Manuel Perez and Denver Restaurant Equipment, Corp. and requested that the matter be consolidated with this case.

² A copy of the full transcript of the 12/12/2018 hearing is attached as Exhibit 1 for convenience of the Court.

Transcript of 2/13/2019 hearing³ at 220:13-221:23, attached hereto as Exhibit 2; Permanent Injunction, attached hereto as Ex. 3; 3/12/2019 Stipulated Consent Judgment (Larry Perez) at 3-4, attached hereto as Ex. 4. In two documented instances, L. Perez took consumers' deposits without delivering a truck and in one instance delivered a food trailer that ended up exploding when the consumer used it. *See LeAnn Lopez Declaration, at pp. 8-12 and 16-18, attached hereto as Ex. 5.* This is the same misconduct that led this Court to ban L. Perez from working in the food truck fabrication business two and a half years ago. Namely, this Court ordered the following permanent injunction against L. Perez in February 2019:

Defendants LARRY PEREZ and RUDY MARTINEZ and their officers, directors, agents, servants, employees, independent contractors and any other persons, in active concert or participation with Defendants, who receive actual notice of the Court's Order are ENJOINED from:

- 1. Engaging in any activity related to the fabrication, repair or sale of food trucks and trailers for profit.*
- 2. Acting as a "Motor vehicle dealer" as defined in C.R.S. §44-20-102(18) unless licensed to do so pursuant to C.R.S. § 44-20-124(2).*

The stipulated Order incorporates the prior oral directive of the Court communicated to the Defendants in open court that this injunction means that:

- 3. If either Defendant Perez or Defendant Martinez "as much as screw in a screw in a food truck or hold up a window to assist someone else on a food truck" they are acting in violation of this Order and subject to proceedings for civil or criminal contempt.*
- 4. Anyone who has notice of this Order and knowingly allows Defendants to perform any such work is also in violation of this Court's Order.
See Permanent Injunction.*

³ A copy of the full transcript of the 2/13/2019 hearing is attached as Exhibit 2 for convenience of the Court.

But this Court’s order and admonitions did not stop L. Perez, who has engaged in far more than simply “screwing in a screw in a food truck.” Since 2019, under the guise of selling restaurant equipment, and working for his father’s Denver Restaurant Equipment business, L. Perez has been building and selling food trucks. In short, L. Perez substantially continued doing what he was enjoined from doing and used his father and Denver Restaurant Equipment to shield his misdeeds. Just as the State suspected might happen (*Ex. 1 at 6:18-7:21*), M. Perez directly and indirectly employed L. Perez and the men who work for L. Perez building food trucks; he directly and indirectly allowed L. Perez to build and sell food trucks at Denver Restaurant Equipment; and he directly and indirectly worked with L. Perez in selling food truck repairs to consumers – and denying refunds for his son’s substandard and dangerous work. M. Perez did so even after the State’s investigator had warned him not once but twice. *See, Ex. 5 at ¶¶4-7; See Affidavit of Service, attached hereto as Exhibit 6.* In addition, M. Perez has assisted L. Perez in avoiding payment of the monetary judgment in this case—money that would refund consumers that L. Perez has harmed.

PROCEDURAL BACKGROUND

On December 3, 2018, the State filed a civil law enforcement action pursuant to the Colorado Consumer Protection Act §§ 6-1-101, *et seq.*, C.R.S. (2018) (“CCPA”), alleging a series of deceptive business practices against Larry Perez, Rudy Martinez, Denver Custom Food Trucks, LLC, Denver Custom Food Trucks & R.E.D., Brothers Custom Food Trucks, LLC, Custom Mobile Kitchen Colorado, LLC, and Restaurant

Equipment Denver #2. The State also filed on December 3, 2018 a Motion for Temporary Restraining Order and Preliminary Injunction.

The Court scheduled a hearing for the temporary restraining order on December 4, 2018. All of the parties appeared and the Court entered the temporary restraining order, setting a preliminary injunction hearing for December 12, 2018. *See, Order on State's Motion for Temporary Restraining Order and Preliminary Injunction.* The TRO enjoined L. Perez and his business partner Rudy Martinez from “engaging in any activity related to the fabrication, repair or sale of food trucks and trailers for profit.” It also enjoined them from acting as “motor vehicle dealers” unless licensed to do so under C.R.S. § 44-20-124(2). *Id. at 2.*

On December 12, 2018, L. Perez appeared in court and, at the direction of this Court, conferred and stipulated to convert the temporary restraining order into a preliminary injunction. The Court ordered the parties to return to court on February 13-14, 2019 for a hearing to determine if a permanent injunction should be ordered.

At the time the State filed its case, L. Perez had ceased operations under Denver Custom Food Trucks and was working for Denver Restaurant Equipment, a family business owned and operated by M. Perez and brother Oscar Perez (hereinafter “O. Perez”). To ensure L. Perez’s employer and family were aware of the stipulated preliminary injunction, the State’s investigator met in person with M. Perez at Denver Restaurant Equipment, located at 4900 Acoma Street in Denver, and informed him about the injunction against L. Perez and left a copy of the stipulated preliminary injunction with M. Perez. *See, Ex. 5 at ¶5.*

On February 13, 2019, the parties appeared for the scheduled two-day permanent injunction hearing. The State presented evidence including testimony from six consumer witnesses, a former employee, Investigator Lopez, and a criminal investigator with the State of Colorado's Auto Industry Division. At the conclusion of the first day of evidence, L. Perez and his co-defendant Martinez alerted the court that they did not wish to proceed with the second day of evidence and that they would agree to be permanently banned from working in the food truck industry. *See Ex. 2, 220:14-221:23*. On February 26, 2019, the Court issued the *Permanent Injunction* against L. Perez and Martinez., which permanently enjoined them from working on food trucks in any manner and selling vehicles without the necessary dealer license to do so. *See, Ex. 3*.

L. Perez was still working for Denver Restaurant Equipment at the time the court entered its Permanent Injunction. To put his employer and family on notice of order, the State's investigator once again drove out to Denver Restaurant Equipment. She met in person with M. Perez and O. Perez and handed a copy of the Permanent Injunction to them. *See, Ex. 5 at ¶7; See, Affidavit of Service attached hereto as Ex. 6*.

The Court set a damages hearing for March 11, 2019. The parties reached an agreement as to damages and the Court vacated the hearing date.

On March 12, 2019, the Court entered two separate final stipulated judgments against L. Perez and Martinez, respectively. The judgments incorporated the Court's earlier *Permanent Injunction*. The Court ordered monetary payments from each Defendant as well, specifying that L. Perez was to pay \$3,000,000. *See, March 12,*

2019 Stipulated Consent Judgment ¶ 3.1.

After entry of the stipulated consent judgment, the State engaged in discussions with L. Perez about payment of the \$3,000,000 judgment. L. Perez informed the Attorney General in May 2019 that he could make monthly payments of only \$450 to \$500. He stated that he was earning \$600/week at Denver Restaurant Equipment. *See Stipulated Payment Plan with Defendant Larry Perez, dated May 29, 2019, attached hereto as Ex. 7.*

FACTUAL BACKGROUND

In mid-June 2019, the Attorney General received information from a consumer that L. Perez was building food trucks at 1357 E. 73rd Avenue, which is a storage garage and parking facility in Denver called G&F Storage. Investigator Lopez drove to G&F Storage and observed L. Perez's personal vehicle parked in front of a storage unit *See, Ex. 5 at ¶¶9-10.* Investigator Lopez contacted the manager of G&F Storage and obtained documents indicating L. Perez began renting storage garages in May 2019. *See Affidavit of Stephen Eaton, attached hereto as Ex. 8, at ¶¶ 4 and 5.*

Investigator Lopez returned to G&F Storage multiple times over the course of four months to monitor L. Perez's activity. She observed various individuals working on food trucks at the location. She spoke with L. Perez about his activities, and he stated he was operating under the name Restaurant Equipment Warehouse, selling restaurant equipment to restaurant and food truck owners. *See, Ex. 5 at ¶¶13-18.* L. Perez stated that he hired his son-in-law, Jorge Gallegos-Carbal, to build food trucks for customers. *Id. at ¶¶44-47.* L. Perez provided a copy of the invoices he was using

for the business, which includes the following products/services listed at the top: “food trailer,” “food truck,” “restaurant equipment,” “service” and “parts.” *See, Ex. 5 at ¶50 (Attachment A).*

L. Perez told Investigator Lopez that if someone comes to the shop asking about food trucks, he directs them to Gallegos who then talks to the customer about the truck and determines what the person needs and wants. *Id. at ¶¶44-47.* Then, according to L. Perez, Gallegos confers with L. Perez on the cost of the items for the food truck, and Gallegos sets the price to charge customers. *Id.* L. Perez told Investigator Lopez that after Gallegos sets the price and collects the money, Gallegos gives the money to L. Perez. L. Perez confirmed that he is paying Gallegos for his work.⁴ *Id.*

Indeed, L. Perez took steps to hide his conduct from law enforcement. There were four workers building food trucks for L. Perez’s Restaurant Equipment Warehouse: Mr. Gallegos-Carbal (Perez’s son-in-law), Marcos Antonio, Mike Noe Espinoza Navarro, and Mr. Alumina. *Affidavit of Marcelo Almuina-Ortega, attached hereto as Ex. 9, ¶8.* L. Perez instructed the men to cover for him if anyone were to ask who owned the business. L. Perez instructed Mr. Almuina to tell customers or law enforcement that Mr. Espinoza was in charge. *Id. at ¶9.* But according to Mr. Almunia, “Mike did not give me directions or orders about building the trucks and I

⁴ On October 21, 2019, Investigator Lopez served Mr. Gallegos with a copy of the Permanent Injunction and explained he could be in violation of the court’s order if he allowed L. Perez to work on food trucks. *See, Ex. 5 at ¶53.* Given Mr. Gallegos worked for both M. Perez and L. Perez, the State elected not to pursue contempt against him but rather his employers.

rarely saw Mike. Larry gave me directions and orders about building truck [sic] and Larry paid me.” *Id.*

Even after being confronted by Investigator Lopez, L. Perez continued to advertise and build and sell food trucks. *See, Ex. 5 at ¶¶ 16-21, 50-53, 101-167.* The State subpoenaed L. Perez’s PayPal/Venmo account tied to Restaurant Equipment Warehouse, which reflects more than \$200,000 in transactions from 2019 through June 2021, some of which are obviously related to food trucks as they include “truck,” “trailer,” or “food truck” in the description. *See, Ex. 5 at ¶162.* These transactions do not include cash payments, which is the payment method L. Perez historically uses and prefers. *See, Ex. 5 at ¶¶31, 73, 77, 139, and 169. See, Motion for TRO/PI, pp. 18-20; See Ex. 2, 80:20-81:4 (testimony of consumer Mohamed Shanata)*

L. Perez has continued to build and sell food trucks, using a variety of locations in Denver, Commerce City, and Westminster. Although L. Perez stopped renting some of his spaces at G&F Storage in December 2019, he transferred one of the units to his employee Mr. Espinoza. *See, Ex. 8 at ¶14; See, Ex. 5 at ¶¶101-102.* L. Perez, however, continued to store food trucks at this location. Mr. Espinoza completed a storage contract and listed the same email and phone number that L. Perez listed on his storage contract. *See, Ex. 8, at ¶14.* L. Perez also paid G&F Storage’s rental fee on behalf of Mr. Espinoza. *Id.* At the same time, L. Perez continued to store food trucks in the parking spaces that he rented. *Id. at ¶15.* Mr. Eaton, who manages the facility, observed food trucks occasionally in the unit rented by Mr. Espinoza in early 2020. *Id. at ¶16.*

In February 2020, L. Perez relocated to 5725 E. 56th Avenue, Unit 116 in Commerce City. *See, Ex. 5 at ¶103.* L. Perez applied for a business license; however, Commerce City denied his application. *See, Ex. 5 at ¶¶107-108.* L. Perez returned to Denver Restaurant Equipment and used his father's business as a means to solicit food truck customers. *See, Declaration of Dayshaun Ortibez, attached hereto as Ex. 10, ¶¶5, 7, and 13.* From approximately August 2020 through at least May 2021, L. Perez operated food truck repair and sales out of his residence in Westminster (*See Ex. 5 at ¶¶143-163; See, Ex. 10, Ortibez Declaration ¶21*), a nearly 5,000 square foot home with an indoor pool and eight-car garage that he rents for \$5,000/month. *See, Ex. 5 at ¶¶143-163.* L. Perez stored numerous food trucks on the premises of the Westminster home. *See Id.; See, Ex. 10, ¶21.*

I. L. Perez is engaging in the same misconduct that led this Court to ban him from food truck customization and sales

Unsurprisingly, L. Perez's violation of the Permanent Injunction has led to consumer harm. On November 8, 2019, Investigator Lopez learned that a consumer named Anibal Miralda filed a police report in Commerce City against L. Perez, complaining he paid L. Perez \$30,000 in August 2019 for a customized food truck that L. Perez never delivered. *See, Ex. 5 at ¶54; See, Affidavit of Anibal Miralda, attached hereto as Ex. 11, at ¶¶ 9-21.* Then, in September 2020, consumer Dayshaun Ortibez suffered injuries after a gas line that L. Perez had installed in her food trailer caused an explosion. *See, Ex. 10 at ¶¶ 15-18; See, Ex. 5 at ¶¶113-142.* L. Perez—and M. Perez—refused to pay for her medical expenses or refund thousands more she had paid as a down payment on another food truck. *See, Ex. 10 at ¶¶19-26.*

L. Perez's egregious misconduct is nothing new. When Perez operated Denver Custom Food Trucks in 2017-2018, he rarely met the promised build-out timelines, leaving many consumers, who were relying on the income they would generate with their food truck, in dire financial situations. *Motion for TRO/PI, p. 3.* Many consumers, despite having paid a large deposit, never received a truck from L. Perez. If, and when, L. Perez did finally complete a consumer's food truck, the truck frequently required additional work and expense and often failed required safety inspections, further delaying consumers' efforts to start their businesses. *Id. at pp. 3-4.* In addition to negotiating a price for the truck and equipment installation, L. Perez promised fast build-out timeframes of 6 to 8 weeks and required consumers to pay a deposit in order to, ostensibly, start the build-out. *Id. at p. 5.* Despite the payment of a deposit, L. Perez did not start on the truck or trailer build-out or use the money for the consumer's project. *Id. at pp. 5-6.*

In 2019, this Court heard from multiple witnesses at the permanent injunction hearing who testified to L. Perez's pattern of taking deposits, failing to deliver a truck, writing bad checks, making threats, and ultimately providing no refunds, which resulted in financial hardship for consumers. *See Ex. 2, at 50:24 – 76:3 (testimony of Jody Hines); 23:16 – 44:14 (testimony of Luis Galvez); 144:2-14 (portion of testimony of Travis Farenholtz); 203:3 – 204:2 (portion of Investigator LeAnn Lopez's testimony).* Jody Hines suffered significantly because of L. Perez's false promises to build her a truck, losing tens of thousands of dollars in a cash deposit paid to L. Perez, additional money spent to relocate from Nebraska to Colorado, and thousands more she owes in

taxes associated with withdrawals from a retirement account to fund her start-up costs. *Id. at 52:23-53:1, 56:8-18, 59:9-17, 61:11-14, 61:22-61:3, 64:1-13, 65:3-11.* Luis Galvez testified that L. Perez threatened his immigration status when he confronted him about his truck and demanded a refund. *Id. at 42:2 – 43:24.*

A. Anibal Miraldo

On August 22, 2019, Mr. Miraldo went to L. Perez’s business at 1357 E. 73rd Ave., in Denver, and paid Perez \$30,000 in cash upfront for the purchase and customized build-out of a food truck. *See, Ex. 11 at ¶¶ 2, 9 and 10.* L. Perez represented to Mr. Miraldo that he would complete the work in one week. *Id. at ¶ 7.* Mr. Miraldo, who is 60 years old and worked in construction most of his life, wanted to start a Honduran food truck business with his wife in Kansas. *Id. at ¶¶ 2 and 7.* Mr. Miraldo found Perez’s Facebook page for his business through a search for “luncheros builders” online. *Id. at ¶ 3.* L. Perez told Mr. Miraldo that another man working there owned the business and the vehicles. Yet, L. Perez negotiated the deposit amount and signed the invoice. *Id. at ¶¶ at 3, 7, 9, 10 and Affidavit Attachment A.*

Even though L. Perez assured Mr. Miralda that his truck would be ready in one week (*Id. at ¶ 7*), Mr. Miraldo returned multiple times to L. Perez’s business to pick up his truck only to be told “another week.” *Id. at ¶¶ 10 and 11.* Mr. Miraldo observed that L. Perez had made virtually no progress toward building his truck. *Id.* Mr. Miraldo never got his truck and received a small fraction (\$2,000) of his money back from L. Perez. *Id. at ¶¶ 13-19.* L. Perez wrote three checks to Mr. Miraldo for

the remaining amount owed, but all three bounced. *Id. at* ¶¶16-18. When Mr. Miraldo pressed L. Perez for a full refund, L. Perez threatened to report his immigration status, and even threatened to beat him up. *Id. at* ¶ 14. Mr. Miraldo and his wife lost the house they had hoped to buy because they were not able to start their food truck business as planned and because they lost \$28,000.00 to L. Perez. *Id. at* ¶20.

Mr. Miraldo was not L. Perez's only customer in 2019. According to L. Perez's employee Mr. Almuina, L. Perez worked on five to six food trucks over the summer of 2019. *See, Ex. 11 at* ¶ 8. Mr. Almuina attested that all but one of the customers he encountered were Spanish speaking, and that all of them—including Mr. Miralda—were upset because their trucks were not completed on time. *Id.* ¶11.

B. Dayshaun Ortibez

In June 2020 Dayshaun Ortibez hired L. Perez to install restaurant equipment in her food trailer. *See Ex. 10 at* ¶¶2, 3. She had searched Facebook and came across Denver Restaurant Equipment (M. Perez's business). L. Perez was listed as the contact. *Id.* Through FaceTime, L. Perez talked with Ms. Ortibez and showed her the equipment that Denver Restaurant Equipment had available. *Id.* ¶ 4. He then directed Ms. Ortibez to come to a Denver Restaurant Equipment location in Commerce City. *Id.* ¶5. L. Perez told Ms. Ortibez that he opened the additional location during the pandemic because the 4900 Acoma location in Denver was not open to the public. *Id. at* ¶¶ 6-8. Ms. Ortibez met L. Perez in a small office space at the Commerce City Denver Restaurant Equipment location; she gave him a deposit and dropped off the food trailer for installation of the parts. *Id.* ¶¶6-7. A month later,

she hired him to install additional parts in the food trailer, including a gas valve pipe for the grill. *Id.* ¶10. This time, L. Perez directed her to bring the trailer to the Denver Restaurant Equipment’s Denver location. *Id.* at ¶ 11.

When L. Perez’s work on the trailer was completed on September 23, 2020, Ms. Ortibez picked it up and took it directly to an event at the Players Club in Denver. *Id.* at ¶15. She was using the grill in the food trailer for the first time when there was an explosion. *Id.* at ¶ 16. Ms. Ortibez’s hair and clothes caught on fire, as did those of her children who were helping her cook. *Id.* at ¶ 16-17. The family was rushed to the hospital. *Id.* Ms. Ortibez and her children suffered third degree burns on their arms, legs and faces. *Id.* Fire department investigators concluded that the explosion was the direct result of the gas line not being hooked up properly. *Id.* at ¶ 19; *See, Ex. 5* at ¶¶140-142. Ms. Ortibez and her husband confronted L. Perez about the explosion. *See Ex. 10* at ¶¶ 20-24. He refused to take any responsibility or refund any of the money she paid him for the work on her food trailer. She also confronted M. Perez at Denver Restaurant Equipment, who also refused to refund any money. *Id.* ¶ 23-24.

II. M. Perez and Denver Restaurant Equipment knowingly allowed and participated with L. Perez to build and sell food trucks

Without the help of M. Perez and Denver Restaurant Equipment it is unlikely that L. Perez would have been able to build and sell food trucks after entry of the permanent injunction. It also would have been difficult for L. Perez to avoid paying more toward the State’s judgment against him without the help of M. Perez.

A. Intertwined History

L. Perez's intertwined history with Denver Restaurant Equipment began in (at least) 2015 when he started building food trucks under the name La Tapatia Mexican Food, Inc., which was part of Denver Restaurant Equipment. *See L. Perez 6/26/2018 CID hearing transcript, attached hereto as Ex. 12, 13:19-18:8.* Although La Tapatia originally sold Mexican groceries, L. Perez began to build customized food trucks and trailers under the name. In 2016, L. Perez started his own business, Denver Custom Food Truck, which became the epicenter for L. Perez's deceptive conduct in the underlying case.

L. Perez's departure from the family business in 2016—and his subsequent attempts to run his own business separate from Denver Restaurant Equipment in 2019 to 2021—were short-lived and largely illusory. Beginning in April 2019, a few months after entry of the Stipulated Permanent Injunction, L. Perez started leasing warehouse and garage space ostensibly to sell restaurant equipment. *See, Ex. 5 at ¶¶9-16.* By and large, L. Perez's new location was effectively an extension of M. Perez's Denver Restaurant Equipment, which L. Perez started in order to accommodate his family's concern about L. Perez's bad publicity for the family business. *Id.* He used Denver Restaurant Equipment's address (4900 Acoma) and listed the business as his employer on the initial contracts. *See Ex. 8 at ¶ 5.* L. Perez used an ENT Credit Union account that listed Denver Restaurant Equipment's address while operating Restaurant Equipment Warehouse. *See Ex. 11 at Attachment B.* L. Perez employed some of the same family members who were also employed by M. Perez at Denver Restaurant Equipment:

- L. Perez employed Mr. Espinoza in the summer of 2019 to build and sell food trucks for Restaurant Equipment Warehouse. Mr. Espinoza worked for Denver Restaurant Equipment from January through at least September 2019. Later in 2019 and early 2020, Mr. Espinoza took over L. Perez’s storage unit leases at the 73rd location and L. Perez continued to pay the lease and store food trucks at the location. *Ex. 8 at ¶¶ 14-16; See, Ex. 5 at ¶¶101-103.*
- L. Perez also employed his son-in-law, Jorge Gallegos⁵, to build food trucks for Restaurant Equipment Warehouse beginning in mid-2019. Since at least January 2019, Mr. Gallegos has worked for M. Perez’s Denver Restaurant Equipment building food trucks. *7/21/2021 M. Perez CID Transcript, attached hereto as Ex. 13, ¶¶27:25-28:15, 32:7-25:12.*

And L. Perez also worked for both businesses at the same time, raising the question whether the businesses were, in effect, separate. In May 2020, when L. Perez began renting his Westminster house, he admitted to his landlord, Dol Bhattarai, that he was running Restaurant Equipment Warehouse out of the 56th Avenue location as part of “helping his dad.” *See, transcript of Aug. 4, 2021 CID hearing of Dol Bhattarai, 72:11-73:19, attached as Ex. 16.* A few months later, in August 2020, the State’s investigator called L. Perez and asked him where he was working, to which L. Perez responded he was working for his father at Denver Restaurant Equipment on Acoma Street. *See, Ex. 5 at ¶107.* Indeed, from June through

⁵ On November 6, 2019, Mr. Gallegos failed to appear and give sworn testimony in the State’s post-judgment investigation of L. Perez. *See, Transcript of CID Hearing of Jorge Gallegos-Carbal, November 6, 2019, attached hereto as Ex. 14, at 3:17-5:7.*

September 2020, when L. Perez was running Restaurant Equipment Warehouse, records show that he was responsible for more than \$45,000 in sales at Denver Restaurant Equipment even though he was not technically on Denver Restaurant Equipment's payroll at that time. *See, transcript of July 21, 2021 CID Hearing of Manuel Perez, attached hereto as Ex. 13 at 44:2-49:17.*

B. M. Perez allowed L. Perez to build food trucks at Denver Restaurant Equipment after entry of the Permanent Injunction

Throughout the last three years, M. Perez has been well aware of L. Perez's food truck activities at Denver Restaurant Equipment and the fact that L. Perez is not allowed to be working on food trucks. *See, Ex. 5 at ¶¶5-7; See, Ex. 13, 11:18-25.* M. Perez initially shared ownership of Denver Restaurant Equipment with another son, O. Perez; then, in July 2020 O. Perez was incarcerated, leaving M. Perez as the sole owner/operator. *See, Ex. 13, 15:3-16:9.* M. Perez goes in to work at the family business on a daily basis. *Id. 53:17-20.* He determines whether L. Perez is allowed to work on the Denver Restaurant Equipment premises. *Id. 54:24-55:10.* He determines whether L. Perez receives compensation for his work (*Id. 30:13-25, 44:15-50:19*). M. Perez has also financially benefited from the food truck business that L. Perez brought to Denver Restaurant Equipment. Denver Restaurant Equipment records indicate that it made more than \$500,000 in food truck-related sales between 2019 and 2021. *See, Ex. 5 at ¶164.*

M. Perez authorized Denver Restaurant Equipment ads, including those for food trucks. *Id. 37:1-43:13.* M. Perez routinely used "stock footage" of a food truck to

entice consumers to call. *Id.* L. Perez was involved in Denver Restaurant Equipment food truck ads. *See, e.g. Ex. 5 at ¶¶30.* In 2020, Ms. Ortibez responded to a Denver Restaurant Equipment Facebook posting about food truck customization and was directed to contact L. Perez. *Ex. 10 at ¶¶2-3.*

Even though M. Perez stated multiple times in his CID hearing that he did not keep track of L. Perez's business activity (*Ex.13 58:25-59:5*) the circumstances say otherwise.

C. M. Perez has participated in food truck sales with L. Perez

Throughout 2019-2021, M. Perez not only allowed L. Perez to sell food trucks via Denver Restaurant Equipment, but he also participated in the sales. After this court entered its order permanently enjoining L. Perez from the food truck business, Denver Restaurant Equipment recorded more than 100 transactions involving food trucks. At least 23 of the recorded sales involved Denver Restaurant Equipment selling food trucks or trailers to customers. It is worth noting that none of the parties—L. Perez, M. Perez or Denver Restaurant Equipment's employees—possess the requisite dealer's license to legally sell motor vehicles in Colorado (C.R.S. § 44-20-102(18); *See, Ex. 5, ¶¶99, 164, 172*), which violates the CCPA and the Permanent Injunction. In August 2020—when L. Perez was responsible for \$45,000 in sales for Denver Restaurant Equipment—Ms. Ortibez hired L. Perez to build her food trailer and paid L. Perez \$3,500 as a down payment for a food truck. *See, Ex. 10.* L. Perez instructed Ms. Ortibez to come to both Denver Restaurant Equipment locations in Denver (4900 Acoma) and Commerce City, and it was during one of her visits to the

Denver location that Ms. Ortiz met M. Perez, and it was M. Perez who suggested she hire L. Perez to install a new gas valve in her food trailer. *Id.* at ¶¶9-10. Ms. Ortiz also stated that she paid both L. Perez and M. Perez a down payment on a food truck that was on display at Denver Restaurant Equipment. *Id.* at ¶13. Later, after her food trailer exploded, she confronted M. Perez as well as L. Perez. *Id.* at ¶¶19-24. Neither man paid her medical expenses or refunded her money. *Id.* at ¶¶26-29.

III. L. Perez and M. Perez are acting in concert to hide L. Perez's assets and thwart the State's ability to collect on the \$3,000,000 judgment

After this Court ordered L. Perez to pay \$3,000,000, L. Perez asked the State to enter into a payment plan. The State agreed so long as L. Perez completed a financial affidavit showing all of his assets and liabilities. Based on L. Perez's responses in April 2019, the State agreed to accept an initial payment of \$2,000 and then between \$450 and \$500 each month from L. Perez and suspend collection efforts. Specifically, the payment plan was premised on Perez's statements and financial affidavit that indicate Perez had a "negative net worth, earns approximately \$600/week at Denver Restaurant Equipment, owes approximately \$28,000.00 on his vehicle, a GMC truck, lives in a rented apartment with his girlfriend, a minor child, and an adult family member, and owes on other judgments." *See* Ex. 7.

Conveniently, M. Perez employed L. Perez from January to April 2021 and paid him \$600/week. *See, Ex. 13 (CID hearing exhibit 9)*. M. Perez claimed L. Perez was cleaning equipment and doing some sales when M. Perez was unavailable. *Ex. 13 at*

45:6-46:23. As soon as L. Perez finalized his payment plan with the State, L. Perez quietly entered into commercial leases for garage and storage spaces in order to start building and selling food trucks again. *See, Ex. 8, ¶4.*

L. Perez, who claimed he had no more than \$450-500 to repay harmed consumers initiated not one but a series of lease agreements over a six-month period totaling \$3,875/month. In April 2019, L. Perez paid \$1,375 for two garage spaces plus a \$700 deposit. In May 2019, he added more spaces at \$500/month. In August 2019, L. Perez signed a contract for six outdoor parking spots, and two garage spaces and an office space for an additional \$2,025/month. By September 2019, L. Perez was paying \$3,875/month in rent to run his business. *See, Ex. 8 at ¶¶ 5-12.*

A year later, L. Perez entered into a two-year residential lease, renting a nearly 5,000 square foot home with an indoor pool and eight-car garage in Westminster. L. Perez pays \$5,000/month in rent. *See, Ex. 5 at ¶¶ 143, 154.* It was here that L. Perez continued to store and sell food trucks. *See, Ex. 5 at ¶¶ 111-112, 133-134.* At about the same time, L. Perez purchased a 2020 GMC Sierra through M. Perez. The truck cost \$91,129.50. L. Perez makes monthly payments to cover the financing. *Id. at ¶¶ 149-150; See Ex. 13, 66:16-67:24.*

Yet, L. Perez continues to pay only \$450/month (and sometimes \$400/month) toward the judgment in this case, claiming that even \$500 is too much. *See Declaration of Olivia Webster attached hereto as Ex. 15.* The payment plan entitles the State to increase the monthly amount if it learns that Perez is able to increase his payments. *Ex. 7 at ¶6.* In June 2021, the State served L. Perez with subpoenas

to produce documents related to his recent conduct. He elected to invoke the Fifth Amendment and refused to answer. *See, 7/8/21 CID Subpoena for the Production of Documents and Information and 7/23/21 Response, attached hereto as Exs. 16 and 17.*

RELEVANT LAW

The power to punish for contempt as a punitive measure or to coerce obedience is an inherent and indispensable power of the courts. *Austin v. City and County of Denver*, 397 P.2d 743 (Colo. 1964); *see also Kourlis v. Port*, 18 P.3d 770 (Colo. App. 2000). A finding of contempt is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v. Aleem*, 149 P.3d 765, 774 (Colo. 2007). Courts have broad remedial powers when faced with contempt of its orders, including injunctive orders. *See, Wilkinson v. Board of County Commissioners of Pitkin County*, 872 P.2d 1269 (Colo. App. 1994).

Rule 107 defines the actions constituting contempt to include “disobedience . . . by any person to . . . any lawful . . . order of the court.” C.R.C.P. 107(a)(1). Thus, to find a party in contempt the fact finder must find that the contemnor did not comply with a lawful order of the court. The duty to comply arises because the contemnor was aware of the order. *See, e.g., People v. Allen*, 868 P.2d 379, 383 n. 10 (Colo.1994) (elements of contempt were established because defendant was aware of a permanent restraining order); *In re Marriage of Bernardoni*, 731 P.2d 146, 148 (Colo.App.1986) (father was made aware of his duty to permit mother to have visits with her children when the order was entered in open court). Rule 107 also distinguishes between direct

and indirect contempt: direct contempt is witnessed by the court, while indirect contempt occurs outside of the court's presence. *See* Colo. R. Civ. P. 107(a)(2) and (3).

In finding contempt, a court may impose remedial sanctions, punitive sanctions, or both. Remedial sanctions are intended "to force compliance with a lawful order or to compel performance of an act within the person's power or present ability to perform." *See* Colo. R. Civ. P. 107(a)(5). If the contempt order is intended to be remedial in nature, the court must find that the contemnor: 1) did not comply with a lawful order of the court; 2) knew of the order; and 3) has the present ability to comply with the order. *In re Marriage of Cyr and Kay*, 186 P.3d 88, 92 (Colo. App. 2008). Proof of willfulness is not required before a court can impose remedial sanctions. *Id.*

In contrast, a court seeking to impose punitive sanctions must find beyond a reasonable doubt: 1) the existence of a lawful order of the court; 2) the contemnor's knowledge of the order; 3) the contemnor's ability to comply with the order; and 4) that the contemnor is willfully refusing to comply with the court's order. *Id.* That is, to support a contempt order imposed to punish, the court must find noncompliance with the court's order *and* that such conduct is offensive to the authority and dignity of the court. *People v. Razatos*, 699 P.2d 970 (Colo. 1985).

ARGUMENT

On March 12, 2019, the Court permanently enjoined L. Perez from engaging in any aspect of the food truck fabrication business and from selling motorized vehicles without a license to do so. Despite a permanent injunction since that time,

L. Perez refuses to comply with the Court’s order—even though he has the present ability to comply. “In a contempt proceeding where remedial sanctions may be imposed...[t]he court shall enter an order ...describing the means by which the person may purge the contempt and the sanctions that will be in effect until the contempt is purged.” C.R.C.P. 107(d)(2). The State is requesting the Court to order M. Perez, L. Perez and Denver Restaurant Equipment to show cause why they should not be held in contempt and be ordered to pay civil penalties, pursuant to § 6-1-112(b), in the amount of \$10,000 for each violation of the Permanent Injunction, which the State calculates to be at least \$30,000 among the contemnors; and accelerate L. Perez’s payment of the State’s judgment against him in the amount of \$5,000/month and further order M. Perez and Denver Restaurant Equipment to make payments on behalf of L. Perez.

The Court’s Permanent Injunction issued on February 23, 2019 included two injunctive terms enjoining L. Perez from engaging in any activities related to the fabrication and sale of food trucks, and from selling motorized vehicles unless he obtained a license to do so. L. Perez, who proceeded *pro se* in the underlying case, is clearly aware of the Permanent Injunction, having been advised by this court multiple times at the preliminary injunction and permanent injunction hearings.

At the December 12, 2018 preliminary injunction hearing, the parties stipulated to convert the temporary restraining order into a preliminary injunction. Multiple times during the hearing the Court spelled out the terms of the injunction the defendants were agreeing to and the consequence of contempt if they violated the

order. The Court made it clear that the defendants could not engage in food truck building either directly or indirectly. Defendant Perez stated he understood.

MS. WEBSTER: Certainly, Your Honor. We spoke with the [sic] both of Defendants. And they agree to convert the TRO to a preliminary injunction and stipulate to those terms. We understand, from Mr. Martinez, that he has put in a request to vacate the warehouse premises where he has been operating Brothers Custom Food Trucks. And so we want to make clear to both of the Defendants, in particular, Mr. Perez since his family business is, in part, building food trucks, that he is not going to be able to participate in any way or form in the food truck business. Either selling the equipment to be installed in food trucks –

THE COURT: Directly or indirectly.

*Transcript of December 12, 2018 preliminary injunction hearing, 6:18-25, 7:1-3.
(emphasis added).*

At the State's request, the Court made it explicitly clear what the injunction meant, again stressing that the defendants cannot directly or indirectly work on food trucks, and that they cannot install equipment in food trucks:

MS. WEBSTER: Correct, Your Honor. And so, we just encourage -- I mean, we explained it, as well. But we encourage -- or ask Your Honor to make sure to explain that to Mr. Perez, as well. He says that he is able to work in the HVAC business within his family's business, working on coolers that go into restaurants. And doing demolition of restaurants, as he explained it. There is to be no consulting. And the family members cannot facilitate or allow him to work on the food truck business, as well. Or else -- and we intend to serve a copy of this preliminary injunction on those family members, as well.

THE COURT: All right. Mr. Perez let's start with you. Mr. Perez, do you understand what Ms. Webster just said?

MR. PEREZ: Yes, Your Honor.

THE COURT: And you understand what this -- if we convert this temporary restraining order to a preliminary injunction, it means you do no work, at all, directly or indirectly in the food truck business. You get -- you understand that, right?

MR. PEREZ: Yes, Your Honor.

THE COURT: And if you do, you're going to be in violation of an injunction. And, potentially, subject to contempt citation. We won't get into all the details of what that means unless and until I have to give you and advisement on a contempt citation. Do you understand that, sir?

MR. PEREZ: Yes, Your Honor.

THE COURT: Mr. Martinez, same goes for you. If you agree to convert the temporary restraining order to a preliminary injunction, then you are effectively out of the food truck business until -- unless and until that preliminary injunction is waived. Do you understand that?

MR. MARTINEZ: Yes, Your Honor.

THE COURT: And that means directly or indirectly.

MR. MARTINEZ: Yes, Your Honor.

THE COURT: That means you guys don't go put in a stove. That means you don't screw in a screw. That means you don't help hold up a window while someone else is putting it in. Do you both understand that?

MR. PEREZ: Yes, Your Honor.

Id. at 7:4-8:16. At the close of the hearing, the Court admonished the defendants one more time about the injunction.

THE COURT: Gentlemen, you -- I'm -- we'll be in recess. But I want to remind you the TRO that I entered, which kept you -- which barred you from doing anything in the food truck business has now been converted to a preliminary injunction. Which has exactly the same terms. So, I'm just trying to be kind here. Don't get yourselves in trouble.

Id. at 16:11-16.

A few months later at the permanent injunction hearing on February 13, 2019, after a full day of testimony presented by the State, the defendants informed the Court that they wished to stipulate to a permanent injunction, to which the Court stated:

THE COURT: All right. Let me make sure I understand what you gentlemen are saying, and then I'll talk to the attorneys general about that. Mr. Perez, are you saying that you are willing to stipulate, agree, to the entry of a permanent injunction which would essentially be exactly the same terms as the temporary restraining order that would bar you from working in the food truck industry any time. Let me finish, though. It will not, that stipulation would only go to the entry of an injunction, it would not go to any damages that the attorneys general might argue you are liable to pay, pursuant to the Colorado Consumer Protection Act. I think I'm probably stating the attorneys general, the attorney generals' position correctly. Is that right, Mr. Simonson?

MR. SIMONSON: That's correct, Your Honor.

THE COURT: Okay.

MR. PEREZ: Correct, Your Honor.

THE COURT: You're willing to do that?

MR. PEREZ: Yes.

Transcript of February 13, 2019 permanent injunction hearing, 221:6-23.

THE COURT: ... So, here's what I'm going to do. I'm going to accept the stipulation subject to it being reduced to writing. I want a written stipulation as to the entry of a permanent injunction, and the terms of that permanent injunction, signed off by the, by the AG's office, and by each of the two parties, recognizing, you guys, let me tell you, if you violate that, that temporary, that permanent injunction, there will be sanctions.

Id. at 223:18-25.

L. Perez has the present ability to comply with the order, but he simply refuses to do so. He could work for his father's business and sell restaurant equipment to restaurants, or work on HVAC systems in restaurants, repair coolers in restaurants, or do demolition of restaurants. *See, Ex. 1 at 7:4-8:16.* Instead, L. Perez has opted to use his father's restaurant equipment business as a front for him to build food trucks. This is nothing new. When L. Perez knew the State was initially investigating him in 2018, he tried to hide his conduct by using Denver Restaurant Equipment's address

on Acoma Street, and family members' names in the advertisements for food trucks. *See, Affidavit of Investigator LeAnn Lopez in Support of Temporary Restraining Order*, ¶¶ 106-114, attached as Exhibit 7 to the Motion for Temporary Restraining Order. After this Court entered the *Final Stipulated Judgment [Defendant Perez]* in March 2019, enjoining L. Perez from ever building food trucks again, L. Perez represented to the Attorney General that he was going back to work for his father and sell equipment to restaurants. *See Ex. 7.*

At the same time that he made this representation, L. Perez was signing contracts to lease garage space to start his new food truck business, using Denver Restaurant Equipment's business address in the contracts (*See, Ex. 8 at ¶ 5*) and using at least one family member, Jorge Gallegos-Carbal, to pose as the operator of the new business (who was working for M. Perez at the same time). *See Affidavit of Anibal Miralda at ¶¶ 8-9, attached hereto as Ex. 11; See Ex. 13, 28:11-15; 32:12-34:10.* L. Perez knew his conduct was a violation of this Court's order, which is why he told consumers he did not own Restaurant Equipment Warehouse (*See, Ex. 11 at ¶¶ 6*) and why he directed his employees to cover for him. (*See, Ex. 9 at ¶¶ 9*).

Such conduct is offensive to the authority and dignity of the court. *See, Razatos.* C.R.C.P. 107(d)(1). Without question, Perez's actions merit sanctions commensurate with his ongoing violation of this Court's Order.

What's more, M. Perez and Denver Restaurant Equipment violated the Permanent Injunction. As L. Perez's employer at the time this Court entered its injunction, the State put M. Perez and O. Perez on notice of this Court's injunction

against L. Perez not once but twice. *See, Ex. 5 at ¶¶5-7; Ex.6.* M. Perez admitted during his CID hearing that he received Permanent Injunction and gave it to L. Perez because “what was happening” made him “really upset.” *Ex. 13, 10:14-11:7.* The State’s investigator not only personally served the TRO and, later the Permanent Injunction, she also explained to M. Perez and O. Perez that they could be held in contempt if they allow L. Perez to do anything related to food trucks. “Both parties said they understood.” *See, Ex. 5 at ¶¶5-7.* The relevant language in the Permanent Injunction reads:

Defendants LARRY PEREZ and RUDY MARTINEZ and their officers, directors, agents, servants, employees, independent contractors and any other persons, in active concert or participation with Defendants, who receive actual notice of the Court’s Order are ENJOINED ...

4. Anyone who has notice of this Order and knowingly allows Defendants to perform any such work is also in violation of this Court’s Order.

Permanent Injunction (emphasis added). Certainly M. Perez had the ability not to actively participate and/or allow L. Perez to build food trucks using Denver Restaurant Equipment as a front. M. Perez made it clear during his CID hearing that he ran Denver Restaurant Equipment and decided when and whether L. Perez was allowed on its premises. *Ex. 13 at 54:24-55:10.* The situation involving Ms. Ortibez illustrates that M. Perez knowingly allowed L. Perez to customize and sell food trucks at Denver Restaurant Equipment. He himself was present during the transactions and did nothing to stop L. Perez; in fact, he assisted L. Perez in the sale. *Ex 10 at ¶¶ 10-13.*

WHEREFORE, the State respectfully requests that this Court

- a. Grant this Motion in all respects;
- b. Order the issuance of a contempt citation directed to L. Perez requiring him to appear before this Court and show cause why he should not be held in contempt of the Court's Order;
- c. Order the issuance of a contempt citation directed to M. Perez requiring him to appear before this Court and show cause why he personally and his business Denver Restaurant Equipment should not be held in contempt of the Court's Order;
- d. Direct that the citation informs L. Perez, M. Perez and Denver Restaurant Equipment that punitive or remedial sanctions, in the form of fines and penalties, including jail time, may be imposed upon them to vindicate the authority and dignity of the Court;
- e. Direct that the citation also informs them that if they fail to appear as ordered, a bench warrant may be issued for their arrest without further notice;
- f. Order civil penalties, pursuant to § 6-1-112(b), in the amount of \$10,000 for each violation of the Court's Order and permanent injunction by L. Perez and M. Perez and Denver Restaurant Equipment;
- g. Order accelerated payment of the State's judgment against L. Perez of \$5,000/month, and further order M. Perez and Denver Restaurant Equipment to make payments on behalf of L. Perez; and
- h. Award the State its costs and attorney's fees, together with all such further relief as the Court deems just.

Respectfully submitted this 9th day of December, 2021.

PHILIP J. WEISER
Attorney General

s/Olivia D. Webster _____
OLIVIA D. WEBSTER, 35867*
Senior Assistant Attorney General
First Assistant Attorney General
Consumer Fraud Unit
Consumer Protection Section

Attorneys for Plaintiff

Plaintiff's Address
Ralph L. Carr Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203