

<p>DISTRICT COURT, SUMMIT COUNTY, COLORADO 501 N. Park Avenue Breckenridge, Colorado 80424</p> <hr/> <p>STATE OF COLORADO, <i>ex rel.</i> PHILIP J. WEISER, ATTORNEY GENERAL</p> <p>Plaintiff,</p> <p>v.</p> <p>FIRST CHOICE PROCESSING.INC.; PERSONAL CAREPACKAGES AND MORE; DIRECT USE MARKETING INC.; PRIORITY CHOICE MARKETING INC.; and DURAND KELBY TOVAR, an individual,</p> <p>Defendants.</p>	<p>DATE FILED: May 14, 2024 2:44 PM FILING ID: DA423E06B2EE0 CASE NUMBER: 2024CV30101</p> <p>▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General LAUREN M. DICKEY, 45773* First Assistant Attorney General BRADY J. GRASSMEYER, 47479* Senior Assistant Attorney General CONOR A. KRUGER, 54111* Assistant Attorney General Ralph L. Carr Judicial Center 1300 Broadway, 7th Floor Denver, CO 80203 Telephone: (720) 508-6216 FAX: (720) 508-6040 *Counsel of Record</p>	<p>Case No.</p> <p>Div.:</p>
<p>COMPLAINT</p>	

Plaintiff, the State of Colorado, upon relation of Philip J. Weiser, Attorney General for the State of Colorado, by and through undersigned counsel (“Attorney General” or the “State”) brings this action and in support thereof alleges as follows:

INTRODUCTION

1. Colorado Charities operate off the goodwill and confidence of Colorado consumers. Fraudulent charities not only harm individual consumers by unlawfully taking their contributions but also the future and viability of all legitimate charities in Colorado by undermining consumers' confidence in charitable giving.

2. The Colorado Charitable Solicitations Act §§ 6-16-101, *et seq.* ("CCSA") regulates charities in Colorado. When the general assembly passed the CSSA, it found that, "[i]legitimate charities are harmed" by fraudulent charities because "the money available for contributions continually is being siphoned off by fraudulent charities" and that "the goodwill and confidence of contributors continually is being undermined by the practices of unscrupulous solicitors." C.R.S. § 6-16-102.

3. Defendants have operated as a charity and have reaped the benefits of the goodwill that comes with being a charity without registering as a charity or undergoing the same scrutiny as a properly registered charity.

4. By failing to follow the laws applicable to other nonprofit entities, Defendants have interfered with the public's interest in making informed choices as to which charitable causes should be supported.

5. The Attorney General brings this action under the Colorado Consumer Protection Act, §§ 6-1-101 through -116, C.R.S. ("CCPA") to stop Durand Tovar, First Choice Processing, Inc., Personal Carepackages And More, Direct Use Marketing Inc., and Priority Choice Marketing Inc. (collectively, Defendants) from engaging in deceptive conduct and to secure all other appropriate relief.

6. The Attorney General is filing a Final Consent Judgment simultaneously with this Complaint. The Final Consent Judgment was agreed to by the parties and represents a final settlement on all of the issues raised by this Complaint. The Attorney General requests that the Court enter the Final Consent Judgment as an order of this Court.

JURISDICTION AND VENUE

7. Pursuant to §§ 6-1-103 and 6-1-110(1), C.R.S., this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

8. The violations alleged in this Complaint occurred, in part, in Summit County, Colorado. Therefore, venue is proper in Summit County, Colorado pursuant to § 6-1-103, C.R.S. and Colorado Rule of Civil Procedure 98.

RELEVANT TIMES

9. The conduct that gives rise to the claims for relief contained in this Complaint began at least in 2013 and has been ongoing through the present.

10. This action is timely because it is being brought within three years of the date on which the last in a series of false, misleading, deceptive acts or practices occurred, and the described acts or practices are ongoing. C.R.S. § 6-1-115.

FACTUAL ALLEGATIONS

11. Defendants solicit consumers door-to-door asking for monetary contributions which they represent will be used to send care packages to active-duty military members and veterans.

12. Defendant Durand Kelby Tovar (“Tovar”) resides at 115 Spyglass Lane, Silverthorne, CO 80498. At all times relevant to this Complaint, acting alone or in concert with others, Tovar formulated, directed, or controlled the acts and practices of the other Defendants, including the acts and practices set forth in this Complaint.

13. First Choice Processing, Inc. (“First Choice”) is a Colorado corporation, incorporated on January 26, 2020, with its principal office located at 400 N. Park Ave Ste #10 b 833, Breckenridge, CO 80424. As of April 30, 2024, First Choice is in good standing with the Colorado Secretary of State. Durand Tovar is the incorporator and registered agent of the corporation.

14. Personal carepackages and more (“Personal Carepackages”) is a Colorado corporation, incorporated on March 27, 2023, with its principal office located at 115 Spyglass Lane, Silverthorne, CO 80498. As of April 30, 2024, Personal Carepackages is in good standing with the Colorado Secretary of State. Durand Tovar is the incorporator and registered agent of the corporation.

15. Direct Use Marketing Inc (“Direct Use”) is a Colorado corporation, incorporated on November 9, 2010, with its principal office located at 1150 Inca Street, #27, Denver, CO 80204. As of April 30, 2024, Direct Use is delinquent with the Colorado Secretary of State and has been so since May 1, 2012. Durand Tovar is the incorporator and registered agent of the corporation.

16. Priority Choice Marketing Inc. (“Priority Choice”) is a Colorado corporation, incorporated on January 8, 2015, with its principal office located at 400 N. Park Ave Ste #10 b 833, Breckenridge, CO 80424. As of April 30, 2024, Priority Choice is delinquent with the Colorado Secretary of State and has been so since June 1, 2022. Durand Tovar filed periodic reports for the corporation in May 2019 and April 2021.

17. Since 2010, Mr. Tovar has operated First Choice Process, Priority Choice, Personal Carepackages, and Direct Use. In this Complaint, the term “Defendant Entities” refers to each of these entities collectively.

I. Attorney General’s Investigation

18. The Attorney General’s investigation began when Attorney General Investigator Tim Halladay spoke with multiple consumers who were visited at their homes by solicitors who identified themselves as working for one of the Defendant Entities. The solicitors asked the consumer for monetary contributions to pay for care packages which would be sent to active-duty military members and military veterans.

19. Consumers were either told that the Defendant Entities were a non-profit entity or believed that Defendant Entities were a non-profit entity when they gave money to the solicitor.

20. Many of these consumers believed they were purchasing care packages that would be sent directly to active-duty military members or military veterans.

21. When consumers asked for receipts for their donations, Defendants, or the solicitors that work on their behalf, gave consumers a receipt that stated that the business was a “for profit company” that was “not affiliated with any military, school, or hospital.”

22. As part of the investigation, Mr. Tovar gave sworn testimony. *See* C.R.S. § 6-1-109. In his sworn testimony, Mr. Tovar stated that Defendant Entities used monetary contributions they received from a solicitation to purchase flat rate boxes from the United States Postal Service.

23. Mr. Tovar testified that he would purchase snacks, socks, and other personal care items from Costco and other retailers to put into the flat rate boxes. Mr. Tovar further testified that once the boxes were assembled, he would send them to active-duty military members or veterans via the USPS.

24. As part of the investigation, the Attorney General reviewed Defendants' bank statements, and records of their peer-to-peer payment processor accounts. These documents do not show any purchases from the USPS between June 2021 and the present day. Those same documents show that Defendants have not made a purchase at Costco since June 11, 2021.

25. Mr. Tovar also testified that the Defendant Entities were registered with the Secretary of State as for-profit companies and that they were specifically not registered as nonprofits or charities. Likewise, there is no indication that Mr. Tovar is registered as a paid solicitor.

26. The Attorney General's investigation also uncovered evidence that solicitors who work on behalf of Defendant Entities show prospective donors a leaflet that claims, "[o]ur distributor annually sends 10,000 plus care packages filled with snacks, entertainment, hygiene and hand-made items, plus personal letter of appreciation to Veterans, New Recruits, and individually named U.S. services members deployed overseas."

27. Mr. Tovar testified that Defendant Entities had not used a third party distributor since at least 2017. Mr. Tovar also testified that the Defendant Entities have not sent anywhere near 10,000 care packages to military members or veterans.

28. In fact, based on the facts learned during the investigation, the Attorney General is unable to confirm that any care packages were sent to active-duty military members or veterans since at least June 2021.

II. Defendants' Deceptive Trade Practices

29. Defendants have violated the Colorado Charitable Solicitations Act. Violating the CSSA is a violation of the Colorado Consumer Protection Act. C.R.S. § 6-1-105(1)(hh). Violating the CCPA subjects a defendant to injunctive and monetary consequences. *See* C.R.S. §§ 6-1-110 to 112.

30. Mr. Tovar directs, controls, and operates the Defendant Entities. Under the CCPA, personal liability may be imposed on officers or agents who directly participated in the deceptive trade practices. C.R.S. § 6-1-102(6).

31. Defendants' violations of the Colorado Charitable Solicitations Act (CSSA) can be divided into two categories: failing to comply with the statutes that govern charitable registration; and using misleading documents during their solicitation.

A. Failure to Register with the Secretary of State

32. Defendants violated the statutes that govern registration of charities in three ways.

33. First, the Defendant Entities were required to file a registration statement with the Secretary of State because they are charitable organizations¹ that have solicited contributions² in Colorado. C.R.S. § 6-16-104(1). The Defendant Entities never filed the required registration statement.

34. Second, absent exceptions which are not present in this case, the Defendant Entities were required to annually file a financial report for the most recent fiscal year on a form prescribed by the Secretary of State or a copy of the organization's IRS form 990. C.R.S. § 6-16-104(5)(a). Defendant entities have not filed any financial reports with the Secretary of State.

35. Third, Mr. Tovar and others that work for Defendant Entities have worked as "paid solicitors" without registering as such. A "paid solicitor" is a person who, for monetary compensation, performs any service in which contributions will be solicited in this state by such compensated person or by any compensated person he or she employs, procures, or engages to solicit for contributions. C.R.S. § 6-16-103(7). Defendants, and the agents that work for them, are paid solicitors.

36. The Attorney General's investigation showed that Defendant Entities pay its solicitors a commission of up to 50% of the amount donated and that solicitors are incentivized to direct the money to certain types of packages to that had a higher percentage of the solicitation going towards the solicitor's commission.

37. On information and belief, none of these solicitors have registered with the Secretary of State as "paid solicitors." C.R.S. § 6-16-104.6.

¹ A charitable organization is any person who is or holds himself out to be established for any benevolent or patriotic purpose, persons that operate for the benefit of veterans, or persons that employ a charitable appeal which suggests there is a charitable purpose as the basis for a solicitation. C.R.S. § 6-16-103(1).

² A "contribution" is "the grant, promise, or pledge of money, credit, property, financial assistance, or any other thing of value in response to a solicitation." C.R.S. § 6-16-103(5).

B. Deceptive Conduct

38. In addition to violating the statutes governing charitable registration, Defendant Entities have violated the CSSA and the CCPA by using deceptive statements during the course of their charitable solicitations.

39. As described above, Defendants show prospective donors a leaflet that claims that their distributor sends more than 10,000 care packages annually.

40. Defendants made these claims despite knowing that they do not use a third party distributor.

41. Defendants themselves send nowhere near 10,000 care packages annually. On information and belief, the Attorney General contends that Defendants have not sent any care packages since at least June 2021.

42. Defendant Entities used this false representation to make donors feel more comfortable with the organization and to induce them to contribute to the organization, which resulted in Defendant Entities collecting more contributions from consumers in violation of C.R.S. § 6-16-111(1)(g).

FIRST CLAIM FOR RELIEF

Violation of the Colorado Charitable Solicitations Act: Failures to Register (Knowingly solicits any contribution and in the course of such solicitation knowingly performs any act or omission in violation of any of the provisions of C.R.S. §§ 6-16-104 to 6-16-107, 6-16-110, and 6-16-111(1)(a))

43. Plaintiff incorporates herein by reference all allegations set forth above.

44. Defendants have violated § 6-16-111(1)(a) by soliciting contributions without following the requirements of § 6-16-104.

45. Defendants hold themselves out to be established for a patriotic purpose, the support of active-duty service members and veterans.

46. Defendants hold themselves out to operate for the benefit of persons who protect the public safety and veterans, and the services offered by Defendant and Defendant Entities claim to benefit active-duty servicemembers and veterans.

47. Accordingly, the Defendant Entities are “charitable organizations” as defined by section 6-16-103.

48. As charitable organizations, Defendants must register as a charity with the Colorado Secretary of State under § 6-16-104 in order to subject them to the scrutiny of the Secretary of State's office.

49. Defendants know that charities must register but have failed to do so.

50. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from Colorado consumers.

51. Violating the Colorado Charitable Solicitations Act is also a violation of the Colorado Consumer Protection Act. C.R.S. § 6-1-105(1)(hh).

SECOND CLAIM FOR RELIEF

Violation of the Colorado Charitable Solicitations Act: Deceptive Conduct
(With the intent to defraud, executes a scheme to defraud by means of a solicitation or obtains money, by means of a false representation in the course of a solicitation, § 6-16-111(1)(g))

52. Plaintiff incorporates herein by reference all allegations set forth above.

53. Defendants have violated § 6-16-111(1)(g) by using false representations on solicitation materials.

54. Specifically, Defendants have solicited donations for care packages that they do not send and have used misleading materials during the solicitation. Defendants have thus obtained contributions with false information.

55. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from Colorado consumers.

56. Because Defendants have violated the CCSA, they have also violated the CCPA. § 6-1-105(1)(hh).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for Judgment against the Defendants and the following relief:

- A. An order declaring Defendants' above-described conduct to be in violation of the Colorado Charitable Solicitations Act, C.R.S. § 6-16-104(1), § 6-16-111(1)(a), § 6-16-111(1)(i), and § 6-16-111(1)(g).
- B. An order declaring Defendants' above-described conduct to be in violation of the Colorado Consumer Protection Act, C.R.S. § 6-1-105(1)(hh).
- C. An order permanently enjoining Defendants, their officers, directors, successors, assignees, agents, employees, and anyone in active concert or participation with any Defendant with notice of such injunctive orders, from engaging in any deceptive trade practice as defined in and proscribed by the CCSA and CCPA, and as set forth in this Complaint.
- D. Additional appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.
- E. A judgment in an amount to be determined at trial for restitution, unjust enrichment, or other equitable relief pursuant to C.R.S. § 6-1-110(1).
- F. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado civil penalties in an amount not to exceed \$20,000 per violation pursuant to C.R.S. § 6-1-112(1)(a), or \$50,000 per violation pursuant to C.R.S. § 6-1-112(1)(c).
- G. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to C.R.S. § 6-1-113(4).
- H. An order adopting the Final Consent Judgment, being filed simultaneously herewith, as an order of the Court.
- I. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCSA and CCPA.

Dated this 14th day of May, 2024

PHILIP J. WEISER
Attorney General

/s/ *Conor A. Kruger*

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