

**GRANTED BY COURT**

**03/12/2019**

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CASE NUMBER: 2018CV34469



**Robert M. Gahey  
Judge**

DISTRICT COURT, CITY AND  
COUNTY OF DENVER, COLORADO

1437 Bannock Street  
Denver, CO 80202

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

Plaintiff,

v.

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,

Defendants.

▲ COURT USE ONLY ▲

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JAY B. SIMONSON, 24077\*  
First Assistant Attorney General  
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\*Counsel of Record

Case No. 2018CV34469

Div.:414

**STIPULATED CONSENT JUDGMENT**

This matter is before the Court on the parties' Stipulation for Entry of a Final Consent Judgment. The Court has reviewed the Stipulation and concludes that good cause has been shown for entering this Final Consent Judgment.

Accordingly, IT IS ORDERED that:

## I. GENERAL PROVISIONS

1.1 Scope of Final Consent Judgment. The injunctive provisions of this Final Consent Judgment are entered pursuant to the Colorado Consumer Protection Act, § 6-1-101, *et seq.* C.R.S. (2018) (“CCPA”). This Final Consent Judgment shall apply to DEFENDANT RUDY MARTINEZ (“DEFENDANT”).

1.2 Release of Claims. The State of Colorado, *ex rel.* Philp J. Weiser, Attorney General (hereinafter the “STATE”), acknowledges by its execution hereof that this Final Consent Judgment constitutes a complete settlement and release of all claims under the CCPA on behalf of the STATE against the DEFENDANT, The STATE agrees that it shall not proceed with or institute any civil action or proceeding under the CCPA against the DEFENDANT 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. Both parties are entering into this Final Consent Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further litigation.

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

1.5 Compliance with and Application of State Law. Nothing herein relieves the DEFENDANT of his duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the STATE for the DEFENDANT 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 Preservation of Private Claims and Relation to Private Settlements. Nothing herein shall be construed as a waiver of any private rights, causes of action, or remedies of any person against the DEFENDANT with respect to the acts and practices covered by this Final Consent Judgment. Judgments obtained by individual consumers in prior legal actions remain in full effect.

1.7 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.

1.8 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) and C.R.C.P. Rule 107.

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

1.10 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.

1.11 Successors in Interest. The terms and provisions of this Final Consent Judgment may be enforced by the current Colorado Attorney General, and by any of his duly authorized agents or representatives, as well as by any of his successors in interest, and by any of his successors in interest's agents or representatives.

1.12 Amendment. This Final Consent Judgment may be amended solely by written agreement signed by the STATE and the DEFENDANT.

1.13 Notice. Any notices or other communication sent to DEFENDANT pursuant to this Final Consent Judgment shall be considered as received if sent by email to [rmartinez682@gmail.com](mailto:rmartinez682@gmail.com).

## II. PERMANENT INJUNCTION

2.1 This Court's Permanent Injunction Order entered on February 26, 2019 is incorporated herein. As per the Injunctive Order, DEFENDANT is prohibited from working on food trucks in any manner.

DEFENDANT, and any person under the direction or control of any DEFENDANT, including but not limited to, any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who has received actual notice of this Court's Order, are hereby PERMANENTLY ENJOINED from:

- a) Engaging in any activity related to the fabrication, repair or sale of food trucks and trailers for profit;
- b) Acting as a "motor vehicle dealer" as defined by C.R.S. §44-20-102(18)

unless licensed to do so pursuant to C.R.S. § 44-20-124(2).

2.2 If previously advised by this Court and included in the permanent injunction “If you (Defendant) as much as screw in a screw in a food truck or hold up a window to assist someone else on a food truck you are acting in violation of the Court’s injunctive Order and subject to proceedings for civil or criminal contempt.

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

2.4 As per the injunction and its prohibition against any activity related to food trucks, DEFENDANT will dissolve any and all corporate entities containing “food truck” or “mobile kitchen” and will cease any use of such names.

### **III. MONETARY PROVISIONS**

3.1 The DEFENDANT agrees to pay a total amount of \$1,500,000. Nothing within this settlement or the payment plan precludes any collection efforts by the Colorado Attorney General. The Attorney General retains all post judgment collection rights, pursuant to C.R.C.P. 69, including the placing of liens, garnishment, and the liquidation of any assets.

3.2 Any payments or collection of money 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 attorney fees and costs, restitution, if any, and for future consumer education and for consumer enforcement.

3.3 All payments on this judgment shall be made payable to the Colorado Department of Law with a reference to “*State v. Denver Custom Food Trucks, et al.*, 2018CV34469, and shall be delivered to:

Chele Clark, Program Assistant  
Consumer Fraud Unit  
Colorado Department of Law  
1300 Broadway 7<sup>th</sup> Floor  
Denver, Colorado 80203

### **IV. REPRESENTATIONS AND WARRANTIES**

4.1 Except as expressly provided in this Final Consent Judgment, nothing in this Final Consent Judgment shall be construed as relieving the DEFENDANT of his 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.

4.2 The DEFENDANT acknowledges that he has thoroughly reviewed this Final Consent Judgment and that he understands and agrees to its terms, and that they agree that it shall be entered as an Order of this Court.

**V. VIOLATION OF THIS CONSENT JUDGMENT**

5.1 Any violation of any injunctive terms of this Consent Judgment shall constitute contempt of this Court and subject DEFENDANT to further penalties and an increase of the \$1,500,000 judgment. Violation of the Court's injunction may also constitute criminal contempt and subject DEFENDANT to incarceration either through a civil or criminal contempt finding.

5.2 DEFENDANT 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.

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

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

BY THE COURT:

\_\_\_\_\_  
District Court Judge

This Consent Judgment concerning the DEFENDANT, signed and agreed to this 8<sup>th</sup> day of March, 2019.

In all respects, on behalf of Defendant  
Rudy Martinez

In all respects, on behalf of the Plaintiff  
the State of Colorado, *ex rel.*  
PHILIP J. WEISER, Attorney General

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RUDY MARTINEZ

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