

DISTRICT COURT, SUMMIT COUNTY, COLORADO  
501 N. Park Avenue  
Breckenridge, Colorado 80424

DATE FILED: May 14, 2024 2:44 PM  
FILING ID: DA423E06B2EE0  
CASE NUMBER: 2024CV30101

STATE OF COLORADO, *ex rel.* PHILIP J. WEISER,  
ATTORNEY GENERAL

Plaintiff,

v.

FIRST CHOICE PROCESSING.INC.; PERSONAL  
CAREPACKAGES AND MORE; DIRECT USE  
MARKETING INC.; PRIORITY CHOICE  
MARKETING INC.; and DURAND KELBY TOVAR,  
an individual

Defendants.

▲ COURT USE ONLY ▲

Case No.

Div.:

**FINAL CONSENT JUDGMENT**

This matter is before the Court on the Stipulation for Entry of a Final Consent Judgment under C.R.C.P. 58(a) by Plaintiff, State of Colorado, *ex rel.* Philip J. Weiser, Attorney General for the State of Colorado and Defendants First Choice Processing .Inc; Personal Carepackages and More; Direct Use Marketing Inc.; Priority Choice Marketing Choice Marketing Inc. (“Defendant Entities”); and Durand Kelby Tovar, an individual (“Defendants”) (collectively, “the Parties”).

The Court, being fully advised in this matter, finds and concludes:

1. That it has jurisdiction over the Parties and the subject matter of this suit under the grounds alleged in the Complaint by the Attorney General;
2. That venue in Summit County is proper; and
3. That the Parties shall be subject to the following provisions:

### I. GENERAL PROVISIONS

1.1 Scope of Final Consent Judgment. The provisions of this Final Consent Judgment are entered pursuant to the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101, *et seq.* (“CCPA”) and the Colorado Charitable Solicitations Act §§ 6-16-101, *et seq.* (“CCSA”)

1.2 Release of Claims. The Attorney General acknowledges by its execution hereof that this Final Consent Judgment constitutes a complete settlement and release of all claims under the CCPA and the CCSA on behalf of the Attorney General against Defendants, with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted under the CCPA and the CCSA in the Complaint, that arose prior to this date and that relate to or are based upon the acts or practices which are the subject of the Complaint filed in this action. The Attorney General agrees that it shall not proceed with or institute any civil action or proceeding under the CCPA and the CCSA against Defendants, including, but not limited to, an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys’ fees, or costs, for any conduct or practice prior to the

date of entry of this Final Consent Judgment which relates to the subject matter of the Complaint filed in this action.

1.3 Liability. All Parties are entering into this Final Consent Judgment for the purpose of compromising and resolving the disputed claims and to avoid the expense of further litigation.

1.4 Preservation of Law Enforcement Action. Nothing herein precludes the Attorney General from enforcing the provisions of this Final Consent Judgment, or from pursuing any law enforcement action under the CCPA and the CCSA with respect to the acts or practices of Defendants not covered by this Complaint and Final Consent Judgment or any acts or practices of Defendants conducted after the entry of this Final Consent Judgment.

1.5 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 Attorney General 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.

1.6 Non-Approval of Conduct. Nothing herein constitutes approval by the Attorney General of Defendants' past or future business practices. Defendants shall not make any representation contrary to this paragraph.

1.7 Third-Party Claims. Nothing herein shall be construed as a waiver of any rights of third parties, including the rights of consumers to seek restitution or other remedies through other actions.

1.8 Use of Settlement as Defense. Nothing herein shall be interpreted to prevent the Attorney General from taking enforcement action to address conduct occurring after the entry of this Final Consent Judgment that the Attorney General 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.

1.9 Use of Settlement in Business Activity. Under no circumstances shall this Final Consent Judgment, the name of the Attorney General, or the names of any of the Attorney General'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 Defendants.

1.10 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.

1.11 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, including those provided under C.R.S § 6-1-112(1)(b).

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

1.13 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.

1.14 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 the Attorney General's authorized agents or representatives, as well as by any of the Attorney General's successors in interest, agents, or representatives.

1.15 Amendment. This Final Consent Judgment may be amended solely by written agreement signed by the Attorney General and Defendants.

1.16 Notice. Whenever Defendants shall provide notice or any other documents to the Colorado Attorney General under this Final Consent Judgment, that requirement shall be satisfied by sending notice to:

Conor A. Kruger  
Assistant Attorney General  
Consumer Fraud Unit  
Colorado Department of Law  
1300 Broadway, 7th Floor  
Denver, CO 80203  
conor.kruger@coag.gov

Any notice or other documents sent to Defendants by the Colorado Attorney General under this Consent Judgment shall be sent to:

Durand Kelby Tovar  
115 Spyglass Lane  
Silverthorne, Colorado 80498  
1stchoiceprocessing333@gmail.com

1.17 Definitions. Unless otherwise stated herein, all terms herein that are defined in the CCPA and the CCSA shall be given the definition provided by the CCPA and the CCSA.

## II. DEFENDANTS' CONDUCT

2.1 The Attorney General alleges that Defendants have violated § 6-16-111(1)(a) by soliciting contributions without following the requirements of § 6-16-104(1). Through his investigation, the Attorney General has found sufficient facts from which he can allege that Defendants hold themselves out to be established for a patriotic purpose: the support of active-duty service members and veterans. Defendants hold themselves out to operate for the benefit of persons who protect the public safety and veterans, and the services offered by Defendants claim to benefit active-duty service members and veterans.

2.2 Through his investigation, the Attorney General has found sufficient facts from which he can allege that Defendants, on their behalf(s), solicit contributions in Colorado. The Defendant Entities are "charitable organizations." C.R.S. § 6-16-103. As charitable organizations that solicit contributions in Colorado,

Defendants must register with the Secretary of State. C.R.S. § 6-16-104. Defendants know that charities must register but they failed to do so.

2.3 Through his investigation, the Attorney General has found sufficient facts from which he can allege that Defendants use false representations on solicitation materials. C.R.S. § 6-16-111(1)(g). Defendants have used a solicitation with false information to defraud consumers and obtain contributions. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from Colorado consumers.

2.4 The Attorney alleges that, by means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from Colorado consumers.

2.5 The Defendants expressly deny any liability or wrongdoing and are entering into this Consent Judgment to avoid further inconvenience and costs of potential litigation.

### **III. PERMANENT INJUNCTION**

3.1 Effective immediately, this Court permanently enjoins Defendants and any other person under their control or direction who receives actual notice of this Order, from:

- a. Engaging in or conducting any “charitable sales promotion,” as that term is defined in the CCSA, Colo. Rev. Stat. § 6-16-103(3);
- b. Making any charitable solicitations on behalf of any charitable organization, as defined in C.R.S. § 6-16-103(1);

- c. Establishing, directing, facilitating, overseeing, funding, consulting on or otherwise engaging in any managerial or oversight activities relating to solicitation on behalf of, or in concert with, any charitable organization;
- d. Overseeing the collection or disbursement of funds by any organization which engages in solicitation on behalf of, or in concert with, any charitable organization;
- e. Advertising, promoting, soliciting for employees or hiring on behalf of any organization which engages in solicitation on behalf of, or in concert with, any charitable organization;
- f. Benefiting financially, either directly or indirectly, from any relationship with any organization which engages in solicitation on behalf of, or in concert with, any charitable organization, including, but not limited to, accepting compensation for providing or facilitating the purchase of merchandise;
- g. Operating, forming, founding, or establishing any charitable organization;
- h. Acting as a director, officer, trustee, compensated employee, or professional fundraising consultant of any charitable organization;
- i. Directing, facilitating, overseeing, funding, consulting on or otherwise engaging in any managerial or oversight activities for any charitable organization including, but not limited to, having involvement in the collection or disbursement of funds;
- j. Recruiting directors for the governing board of a charitable organization;
- k. Overseeing the operational finances of any charitable organization; and
- l. Benefiting financially, either directly or indirectly, from any relationship with any charitable organization.

#### **IV. MONETARY PROVISIONS**

4.1 In exchange for the release provided in this Consent Judgment, Defendants agree that entry of a final judgment shall be entered against each



Defendant, jointly and severally, in the amount of \$50,000. Interest on this judgment shall accrue at the statutory rate from the date the Court enters a judgment as an order of the Court. The Attorney General agrees to suspend enforcement of the monetary judgment referenced in this paragraph if Defendants comply with paragraphs 4.2 to 4.4 of this Consent Judgment.

4.2 Defendants shall make a minimum payment of \$200 on June 1, 2024, followed by monthly payments of \$200 to be paid on the first of each successive month until the total sum of \$20,000 is paid to the Attorney General. The money that Defendants pay shall 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 Attorney General's actual costs and attorneys' fees, the payment of restitution to consumers, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.

4.3 Interest shall not accrue on any payments due in paragraph 4.2 of this Consent Judgment and Defendants shall receive no discount nor pay any penalty for paying more than \$200 each month.

4.4 Defendants shall send payment by check, made payable to the Colorado Department of Law with a reference to "First Choice Processing." The payment shall be delivered mailed or otherwise delivered to the following address:

Colorado Department of Law  
Consumer Fraud Unit  
1300 Broadway, 7th Floor  
Denver, Colorado 80203

4.5 In the event that Defendants fail to comply with paragraphs 4.2-4.4 for three successive months in a row, the Attorney General shall provide written notice to the Defendants and provide the Defendants 35 days to cure the default without a penalty. If the Defendants do not cure the default within the 35 day period outlined in the notice, the judgment referenced in paragraph 4.1 (\$50,000) shall immediately enter as a final judgment against Defendants, jointly and severally. If the Defendant's default cause the judgment referenced in paragraph 4.1 (\$50,000) to enter, the Attorney General may take any action authorized by then existing law to collect on the judgment.

4.5 In the event that Defendants fail to comply with paragraph 4.4 for three successive months, the Attorney General shall provide written notice to the Defendants and provide the Defendants 35 days to cure the default without a penalty. If the Defendants do not cure the default within the 35 day period outlined in the notice, the judgment referenced in paragraph 4.1 plus interest shall immediately enter as a final judgment against Defendants, jointly and severally. If the Defendants default and do not cure within the 35 day period, the Attorney General may take any action authorized by then existing law to collect on the judgment without further action of the Court.

## **V. REPRESENTATIONS AND WARRANTIES**

5.1 Nothing in this Final Consent Judgment shall be construed as relieving Defendants of their obligation to comply with all state and federal laws, regulations,

or rules, or granting permission to engage in any acts or practices prohibited by such law, regulation or rule.

5.2 Defendants acknowledge that they have thoroughly reviewed this Final Consent Judgment, that they understand and agree to its terms, and that they agree that it shall be entered as an Order of this Court. Defendants have had an opportunity to consult with counsel before entering this Consent Judgment.

5.3 During the Attorney General's investigation, Defendants have produced documents and made representations as to the value of their company and their assets, the Attorney General relied on these representations as a material inducement to entering this Consent Judgment.

5.4 Defendants have been given the opportunity to have an attorney review this agreement prior to signing it.

## **VI. VIOLATION OF THIS CONSENT JUDGMENT**

6.1 Any violation of any injunctive terms of this Consent Judgment shall constitute both an event of default under the Consent Judgment and contempt of this Court and subject Defendants to further penalties. Violation of the Court's injunction may also constitute criminal contempt and subject Defendants to incarceration either through a civil or criminal contempt finding.

6.2 Defendants shall fully cooperate with all further investigations relating to these proceedings, including investigations into deceptive trade practices and any investigations into Defendant's assets and financial standing.

6.3 In any action brought by the State to enforce this Final Consent Judgment, Defendants consent to personal and subject matter jurisdiction in the District Court for Summit County.

6.4 In the event that the State seeks judicial relief to enforce the terms of this consent judgment and is successful in such enforcement, the Defendants shall pay the reasonable attorneys fees incurred by the State in connection with the enforcement action. Defendants shall be jointly and severally liable for any attorneys fees amount ordered by the Court in an enforcement action.

## VII. ENFORCEMENT OF FINAL CONSENT JUDGMENT

7.1 In any action brought by the Attorney General to enforce this Final Consent Judgment, Defendants consent to personal and subject matter jurisdiction in Summit County District Court. Defendants further consent to domestication of any judgment related to violations of this Consent Judgment in any state court within the United States. This Consent Judgment is governed by the laws of the State of Colorado.

SO ORDERED and SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

BY THE COURT:

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The Honorable  
District Court Judge

Agreed to and approved by the parties:

On behalf of the Plaintiffs,

PHILIP J. WEISER, Attorney General

For the Attorney General



\_\_\_\_\_  
Conor A. Kruger, #54111  
Assistant Attorney General  
Brady J. Grassmeyer, #47479  
Senior Assistant Attorney General  
Consumer Protection Section

(Date) 4/30/24

On behalf of Defendants,

\_\_\_\_\_  
Durand Kelby Tovar, Pro Se

(Date) \_\_\_\_\_

On this \_\_\_\_ Day of \_\_\_\_\_, 2024, Durand Kelby Tovar, signed

this Final Consent Judgment before me in the State of Colorado, County of

\_\_\_\_\_. Witness my hand and official seal,

\_\_\_\_\_  
Notary Public

Agreed to and approved by the parties:

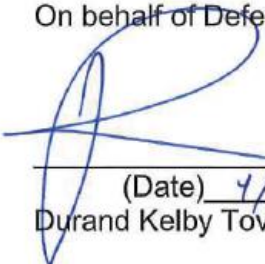
On behalf of the Plaintiffs,

PHILIP J. WEISER, Attorney General

For the Attorney General

\_\_\_\_\_  
(Date) \_\_\_\_\_  
Conor A. Kruger, #54111  
Assistant Attorney General  
Brady J. Grassmeyer, #47479  
Senior Assistant Attorney General  
Consumer Protection Section


On behalf of Defendants,

  
\_\_\_\_\_  
(Date) 4/30/2024  
Durand Kelby Tovar, Pro Se

On this 30 Day of April, 2024, Durand Kelby Tovar, signed

this Final Consent Judgment before me in the State of Colorado, County of

Summit. Witness my hand and official seal,

  
\_\_\_\_\_  
Notary Public

JAMES STEWART WILLIAMS  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20204029573  
MY COMMISSION EXPIRES AUGUST 25, 2024