

<p>DISTRICT COURT, COUNTY OF LARIMER,  COLORADO  201 La Porte Avenue  Suite 100  Fort Collins CO 80521</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS,  ATTORNEY GENERAL,</p> <p>Plaintiff,</p> <p>v.</p> <p>FULL SPIRIT MINISTRIES a/k/a OPEN DOOR  MISSION, RICHARD M. THEBO, individually,  DARREN C. THEBO, individually, ANDREW  KAMINSKI, individually, and PATSY KAMINSKI,  individually.</p> <p>Defendants.</p>	<p><b>EFILED Document</b>  <b>CO Larimer County District Court 8th JD</b>  <b>Filing Date: Mar 14 2012 3:07PM MDT</b>  <b>Filing ID: 43081085</b>  <b>Review Clerk: Lisa L Graham</b></p> <p style="text-align: center;">▲ <b>COURT USE ONLY</b> ▲</p>
<p>Attorneys for Plaintiff:  JOHN W. SUTHERS  Attorney General  ALISSA HECHT GARDENSWARTZ, 36126*  Senior Assistant Attorney General  <a href="mailto:alissa.gardenswartz@state.co.us">alissa.gardenswartz@state.co.us</a>  GINNY SCIABBARRASI, 39753*  Special Assistant Attorney General  ginny.sciabbarrasi@state.co.us  JAY B. SIMONSON, 24077*  First Assistant Attorney General  jay.simonson@state.co.us  1525 Sherman Street, 4<sup>th</sup> Floor  Denver, CO 80203  (303) 866-5079  (303) 866-4916 Fax  *Counsel of Record</p>	<p>Case No.:  12CV438</p> <p>Div.:</p>
<p><b>COMPLAINT</b></p>	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges as follows:

## INTRODUCTION

1. The Colorado Attorney General brings this action on behalf of the State of Colorado pursuant to the Colorado Charitable Solicitations Act, Colo. Rev. Stat. §§ 6-16-101 *et seq.* (“CCSA”), and the Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 *et seq.* (“CCPA”), to enjoin and restrain the Defendants from engaging in certain acts of charitable fraud, as well as for statutorily mandated civil penalties, for disgorgement, restitution, and for other relief as provided in the CCSA, and the CCPA. The Attorney General additionally brings this action under his common law authority to protect against misuse of charitable assets.

## PARTIES

2. John W. Suthers is the duly elected Attorney General of the State of Colorado, and is authorized to enforce the CCPA and the CCSA. The Attorney General is also charged with protection of charitable assets pursuant to common law and Colo. Rev. Stat. § 24-31-101(5).

3. Defendant Full Spirit Ministries a/k/a Open Door Mission (“FSM-ODM”) is a Colorado non-profit corporation incorporated on or about February 5, 1986, with a principal place of business at 316 Jefferson Street, Fort Collins, CO 80524. In its Registration Statement for Colorado Charitable Organizations, FSM-ODM states that its mission is to, “Shelter, feed, and help rehabilitate homeless people back into a productive part of society.”

4. Defendant Richard M. Thebo is an individual who at the times relevant to this action resided at 2715 Alan Street, Fort Collins, CO 80524. Richard Thebo is the founder, Chief Executive Officer and President of FSM-ODM. Richard Thebo is intimately involved in all aspects of FSM-ODM’s operations, and has formulated, directed, controlled, or participated in the alleged unlawful acts or practices of FSM-ODM.

5. Defendant Darren C. Thebo is an individual who at the times relevant to this action resided at 2716 Alan Street, Fort Collins, CO 80524. Mr. Thebo is Defendant Richard Thebo’s son, and a former board member of FSM-ODM. Mr. Thebo has formulated, directed, controlled, or participated in the alleged unlawful acts or practices of FSM-ODM.

6. Defendant Andrew Kaminski is an individual who at times relevant to this action resided at 16570 East LaSalle Place, Aurora, Colorado 80013. Mr. Kaminski currently serves on the board of FSM-ODM and is one of the founding board members. Mr. Kaminski has formulated, directed, controlled, or participated in the alleged unlawful acts or practices of FSM-ODM.

7. Defendant Patsy Kaminski is an individual who at times relevant to this action resided at 16570 East LaSalle Place, Aurora, Colorado 80013. Ms. Kaminski

has served on the FSM-ODM board since 2006. Ms. Kaminski has formulated, directed, controlled, or participated in the alleged unlawful acts or practices of FSM-ODM.

### **JURISDICTION AND VENUE**

8. Pursuant to the CCPA, Colo. Rev. Stat. §§ 6-1-103 and 6-1-110(1), this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

9. At all relevant times during this action, Defendant FSM-ODM maintained a principal place of business in Fort Collins, Colorado. Therefore, venue is proper in Larimer County, Colorado, pursuant to Colo. Rev. Stat. §§ 6-1-103, and Colo. R. Civ. P. 98.

### **RELEVANT TIMES**

10. The conduct that gives rise to the claims for relief contained in this Complaint began as early as 2003 and has continued through the present.

### **PUBLIC INTEREST**

11. Through the unlawful practices of their business, vocation, or occupation the Defendants have deceived, misled, and financially injured consumers in Colorado. Specifically, the Defendants improperly solicited and spent donations made to FSM-ODM, and have repeatedly violated the Colorado Charitable Solicitations Act and the Colorado Consumer Protection Act.

12. Additionally, Defendants have misused and wasted and continued to misuse and waste charitable assets intended for the benefit of the public.

13. Therefore, the Attorney General believes these legal proceedings are in the public interest and are necessary to safeguard Colorado citizens from the Defendants' charitable fraud and unlawful business activities, as well as to protect valuable charitable assets intended to benefit the public.

### **STATUTORY BACKGROUND**

#### ***A. The Colorado Charitable Solicitations Act***

14. The Colorado Charitable Solicitations Act was passed by the legislature after it found that "fraudulent charitable solicitations are a widespread practice in this state which results in millions of dollars of losses to contributors and legitimate charities each year." Colo. Rev. Stat. § 6-16-102. Accordingly, the legislature passed the Act to "protect the public's interest in making informed choices as to which charitable causes should be supported." *Id.*

15. The Charitable Solicitations Act prohibits “charitable fraud,” which is committed when a person:

(g) With intent to defraud, devises or executes a scheme or artifice to defraud by means of a solicitation or obtains money, property, or services by means of a false or fraudulent pretense, representation, or promise in the course of a solicitation. A representation may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a material fact;

...

(i) Represents or causes another to represent that a contribution to a charitable organization will be used for a purpose other than the purpose for which the charitable organization actually intends to use such contribution;

Colo. Rev. Stat. § 6-16-111(1)(g) and (i).

***B. The Consumer Protection Act***

16. The Colorado Consumer Protection Act (CCPA) prohibits deceptive trade practices as set forth in the statute. *Id.* § 6-1-105.

17. Any violation of the CCSA is a deceptive trade practice under the CCPA and subjects the violator to the CCPA’s penalties. *Id.* §§ 6-1-105(1)(hh), 6-16-111(5).

**GENERAL ALLEGATIONS**

18. FSM-ODM is a tax-exempt charity that operates a homeless shelter located in Fort Collins, Colorado. According to FSM-ODM tax filings, over 99% of the organization’s revenues come from public donations.

19. Since its inception in 1986, Defendant Richard Thebo has been the CEO and President of FSM-ODM, and has always served on its Board. Defendant Richard Thebo has hand-picked the remaining board members, who are typically close friends and family.

20. For example, Defendant Richard Thebo’s son, Defendant Darren Thebo, also served on the Board from approximately 2009 to 2010. Defendant Richard Thebo has been married twice, and both of his wives served on the FSM-ODM Board until their respective divorces from Defendant Richard Thebo.

21. Additionally, Defendant Richard Thebo hand-picked his friend, Defendant Andrew Kaminski, as one of the founding board members of FSM-ODM.

22. Defendant Patsy Kaminski is Andrew Kaminski's wife, and was appointed to the Board after Defendant Richard Thebo's second wife was ousted from the Board in 2006.

23. Defendants Andrew and Patsy Kaminski run a prison ministry, Full Gospel Businessmen's Fellowship International, to which FSM-ODM donates money, approximately \$150, on a monthly basis. Additionally, FSM-ODM made a one-time payment of \$4500 to Andrew Kaminski personally, ostensibly to purchase a car for his ministry.

24. The consequence of FSM-ODM's Board consisting of Defendant Richard Thebo's friends and family has been a lack of oversight over FSM-ODM's operations and finances, resulting in misuse of charitable assets and misrepresentations to donors.

***A. Misuse of Charitable Funds***

25. Defendants misled donors by raising money ostensibly for the benefit of FSM-ODM and intending to use those funds for private benefit instead.

26. For example, Richard Thebo purchased his home in 2007 and his son Darren's home in 2008. Although these homes were for their personal use and are both in Defendant Richard Thebo's name, Defendant Andrew Kaminski admitted in sworn testimony that FSM-ODM has made mortgage payments on both homes and paid for a number of improvements to both homes. These improvements include new, high-end carpeting, new driveways, new fencing, landscaping, and the installation of a waterfall. By FSM-ODM's own admission, the charity has spent at least \$7701.96 on improvements to the homes of Defendants Richard and Darren Thebo.

27. Defendants claim these improvements were paid for by FSM-ODM because the Thebos' homes were used as "halfway houses." However, these properties were never listed on FSM-ODM tax returns as assets of the organization, nor were improvements to these homes reported as program expenses of the organization.

28. Moreover, the homeless individuals who lived at Defendant Richard Thebo's residence primarily were his female companions. Defendant Darren Thebo has only had two individuals live with him at his residence since it was purchased, and only one of those individuals was from the FSM-ODM shelter.

29. Additionally, Defendant Darren Thebo, who operates Thebo Construction LLC, used FSM-ODM funds to purchase tools for his general construction business. While FSM-ODM claims that Defendant Darren Thebo performed some construction at the shelter, he also used construction tools and materials purchased with FSM-ODM funds for other construction jobs. Moreover,

because these purchases were made on an FSM-ODM account, Thebo did not pay sales tax on the vast majority of these items.

30. Defendant Richard Thebo also purchased a Ford truck in 2004 using FSM-ODM funds, titled the vehicle in FSM-ODM's name, and then let Defendant Darren Thebo use it for his personal business. FSM-ODM made both finance and insurance payments on the vehicle, even though Defendant Darren Thebo used the truck for personal business up to approximately August 2010. Similarly, Defendant Richard Thebo purchased a Saturn Vue with FSM-ODM funds that he uses for personal business.

31. Defendant Richard Thebo generally has allowed FSM-ODM funds to be used for his son Darren's expenses, including over \$1000 in dental work, a \$1590 bill for legal services, and child support payments. Defendant Richard Thebo also allowed his son to use FSM-ODM credit cards for personal expenses. Finally, Defendant Darren Thebo has taken in-kind donations made to FSM-ODM for his personal use, including a donated television and numerous donated food items.

32. The \$1590 that FSM-ODM paid for Defendant Darren Thebo's legal fees was categorized as a loan to him. Upon information and belief, Defendant Darren Thebo has not repaid said loan.

33. FSM-ODM claims that payments made to Defendant Darren Thebo were for his construction work at the shelter. In fact, many homeless residents at the shelter did the majority of the work for which Defendant Darren Thebo was allegedly compensated.

34. Defendant Richard Thebo also has run his personal expenses through FSM-ODM, including veterinary bills and pet supplies, numerous meals at restaurants, cellular phone bills, and payment for a speeding ticket in 2003.

35. In addition to accepting donations from the public, FSM-ODM charges certain homeless residents a nightly fee for staying at the shelter, which is typically paid in cash. Defendant Richard Thebo would treat these funds as petty cash and would not track the funds from being taken from the residents to being deposited at the bank. Oftentimes Defendant Richard Thebo simply would pocket the cash, or give it to his son Darren.

#### ***B. Misrepresentations to Donors***

36. Defendant FSM-ODM additionally has made misrepresentations in its fundraising. Specifically, FSM-ODM falsely represented that it helped far more homeless individuals than it actually did. The home page of the FSM-ODM website, [www.odministries.org](http://www.odministries.org), in 2010 falsely stated that FSM-ODM was, "Serving meals to more than 2,300 and sleeping more than 450 people per month."

37. In fact, FSM-ODM served 2,300 meals, but it did not serve 2,300 people. Similarly, FSM-ODM beds may have been occupied 450 times a month, but it did not sleep 450 separate individuals in a month.

38. FSM-ODM perpetuated this false representation in its monthly newsletters. FSM-ODM sent out newsletters on a monthly basis since at least August 2006. Until approximately May 2011, these newsletters always contained statistics for the prior month that were reported in a similarly misleading manner; that is, representing occurrences as separate individuals.

39. The State contends that the aforementioned practices violate § 6-16-111(1)(g) and (i) of the CCSA, and consequently violate § 6-1-105(hh) of the CCPA.

### **FIRST CLAIM FOR RELIEF**

(False Pretenses)

40. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 39 of this Complaint.

41. Through the above-described conduct in the course of its business, occupation or vocation, Defendants have violated the CCSA, Colo. Rev. Stat. § 6-16-111(1)(g) and the CCPA, Colo. Rev. Stat. § 6-1-105(1)(hh) by, with the intent to defraud, obtaining money by means of a false or fraudulent pretense, representation or promise.

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

### **SECOND CLAIM FOR RELIEF**

(False Statements Regarding Purpose of Contributions)

43. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 42 of this Complaint.

44. Through the above-described conduct in the course of its business, occupation or vocation, Defendants have violated the CCSA, Colo. Rev. Stat. § 6-16-111(1)(i) and the CCPA, Colo. Rev. Stat. § 6-1-105(1)(hh) by representing that contributions would be used for purposes other than those for which they were actually used.

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

## **RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for judgment against the Defendant and the following relief:

- A. An order declaring Defendants' above-described conduct to be in violation of the Colorado Charitable Solicitations Act, Colo. Rev. Stat. § 6-16-111(1)(g) and (i), and the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1)(hh).
- B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with any Defendant with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCSA or the CCPA and as set forth in this Complaint.
- C. An order permanently enjoining Defendants Richard Thebo, Darren Thebo, Andrew Kaminski and Patsy Kaminski from:
- 1) Operating, forming, founding, or establishing any charitable organization, as defined in Colo. Rev. Stat. § 6-16-103(1);
  - 2) Acting as a director, officer, trustee, compensated employee, professional fundraising consultant, or paid solicitor of any charitable organization, as defined in Colo. Rev. Stat. § 6-16-103(1);
  - 3) Making any charitable solicitations on behalf of any charity; and
  - 4) Using any trade names to make any charitable solicitations;
- D. Appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.
- E. For a judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to Colo. Rev. Stat. § 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 \$2,000 per violation pursuant to Colo. Rev. Stat. § 6-1-112(1) or \$10,000 per violation pursuant to Colo. Rev. Stat. § 6-1-112(3).
- F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, attorney fees, pursuant to Colo. Rev. Stat. § 6-1-113(4).

G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA and the CCSA, and to protect against further misuse of charitable assets.

Dated this 14<sup>th</sup> day of March, 2012.

JOHN W. SUTHERS  
Attorney General

*/s Alissa H. Gardenswartz*

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ALISSA H. GARDENSWARTZ, 36126\*  
Senior Assistant Attorney General

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Attorneys for Plaintiff  
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*Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.*