

COMMON PLEAS COURT
FILED

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MARGIE MURPHY MILLER
CLERK OF COURTS
ALLEN COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
ALLEN COUNTY, OHIO

State of Ohio, *ex rel.* Mike DeWine,
Attorney General of Ohio
Charitable Law Section
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215

Plaintiff,

v.

Encore Music Productions, Ltd
C/O Joseph A. Chiovitti
6600 South Avenue
Suite 3
Boardman, Ohio 44513

Phil's Productions LLC
C/O Philip Howells
1609 Chattanooga Avenue
Youngstown, Ohio 44514

Joseph Chiovitti
802 Woodfield Court, Unit B
Youngstown, OH 44512

Case No.

Judge

REED

Type of Case: Other Civil

CV2013 0676

Philip Howells
1609 Chattanooga Avenue
Youngstown, OH 44514 :

M.V.P. Productions LLC :
C/O Martin Vernello
651 Wheeling Avenue, Suite 4
Cambridge, Ohio 43725 :

Martin Vernello :
49200 Purinton Avenue, Apt. 105
East Liverpool, Ohio 43920 :

Kingsley Harris :
6321 St. Andrews Drive
Canfield, Ohio 44406 :

Jennifer Fairall :
a.k.a. Jennifer Goodman
206 Robinson Road
Campbell, Ohio 44405 :

Jessica Covington :
5005 Center Road
Lowellville, Ohio 44436 :

Matthew Bocian :
1986 Wolosyn Circle, Apt. 4
Youngstown, Ohio 44514 :

William Sharp :
D.B.A. Sharp Productions
513 W. Mary Street
Bucyrus, Ohio 44820 :

Waive Sharp :
D.B.A. Sharp Productions
513 W. Mary Street
Bucyrus, Ohio 44820 :

William Berrier :
P.O. Box 346
11154 Mentzer Road
North Lima, Ohio 44452 :

Abby Makara :
 2202 Cherry Hill Avenue :
 Youngstown, Ohio 44509 :

Laura Harper :
 651 Wheeling Avenue, Suite 1 :
 Cambridge, Ohio 43725 :

Jaime Kegarise :
 127 Wilson Street :
 Struthers, Ohio 44471 :

Esther Holmes :
 1520 Overland Avenue, Unit 105 :
 Youngstown, Ohio 44511 :

John Douglas :
 7506 Oregon Trail, Apt. 2 :
 Youngstown, Ohio 44512 :

Defendants. :

OHIO ATTORNEY GENERAL’S COMPLAINT AND JURY DEMAND

Plaintiff State of Ohio, *ex rel.* Mike DeWine, is the duly elected, qualified and acting Attorney General of Ohio, and hereby alleges:

I. JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Mike DeWine (“Attorney General” or “Attorney General’s Office”), having reasonable cause to believe that violations of Ohio’s charitable laws have occurred, brings this action in the public interest and under the authority vested in the Attorney General by Ohio Revised Code (R.C.) Section 109.23 *et seq.* (“Ohio Charitable Trust Act”), Ohio Revised Code Chapter 1716 (“Ohio Organizations

Act”), R.C. § 2923.34, R.C. § 2921.13(G), and the Attorney General’s common law authority to enforce charitable trusts.

2. Defendants’ actions, as described herein, occurred throughout the State of Ohio including in Allen County, Ohio.

3. Defendants solicited individuals located throughout the state of Ohio claiming that proceeds benefitted charitable purposes including the IAFF #334 (“Lima Fire Fighters”), a charitable organization located in Allen County, Ohio.

II. PARTIES

A. Encore Music Productions Ltd.

4. Defendant Encore Music Productions, Ltd. (“Encore”) is a domestic limited liability company having its principal place of business at 755 Boardman-Canfield Road, Suite K-1, Youngstown, Ohio 44512 and 8255 South Avenue, Suite C, Youngstown, Ohio 44512.

5. Encore was formed on or around January 7, 2005 by Defendant Joseph Chiovitti.

6. Encore is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

7. Encore conducted charitable solicitation campaigns on behalf of local firefighter unions and fraternal orders of police in Ohio, as well as for other charitable organizations.

8. Encore is in privity with and is the successor to Encore Music Productions, Inc. Encore Music Productions, Inc. entered into an Assurance of Discontinuance with the Attorney General in 2000 and it was filed in the Franklin County Common Pleas Court on November 22, 2000. The Assurance of Discontinuance is binding on all successors, heirs, and assignees of Encore Music Productions, Inc. Encore Music Productions, Inc. dissolved on January 25, 2005,

approximately nineteen days after Encore was formed. Encore assumed Encore Music Productions, Inc.'s ongoing business concern, contracts and assets.

9. Encore was at all relevant times a director, member, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

B. Joseph Chiovitti

10. Defendant Joseph Chiovitti owned, directed, and operated Encore Music Productions, Inc. until its dissolution in 2005 when he became the owner, director, and operator of Encore. Joseph Chiovitti signed the Assurance of Discontinuance with the Attorney General on behalf of Encore Music Productions, Inc. in 2000.

11. Joseph Chiovitti is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

12. Joseph Chiovitti conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

13. Joseph Chiovitti was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

14. Joseph Chiovitti may have participated in additional activities that are not yet known.

C. Phil's Productions LLC

15. Defendant Phil's Productions LLC ("Phil's Productions") is a domestic limited liability company having its principal place of business at 1609 Chattanooga Avenue, Youngstown, Ohio 44514.

16. Phil's Productions was formed on or around July 15, 2009 by Defendant Philip Howells.

17. Phil's Productions is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

18. Phil's Productions conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

19. Phil's Productions was at all relevant times a director, member, agent or co-conspirator, of the other Defendants and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

D. Philip Howells

20. Defendant Philip Howells is the owner, director, and operator of Phil's Productions.

21. Philip Howells is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

22. Philip Howells conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

23. Philip Howells was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

24. Philip Howells may have participated in additional activities that are not yet known.

E. M.V.P. Productions L.L.C.

25. Defendant M.V.P. Productions L.L.C. ("MVP Productions") is a domestic limited liability company having its principal place of business at 651 Wheeling Avenue, Suite 4, Cambridge, Ohio 43725.

26. MVP Productions was formed on or around November 10, 2004 by Martin Vernello.

27. MVP Productions is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

28. MVP Productions conducted charitable solicitation campaigns on behalf of local firefighter's unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

29. MVP Productions was at all relevant times a director, member, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action

F. Martin Vernello

30. Defendant Martin Vernello is the owner, director, and operator of MVP Productions.

31. Martin Vernello is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

32. Martin Vernello conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

33. Martin Vernello was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

34. Martin Vernello may have participated in additional activities that are not yet known.

G. William Sharp

35. Defendant William Sharp was at all relevant times doing business as a professional solicitor for Encore and Sharp Productions.

36. William Sharp is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

37. William Sharp conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

38. William Sharp was at all relevant times a director, member, officer, employee, agent or co-conspirator, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

39. William Sharp may have participated in additional activities that are not yet known.

H. Waive Sharp

40. Defendant Waive Sharp was at all relevant times doing business as a professional solicitor for Encore and Sharp Productions.

41. Waive Sharp filed Sharp Productions as a registered trade name with the Ohio Secretary of State on May 19, 2011.

42. Waive Sharp is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

43. Waive Sharp conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

44. Waive Sharp was at all relevant times a director, member, officer, employee, agent or co-conspirator, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

45. Waive Sharp may have participated in additional activities that are not yet known.

I. Kingsley Harris

46. Defendant Kingsley Harris is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

47. Kingsley Harris conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

48. Kingsley Harris was at all relevant times a director, member, officer, employee, agent or co-conspirator, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

49. Kingsley Harris may have participated in additional activities that are not yet known.

J. Jennifer Fairall

50. Defendant Jennifer Fairall, a.k.a. Jennifer Goodman, was a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

51. Jennifer Fairall conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

52. Jennifer Fairall was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

53. Jennifer Fairall may have participated in additional activities that are not yet known.

K. Jessica Covington

54. Defendant Jessica Covington is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

55. Jessica Covington conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.



56. Jessica Covington was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

57. Jessica Covington may have participated in additional activities that are not yet known.

L. Matthew Bocian

58. Defendant Matthew Bocian is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

59. Matthew Bocian conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

60. Matthew Bocian was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

61. Matthew Bocian may have participated in additional activities that are not yet known.

M. William Berrier

62. Defendant William Berrier is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

63. William Berrier conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

64. William Berrier was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

65. William Berrier may have participated in additional activities that are not yet known.

N. Abby Makara

66. Defendant Abby Makara is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

67. Abby Makara conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

68. Abby Makara was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

69. Abby Makara may have participated in additional activities that are not yet known.

O. Laura Harper

70. Defendant Laura Harper was a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

71. Laura Harper conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

72. Laura Harper was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

73. Laura Harper may have participated in additional activities that are not yet known.

P. Jaime Kegarise

74. Defendant Jaime Kegarise was a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

75. Jaime Kegarise conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

76. Jaime Kegarise was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

77. Jaime Kegarise may have participated in additional activities that are not yet known.

Q. Esther Holmes

78. Defendant Esther Holmes is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

79. Esther Holmes conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

80. Esther Holmes was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

81. Esther Holmes may have participated in additional activities that are not yet known.

R. John Douglas

82. Defendant John Douglas is a professional solicitor as defined in R.C. § 1716.01(J), conducting charitable solicitation campaigns involving telemarketing and concerts.

83. John Douglas conducted charitable solicitation campaigns on behalf of local firefighter unions or fraternal orders of police in Ohio, as well as for other charitable organizations.

84. John Douglas was at all relevant times a director, member, officer, employee, agent or co-conspirator of the other Defendants, and acted with complicity or in active participation with the Defendants in activities giving rise to this action.

85. John Douglas may have participated in additional activities that are not yet known.

III. ACTIVITIES OF THE DEFENDANTS



A. Encore Music Productions, Inc.

86. Between 1997 and 2000, Encore Music Productions, Inc. violated several provisions of R.C. Chapter 1716 by soliciting for unregistered charities and soliciting without filing solicitation notices, contracts, sworn consent statements and financial reports. Encore Music Productions, Inc. entered into an Assurance of Discontinuance with the Attorney General that was filed in Franklin County Common Pleas Court on November 22, 2000. The Assurance of Discontinuance was binding on Encore Music Productions, Inc.'s successors, assignees and heirs.

87. Defendant Joseph Chiovitti signed the Assurance of Discontinuance under oath, acknowledging that he has knowledge of the requirements of professional solicitors set forth in R.C. Chapter 1716 and promising to abide by those requirements. Encore Music Productions, Inc. continued its existence until January 25, 2005 when Defendant Chiovitti dissolved the corporation and then continued operating the same business under a similar name as the domestic limited liability company, Encore Music Productions, Ltd ("Encore").

B. Encore Music Productions, Ltd.

88. Defendant Joseph Chiovitti operated his telemarketing business from on or around 2006 to the time of filing of this complaint by working with several agents he labeled as "promoters": Martin Vernello, William Sharp, Waive Sharp, Philip Howells, Michael Rosine, and Larry Csernik. Each of these individuals assisted Chiovitti by soliciting potential donors, contacting and communicating with the charitable organizations, and hiring additional agents to solicit potential donors by telephone or in person for Encore's campaigns.

89. All but one of the above individuals created their own limited liability company or trade name. Martin Vernello formed MVP Productions, Philip Howells formed Phil's Productions,

William and Waive Sharp established a trade name of Sharp Productions, and Michael Rosine formed MSR Management LLC.

90. Encore's stated purpose in its Articles of Organization filed with the Ohio Secretary of State is "to provide fundraising by booking concerts for non-profit organizations such as fraternal order of police organizations and firefighter associates or any other purpose permitted by law." The Defendants pursued this purpose by requesting monetary donations and selling concert tickets and business advertisements in concert program books.

91. Defendants typically held fundraising concerts for police and firefighter organizations and hosted concerts in the organization's local community.

92. Encore typically executed a "Production Agreement" or contract with each charitable organization for which it conducted a fundraising campaign. Each Production Agreement guaranteed the charitable organization a minimum profit ranging between 10-33% of gross revenue from the campaign.

93. All of the Defendants acted as professional solicitors for Encore's contracted campaigns.

94. The Defendants telephoned local businesses and individuals, soliciting donations for the contracted charitable organizations. The Defendants typically asked donors to mail checks to a local P.O. Box address or arranged for an on-site pick up of the donation.

95. Encore registered annually as a professional solicitor with the Attorney General.

However, none of the other Defendants ever registered as professional solicitors nor were they included on Encore's registration filings with the Attorney General.

96. Overall, the Defendants conducted over one-hundred charitable campaigns since 2006 for over thirty different charitable organizations.



C. Defendants Hired Convicted Felons to Solicit Donations and Trained Solicitors to Lie to Donors.

97. The Defendants employed individuals convicted of felonies within five years to solicit on behalf of contracted charitable organizations.

98. Solicitors were convicted of offenses, including first-degree felonies, receiving stolen property, possession of cocaine, trafficking in cocaine, possession of heroin, unlawful sexual conduct with a minor, theft, grand theft, breaking and entering, falsification, permitting drug abuse, burglary, identity fraud, forgery, obstructing official business, and felonious assault, .

99. The Defendants had constructive or actual knowledge that solicitors under their direction and control were convicted felons.

100. The Defendants routinely utilized various schemes to deceive potential donors into believing that a local charitable organization would receive 100% of all donations.

101. Defendants explicitly lied to potential donors and told them that all or 100% of the proceeds from the solicitation campaign benefitted the local charitable organization when contracted charities only received 10-33% of gross revenue.

102. Defendants failed to disclose to potential donors that they were professional solicitors and misled donors as to their identities.

103. Defendants falsely identified themselves as firefighters. Several charitable organizations received numerous complaints from the public regarding phone solicitors falsely identifying themselves as firefighters. Those charitable organizations notified Defendants about these complaints.

104. Defendants trained solicitors to mislead donors by claiming to be volunteers and by claiming that solicitors were in local areas. Defendants also falsely claimed that 100% of the donations benefitted local charities.

D. Defendants Obstructed the Attorney General's Investigation and Solicited without Properly Filing with the Attorney General

105. Defendants obstructed and lied to investigators of the Attorney General attempting to interview some of the Defendants' solicitors.

106. Defendant Encore failed to register or identify approximately 200 of its solicitors.

107. Since 2006, Defendant Encore failed to comply with numerous filing requirements with the Attorney General, including requirements to file solicitation notices, contracts, consent agreements, solicitation campaign financial reports and professional solicitor registration statements.

108. The Defendants conducted solicitation campaigns for unregistered charities and for charities that were not compliant with financial reporting requirements with the Attorney General.

109. Although the remaining Defendants acted as professional solicitors for various contracted charitable organizations, they failed to file any required documents or bonds.

110. The Defendants participated with, controlled, directed or conspired with Encore in committing these violations.

111. Upon information and belief, Defendants falsified financial reports to ensure they retained the full expense amounts authorized under the Production Agreements.

V. GENERAL ALLEGATIONS

A. Charitable Organizations Act

112. Alliance Firefighters Association #480, Ashtabula County Sheriff's Patrol, Blue Knights Chapter XIV, College Township Volunteer Fire Association, Fraternal Order of Police #10 ("FOP #10"), Fraternal Order of Police #106 ("FOP #106"), Fraternal Order of Police #128 ("FOP #128"), Fraternal Order of Police #132 ("FOP #132"), Fraternal Order of Police #147 ("FOP #147"), Fraternal Order of Police #16 – Lake/Geauga ("FOP #16"), Fraternal Order of Police #171 ("FOP #171"), Fraternal Order of Police #19 ("FOP #19"), Fraternal Order of Police #50 ("FOP #50"), Fraternal Order of Police #52 ("FOP #52"), Fraternal Order of Police #53 ("FOP #53"), Fraternal Order of Police #6 ("FOP #6"), Fraternal Order of Police #60 ("FOP #60"), Fraternal Order of Police #68 ("FOP #68"), Fraternal Order of Police #71 ("FOP #71"), Fraternal Order of Police #77 Wyandot County ("FOP #77"), Fraternal Order of Police #8 ("FOP #8"), Fraternal Order of Police #90 ("FOP #90"), International Association of Firefighters Marion Township Local #2134 ("IAFF #2134"), International Association of Firefighters #1340 ("IAFF #1340"), International Association of Firefighters #1910 ("IAFF #1910"), International Association of Firefighters #2786 ("IAFF #2786"), International Association of Firefighters #291 ("IAFF #291"), International Association of Firefighters #312 ("IAFF #312"), International Association of Firefighters #334 ("IAFF #334"), International Association of Firefighters #3356 ("IAFF #3356"), International Association of Firefighters #379 ("IAFF #379"), International Association of Firefighters #381 ("IAFF #381"), Kiwanis Club of Boardman and Tiffin Area Babe Ruth Baseball League are "charitable organizations" as defined in R.C. § 1716.01(A).

113. Defendants are "persons" as defined in R.C. § 1716.01(I).

114. Defendants conducted "solicitations," as that term is defined in R.C. § 1716.01(K), on behalf of various charitable organizations in the State of Ohio.

115. Defendants are “professional solicitors” within the meaning of R.C. § 1716.01(J); therefore, Defendants are subject to the requirements of R.C. § 1716.01 *et seq.* relating to the obligations of professional solicitors.

116. Defendants solicited, collected, and/or expended contributions on behalf of various charitable organizations including those listed in paragraph 112 and, therefore, have fiduciary duties under R.C. § 1716.17 and the common law.

B. Ohio Charitable Trusts Act

117. Funds raised and held by Defendants on behalf of the charitable purposes are subject to a valid “charitable trust” under R.C. § 109.23.

118. Defendants are or have been fiduciaries and have fiduciary duties under R.C. § 109.23 *et seq.* and the common law.

C. Ohio Pattern of Corrupt Activities Act

119. Defendants constitute an “enterprise” as defined in the Ohio Pattern of Corrupt Activities Act, R.C. § 2923.31.

120. This enterprise has engaged in “corrupt activities” as defined in R.C. § 2923.31(I), in that Defendants routinely conspired and engaged in conduct constituting certain predicate offenses alleged in this Complaint.

121. The Attorney General brings this civil proceeding against Defendants for their actions of engaging in a pattern of corrupt activity in violation of R.C. § 2923.32 pursuant to R.C. § 2923.34.

122. The allegations in the preceding paragraphs of this Complaint are incorporated by reference into each and every count of this Complaint as if fully restated therein, and the

allegations in each count of this Complaint are incorporated by reference into every other count of this complaint as if fully restated therein.

VI. Allegations

COUNT ONE **PATTERN OF CORRUPT ACTIVITIES – RACKETEERING**

123. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by engaging in “racketeering activity” under the Organized Crime Control Act of 1970 (18 USC Section 1961(1)(B)).

124. Defendants and other persons acting at the Defendants’ direction may have committed additional corrupt activities not known at this time.

COUNT TWO **PATTERN OF CORRUPT ACTIVITIES – RACKETEERING BY MAIL FRAUD**

125. Defendants engaged in “racketeering activity” under the Organized Crime Control Act of 1970 (18 USC Section 1961(1)(B)) by fraudulently requesting that charitable donations be delivered through the United States Postal Service. Donations were sent through the United States Postal Service in response to the Defendants’ fraudulent solicitations. Such conduct is mail fraud in violation of 18 USC Section 1341.

126. Defendants and other persons acting at the Defendants’ direction may have committed additional corrupt activities not known at this time.

COUNT THREE **PATTERN OF CORRUPT ACTIVITIES – RACKETEERING BY WIRE FRAUD**

127. Defendants engaged in “racketeering activity” under the Organized Crime Control Act of 1970 (18 USC Section 1961(1)(B)) by transmitting or causing to be transmitted verbal charitable solicitations by means of wire, committing wire fraud in violation of 18 USC Section 1343.

128. Defendants and other persons acting at the Defendants’ direction may have committed additional corrupt activities not known at this time.

COUNT FOUR
PATTERN OF CORRUPT ACTIVITIES – RACKETEERING BY LAUNDERING
MONEY OR ASSETS

129. Defendants engaged in “racketeering activity” under the Organized Crime Control Act of 1970 (18 USC Section 1961(1)(B)) by laundering money or assets in violation of 18 USC 1956.

130. Defendants and other persons acting at the Defendants’ direction may have committed additional corrupt activities not known at this time.

COUNT FIVE
PATTERN OF CORRUPT ACTIVITIES – RACKETEERING BY ENGAGING IN
MONETARY TRANSACTIONS IN PROPERTY DERIVED FROM UNLAWFUL
ACTIVITY

131. Defendants engaged in “racketeering activity” under the Organized Crime Control Act of 1970 (18 USC Section 1961(1)(B)) by engaging in monetary transactions in property derived from unlawful activity in violation of 18 USC 1957.

132. Defendants and other persons acting at the Defendants’ direction may have committed additional corrupt activities not known at this time.

COUNT SIX
PATTERN OF CORRUPT ACTIVITIES – RACKETEERING BY TRANSPORTING
STOLEN OR FRAUDULENTLY TAKEN MONEYS

133. Defendants engaged in “racketeering activity” under the Organized Crime Control Act of 1970 (18 USC Section 1961(1)(B)) by transporting stolen or fraudulently taken moneys over

\$5,000 knowing the same had been stolen, converted, or taken by fraud in violation of 18 USC 2314.

134. Defendants and other persons acting at the Defendants' direction may have committed additional corrupt activities not known at this time.

COUNT SEVEN

PATTERN OF CORRUPT ACTIVITIES – RACKETEERING BY RECEIVING, POSSESSING, CONCEALING, STORING, BARTERING, OR DISPOSING OF STOLEN OR FRAUDULENTLY TAKEN MONEYS

135. Defendants engaged in “racketeering activity” under the Organized Crime Control Act of 1970 (18 USC Section 1961(1)(B)) by receiving, possessing, concealing, storing, bartering, or disposing of stolen or fraudulently taken moneys over \$500 or more in violations of 18 USC 2315.

136. Defendants and other persons acting at the Defendants' direction may have committed additional corrupt activities not known at this time.

COUNT EIGHT

PATTERN OF CORRUPT ACTIVITIES – MONEY LAUNDERING

137. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by engaging in transactions with the proceeds of unlawful activities with the purpose of committing or furthering the commission of corrupt activity in violation of R.C. § 1315.55(A)(1).

138. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by engaging in transactions with the proceeds of unlawful activities with the intent to conceal or disguise the nature, location, source, ownership, or control of the property in violation of R.C. § 1315.55(A)(2).

139. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by engaging in transactions with the purpose to promote, manage, establish, carry on, or facilitate

the promotion, management, establishment, or carrying on of corrupt activity in violation of R.C. § 1315.55(A)(3).

140. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by conducting, structuring, or attempting to conduct or structure a transaction involving the proceeds of corrupt activity in violation of R.C. § 1315.55(A)(4).

141. Defendants and other persons acting at the Defendants' direction may have committed additional corrupt activities not known at this time.

COUNT NINE
PATTERN OF CORRUPT ACTIVITIES – THEFT

142. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by engaging in theft of charitable assets or records of one or more of the charitable organizations and of donors in violation of R.C. § 2913.02.

143. Defendants and other persons acting at the Defendants' direction may have committed additional corrupt activities not known at this time.

COUNT TEN
PATTERN OF CORRUPT ACTIVITIES - TELECOMMUNICATIONS FRAUD

144. As described in this Complaint, Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by knowingly disseminating, transmitting, or causing to be disseminated or transmitted by means of wire, verbal charitable solicitations with purpose to execute or otherwise further a scheme to defraud in violation of R.C. § 2913.05(A).

145. Defendants and other persons acting at the Defendants' direction may have committed additional corrupt activities not known at this time.

COUNT ELEVEN
PATTERN OF CORRUPT ACTIVITIES – TAMPERING WITH EVIDENCE

146. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by altering, destroying, concealing or removing records and documents of one or more of Defendants, including, but not limited to, Defendants' employee list in violation of R.C. § 2921.12(A)(1).

147. Defendants and other persons acting at the Defendants' direction may have committed additional corrupt activities not known at this time.

COUNT TWELVE
PATTERN OF CORRUPT ACTIVITIES – TAMPERING WITH RECORDS

148. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by falsifying, destroying, removing, altering, defacing or mutilating writings, data or records of Defendants, including, but not limited to, the solicitation registration forms and affidavits of employee or agent of Encore Music Productions, Ltd. with the purpose to defraud or knowing that they were facilitating a fraud in violation of R.C. § 2913.42(A)(1).

149. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by uttering writings or records of Defendants, knowing them to have been tampered with the purpose to defraud or knowing that they were facilitating a fraud in violation of R.C. § 2913.42(A)(2).

150. Defendants and other persons acting at the Defendants' direction may have committed additional corrupt activities not known at this time.

COUNT THIRTEEN
PATTERN OF CORRUPT ACTIVITIES – OBSTRUCTION OF JUSTICE

151. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by destroying or concealing evidence of violations of law or acts or inducing persons to withhold

testimony or information with the purpose to hinder the discovery or punishment of their acts in violation of R.C. § 2921.32(A)(4).

152. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by communicating false information to the Attorney General, the State of Ohio and others with the purpose to hinder the discovery or punishment of their acts in violation of R.C. § 2921.32(A)(5).

153. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by preventing or obstructing the Attorney General's investigation by means of intimidation or deception in violation of R.C. § 2921.32(A)(6).

154. Defendants and other persons acting at the Defendants' direction may have committed additional corrupt activities not known at this time.

COUNT FOURTEEN
PATTERN OF CORRUPT ACTIVITIES – PERJURY

155. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by knowingly making false statements while under oath in an affidavit filed with the Attorney General in violation of R.C. § 2921.11(A).

156. Defendants and other persons acting at the Defendants' direction may have committed additional corrupt activities not known at this time.

COUNT FIFTEEN
PATTERN OF CORRUPT ACTIVITIES – RECEIVING STOLEN PROPERTY

157. Defendants engaged in a pattern of corrupt activities in violation of R.C. § 2923.32 by receiving, retaining or disposing of property of one or more charitable organizations while knowing or having reasonable cause to believe that the property was obtained from theft in violation of R.C. § 2913.51(A).

158. Defendants and other persons acting at the Defendants' direction may have committed additional corrupt activities not known at this time.

COUNT SIXTEEN
DECEPTIVE ACTS AND PRACTICES

159. At times relevant to this Complaint, Defendants and their agents committed a deceptive act or practice by knowingly misrepresenting a material fact related to the planning, conducting, or executing of a solicitation of contributions for a charitable organization or for a charitable purpose when, among other things, they claimed to be volunteers, members, or firefighters of the charitable organizations when requesting donations, and claimed one-hundred percent or all of the donations would benefit the charitable organization when neither were true statements in violation of R.C. § 1716.14(A)(1).

160. The acts alleged in this Count constitute violations of R.C. § 1716.14(A)(1), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT SEVENTEEN
ILLEGALLY SOLICITING WITHOUT REGISTERING AS PROFESSIONAL SOLICITORS

161. Defendants and their agents failed to disclose the names and addresses of approximately two hundred persons working as officers, employees, and agents of Defendants and their agents and all other persons with whom Defendants have contracted or hired to work under their direction, including solicitors, within five days of the date of employment or contractual arrangement in violation of R.C. § 1716.07(B).

162. Defendants and their agents failed to register with the Attorney General before engaging in solicitation in violation of R.C. § 1716.07(B).

163. The acts alleged in this Count constitute violations of R.C. § 1716.07(B), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT EIGHTEEN
ILLEGALLY SOLICITING WITHOUT FILING A BOND

164. Defendants failed to file with and have approved by the Attorney General a bond in which the professional solicitor shall be the principal obligor, in the sum of twenty-five thousand dollars, with one or more sureties authorized to do business in this state in violation of R.C. § 1716.07(C).

165. The acts alleged in this Count constitute violations of R.C. § 1716.07(C), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT NINETEEN
ILLEGALLY SOLICITING WITHOUT FILING SOLICITATION NOTICES

166. At times relevant to this Complaint, Defendants Encore and Chiovitti failed to timely file ninety-three (93) solicitation notices with the Attorney General's Office prior to commencing solicitation campaigns in violation of R.C. § 1716.07(D).

167. The remaining Defendants failed to file any required documents with the Attorney General.

168. The acts alleged in this Count constitute violations of R.C. § 1716.07(D), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT TWENTY
ILLEGALLY SOLICITING WITHOUT FILING FINANCIAL REPORTS

169. At times relevant to this Complaint, Defendants Encore and Chiovitti failed to timely file one hundred twenty-seven (127) financial reports with the Attorney General's Office for various solicitation campaigns in violation of R.C. § 1716.07(E).

170. The remaining Defendants failed to file any required documents with the Attorney General.

171. The acts alleged in this Count constitute violations of R.C. § 1716.07(E), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT TWENTY-ONE
ILLEGALLY SOLICITING WITHOUT UPDATING REQUIRED INFORMATION

172. At times relevant to this Complaint, Defendants failed to report in writing to the Attorney General changes in information filed with the Attorney General within seven days after the changes occurred in violation of R.C. § 1716.07(H).

173. The acts alleged in this Count constitute violations of R.C. § 1716.07(H), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT TWENTY-TWO
HIRING CONVICTED FELONS TO SOLICIT

174. At times relevant to this Complaint, Defendants hired at least twenty-four solicitors who had been convicted of felonies within five years of soliciting in violation of R.C. § 1716.07(I)(2).

175. Defendants Abby Makara, Philip Howells, Esther Holmes, and John Douglas were convicted of felonies within five years of serving as professional solicitors in violation of R.C. § 1716.07(I)(2).

176. The acts alleged in this Count constitute violations of R.C. § 1716.07(I)(2), for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT TWENTY-THREE
ILLEGALLY SOLICITING WITHOUT IDENTIFYING PROFESSIONAL SOLICITORS

177. At times relevant to this Complaint, Defendants and their agents failed to clearly and conspicuously disclose the name of Defendants as it is on file with the Attorney General and a statement that the solicitation is being conducted by the person as a professional solicitor prior to verbally requesting a contribution in violation of R.C. § 1716.08(B)(1)(a).

178. The acts alleged in this Count constitute violations of R.C. § 1716.08(B)(1)(a), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT TWENTY-FOUR
ILLEGALLY SOLICITING WITHOUT STATING THE FIXED PERCENTAGE RECEIVED BY THE CHARITABLE ORGANIZATION

179. Defendants and their agents failed to provide the fixed percentage of the gross revenue or the reasonable estimate of the percentage of the gross revenue that the charitable organization will receive as a benefit from the solicitation campaign when asked by a person being solicited in violation of R.C. § 1716.08(B)(2).

180. The acts alleged in this Count constitute violations of R.C. § 1716.08(B)(2), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT TWENTY-FIVE
MISLEADING AS TO MATERIAL FACT CONCERNING THE SOLICITATION

181. Defendants and their agents mislead persons to a material fact concerning the solicitation of contributions for a charitable organization or a charitable purpose when they falsely stated or implied that they were volunteers, members, or firefighters of the charitable organization and that one-hundred percent or all of the donation would benefit the charitable organization or be used for a charitable purpose when neither was true in violation of R.C. § 1716.14(A)(2).

182. The acts alleged in this Count constitute violations of R.C. § 1716.14(A)(2), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand (\$10,000) for each violation under R.C. § 1716.16(B).

COUNT TWENTY-SIX
MISLEADING PERSONS IN BELIEF PROCEEDS FROM SOLICITATION WILL BE
USED FOR CHARITABLE PURPOSE

183. Defendants and their agents mislead persons in the belief, or made or used representations to persons that implied that one-hundred percent or all of the proceeds of the

solicitation would be used for a charitable purpose when only ten to thirty-three percent of the donations would be used for a charitable purpose in violation of R.C. § 1716.14(A)(5).

184. The acts alleged in this Count constitute violations of R.C. § 1716.14(A)(5), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand (\$10,000) for each violation under R.C. § 1716.16(B).

COUNT TWENTY-SEVEN
MISREPRESENTATION OF GREATER DISTRIBUTION TO CHARITY THAN REPORTED TO THE ATTORNEY GENERAL AND RECEIVED BY THE CHARITIES

185. Defendants and their agents represented directly or by implication that a charitable organization will receive one-hundred percent of the gross revenue from a solicitation campaign which is greater than the ten to thirty-three percent of the gross revenue set forth in the contracts signed by Defendants and the charities and filed with the Attorney General and different than the ten to thirty-three percent the charitable organizations received in violation of R.C. § 1716.14(A)(8).

186. The acts alleged in this Count constitute violations of R.C. § 1716.14(A)(8), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT TWENTY-EIGHT
FILING FALSE INFORMATION WITH THE ATTORNEY GENERAL

187. Defendants filed false information with the Attorney General, including but not limited to registration forms for 2008, 2009, 2010, 2011, 2012 and 2013 stating the registrant or any member, officer, employee, or agent has not been convicted of a felony in this or another state within the past five years when twenty-four individuals had been convicted of felonies within

five years of soliciting and filing registration forms denying hiring any individuals with felony convictions with five years of soliciting between 2008 and 2013 in violation of R.C. § 1716.14(A)(9).

188. The acts alleged in this Count constitute violations of R.C. § 1716.14(A)(9), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT TWENTY-NINE
FILING FALSE INFORMATION IN RESPONSE TO RECORDS REQUEST

189. Defendants provided false or misleading information in response to a request from the Attorney General when providing four affidavits signed under oath by Defendants claiming they had no knowledge of any of their activities that could be expected to lead to a conviction when all four solicited within five years of a felony conviction and filing registration forms with the Attorney General denying hiring any individuals with felony violations within five years of soliciting in violation of R.C. § 1716.14(A)(10).

190. The acts alleged in this Count constitute violations of R.C. § 1716.14(A)(10), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT THIRTY
FAILING TO PROVIDE COMPLETE AND TIMELY PAYMENT TO CHARITIES

191. Defendants failed to provide complete and timely payment of proceeds to charitable organizations in 2008 in violation of R.C. § 1716.14(A)(11).

192. The acts alleged in this Count constitute violations of R.C. § 1716.14(A)(11), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000) for each violation under R.C. § 1716.16(B).

COUNT THIRTY-ONE
ILLEGALLY SOLICITING IN VIOLATION OF OHIO REVISED CODE CHAPTER
1716

193. Defendants and their agents failed to comply with numerous requirements of Ohio Revised Code Chapter 1716 for the reasons stated above in violation of R.C. § 1716.14(A)(12).

194. The acts alleged in this Count constitute violations of R.C. § 1716.14(A)(12), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT THIRTY-TWO
FAILURE TO COMPLY WITH OHIO REVISED CODE CHAPTER 1716

195. R.C. § 1716.07(A) prohibits professional solicitors from engaging in any solicitation unless it has complied with the requirements of Chapter 1716 and any rules adopted thereunder.

196. Defendants and their agents failed to comply with the requirements of Chapter 1716 and/or any rules adopted thereunder.

197. The acts alleged in this Count constitute violations of R.C. § 1716.07(A), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B).

COUNT THIRTY-THREE

VIOLATIONS OF ASSURANCE OF DISCONTINUANCE

198. Defendants violated an assurance of discontinuance with the Attorney General's Office dated November 22, 2000, Franklin County Common Pleas Case Number 00MS11207. In part, the assurance of discontinuance required Encore to: (a) file completed solicitation notices and consents prior to commencing solicitation campaigns, (b) properly file solicitation campaign financial reports, and (c) comply with R.C. Chapter 1716.

199. The assurance of discontinuance provided that any evidence of a violation of the assurance was prima facie evidence of a violation of R.C. Chapter 1716.

200. Defendants violated several of the terms of the assurance of discontinuance, including but not limited to, filing ninety-three (93) solicitation notices and consents after commencing solicitation campaigns, filing one hundred twenty-seven (127) financial reports late, and failing to comply with R.C. §§ 1716.07, 1716.08, 1716.14, 1716.16 and 1716.17 in violation of R.C. § 1716.16(D).

201. The acts alleged in this Count constitute violations of R.C. § 1716.16(D), for which Defendants are subject to injunctive relief and for which Defendants are liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each violation under R.C. § 1716.16(B) and shall be paid into the state treasury to the credit of the charitable law fund in accordance with R.C. § 1716.16(E).

COUNT THIRTY-FOUR **NUISANCE**

202. Defendants and their agents solicited contributions for charitable organizations or for a charitable purpose without complying with R.C. §§ 1716.07, 1716.08, 1716.14, and 1716.17 in violation of R.C. § 1716.14(B), which constitute a nuisance.

203. If Defendants' activities are not abated and perpetually enjoined, further violations of the Ohio Charitable Organizations Act are imminent and will persist.

204. Under Ohio Revised Code Chapter 3767 and R.C. § 1716.16(B), the Plaintiff State of Ohio is entitled to abate Defendants' further violations of the Ohio Charitable Solicitation Act and perpetually enjoin Defendants from all acts of solicitation in the State of Ohio as defined in R.C. § 1716.01(K).

COUNT THIRTY-FIVE
OBSTRUCTION OF JUSTICE

205. Defendants destroyed or concealed evidence of violations of law or acts or induced persons to withhold testimony or information with the purpose to hinder the discovery or punishment of their acts in violation of R.C. § 2921.32(A)(4).

206. Defendants communicated false information to the Attorney General, the State of Ohio and others with the purpose to hinder the discovery or punishment of their acts in violation of R.C. § 2921.32(A)(5).

COUNT THIRTY-SIX
FALSIFICATION

207. Defendants knowingly made a false statement with the purpose to mislead a public official in performing the public official's official function, with the purpose to secure the issuance by a governmental agency of a registration, the statement was sworn or affirmed before a notary public or another person empowered to administer oaths, the statement was in writing on or in connection with a report or return that is required or authorized by law, the statement was made with purpose to commit or facilitate a theft offense, and the statement was made on a form, record or other writing that is required by law when Defendants submitted affidavits to the Attorney General swearing they did not have knowledge of any activities they would expect to

lead to any conviction when Defendants had solicited within five years of a felony conviction, and when Defendants submitted registration forms swearing no employees had felonies within five years of soliciting in 2008, 2009, 2010, 2011, 2012, and 2013 when they had hired employees with felonies within five years in violation of R.C. § 2921.13(G).

208. The Attorney General brings this action pursuant to R.C. §2921.13 (G) as a person injured by the false statements and on behalf of the charitable beneficiaries and the general public injured by the false statements.

COUNT THIRTY-SEVEN
COMMON LAW FRAUD

209. As described in this Complaint, Defendants and other persons acting at Defendants' direction made false or misleading statements and representations to the Attorney General, the State of Ohio, charitable organizations, potential donors and the public who relied on such statements to their detriment and to the enrichment of Defendants.

210. Defendants' statements and misrepresentations were purposeful, willful, wanton, and/or reckless and intended to mislead the Attorney General, the State of Ohio, charitable organizations, potential donors and the public.

211. The Attorney General, the State of Ohio and other persons relied on those false or misleading statements and representations and have suffered damages.

COUNT THIRTY-EIGHT
CIVIL CONSPIRACY

212. Defendants and other persons acting at Defendants' direction, including but not limited to telemarketers, professional solicitors and other associated persons of Defendants maliciously combined to commit the acts as described and alleged in this complaint.

213. Defendants and other persons acting at Defendants' direction acted in a tortious nature and resulted in loss or other damages to the charitable beneficiaries of those charities for which they solicited.

COUNT THIRTY-NINE
UNJUST ENRICHMENT

214. When a party would be unjustly enriched by wrongly retaining property, the Court may impose a constructive trust upon that party, placing upon the party the duty in equity to convey the property to its rightful owner.

215. Defendants personally benefited at the expense of the charitable beneficiaries for which they were soliciting, and at the expense of donors by taking proceeds collected for charitable purposes and using that money for their own personal and other unlawful purposes.

216. As a result of Defendants' conduct, Defendants were unjustly enriched when they retained charitable proceeds at the expense of charitable beneficiaries.

217. Because Defendants have been unjustly enriched, Plaintiff Attorney General is entitled to an order of this Court disgorging all amounts unjustly retained by Defendants.

218. The Attorney General, in his role as *parens patriae*, protects charitable trusts and their beneficiaries who should have benefited from charitable trust assets, including the assets raised or held on behalf of the charitable beneficiaries of firefighter and police officer organizations.

219. Because Defendants have proven incapable of appropriately managing and distributing charitable trust assets and solicitation proceeds collected and held for charitable purposes, Plaintiff Attorney General is entitled to an order imposing a constructive trust over all proceeds raised or collected by Defendants for charitable purposes, including all amounts unjustly retained by Defendants, and an order enforcing such constructive trust. Moreover, Plaintiff Attorney

General requests that all assets and proceeds under constructive trust be transferred to legitimate charitable organizations benefiting similar charitable purposes for which Defendants solicited within the discretion of the Court.

COUNT FORTY
FAILING TO COOPERATE WITH INVESTIGATION

220. Defendants knowingly concealed information with the purpose to avoid, evade or prevent compliance in whole or in part with any investigation under Chapter 1716 by submitting sworn affidavits to the Attorney General stating Defendants had no knowledge of any activities which they could be expected to lead to a conviction when Defendants had knowledge of felony convictions within five years of soliciting in violation of R.C. § 1716.15(E).

COUNT FORTY-ONE
BREACH OF FIDUCIARY DUTIES

221. Defendants and other persons acting at Defendants' direction owed fiduciary duties to the charitable beneficiaries of the organizations for which they solicited contributions, including the duty of care, the duty of loyalty, the duty to properly manage accounts, and the duty to comply with the law, as well as other duties, including, but not limited to, the duty to not waste charitable trust assets and to act in the best interest of the charities, resulting in loss and other damages to the charitable beneficiaries of those organizations.

222. Defendants violated their fiduciary duties of good faith by failing to act with the degree of care and skill which an ordinarily prudent person would have used in dealing with his or her own property.

223. Defendants violated their fiduciary duties to not commingle charitable assets with their own personal assets by keeping a percentage of all donations for expenses after telling donors one hundred percent of the donation would be received by the charitable organizations.

COUNT FORTY-TWO
REFORMATION OF CHARITABLE TRUST

224. Ohio courts recognize the equitable doctrine of *cy pres* and courts will apply the doctrine when: (A) there is a viable charitable trust; (B) the donor evidenced a general charitable intent on establishing the trust; and (C) it has become impossible or impractical to carry out the specific purposes or terms of the trust.

225. Ohio case law recognizes the equitable doctrine of deviation. The Court may apply the doctrine when it deems it necessary or highly desirable in order to enable the trustee to perform the purposes of the trust. The Court may deviate from the terms of the trust if the provisions have become so restrictive as to impair accomplishment of the trust purposes.

226. Defendants and other persons acting at Defendants' direction solicited for charitable purposes and manifested an intention to create a charitable trust in favor of the charitable beneficiaries of the organizations for which they solicited by claiming that one-hundred percent or all proceeds benefitted a charitable organization or a charitable purpose. As such, the funds raised or collected by Defendants may be used only for the charitable purposes set forth in the terms of the trust. Additionally, all charitable proceeds unjustly or illegally retained by Defendants are subject to the same charitable trust.

227. In donating money for the benefit of the charitable beneficiaries for which Defendants solicited, the public manifested the intent to create a charitable trust in favor of the charitable beneficiaries. As such, the funds raised by Defendants on behalf of the charitable beneficiaries must be used only for the charitable purposes set forth in the terms of the trust. Additionally, all charitable proceeds unjustly or illegally retained by Defendants are subject to the same charitable trust.

228. The specific purpose and/or specific terms of the charitable trust have become impossible or impractical to perform due to the unlawful acts of Defendants and other persons acting at the Defendants' direction.

229. Because Defendants have proven incapable of appropriately managing and distributing charitable trust assets and solicitation proceeds collected on behalf of charitable purposes, the Attorney General requests an order reforming the charitable trust and distributing all assets and proceeds to legitimate charitable organizations benefiting similar charitable purposes in Ohio.

PRAYER FOR RELIEF

WHEREFORE, pursuant to his statutory and common law authority, Plaintiff Attorney General respectfully requests the Court to grant the following relief:


- (A) Grant a permanent injunction and perpetually enjoin Defendants from holding any position as a director, officer, trustee or employee of any nonprofit corporation or association in the state of Ohio;
- (B) Grant immediate equitable and statutory relief freezing the accounts of Defendants and any other accounts used to perpetuate illegal activities and attach all assets comingled or otherwise accumulated or acquired with charitable proceeds;
- (C) Grant a preliminary and permanent injunction prohibiting Defendants from soliciting in the state of Ohio for charitable purposes.
- (D) Impose a constructive trust over all assets unjustly or illegally retained by Defendants and order those Defendants to disgorge all assets held under that constructive trust to the Attorney General for distribution to legitimate charitable organizations benefiting the purposes for which Defendants solicited.

- (E) Order Defendants to pay restitution and compensatory damages, including interest for all amounts unjustly or illegally retained by Defendants to the Attorney General for distribution to legitimate charitable organizations benefitting the purposes for which Defendants solicited;
- (F) Order the dissolution or reorganization of the Defendant's enterprise;
- (G) Order the dissolution of all of the Defendants' business entities and revocation of all of the Defendants' business licenses;
- (H) Order the divestiture of the Defendants' interests in the Defendants' enterprise or real property.
- (I) Declare the terms of the charitable trust, and enter an order enforcing those terms in a manner consistent with this Complaint including transferring the assets of Defendants to the Attorney General for distribution to legitimate charitable organizations benefitting the purposes for which Defendants solicited.
- (J) Reform the charitable trust in accordance with the doctrine of *cy pres* or deviation, including transferring the assets of Defendants to the Attorney General for distribution to legitimate charitable organizations benefitting the purposes for which Defendants solicited.
- (K) Award Plaintiff Attorney General punitive damages in an amount that is just and appropriate for Defendants' malfeasance;
- (L) Award Plaintiff Attorney General reasonable attorneys' fees, expenses, and costs of investigation and litigation in accordance with R.C. § 1716.16;

- (M) Award Plaintiff Attorney General the total value of the treble damages, attorneys' fees, and costs awarded to the prevailing party, less any restitution received by the Plaintiff Attorney General in accordance with R.C. § 2923.34.
- (N) Impose a civil penalty against Defendants of up to \$10,000 for each violation of Ohio Revised Code Chapter 1716.
- (O) Order restitution and other compensation as the Court deems appropriate for Defendants' unlawful conduct;
- (P) Order Defendants to give an accurate accounting of solicitation activities and financial activities.
- (Q) Award joint and several liability against Defendants.
- (R) Grant Plaintiff Attorney General other relief as the Court deems proper and necessary.

Respectfully submitted,

MIKE DEWINE
Attorney General


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JURY DEMAND

Plaintiff, State of Ohio, by and through counsel, hereby demands a trial by jury on all issues so triable.

Amley E. Redabaugh