

STATE OF MICHIGAN  
IN THE 46<sup>TH</sup> JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OTSEGO

DANA NESSEL, ATTORNEY GENERAL OF  
THE STATE OF MICHIGAN, *ex rel* The  
People of the State of Michigan,

Petitioner,

No. 22-

-CP

HON.

v

MICHIGAN'S CHOICE TREE SERVICE,  
LLC,

Respondent.

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Darrin F. Fowler (P53464)  
Daniel J. Ping (P81482)  
Assistant Attorneys General  
Michigan Dep't of Attorney General  
Corporate Oversight Division  
P.O. Box 30736  
Lansing, MI 48909  
(517) 335-7632  
FowlerD1@michigan.gov  
PingD@michigan.gov

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**ATTORNEY GENERAL'S *EX PARTE* PETITION FOR CIVIL  
INVESTIGATIVE SUBPOENAS**

**I. Introduction**

While natural disasters can bring neighborhoods and communities together in very uplifting ways, there are unfortunately a few in society who see such disasters as economic opportunities. For this reason, the Attorney General

maintains a consumer alert warning of such misdeeds.<sup>1</sup> This Petition sets forth probable cause to believe Michigan’s Choice Tree Service is violating the Michigan Consumer Protection Act by adding economic stress to physical damage and devastation.

## II. Parties, Legal Authority, and Venue

1. Michigan’s Attorney General is authorized to file an *ex parte* petition in the Circuit Court requesting issuance of investigative subpoenas pursuant to Section 7 of the Michigan Consumer Protection Act (MCPA), MCL 445.907(1), which provides in pertinent part:

Upon the *ex parte* application of the attorney general to the circuit court in the county where the defendant is established or conducts business or, if the defendant is not established in this state, in Ingham county, the circuit court, if it finds probable cause to believe a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act, may, after *ex parte* hearing, issue a subpoena compelling a person to appear before the attorney general and answer under oath questions relating to an alleged violation of this act....The subpoena may compel a person to produce the books, records, papers, documents, or things relating to a violation of this act . . . .

2. According to records maintained by the Michigan Department of Licensing and Regulatory Affairs, Michigan’s Choice Tree Service LLC was created as a limited liability company on March 12, 2019. Those records identify David Foster as a member of this entity.

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<sup>1</sup> Consumer Alert, Michigan Department of Attorney General, Disaster Scams, available at: <https://www.michigan.gov/ag/consumer-protection/consumer-alerts/consumer-alerts/scams/disaster> (last visited August 17, 2022).

3. As detailed in this Petition, Michigan's Choice performed tree services for Gaylord residents in the wake of the tornado this past May, making this Court an appropriate venue for this petition.

### **III. Factual Background**

4. As this Court is well aware, a devastating tornado hit Gaylord, Michigan on May 22, 2022.<sup>2</sup> This Court can take judicial notice of this event pursuant to MRE 201.

5. Since that time, the Attorney General has received consumer complaints from three Gaylord residents arising from their interactions with Michigan's Choice. These complaints are included as **Exhibit 1**.

6. Among these complainants was Karen, who was telephonically interviewed by an Attorney General investigator. This interview is included as an audio file on the thumb drive labeled **Exhibit 2**.

7. As alluded to in her complaint, and elaborated during her interview, Karen says that David Foster gave her misinformation that convinced her to engage Michigan's Choice to remove four fallen trees. Specifically, Karen says that Foster told her that he had been sent to the area by Karen's insurance company. He also told Karen that Michigan's Choice would charge only what insurance would cover, and that she would not see a bill. Foster's representations led Karen to believe she

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<sup>2</sup> Paradise Afshar, Andy Rose, and Sharif Paget, *One dead, more than 40 injured as Michigan tornado causes 'catastrophic' damage*, CNN (May 20, 2022) available at: <https://www.cnn.com/2022/05/20/weather/severe-weather-friday-wxn/index.html> (last visited October 20, 2022).

would have no financial responsibility for the removal of these trees since Michigan's Choice was working directly with her insurer. (See Ex. 1 and Ex. 2.)

8. During the interview, Karen explained to the investigator that, before signing the contract with Michigan's Choice, she consulted the company's website. Consistent with the representations Foster made to Karen personally, Michigan's Choice states on its website that it works directly with insurers for emergency tree services and customers have no out-of-pocket costs. The Attorney General's Investigator captured screen shots of the Michigan's Choice website ([www.michoicetreeservice.com](http://www.michoicetreeservice.com)) showing these representations. (**Exhibit 3.**)

9. Karen's recorded interview also reveals that Foster told her the tree stumps would be removed in such a way that she would hardly be able to tell trees had been there.

10. Based on these various representations, Karen signed a contract with Michigan's Choice. In so doing, she observed it did not contain a price for the work to be performed. However, she thought she had a fair idea about the total project cost based on her discussions with Foster. She had asked Foster about removal of a fifth tree that was still standing, and which was larger than the four trees felled by the tornado. Foster told her that he could not do that tree at that time, but that he could remove it on a future date. When Karen asked about the cost for that fifth tree, he responded that it would cost between \$500 and \$600. Thus, as Karen explained to the investigator, she assumed the cost for each of the four smaller trees would be less than that. (Ex. 2.)

11. The project played out very differently than Karen anticipated based on the representations made to her by Foster. The tree removal was accomplished on May 23—the day after the tornado. It took around 3.5 hours. But the stumps and other debris were still there, so Karen reached out to Foster to find out when Michigan’s Choice would finish the promised work. Foster told her then that the stumps would not be removed, and Karen later learned this was not something her insurance would pay for. (*Id.*)

12. Karen then learned that Michigan’s Choice billed her insurance company \$20,491.42 for the removal of the four trees—a cost equating to more than five times the per-tree cost Karen was led to anticipate based on her discussion with Foster about the larger tree that had not been removed. (*Id.*) Although Michigan’s Choice did not send Karen a copy of the bill, her insurance company did supply one to her. It is attached as **Exhibit 4**.

13. To determine the appropriate amount of payment to Michigan’s Choice, Karen’s insurance company asked other tree removal services to review the work done for Karen. Those companies’ estimates range from \$4,000.00 to \$14,185.00, and they are included as **Exhibit 5**. Based on these estimates, Karen’s insurer paid Karen \$13,485.00 for the work performed by Michigan’s Choice. Karen then sent a check to Michigan’s Choice at the end of June that was designated as a final payment for the work performed. (See Ex. 2; **Exhibit 6**.)

14. Karen thought her dealings with Michigan’s Choice were concluded. But on July 19 she received in the mail notice of a lien on her home in the amount

of \$20,491.42. The lien had been filed with the Otsego County Circuit Court on June 10. Upon receiving the lien paperwork, Karen tried calling Foster to discuss the matter, but did not reach him. (Ex. 2.)

14. As Karen explains in a supplement to her consumer complaint to the Attorney General, “I sent my lien to Frankenmuth Insurance and was told by my adjuster that since they paid a reasonable amount already they will not defend me and I’m on my own. They advised me to contact your office.” (**Exhibit 7.**)

15. Karen is not the only consumer impacted by the Gaylord tornado to have a lien placed on her home by Michigan’s Choice. In another consumer complaint, Fay describes interactions with Foster very similar to those elaborated by Karen. Foster also told Fay that he would collect from the insurance company and not charge her out-of-pocket. Still, Michigan’s Choice put a lien on Fay’s home, too, though the notice was addressed to Fay’s deceased parents. (Ex. 1, p 5.) A copy of the notice of lien Michigan’s Choice sent to Fay is included as **Exhibit 8.**

16. The placing of liens on the homes of Karen and Fay is wholly inconsistent with Foster’s oral representations and those made on Michigan’s Choice website suggesting the company works directly with insurers to avoid out-of-pocket costs to consumers. The Attorney General’s Special Agent attempted to interview David Foster about these concerns, leaving his business card at Foster’s home when the door went unanswered. Agent Campbell was then contacted by an attorney for Michigan’s Choice who said the liens on the homes of these two customers would be removed. (**Exhibit 9.**)

17. Beyond the apparent misrepresentations preceding the liens, there is additional reason to examine their propriety. Both liens were effectuated by affidavits signed by David Foster on dates different than the date upon which his signature was purportedly notarized. The lien on Karen's home was accomplished through an affidavit signed by Foster on June 7, 2022, but notarized on June 2, 2022. **(Exhibit 10.)** And the lien on Fay's home was effectuated by an affidavit signed by Foster on June 7, 2022, but notarized on June 6, 2022. **(Exhibit 11.)**

18. The third Gaylord resident, Carol, had an even more confusing experience with Michigan's Choice. Carol also participated in a telephonic interview with the Attorney General's investigator to relate what happened to her. That recording is also included on the thumb drive. (Ex. 2.)

19. According to Carol, Foster came to her home the day after the tornado struck. He introduced himself and gave her a business card with his name and the company name, but because Foster was driving a truck that had no company markings on it, Carol was hesitant to trust him. She told him she wanted to speak with her insurance company first. Foster told Carol Michigan's Choice would work with her insurance company and she would have no out-of-pocket costs. (*Id.*)

20. Carol provided Foster's business card to her insurance company, and arrangements were made such that Michigan's Choice performed the work. But Carol explained those arrangements were between the insurance company and Michigan's Choice, and that she did not sign any agreement for the tree services. (*Id.*)

21. After the work was performed, Foster called Carol numerous times in an effort to get payment—she said he seemed to believe the insurance company was sending her a check to be used to pay Michigan’s Choice. While Carol did receive a check from her insurance company, it was intended for the repairs to her roof that were needed as a result of the tornado. Carol deposited that check on Friday, July 8.

22. But on Tuesday, July 12, Foster texted Carol telling her a new check was going to be sent to her from the insurance company. Foster’s text message said in part, “I had a new check overnighted to you with tracking. It will be at your house Wednesday morning. I will swing by Wednesday afternoon to pick up check from you.” The entire text message thread is included as **Exhibit 12**.

23. Confused by this development, Carol called her insurance agent to find out what was happening. The agent asked Carol whether she had asked for the check to be voided. Carol responded she would not do that since she needed that money for her roof repairs. Carol then received a call from her bank indicating that the original check had been voided and would not be credited to her account. To this point, Carol has no idea how Foster managed to insinuate himself into her insurance company’s effort to facilitate her roof repairs, but she wants to make sure this cannot be done to other consumers. (Ex. 2.)

24. The Attorney General’s concerns about Michigan’s Choice do not relate solely to what has occurred with Gaylord residents. There is probable cause to believe Michigan’s Choice is engaging in similar practices while dealing with

consumers in other communities as well. For example, the Attorney General has received a variety of documents from a consumer named Kristy who lives in Rockford. Through recent emails, Kristy supplied her contract with Michigan's Choice, a text message thread between her and David Foster, photographs of the single tree that fell on her home, and the Michigan's Choice invoice in the amount of \$33,449.08. These documents are collectively included as **Exhibit 13-A**. A text message from late August of this year from Foster, as the tree removal was being planned, shows him telling Kristy, "I'm very familiar with insurance billing. We do over 100 trees on structures a year. Most with State Farm. We will make sure you do not have any additional bill and that state farm covers our entire bill." (*Id.*, p 11.)

25. But when Kristy supplied Foster with her claim number after the job was done, he responded that, because her coverage was with Farm Bureau and not State Farm as he had thought, she may have out-of-pocket costs. After saying Farm Bureau is an awful carrier, he added:

They are going to try to give us 1/5 of what we invoice and say our bill is outrageous. Then they will make you pay the rest out of pocket. [*Id.* pp 17, 18.)]

26. A subsequent email between Farm Bureau and Kristy (and her husband Carl) shows that the insurer approved payment in the amount of \$11,340.00 to Michigan's Choice for the work performed. This email, supplied by Farm Bureau, is attached as **Exhibit 13-B**. Under Kristy's contract with Michigan's Choice, that leaves a balance of more than \$22,000 which Michigan's Choice may try to pursue from Kristy and Carl through lien or other pressure. (Ex.

13-A.) And Foster's post-job text to Kristy suggests Michigan's Choice may do just that, notwithstanding the representations made on the company's website and in his pre-work text to her.

27. Still more consumers are likely being impacted by these kinds of business practices. For example, the Better Business Bureau (BBB) has supplied the Attorney General with a complaint it received from a Grand Rapids resident named Korey. Korey said that Michigan's Choice removed a small limb that had fallen on his home during a storm in late July of this year. Although Korey had initially planned to have insurance cover the expense, he decided to just ask Foster to bill him directly so that he could pay out-of-pocket and guard against a claim that would cause an increase in his insurance rates. As Korey alleged in his own words:

I was sent a bill for \$14,773.72! This bill claims to be for a tree removal, I had one small limb cut out. I have asked Dave [Foster] and his company to reevaluate this bill, give them another chance to fix this, but he stands by his cost and "tree removal" fees. [BBB complaint, **Exhibit 14.**]

And there is a Google review from a consumer named Matthew S. who asserts:

Do not use this company if you plan to bill insurance for storm damage. I used their emergency service, was led to believe I wouldn't be charged and ended up with an excessive bill the insurance company wouldn't cover. Do your research, get quotes, and don't let companies like this take advantage of you. [Google Review, **Exhibit 15.**<sup>3</sup>]

Matthew is a resident of Wyoming, Michigan, and the Attorney General has obtained a copy of the invoice packet showing Michigan's Choice billed Farm

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<sup>3</sup> Available at: <https://g.co/kgsDXqRYm>.

Bureau \$19,798.74 after the top portion of an oak tree fell on his home. (Matthew S. Invoice, **Exhibit 16.**)

Finally, Matthew K. of Grand Rapids also told the Attorney General investigator that he entered into a contract with Michigan's Choice upon representations from David Foster that Foster would work with the insurance company for payment. Matthew said that Michigan's Choice gave his insurer a bill for over \$22,000. Although it was a single tree that fell across both his shed and garage, Matthew said the invoice strangely describes removal from each structure as though they were distinct activities, though they were not. After Matthew's insurer determined a payment of just over \$6,000 was appropriate, Matthew received an invoice and threats of lien from Michigan's Choice—which concerned him since he expects to close on the sale of the home on November 4. (Ex. 2.) A copy of the invoice and threat of lien was supplied to the Attorney General by the National Insurance Crime Bureau. (**Exhibit 17.**) Matthew subsequently notified the Attorney General that he paid the additional \$4,250 to Michigan's Choice to get out from under the threatened lien. (**Exhibit 18.**)

#### **IV. Legal Concerns**

The evidence presented through this Petition establishes probable cause to believe Michigan's Choice Tree Service has engaged in a pattern of confusing consumers about their legal rights and obligations and misleading consumers about the nature of the agreements they are signing, the cost of the services it is providing, and the potential for financial responsibility for costs not paid for by

insurance. Michigan's Choice also shows a pattern of charging grossly excessive prices for its tree services.

The Michigan Consumer Protection Act (MCPA) exists to protect consumers from unfair, deceptive, and unconscionable practices in the conduct of trade or commerce. See MCL 445.901 et seq. Under the MCPA, the following activities are prohibited as unfair trade practices:

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(r) Representing that a consumer will receive goods or services free or without charge, or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is. [MCL 445.903(1).]

## **V. Conclusion and Relief Sought**

Based on the concerns and evidence described in this Petition, the Attorney General seeks authority to issue subpoenas allowing her to more fully examine Michigan's Choice and its business practices. This will include seeking

documentary evidence relating to Michigan's Choice's pricing and billing practices, including information allowing the Attorney General to better understand how its invoices are calculated as compared to how that work is priced by others providing similar services. The Attorney General will also seek to identify other Michigan consumers who may be impacted by liens despite representations that they would have no out-of-pocket costs, and to identify any other consumers whom Michigan's Choice still asserts have outstanding invoices based on the provision of emergency tree services. The Attorney General will seek documentation and testimony providing for a better understanding of the above consumer transactions, as well as similar transactions with Michigan's Choice that may be identified during this investigation. The Attorney General seeks to take the testimony of David Foster, as well as that of any other appropriate individuals identified during the course of the investigation. This may include subpoenas to insurance companies to which Michigan's Choice has submitted invoices for work performed for Michigan consumers.

Respectfully submitted,



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Darrin F. Fowler (P53464)  
Daniel J. Ping (P81482)  
Assistant Attorneys General  
Michigan Dep't of Attorney General  
Corporate Oversight Division  
P.O. Box 30736  
Lansing, MI 48909  
(517) 335-7632  
FowlerD1@michigan.gov  
PingD@michigan.gov

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