

Foreign / Out of State Subpoenas Procedure

Required for all subpoenas

***** LOOK AT EXAMPLES ON FOLLOWING PAGES *****

- One (1) ORIGINAL (wet ink) & Two (2) copies to be provided by Attorney or Pro Se party.
- The subpoena must be styled in the original format of state where issued.
- The Clerk Signature Block must appear at the bottom of OR next page proceeding attorneys signature and have sufficient space for the Deputy Clerk's Signature and Seal of Broward County. (see example)
- Each subpoena must include either one of the following for either a Subpoena For Taking Deposition or Subpoena Duces Tecum or to Produce Documents. (see example)
 - o Notice of Taking Deposition
 - o Notice of Production/Notice of Intent
- Either "Notice" must be titled accordingly. A Judge's Order to Allow Depositions will not satisfy the clerk's requirement. If you have a question about this, call or text my cellphone.
- The Broward Clerk WILL NOT issue a case number for out of state subpoenas.

COURIER ISSUANCE AND SERVICE OF PROCESS CAN BE DONE BY:

ALL BROWARD PROCESS CORP.

(954)214-5194 cellphone

(954)581-9087 office

701 N Fig Tree Lane, Plantation, FL 33317



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

CHRISTINE DAY,

Plaintiff,

v.

C.A. No. N21C-12-019 CLS

PERFORMANCE KITCHEN, PBC,
(f/k/a Luvo, Inc.),

Defendant.

**SUBPOENA DUCES TECUM DIRECTED TO
HEALTHSUN HEALTH PLANS, INC.**

**TO: HealthSun Health Plans, Inc.
c/o CT Corporation System
1200 S Pine Island Road
Plantation, FL 33324**

YOU ARE HEREBY COMMANDED:

To produce and permit inspection and copying of designated documents, electronically stored information or tangible things in your possession, custody or control in accordance with the attached Schedule A on or before June 5, 2023 at the offices Bailey & Glasser, LLP, 2961 Centerville Road, Suite 302, Wilmington, Delaware 19808, or such other location or date as may be agreed by the parties or ordered by the Court.

This subpoena is issued pursuant to Superior Court Civil Rule 45, a copy of which is attached hereto as Schedule B, setting forth the protections and duties with respect to this subpoena.

Dated: April 24, 2023

Of Counsel:

Jonathan Harris
Daniel B. Grossman
Harris St. Laurent & Wechsler LLP
40 Wall Street, 53rd Floor
New York, New York 10005
Telephone: (212) 397-3370

David A. Felice
David A. Felice (#4090)
Bailey & Glasser, LLP
2961 Centerville Road, Suite 302
Wilmington, Delaware 19808
Telephone: (302) 504-6333
Facsimile: (302) 504-6334

Attorneys for Plaintiff

BRENDA D. FORMAN, CLERK OF COURT

BY _____

AS DEPUTY CLERK

CAN be AT
bottom of
next page.

SCHEDULE A

DEFINITIONS

1. "Judgment" means the default judgment entered on or about January 10, 2022 in the above-captioned action in favor of plaintiff Christine Day and against defendant Performance Kitchen, PBC (f/k/a Luvo, Inc.) in the total amount of \$714,075.20, with post-judgment interest accruing at the rate of 12% on \$550,000 and 14% on the balance, each compounded monthly.

2. "Judgement Debtor" and "PK" mean Performance Kitchen, PBC (f/k/a Luvo, Inc.) its subsidiaries, divisions, predecessor and successor companies, affiliates, and any partnership or joint venture to which it may be a party.

3. "You" and "Your" mean HealthSun Health Plans, Inc. its subsidiaries, divisions, predecessor and successor companies, affiliates, any partnership or joint venture to which it may be a party, and/or each of its employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

4. "Revenue" or "income" mean any and all money, earnings, revenue, or payments of any kind that the Judgement Debtor received in any form, whether in cash or by check, credit or debit card, electronic transfer, or otherwise, including but not limited to payments for goods and services, payments on accounts receivable, loan repayments, interest income, rents, royalties, license fees, commissions,

dividends, distributions, payments concerning sales of assets, equipment, or inventory, payments on contracts, or any other payment or remuneration the Judgement Debtor received in connection with the Judgement Debtor's business.

5. "Asset" means any property or thing of value the Judgement Debtor owned, claimed, or held any interest in, in whole or in part, including any and all real property, tangible personal property including cash, vehicles, goods, inventory, machinery, equipment, trade fixtures, office equipment, supplies, and computer systems and networks, and intangible personal property including goodwill, contracts, accounts receivable, notes receivable, stocks, bonds, and other securities, ownership interest in any other entities such as subsidiary corporations, general or limited partnerships, and joint ventures, intellectual property rights including copyrights, patents, trademarks, and trade names, and insurance policies which the Judgement Debtor owns or which name the Judgement Debtor as an insured.

6. "Account" means any domestic or foreign account maintained with any bank, financial institution, credit card company, or other entity, regardless of how such account is titled, during the relevant time period. Account includes, but is not limited to, any checking account, savings account, credit card account, deposit account, safe deposit box, or other storage device for cash or valuables in any form. With respect to any document requests concerning an account held by a particular person, account includes all accounts in which that person has or had any legal or

equitable interest or signatory authority, whether individually, jointly, in trust, tenancy by the entirety, or otherwise.

7. The “relevant time period” means June 30, 2020 to the present.

REQUESTS FOR DOCUMENTS

1. Produce all documents concerning transfers made between You and the Judgment Debtor during the relevant time period, including but not limited to, offers made and received, contracts, correspondence, financing and purchase agreements, billing history, billing address, electronic fund transfers, wires (CHIPS, Fedwire, SWIFT, or other wire/electronic payment system), checks, transfer receipts, and any other revenue or asset transferred between You and the Judgment Debtor.

2. To the extent not included in Request No. 1, produce all documents concerning any contract or agreement entered between You and the Judgment Debtor during the relevant time period.

3. Produce all documents relating to the Judgment Debtor’s revenue during the relevant time period, including but not limited to:

- a. Documents evidencing all sources of income, revenue, or remuneration of any kind, including payments for goods and services, interest income, operating income, payments on accounts receivable, commissions, agency fees, loan repayments, rents, royalties, license

fees, dividends, distributions, payments relating to sales of assets, equipment, or inventory, payments on contracts, or any other payment or remuneration the Judgement Debtor received in connection with the operation of its business.

- b. Financial statements, balance sheets, income statements, cash flow statements, loan applications, and other financial disclosures prepared or submitted by the Judgement Debtor or on the Judgement Debtor's behalf during the relevant time period.

4. All documents concerning or evidencing the Judgement Debtor's business dealings with You during the relevant time period, including but not limited to:

- a. Documents relating to or evidencing any transaction between You and the Judgement Debtor.
- b. All contracts and other documents evidencing, establishing, or describing Your business or professional relationship with the Judgment Debtor.

5. Produce documents sufficient to ascertain whether any of the Judgment Debtor's assets are in your possession or care, subject to liens, attachments or other encumbrances.

6. Produce all documents concerning any business dealings or transactions a result of which the Judgment Debtor may now have, or may in the future become entitled to, money or credit from You.

7. Produce all documents that the Judgment Debtor provided You during the relevant time period concerning the Judgment Debtor's financial condition.

8. For any payments that you made to the Judgment Debtor during the relevant time period, produce documents sufficient to identify (by name, address, and account number) all banks or financial institutions at which Judgment Debtor maintained an account during the relevant time period.

SCHEDULE B

Superior Court Rule of Civil Procedure 45, subdivisions (c) and (d) of Rule 45 state as follows:

(c) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and may impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated documents, electronically stored information, or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court on behalf of which the subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance;
- (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iii) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court on behalf of which the subpoena was issued may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

(d) Duty in responding to subpoena.

(1) If a subpoena does not specify a form for producing documents or electronically stored information, the person responding shall produce it in a form or forms in which it is ordinarily maintained, or in which it is reasonably usable. Absent a showing of good cause, the person responding need not produce the same documents or electronically stored information in more than one form. The person responding need not provide discovery of documents or electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On a motion to compel discovery or for a protective order, the person responding to a subpoena must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court nevertheless may order discovery from such sources if the requesting party shows good cause. The Court may specify the conditions for the discovery.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, electronically stored information, or tangible things not produced that is sufficient to enable the demanding party to contest the claim.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

CHRISTINE DAY,

Plaintiff,

v.

C.A. No. N21C-12-019 CLS

PERFORMANCE KITCHEN, PBC,
(f/k/a Luvo, Inc.),

Defendant.

**NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM
WITHOUT DEPOSITIONS ON A NONPARTY**

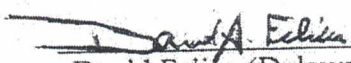
TO: Christopher Durbin, Esq.
Cooley LLP
Counsel for Defendant
1700 Seventh Avenue
Suite 1900
Seattle, WA 98101-1355
Telephone: (206) 452-8769

↑
Notices titled
like this.

YOU ARE NOTIFIED, pursuant to Fla. Stat. 92.251 and Fla. R. Civ. P. 1.351, after 10 days from the date of service of this notice, the undersigned will apply to the clerk of Broward County Circuit Court for issuance of the attached foreign subpoena directed to **Healthsun Health Plans, Inc. c/o CT Corporation System, 1200 S Pine Island Road, Plantation, FL 33324**, who is not a party, to produce the items listed at the time and place specified in the subpoena.

Dated: April 27, 2023

Of Counsel:
Jonathan Harris
Daniel B. Grossman
Harris St. Laurent & Wechsler LLP
40 Wall Street, 53rd Floor
New York, NY 10005
Telephone: (212) 391-3370


David Felice (Delaware Bar No. 4090)
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Telephone: (302) 504-6333

Counsel for Plaintiff