

COMMON PLEAS COURT  
FILED

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MARGIE MURPHY MILLER  
CLERK OF COURTS  
ALLEN COUNTY, OHIO

IN COURT OF COMMON PLEAS  
ALLEN COUNTY, OHIO

THE STATE OF OHIO, *ex rel*,  
MIKE DEWINE,  
OHIO ATTORNEY GENERAL

Plaintiff

v.

ENCORE MUSIC PRODUCTIONS, LTD., et al.

Defendants.

Case No. CV2013

0676

Judge

**REED**

Type of Case: Other Civil

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**MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION**

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Plaintiff, State of Ohio *ex rel*. Mike DeWine, the Ohio Attorney General, respectfully moves this Court, pursuant to Ohio Civ. R. 65, R.C. §§ 2923.34 and 1716.16(B) for the immediate issuance of a Temporary Restraining Order (without notice to the Defendants) and a Preliminary Injunction enjoining Defendants, Encore Music Productions, Ltd., Joseph Chiovitti, Phil's Productions LLC, Philip Howells, MVP Productions LLC, Martin Vernello, William Sharp, Waive Sharp, Kingsley Harris, Jennifer Fairall, Jessica Covington, Abby Makara, William Berrier, Laura Harper, Jaime Kegarise, Esther Holmes, John Douglas, and Matthew Bocian, as well as their officers, agents, servants, employees, attorneys, and those persons in

active concert or participation with them (hereinafter “Encore Defendants”), from soliciting for any charitable organization or charitable purpose in the State of Ohio and from acting as a professional solicitor under Ohio Revised Code Chapter 1716, the Ohio Charitable Organizations Act.

Specifically, the Attorney General requests the Court to:

1. Order Defendants to immediately cease all activities on behalf of any charitable organization or trust in the state of Ohio, including, but not limited to International Association of Firefighters of Alliance #480 (“IAFF #480”), International Association of Firefighters of 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”), 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”), 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”), Kiwanis Club of Boardman and the Tiffin Area Babe Ruth Baseball League;

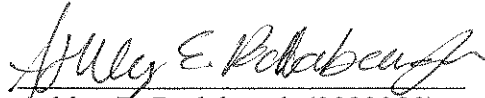
2. Order Defendants to immediately cease all acts of solicitation as defined in R.C. § 1716.01(K) in the State of Ohio for any charitable purpose or charitable organization, including, but not limited to, the same parties listed in paragraph 1. This includes, but is not limited to:
  - a. Requesting orally or in writing anything of value for the benefit of a charitable purpose or charitable organization,
  - b. Distributing, circulating, posting, or publishing any handbill, written advertisement, or other publication that directly or implicitly seeks to obtain a contribution for any charitable purpose or charitable organization,

- c. Selling, offering, or attempting to sell any concert tickets for any charitable organization or charitable purpose, or using the name of any charitable organization or charitable purpose in an appeal for the sale of concert tickets, including those concerts in which all or part of the proceeds from the sale will be used for any charitable purpose or will benefit any charitable organization;
3. Order Defendants to immediately cease from disposing of assets held in the name of or for the benefit of the same parties listed in paragraph 1 or any other charitable or nonprofit entity, including but not limited to cash, supplies, and financial and other records;
4. Order Defendants to immediately cease accessing or withdrawing funds from any and all financial accounts in the name of the same parties listed in paragraph 1 or any other charitable or nonprofit entity;
5. Order that all accounts in the name of Encore Music Productions, Ltd., MVP Productions LLC and Phil's Production's LLC be taken into actual and/or constructive possession by any and all banking institutions;
6. Order that specific accounts in the names of Defendants Encore Music Productions, Ltd., Phil's Productions, LLC, Joseph A. Chiovitti, Philip J. Howells, and Martin J. Vernello, identified as The Farmers National Bank of Canfield account numbers 1552127 and 5505109, Huntington National Bank account number 2788838563, Seven Seventeen Credit Union account number 355245-00, JP Morgan Chase Bank account number 113513700, and Peoples Bank account number 2040045585 be taken into actual and/or constructive possession by those banking institutions and frozen as to all deposits and transfers.

The reasons and authorities are more fully set forth in the attached Memorandum in Support, which is incorporated by reference.

Respectfully submitted,

Mike DeWine  
Ohio Attorney General



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### **MEMORANDUM IN SUPPORT**

#### **I. INTRODUCTION**

The Encore Defendants conspired to steal money from charities by creating an organization of telemarketers, which included some recently convicted felons, to mislead Ohio citizens as to their identity and the percentage of the donation going to charity in violation of R.C. Chapters 1716 and 2923. The Encore Defendants targeted charities with strong, emotional appeal to public donors, specifically firefighters and police charities, in hopes to gain the most profit from each solicitation campaign.

For each solicitation campaign, the Encore Defendants used local telephone numbers and instructed the telemarketers to mislead Ohio citizens into believing the telemarketers were local firefighters, police officers, or volunteers and one hundred percent of their donation went to the

local firefighter or police charity for which they were soliciting. Instead, the telemarketers were paid agents of the Encore Defendants and not firefighters or volunteers, and only ten to thirty-three percent of each donation went to the charities. Beyond the Encore Defendants deception of Ohio citizens, they also blatantly disregarded the Attorney General filing requirements of R.C. Chapter 1716 over two hundred times, with many of the filings containing false information.

The Encore Defendants used hundreds of thousands of dollars donated by Ohio citizens for paying telemarketers and gambling instead of charitable purposes. The Encore Defendants are operating in violation of, and have failed to comply with, R.C. §§ 1716.07, 1716.08, 1716.14, and 1716.17, and its actions constitute a nuisance pursuant to R.C. § 1716.14(B). Further, the Encore Defendants will continue to mislead Ohio citizens, misuse charitable assets, and continue to deplete its funds for paychecks and gambling without immediate redress under R.C. §2923.34. Accordingly, this Court should issue an injunction to protect Ohio residents from the misleading and illegal acts of the Encore Defendants.

## **II. FACTS**

Ohio law strictly regulates charitable organizations and those individuals and entities acting on behalf of charities, mainly professional solicitors. The Ohio Attorney General's Office is the sole regulatory authority over Ohio's charities and the Office possesses broad powers to ensure that Ohio citizens are not defrauded in making charitable donations. In order to raise money, charities sometimes use professional solicitors whose only purpose is to solicit donations from citizens, including the elderly, by telephone, mail or in person. A bedrock principle of professional solicitation under the law is that they must not lie to the individuals they contact for donations.

### **A. Encore Music Productions, Ltd.'s Organizational Scheme.**

In 1997, Defendant Joseph Chiovitti, a professional solicitor of twenty-seven years, formed a for-profit corporation for telemarketing called Encore Music Production, Inc. (“Encore, Inc.”). (See Jeffrey Duvall Affidavit attached as “Exhibit 1”). In January 2005, Defendant Chiovitti dissolved Encore, Inc. and formed a Limited Liability Company under a similar name, Encore Music Productions, Ltd. (“Encore”). (Exhibit 1). Encore is located in Youngstown, Ohio and starting in 2006, Defendant Chiovitti expanded it to include several agents, one of which joined him in Youngstown. (See Berena Seifert Affidavit attached as “Exhibit 2”).

Defendant Philip Howells joined forces with Joseph Chiovitti in Youngstown and formed his own Limited Liability Company, Phil’s Productions, LLC. (Exhibits 1 and 2). The two men worked in the same location and managed the same telemarketers. (Exhibit 1). Joe Chiovitti contracted with the charities and filed paperwork with the Attorney General’s Office and Philip Howells used his company, Phil’s Productions, to pay the telemarketing staff. (See Sarah Perez Affidavit attached as “Exhibit 3” and Exhibit 2).

Although Chiovitti and Howells controlled the operation of Encore in Youngstown, several other defendants assisted with management of the telemarketers and larger solicitations. (Exhibit 1). Defendants Matthew Bocian, Jaime Kegarise, Jennifer Fairall, William Berrier, Jessica Covington, Esther Holmes, Abby Makara, and John Douglas all assisted Chiovitti and Howells with the day to day operation of Encore and/or solicited charities on behalf of Encore. (Exhibit 3).

Outside of Youngstown, Chiovitti worked with three other Defendants, Martin Vernello, William Sharp, and Waive Sharp (husband and wife), who all managed charitable solicitations from satellite locations throughout Ohio. (Exhibits 1, 2, and 3). Martin Vernello also formed his own company, MVP Productions LLC. (Exhibit 1). Vernello solicits with a few individuals,

including Defendant Laura Harper. (Exhibit 1). William and Waive Sharp solicit for Encore under the name of Sharp Productions typically from their home. (Exhibit 1).

Between 2006 and 2013, the Encore Defendants together conducted over 100 charitable campaigns for over thirty different charitable organizations, mostly firefighter and police officer charities. (Exhibit 2). Although some agents created separate corporate identities, they were all agents of Encore working together for one purpose, to make money through illegal solicitation methods.

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 firefighters associates or any other purpose permitted by law." (Exhibit1). Encore and its agents pursued this purpose by requesting monetary donations and selling concert tickets and business advertisements in concert program books. (Exhibit 1). Defendants' fundraising concerts were typically for police and firefighter organizations and held in the charitable organization's local community. (Exhibits 1 and 2). The defendants would call from local telephone numbers and ask donors to mail checks to a local P.O. Box or arranged for an on-site pick up of the donation. (Exhibit 1). All of these actions created an illusion portrayed to the public that the Defendants were calling locally and that all of the donations would stay locally.

**B. Encore has a History of Violating Charitable Solicitation Laws.**

Between 1997 and 2000, Encore, Inc. violated several provisions of Ohio Revised Code (R.C.) Chapter 1716 by soliciting for unregistered charities, and soliciting without filing solicitation notices, contracts, sworn consent statements and financial reports with the Attorney General. (See Assurance of Discontinuance attached as "Exhibit 4"). On November 14, 2000, the



Attorney General's Office took action and entered into an Assurance of Discontinuance with Encore, Inc. and Joseph Chiovitti. (Exhibit 4). An Assurance of Discontinuance is a special type of settlement agreement statutorily proscribed for professional solicitors in R.C. Chapter 1716.

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 obey those requirements. (Exhibit 4). The Assurance of Discontinuance is binding on Encore because it is binding on Encore, Inc.'s successors, assignees and heirs. (Exhibit 4). However, Encore has violated the requirements of the Assurance of Discontinuance and continues to violate several Ohio laws. The remaining Defendants actively solicit without complying with any of the filing requirements mandated by Chapter 1716.

**C. The Defendants Continue to Defraud Ohio citizens and Violate Several Ohio Laws.**

***1. The Defendants Mislead Donors to Believe 100% of Their Donations Went to the Charity When Only 10% to 33% Actually Was Retained by the Charities.***

The Defendants and their agents falsely tell donors or lead them to believe that 100 percent of each donation goes to a local charity. (Exhibit 1) Instead, only ten to thirty-three percent of each donation goes to the local charity, while up to ninety-percent of each donation pays for Defendants' expenses, including pay checks and even gambling. (Exhibits 2 and 3). For example, between 2010 and 2013, Defendant Philip Howells used Defendant Phil's Productions account containing charitable dollars to spend over \$95,000 on gambling in the Mountaineer Casino in Chester, West Virginia, the Rivers Casino in Pittsburgh, Pennsylvania and the Horseshoe Casino in Cleveland, Ohio. (Exhibit 3).

Defendant Jennifer Fairall is one such example of the misleading and deceitful acts used by the Defendants to obtain donations from the public. (Exhibit 1). Defendant Jennifer Fairall solicited for FOP #106 in Ashtabula County, Ohio from a call room in Youngstown, Ohio. (Exhibit 1). She told a potential donor, “The Ashtabula County deputies, the FOP lodge 106. They do a benefit concert once a year, and you know, *we* get big names in, *we’ve* had Hermit Hermits, Juice Newton, *we’ve* had a lot of people, pretty popular people. And this year *we* got Davy Jones.” (Exhibit 1). She also said, “one hundred percent of the proceeds, it stays in Ashtabula and goes to different projects that they work on throughout the year... they give scholarships to children who are pursuing law enforcement, *we* work a lot with *our* food banks.” (Exhibit 1). However, FOP #106 only received 10% of the donations collected by the Defendants. (Exhibit 1). When asked if it was a fundraiser, Fairall confirmed it was a fundraiser for “us” and “we” do it every year. (Exhibit 1).

Defendant Fairall was also asked if she was a member of the FOP #106, she responded she was “not a policeman or police officer, [she’s] actually friends with one of the guys that is with the union and [she] come[s] in every year to make some phone calls for them.” (Exhibit 1). She never said she was calling as a professional solicitor. (Exhibit 1). Later, investigators from the Attorney General’s Office interviewed Fairall in Encore’s call center. (Exhibit 1). Fairall told the investigators that she was not friends with any of the officers and she insisted that she never tells people that 100% of the proceeds go to the charity. (Exhibit 1).

**2. *The Defendants Trained Their Employees to Give Potential Donors the Impression They Were Calling as Local Firefighters or Volunteers.***

The Defendants failed to disclose that they were professional solicitors calling on behalf of charities and falsely identified themselves as firefighters and volunteers of the charities.

(Exhibit 1). The Defendants trained and permitted their agents to create the misconception that the solicitors are local firefighters or volunteers of the firefighters or police officers, even sometimes claiming to have recently returned from putting out a fire. (Exhibit 1). They identify themselves as being “with” the charities and use words such as “we,” “our,” and “us” (Exhibit 1). When asked directly whether they are an actual firefighter or police officer, Defendants and their agents are trained to respond that they are volunteers working for the charities (Exhibit 1). However, none of the Defendants and their agents are firefighters, police officers, or volunteers (Exhibits 1 and 3).

***3. The Defendants Hired More Than Twenty-Two Recently Convicted Felons to Solicit.***

The Defendants hired over twenty-two individuals convicted of felonies within five years to solicit on behalf of contracted charitable organizations. (Exhibit 1). Those felons 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, permitting drug abuse, burglary, identity fraud, forgery, obstructing official business, felonious assault, and failing to comply with order or signal of a police officer. (Exhibit 1). Many of the felons were recruited from a community correctional facility in Youngstown, Ohio. (Exhibit 1). The Attorney General notified the Defendants it was illegal to employ individuals convicted of a felony within five years as solicitors, yet the Defendants continue to retain several felons a year as telemarketers and solicitors. (Exhibits 1 and 3).

***4. The Defendants Lied to the Attorney General’s investigators and Attempted to Obstruct Their Investigation.***

Upon the arrival of Attorney General's investigators to Encore's location in Youngstown, Defendants instructed their solicitors to shut down the phones and remain out of sight. (Exhibit 1). The investigators went to the Youngstown location to interview all individuals soliciting for Encore. (Exhibit 1). The Defendants attempted to prevent the investigators from interviewing employees located in the basement of the building by denying that any other employees were in the building. (Exhibit 1). Eventually the hidden employees walked upstairs for a break and the investigators interviewed them. (Exhibit 1).

The Defendants additionally hid employees from the Attorney General's office by failing to provide a list of employees for every registration filed on Encore's behalf since 2006 and failing to update the Attorney General's office of new employees hired after each annual registration was filed. (Exhibit 2). Since 2006, Defendants only registered Encore and its principal staff, namely Defendants Joe Chiovitti, Philip Howells, Martin Vernello, and William Sharp as well as two administrative staff members. (Exhibit 2). In total, Defendants failed to register or identify over 200 of its other solicitors. (Exhibits 2 and 3).

***5. The Defendants Illegally Solicit by Consistently Failing to Properly File with the Attorney General's Office.***

Ohio law requires the Defendants as professional solicitors to register annually with the Attorney General and file a bond for \$25,000. (Exhibit 2). The Defendants must also file a Solicitation Notice prior to any charitable solicitation campaign and a Financial Report after a campaign has concluded. (Exhibit 2). Defendant Encore also failed to meet over 210 filing requirements with the Attorney General, totaling approximately 83,543 days delinquent. (Exhibit 2).

Of those over 210 missed requirements, Defendant Encore failed to file ninety-three Solicitation Notices on time, including contracts and consent agreements with the charities, before beginning solicitation campaigns. (Exhibit 2). Encore filed twenty-two Solicitation Notices over one-year late and twenty-five Solicitation Notices over two-years late. (Exhibit 2). Encore also failed to timely file 127 solicitation campaign Financial Reports. (Exhibit 2). Encore filed forty-seven of those reports over one-year late, eleven reports over two-years late, two reports over three-years late, and two reports over four-years late. (Exhibit 2). Additionally, Defendant Encore conducted solicitation campaigns for Blue Knights Chapter XIV, Fraternal Order of Police #16, and Struthers Firefighters Community Fund, LLC in 2013 when those charitable organizations failed to register or file financial reports with the Attorney General's Charitable Law section. (Exhibit 2).

### **III. LAW AND ARGUMENT**

**A. The Court should issue a temporary restraining order and a preliminary injunction against the Encore Defendants because the Attorney General can show that they have violated the Ohio Charitable Organizations Act and because it promotes the public interest.**

Professional solicitors like the Encore Defendants are specifically regulated by the Ohio Charitable Organizations Act, R.C. Chap. 1716. This Act provides the Attorney General with statutory authority to seek and obtain broad injunctive relief against non-compliant professional solicitors. In particular, R.C. § 1716.16(B) states, "Upon a finding that any person has engaged or is engaging in any act or practice in violation of this chapter or any rule adopted under this chapter, a court may make any necessary order or enter a judgment including, but not limited to, an injunction, restitution, or an award of reasonable attorney's fees and costs of investigation and litigation, and may award to the state a civil penalty of not more than ten thousand dollars for each violation of this chapter or rule. *In seeking injunctive relief, the attorney general shall not*

*be required to establish irreparable harm but only shall establish a violation of a provision of this chapter or a rule adopted under this chapter or that the requested order promotes the public interest.”* (Emphasis added).<sup>1</sup>

The issuance of a temporary restraining order and preliminary injunction does not require clear and convincing evidence. *State v. R&J Partnership, Ltd.* (2<sup>nd</sup> Dist. Ct. App. 2007), 2007 Ohio 7165, 2007 Ohio App. LEXIS 6268 (specifically applying a preponderance of the evidence standard to preliminary injunctions under R.C. Section 1716.16(B)); *see Stoneham*, 140 Ohio App.3d at 267-68. In *R&J Partnership*, the Second District Court of Appeals considered a motion for preliminary injunction brought by the Attorney General pursuant to R.C. § 1716.16(B) to enjoin charitable activities. There, the Court found that R.C. § 1716.16(B) only requires the Attorney General to establish a violation of Chapter 1716 by a preponderance of the evidence in order to obtain a preliminary injunction. *R&J Partnership* (2<sup>nd</sup> Dist. Ct. App. 2007), 2007 Ohio 7165. Therefore, in obtaining a temporary restraining order and preliminary injunction in this matter, the Attorney General need only establish a violation of Chapter 1716 or show the requested order promotes the public interest by a preponderance of the evidence.

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<sup>1</sup> The general rule for issuance of a preliminary injunction requires the plaintiff to establish that there will be irreparable injury if the Court does not enjoin the defendants’ conduct. Ohio Civil Rule 65(A). Ohio Courts have considered four factors as shown by clear and convincing evidence to obtain a preliminary injunction, including (1) a substantial likelihood of success on the merits, (2) the existence of irreparable harm if an injunction is not issued, (3) that third-parties will not be unjustifiably harmed if an injunction is issued, and (4) that granting an injunction will serve the public interest. *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260, 267-68.

However, when a statute grants a specific injunctive remedy, the general rule does not apply. *Ackerman v. Tri-City Geriatric & Health Care, Inc.* (1978), 55 Ohio St.2d 51, 56. In *Ackerman*, the Ohio Supreme Court found that when a statute grants specific injunctive relief, the state need not show irreparable injury. *Id.* In the case of a statutory injunction, the moving party need only satisfy the statutory conditions. *Id.* at 57.

***1. The Defendants violated numerous provisions of R.C. Chap. 1716, which warrants an immediate ban from further charitable activities.***

For years, Defendants have persisted in a pattern of fraud and deceit that continues up to this day, which include but are not limited to violations of R.C. §§ 1716.07, 1716.08, 1716.14 and 1716.17 in the course of acting as a professional solicitor.<sup>2</sup>

**a. Committing Deceptive Acts or Practices and Misleading the Public in violation of R.C. §§ 1716.14(A)(1), (A)(2), and (A)(8).**

Defendants repeatedly planned, committed, and/or executed deceptive acts and misrepresentations upon potential donors as prohibited by R.C. § 1716.14(A). R.C. § 1716.14(A)(1) prohibits those soliciting on behalf of a charitable organization or a charitable purpose from “[c]omitting any deceptive act or practice as applied to the planning, conducting, or executing of any charitable solicitation of contributions.” R.C. § 1716.14(A)(2) prohibits those soliciting on behalf of a charitable organization or a charitable purpose from “[m]isleading any person as to any material fact concerning the solicitation of contributions for a charitable organization or charitable purpose or concerning a charitable sales promotion.” R.C. § 1716.14(A)(8) prohibits professional solicitors from representing that the charitable organization will receive a greater percentage of the gross revenue than the amount in the contract on file with the Attorney General.

Defendants falsely represented themselves and instructed their agents to falsely represent themselves to the public as firefighters, police officers, or “volunteers” for the fire or police organizations. Defendants also mislead the public in the belief that “all” or “100 percent” of the

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<sup>2</sup> Facts are supported by Affidavits of Major Case Investigator Jeffrey Duvall (Attached as Exhibit 1), Professional Solicitation Coordinator Berena Seifert (Attached as Exhibit 2), Senior Charitable Funds Auditor Sarah Perez (Attached as Exhibit 3), Assurance of Discontinuance (Attached as Exhibit 4), and Jeremy Welker (Attached as Exhibit 5).

proceeds from donations or concert ticket sales would go to the charities when only ten to thirty-three percent of the donation went to the charities. While making these false claims, Defendants furthered the fraud by failing to disclose their true identity as professional solicitors working for Encore.

**b. Illegally soliciting without registering as a professional solicitor in violation of R.C. § 1716.07(B).**

R.C. § 1716.07(B) requires professional solicitation organizations that register on behalf of all its members, officers, employees, agents, and solicitors to provide the names and addresses of all the officers, employees, and agents of the professional solicitor and all other persons with whom the professional solicitor has contracted to work under its direction, including solicitors, within five days of the date of employment or contractual arrangement. However, other than the principals of the enterprise, Defendants failed to disclose over 200 names and addresses of the vast majority of their officers, employees, solicitors, or agents as required by law.

**c. Illegally soliciting without filing Solicitation Notices and Financial Reports in violation R.C. §§ 1716.07(D) and (E).**

R.C. § 1716.07(D) requires professional solicitors to file a “Solicitation Notice” with the Attorney General’s Office prior to engaging in any solicitation by providing basic information about the campaign, including a copy of the contract with the charity and a signed consent statement from the charity. Also, within 90 days of the conclusion of any solicitation campaign, R.C. § 1716.07(E) requires professional solicitors to file a financial report with the Attorney General’s Office. However, since 2006, Defendant Encore was delinquent on over 210 solicitation notices and financial reports. More than 100 of Encore’s reports were over a year late. Defendant Encore was delinquent in providing these required materials for a total of at least 83,253 days. All of the other Defendants also failed to register as professional solicitors with the



Attorney General and failed to meet any of the Attorney General's professional solicitor filing requirements.

**d. Illegally soliciting without updating required information in violation of R.C. § 1716.07(H).**

R.C. § 1716.07(H) requires professional solicitors to notify the Attorney General of any changes in the materials they submit within seven days after the change occurs. Not only has Defendant Encore failed to file materials on time in the first place, it has failed to notify the Attorney General's Office of changes to the materials it has filed.

**e. Hiring convicted felons to solicit within five years of their convictions in violation of R.C. § 1716.07(I)(2).**

Professional solicitors are prohibited from hiring convicted felons as employees within five years of conviction under R.C. § 1716.07(I)(2). Defendants have hired over twenty-two felons to work as telemarketers who were convicted within the five-year period. Those felons have convictions for receiving stolen property, possession of cocaine, trafficking in cocaine, possession of heroin, theft, grand theft, breaking and entering, falsification, permitting drug abuse, burglary, identity fraud, forgery, obstructing official business, felonious assault, and failing to comply with order or signal of a police officer, among others.

**f. Illegally soliciting without disclosing the professional solicitor's name in violation of R.C. § 1716.08(B)(1)(a).**

Prior to engaging in any solicitation, R.C. § 1716.08(B)(1)(a) requires professional solicitors to clearly and conspicuously disclose the name of the professional solicitor as it is on file with the Attorney General and state that the solicitation is being conducted by the person as a professional solicitor. Defendants failed to make these disclosures to potential donors. Instead, Defendants represented or instructed its agents to represent themselves to potential donors as members of or volunteers for the various police and firefighter organizations.

**g. Violating terms of an Assurance of Discontinuance in violation of R.C. § 1716.16(D).**

R.C. § 1716.16(D) provides that a violation of an assurance of discontinuance constitutes a violation of Chapter 1716 of the Revised Code. In November 2000, Defendant Joseph Chiovitti signed an assurance of discontinuance on behalf of Encore Music Productions, Inc., of which Defendant Encore is the successor, requiring the professional solicitor to, in part: (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. However, based on the attached affidavits and above arguments, Defendant Encore has failed to comply with those assurances.

**h. Breaching their fiduciary duties in violation of R.C. § 1716.17**

Defendants violated R.C. § 1716.17 by breaching their fiduciary duties to the charitable beneficiaries of the police and firefighter organizations. Defendants owe fiduciary duties to those beneficiaries, including the duty of care, the duty of loyalty, the duty to properly manage accounts, and the duty to comply with 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. Here, by stating that 100 percent of donations went to charity, Defendants had fiduciary duties to use all the charitable proceeds they received according to the above fiduciary principles. (Exhibit 3). Instead of distributing 100 percent of the donations to the charities, Defendants breached their fiduciary duties by spending sixty-seven to ninety percent of the donations on their own expenses, including payroll and gambling. (Exhibit 4).

The actions of Encore Defendants constitute violations of R.C. §§ 1716.07, 1716.08, and 1716.14, which results in breaches of fiduciary duties in violation of R.C. § 1716.17, and constitutes a nuisance pursuant to R.C. § 1716.14(B). The Attorney General has established by a

preponderance of evidence numerous violations of Chapter 1716 by Encore Defendants and is therefore entitled to the necessary protection of injunctive relief under R.C. § 1716.16(B).

**2. *Immediate injunctive relief protects the public interest.***

In order to protect the public interest, the Attorney General was given the responsibility to regulate charitable solicitations in Ohio, protect and preserve charitable trust assets resulting from those solicitations, and protect the public from misleading solicitations. If the Defendants are permitted to continue soliciting, they will continue to mislead Ohio residents as to the identity of the person conducting the solicitation and the amount of money received by the charitable organizations. As stated above, Defendants' misleading statements, hiring of recently convicted felons and breach of fiduciary duties continue to deprive Ohio residents of the chance to make a fully informed decision as to how to spend their money because they are unaware of Defendants' identity and unlawful actions. If injunctive relief is not granted, the Attorney General cannot carry out his statutory responsibilities of protecting Ohioans. Thus, The Attorney General has established by a preponderance of the evidence that the requested relief promotes the public interest and is therefore entitled to the necessary protection of injunctive relief under R.C. § 1716.16(B).

**B. *A temporary restraining order and a preliminary injunction are also proper under the Ohio Corrupt Activities Act.***

R.C. § 2923.34(D) states in pertinent part, "In a civil proceeding under division (B) of this section, the court may grant injunctive relief without a showing of special or irreparable injury. Pending final determination of a civil proceeding initiated under this section, *the court may issue a temporary restraining order or a preliminary injunction upon a showing of immediate danger or significant injury to the plaintiff, including the possibility that any judgment for money damages might be difficult to execute[.]*" (Emphasis added).

**1. *The public is in immediate danger of Encore Defendants' continuing illegal acts defrauding them and charities of charitable assets.***

Defendants are currently calling Ohio citizens on behalf of charitable organizations and claiming the charities receive one hundred percent of the donation when the charities are receiving as little as ten percent of the donation. Without the necessary injunctive relief from this Court, the Encore Defendants will continue to solicit and defraud the public of its money by misleading the public as to their identity and the amount of money received by charities. Ohio citizens will continue to donate money to the Encore Defendants believing that their entire donation is for local charitable use, when a majority of the money benefits the Encore Defendants.

**2. *The Encore Defendants' continuous disregard for the law and their duplicitous practices support the presumption that any judgment for money damages will be difficult for the Attorney General to execute.***

Encore Defendants continue to hire solicitors, conduct charitable solicitation campaigns, and fail to timely file documents with the Attorney General. Without a Temporary Restraining Order and Preliminary Injunction, Encore Defendants will continue to pay its employees and agents hired for the charitable concerts. Additionally, Defendant Philip Howells will continue to use charitable monies for gambling in casinos. The depletion of Encore Defendants' funds for those reasons will make it difficult for the Attorney General to execute a judgment for money damages. Further, Encore Defendants have ignored the Franklin County Common Pleas Court enforcement of its 2000 Assurance of Discontinuance and continues to violate its provisions to this day. Those violations will continue to occur unless this Court issues a Temporary Restraining Order prior to a hearing.

Thus, the Attorney General has established by a preponderance of the evidence that the requested relief is necessary to protect the public and the Attorney General from immediate

danger of the Encore Defendants' continual fraud of charitable assets and potential depletion of assets resulting in difficulty of obtaining money damages in violation of R.C. § 2923.34.

**C. Irreparable injury will result from Defendants' continued conduct.**

Although not required, the Attorney General can also show by clear and convincing evidence (1) a substantial likelihood of success on the merits, (2) the existence of irreparable harm if an injunction is not issued, (3) that third-parties will not be unjustifiably harmed if an injunction is issued, and (4) that granting an injunction will serve the public interest. *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260, 267-68. *See also Martin Marietta Corp. v. Bendix*, 690 F.2d 558 (6th Cir., 1982). Considerable weight should be given to whether the public interest might be furthered or injured by a TRO. *See Adams v. Ohio Dept. of Health*, 356 N.E.2d 324, 328 (Montgomery C.P., 1976).

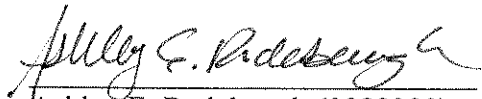
The Attorney General is substantially likely to succeed on the merits because Defendants violated the Ohio Charitable Organizations Act, the Ohio Corrupt Activities Act as well as the Common Law. As shown above, there is a substantial likelihood that the Attorney General will prevail on the merits. The public interest will suffer irreparable harm if injunctive relief is not granted, as Defendants will continue to mislead Ohio residents when soliciting for charitable donations, continue to hire recently convicted felons to solicit, and continue to convert charitable assets for their own benefit. No third parties would be unjustly harmed by the temporary cessation of solicitation. Finally, an injunction will serve the public interest by preventing Ohio residents from being misled when making the decision to donate to a charitable organization and preventing the misuse of charitable assets. Thus, an injunction is proper and necessary under Rule 65 of the Ohio Rules of Civil Procedure in order to protect the public interest.

#### IV. CONCLUSION

For all the reasons stated above, the Attorney General respectfully requests this Court to issue a Temporary Restraining Order and a Preliminary Injunction pursuant to R.C. § 2923.34, R.C. § 1716.16(B), and Rule 65 of the Ohio Rules of Civil Procedure in order to protect the public interest.

Respectfully submitted,

Mike DeWine  
Ohio Attorney General



Ashley E. Rodabaugh (0089389)  
Steven Kochheiser (0088058)  
Julie M. Pfeiffer (0069762)  
Assistant Attorneys General  
Charitable Law Section  
150 E. Gay St., 23<sup>rd</sup> Floor  
Columbus, Ohio 43215-3130  
Voice: 614-466-3181  
Fax: 866-471-2611  
*Attorneys for Plaintiff State of Ohio*

**CERTIFICATE OF SERVICE**

Copies of the Motion was delivered to Clerk for personal service to the follow persons  
on this 25<sup>th</sup> day of September, 2013 to:

Encore Music Productions, Ltd  
C/O Joseph Chiovitti  
755 Boardman-Canfield Road  
Suite K-1  
Youngstown, Ohio 44512

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

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

Philip Howells  
1609 Chattanooga Ave  
Youngstown, OH 44514

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

Martin Vernello  
825 Beatty Ave.  
Cambridge, Ohio 43725

Kingsley Harris  
308 W. Chestnut Street  
Lisbon, Ohio 44432

Jennifer Fairall  
a.k.a. Jennifer Goodman  
206 Robinson Road

Matthew Bocian  
38 Carter Circle #5  
Boardman, Ohio 44512

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  
149 Rhoda Ave.  
Youngstown, Ohio 44509

Laura Harper  
28 Weedon Ave.  
Cambridge, Ohio 43725

Jaime Kegaris  
127 Wilson St.,  
Struthers, Ohio 44471

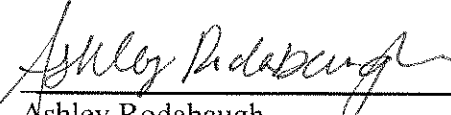
Esther Holmes  
425 Cleveland St.  
Youngstown, Ohio 44511

John Douglas  
3515 Lenox Ave.

Campbell, Ohio 44405

Youngstown, Ohio 44502

Jessica Covington  
5005 Center Road  
Lowellville, Ohio 44436

A handwritten signature in cursive script, reading "Ashley Rodabaugh", written over a horizontal line.

Ashley Rodabaugh  
Assistant Attorney General



**AFFIDAVIT OF MAJOR CASE INVESTIGATOR JEFFERY D. DUVALL**

State of Ohio            )  
                                  ) SS  
County of Franklin    )

NOW COMES Jeffery D. Duvall, being first duly sworn, deposes and states as follows:

1. I am of lawful age and suffer no disability at law.
2. I make this Affidavit upon personal information, knowledge, and belief.
3. I am employed by the Office of the Attorney General of the State of Ohio, Charitable Law Section, as a Major Case Investigator, and have held this position since January 2012. As a Major Case Investigator, I investigate issues concerning the management of charitable trusts, charitable solicitations, and charitable gaming.
4. As part of an ongoing investigation by this Office of Encore, I reviewed numerous audio recordings of the defendants and researched information on the defendants. Through my research I discovered Defendant Joseph Chiovitti has been a professional solicitor for twenty-seven years.
5. As part of an ongoing investigation by this Office of Encore, I reviewed Ohio Law Enforcement Gateway criminal history checks for Encore employees, directors and agents. I discovered over twenty-two individuals who were employees, directors or agents of Encore had a felony conviction within five years of employment by Encore or its agents. The felony convictions consisted of 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, permitting drug abuse, burglary, identity fraud, forgery, obstructing official business, felonious assault, and failing to comply with order or signal of a police officer. I also discovered from several Encore employees that many of them were members of a community correctional facility in Youngstown, Ohio. None of the individuals I reviewed were employed as a firefighter or police officer. One of the most recently paid employees of Encore, Marquise Edmonds, was charged in 2007 for possession of cocaine, a felony of the fourth degree.
6. As part of an ongoing investigation by this Office of Encore, I reviewed canceled checks from Phil's Productions LLC bank account at The Farmers National Bank of Canfield for the years 2011, 2012 and 2013. During that time frame, I found checks that appeared to be pay checks with "sub-contractor" written in the memo line for Defendants Matthew Bocian, Jaime Kegarise, Jennifer Fairall, William Berrier, Jessica Covington, Esther



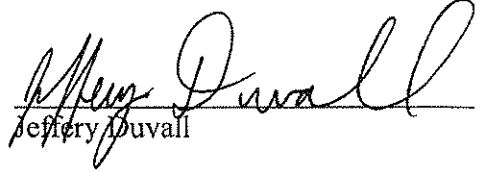
Holmes, Abby Makara, and John Douglas. Additionally, I found a check written to Marquise Edmonds in April 2013.

7. As part of an ongoing investigation by this Office of Encore, I reviewed Encore's Articles of Organization filed with the Ohio Secretary of State. The filing stated Encore's purpose is "to provide fundraising by booking concerts for non-profit organizations such as fraternal order of police organizations and firefighters associates or any other purpose permitted by law."
8. I also reviewed other filings of the defendants with the Ohio Secretary of State's Office. I discovered Joseph Chiovitti formed Encore Music Productions, Inc. in 1997. He also dissolved Encore Music Productions, Inc. in January 2005 and formed a Limited Liability Company called Encore Music Productions, Ltd. Martin Vernello formed a Limited Liability Company called M.V.P. Productions LLC in November of 2004. Philip Howells also formed a Limited Liability Company called Phil's Productions LLC in July of 2009. Waive Sharp registered a trade name of Sharp Productions in May of 2011.
9. As part of an ongoing investigation by this Office of Encore, I interviewed with individuals of the Lancaster International Association of Fire Fighters, Local #291. They identified Laura Harper as one of several individuals that helped Martin Vernello make solicitations.
10. As part of an ongoing investigation by this Office of Encore, I interviewed with William and Waive Sharp. They informed me that they typically call from their home when soliciting on behalf of charities.
11. As part of an ongoing investigation by this Office of Encore, I reviewed records provided to the Attorney General's Office by Encore and the charities that contract with Encore. Based on my review of those records, I determined that Encore conducted concerts on behalf of the charities in the town of the charity and in addition to requesting for donations over the phone, Encore also asked individuals to buy concert tickets and business advertisements in the concert books. When calling for donations, Encore used local telephone numbers to call for donors and asked donors to mail donations to a local P.O. box or arranged for an on-site pickup.
12. As part of an ongoing investigation by this Office of Encore, I reviewed sworn affidavits submitted by John Douglas, Philip Howells, Esther Holmes, and Abby Makara. All four swore in writing, under oath, they had no knowledge of any of their activities which could be expected to lead to any conviction. I also reviewed all four individuals' Ohio Law Enforcement Gateway criminal history checks. All four of those individuals had a felony conviction within five years of soliciting for Encore and its agents. All four of them lied on their affidavits filed with our office.

13. As part of an ongoing investigation by this Office of Encore, I reviewed the audio recordings of charitable solicitation calls made by Encore and its agents. Based on my review, I determined that Encore and its agents failed to disclose its name, a statement that the solicitation is being conducted by a professional solicitor, and, if asked, the percentage of gross revenue from the campaign retained by the charitable organization.
14. As part of an ongoing investigation by this Office of Encore, I reviewed the audio recording of Jennifer Fairall, an agent of Encore. In the recording I heard her tell a potential donor, "The Ashtabula County deputies, the FOP lodge 106. They do a benefit concert once a year, and you know, *we* get big names in, *we've* had Hermit Hermits, Juice Newton, *we've* had a lot of people, pretty popular people. And this year *we* got Davy Jones." She also said, "100% of the proceeds, it stays in Ashtabula and goes to different projects that they work on throughout the year... they give scholarships to children who are pursuing law enforcement, *we* work a lot with *our* food banks." As an employee of the Ohio Attorney General's Office, Charitable Law Section, I consulted the records of FOP 106 and the organization only receives 10% of the donations collected by Encore. Ms. Fairall also confirmed it was a fundraiser for "us" and "we" do it every year. She said she was "not a policeman or police officer, [she's] actually friends with one of the guys that is with the union and [she] come[s] in every year to make some phone calls for them."
15. As part of an ongoing investigation by this Office of Encore, I reviewed audio recording of an interview by an investigator in our office of Jennifer Fairall. The interview took place at Encore's call center after the phone call recording I reviewed of Jennifer Fairall mentioned above in paragraph 13. During the interview, Ms. Fairall stated she was not friends with any of the police officers and insisted she never tells people that 100% of the proceeds go to the charity.
16. As part of an ongoing investigation by this Office of Encore, I interviewed an agent of Encore who admitted to hearing an individual make a charitable solicitation call and state during that call that he had just returned from a fire.
17. As part of an ongoing investigation by this Office of Encore, I interviewed three agents of Encore who made telephone solicitations. The three agents told me they were instructed to mislead individuals they called. Additionally, they were instructed to have the individuals they call believe the solicitors were actually firefighters or volunteers for the firefighters and police officers. The agents also informed me that Joseph Chiovitti and Philip Howells managed the call center in Youngstown, Ohio.
18. As part of an ongoing investigation by this Office of Encore, I reviewed the audio recordings and investigative reports of interviews conducted by our office of Encore's agents, directors, and employees. Based on my review, I determined that Encore's directors, agents and employees attempted to prevent investigators from our office from interviewing other agents from Encore. When the investigators attempted to interview all of Encore's employees the defendants lied to the investigators and told them there were

no other employees in the office at the time. Later the investigators discovered other workers were hidden in the basement of Encore and interviewed them.

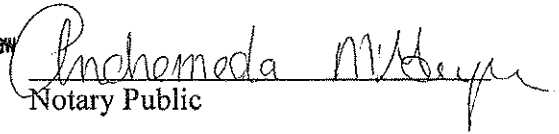
FURTHER AFFIANT SAITH NAUGHT.

  
Jeffrey Duvall

SWORN TO AND SUBSCRIBED in my presence, this 20<sup>th</sup> day of September, 2013.



Andromeda M. McGregor, Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date  
Sec. 147.03 R.C.

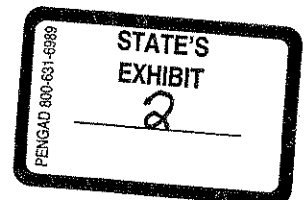
  
Notary Public

**AFFIDAVIT OF PROFESSIONAL SOLICITATION COORDINATOR  
BERENA S. SEIFERT**

State of Ohio            )  
                                  ) SS  
County of Franklin    )

NOW COMES Berena S. Seifert, being first duly sworn, deposes and states as follows:

1. I am of lawful age and suffer no disability at law.
2. I make this Affidavit upon personal information, knowledge, and belief.
3. I am employed by the Office of the Attorney General of the State of Ohio, Charitable Law Section, as the Professional Solicitation Coordinator, and have held this position since May 2006. As the Professional Solicitation Coordinator, I monitor professional solicitors in Ohio and enforce professional solicitation laws.
4. As the Professional Solicitation Coordinator, I monitor Attorney General filing requirements of professional solicitors. I regularly communicate with professional solicitors in Ohio to obtain annual registration filings, solicitation notice filings, fundraising contracts between charities and professional solicitors, financial statement filings, and registration update filings.
5. One of the professional solicitors I have dealt with is Encore Music Productions, Ltd. ("Encore").
6. My main point of contact at Encore has been Joseph Chiovitti. He represented himself to be the President and Owner of Encore Music Productions.
7. Encore has registered yearly as a professional solicitor with the Ohio Attorney General's Office since at least 2006 and has filed over one hundred campaigns with over thirty different charities.
8. The solicitation notices and fundraising contracts submitted by Encore indicated that their solicitation activities were mostly on behalf of police officer and firefighter charities.
9. The fundraising contracts filed by Encore for its solicitation campaigns designate a fixed percentage rate between ten to thirty-three percent of the gross revenue to the contracting charity.

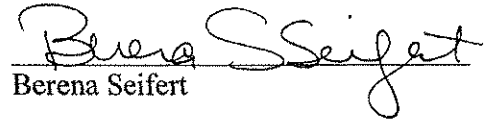


10. According to solicitation records on file with the Ohio Attorney General's Office, Joseph Chiovitti first registered as a professional solicitor with the name Encore Music Productions, Inc. Then in March 2005, solicitation records with the Ohio Attorney General's Office indicate that Joseph Chiovitti registered as a professional solicitor under a similar name, Encore Music Productions, Ltd. The location of Encore Music Productions, Ltd. is in Youngstown, Ohio.
11. Joseph Chiovitti submitted the 2006, 2007, 2008, 2009, 2010, 2013 and 2014 registration forms with the Attorney General's Office on behalf of Encore. Each of the registration forms contained an affidavit signed by Joseph Chiovitti and notarized by a notary public. The affidavit was a sworn statement by Joseph Chiovitti that he was the individual who completed the registration forms for Encore, that he read the registration forms and has knowledge of their contents, that the information in the registration forms was true to the best of his knowledge and belief, and the registration forms were made for the purpose of complying with the provisions of Chapter 1716 of the Ohio Revised Code. Joseph Chiovitti submitted the 2011 registration form with the Attorney General's Office on behalf of Encore through an online application and affirmed that the registration was true and complete to the best of his knowledge and belief by marking a box that said "I understand." Mary Tatum did the same for Encore's 2012 electronic filing with the Attorney General's Office.
12. Joseph Chiovitti marked "no" on Encore's registration forms filed with the Attorney General's Office for 2008, 2009, 2010, 2011, 2013 and 2014 next to the question, "[h]as any member, officer, employee, or agent of the professional solicitor been convicted in the last five years of any violation of Ohio Revised Code Chapter 1716, or any charitable solicitation law of any other jurisdiction or of a felony in this or another state?" Mary Tatum did the same for Encore's registration form filed with the Attorney General's Office in 2012.
13. Joseph Chiovitti stated on Encore's 2013 registration form filed with the Attorney General's Office that Encore verified the criminal background of its employees, officers, members, and agents through Fraternal Order of Police clients. Mary Tatum stated on Encore's 2012 registration form filed with the Attorney General's Office that Encore verified the criminal background of its employees, officers, members, and agents through Fraternal Order of Police clients.
14. Because Encore registers as a professional solicitor with the Ohio Attorney General's Office as an organization, Encore must include in its registration statements the names and addresses of all its members, officers, employees, and agents, along with all other persons with which it has contracted to work under its direction, including solicitors, in its registration paperwork. It must also provide updates to that information within five days of employment or contractual agreement with additional individuals.

15. Registration materials submitted by Encore since March 2005 identified the following individuals as members, officers, employees, and agents, along with all other persons with which it has contracted to work under its direction, including solicitors of Encore Music Productions:
- 2005: Joseph Chiovitti, Martin Vernello, William Sharp, Larry Csernik, Robert Englert
  - 2006: Joseph Chiovitti, Martin Vernello, William Sharp, Larry Csernik
  - 2007: Joseph Chiovitti, Martin Vernello, William Sharp, Larry Csernik
  - 2008: Joseph Chiovitti, Martin Vernello, William Sharp, Michael Rosine
  - 2009: Joseph Chiovitti, Martin Vernello, William Sharp
  - 2010: Joseph Chiovitti, Phillip Howells, Martin Vernello, William Sharp
  - 2011: Joseph Chiovitti, Phillip Howells, Martin Vernello, William Sharp, Heather Wilcox, Mary Tatum
  - 2012: Joseph Chiovitti, Phillip Howells, Martin Vernello, Heather Wilcox, Mary Tatum
  - 2013: Joseph Chiovitti, Phillip Howells, Martin Vernello, Jaime Kegarise, Abby Makara, Jason Smith, Vincent M. Atwood II
16. To my knowledge, since 2006 Encore has never provided to the Ohio Attorney General's Office an update to its registration information providing the names of additional employees or agents.
17. Professional solicitors must also provide to the Ohio Attorney General's Office solicitation notices, copies of their fundraising contracts with each charity, and financial reports for each completed fundraising campaign.
18. Since 2006, Encore failed to timely file over 210 filings with the Attorney General's Office. Encore failed to file 93 Solicitation Notices on time, including contracts and consent agreements with charities, before beginning solicitation campaigns. Twenty-two of Encore's Solicitation Notices were over one-year late and twenty-five were over two-years late. Encore also failed to timely file 127 solicitation campaign Financial Reports. Forty-seven of Encore's Financial Reports were over one-year late, eleven were over two-years late, two were over three-years late, and two were over four-years late. In total, Encore was late a total of approximately 83,253 days with required Ohio Attorney General's Office filings.
19. In 2013, Encore conducted solicitation campaigns for Blue Knights Chapter XIV, Fraternal Order of Police #16, and Struthers Firefighters Community Fund, LLC when those charitable organizations failed to register or file financial reports with the Attorney General's Office.

20. On numerous occasions I have communicated directly with Joseph Chiovitti over telephone and e-mail regarding Encore's failure to timely file required documents, or file required documents at all.

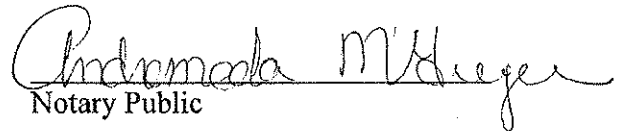
FURTHER AFFIANT SAITH NAUGHT.

  
Berena Seifert

SWORN TO AND SUBSCRIBED in my presence, this 20<sup>th</sup> day of September, 2013.



Andromeda M. McGregor, Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date  
Sec. 147.03 R.C.

  
Notary Public



**AFFIDAVIT OF SENIOR CHARITABLE FUNDS AUDITOR SARAH PEREZ**

State of Ohio            )  
                                  ) SS  
County of Franklin    )

**NOW COMES** Sarah Perez, being first duly sworn, deposes and states as follows:

1. I am of lawful age and suffer no disability at law.
2. I make this Affidavit upon personal information and knowledge.
3. I am employed as a Senior Charitable Funds Auditor, with the Charitable Law Section of the Ohio Attorney General’s Office.
4. I am a Certified Fraud Examiner (CFE), and member of the Association of Certified Fraud Examiners (ACFE).
5. I have a Bachelor of Science degree in Accounting and Forensic Accounting from Franklin University.
6. I have been employed with the Charitable Law Section of the Ohio Attorney General’s Office since December 2009.
7. Before working for the Charitable Law Section of the Ohio Attorney General’s Office, I was employed as a Staff Accountant at Beilharz Consulting, Inc.
8. As part of my duties as a Senior Charitable Funds Auditor with the Charitable Law Section of the Attorney General’s Office, I routinely review charitable financial records including bank account records.
9. I was assigned to review the bank account records of Encore Music Productions, LTD., Phil’s Productions LLC, Joseph A. Chiovitti, Philip J. Howells, Martin J. Vernello and Waive Sharp. I also reviewed joint accounts belonging to MSR Management, GD Management, and numerous show accounts.




10. The open accounts consist of:

<u>Account Name</u>	<u>Account Number</u>	<u>Bank</u>
Encore Music Productions LTD	1552127	The Farmers National Bank of Canfield
Joseph A Chiovitti	2788838563	Huntington National Bank The Farmers National Bank of
Phil's Productions LLC	5505109	Canfield
Philip J Howells	355245-00	Seven Seventeen Credit Union
Martin J Vernello	113513700	JP Morgan Chase Bank
Martin J Vernello	2040045585	Peoples Bank
Waive Sharp	744659	Farmers Citizens Bank

11. In my review of the bank accounts listed in paragraph 10, I discovered that all of the accounts either deposited checks written directly from charities or received charity money indirectly. The accounts in the names of Encore Music Productions, Ltd., Phil's Productions, LLC, Martin J. Vernello, and Waive Sharp received checks directly from the charities, while the bank accounts in the name of Joseph A Chiovitti and Philip J. Howells deposited checks written out of the Encore Music Production, Ltd. and Phil's Productions, LLC bank accounts.
12. The only signatory on the bank accounts for Encore Music Productions is Joseph Chiovitti. The only signatory on the bank account for Phil's Productions is Philip Howells.
13. Among the bank records I reviewed were checks written from the Encore Music Productions and Phil's Productions bank accounts. From 2008 through 2013 checks were written to approximately two hundred individuals. These checks appear to be weekly payroll checks. Many withdrawal checks from the Encore Music Productions bank accounts were written to individuals and contained the memo line "Pay Period [date]." Many withdrawal checks written to individuals from the Phil's Productions bank account contain memo lines stating "Subcontractor."
14. Other than the payroll check withdrawals, I also discovered withdrawals from the bank accounts for Phil's Productions related to apparent gambling activities. These transactions occurred at Mountaineer Casino in Chester, West Virginia, "Route 2," located in Chester, West Virginia, Horseshoe Casino in Cleveland Ohio, and Rivers Casino in Pittsburgh, Pennsylvania. The transactions included debit card charges and ATM withdrawals at those locations. I also discovered transactions related to gambling through the website Facebook.com. For the period July 2009 through September 2012,

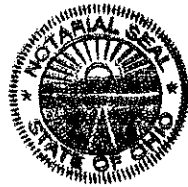
these gambling transactions from the Phil's Productions bank accounts totaled approximately \$104,176.94.

FURTHER AFFIANT SAITH NAUGHT.

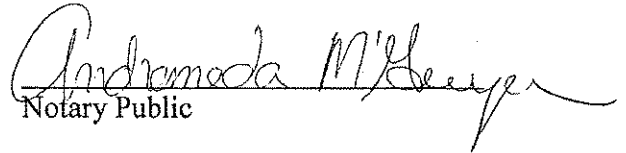


Sarah Perez

SWORN TO AND SUBSCRIBED in my presence, this 5<sup>th</sup> day of September, 2013.



Andromeda M. McGregor, Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date  
Sec. 147.03 R.C.



Notary Public

AFFIDAVIT OF ASSISTANT SECTION CHIEF SAMUEL J. KIRK III

State of Ohio )  
 ) SS  
County of Franklin )

NOW COMES Samuel J. Kirk III, being first duly sworn, deposes and states as follows:

1. I am of lawful age and suffer no mental disability at law.
2. I am a qualified records custodian for the Ohio Attorney General's Charitable Law Section.
3. The attached "Assurance of Discontinuance" pertaining to Encore Music Productions Dated received on November 17, 2000 is a true and accurate copy of the Assurance of Discontinuance contained in the Attorney General's official files. The Assurance of Discontinuance is kept in the regular course of business and constitutes an official public record.

FURTHER AFFIANT SAITH NAUGHT.

*Samuel J. Kirk III*  
 Samuel J. Kirk III

SWORN TO AND SUBSCRIBED in my presence, this 24th day of September, 2013.



**JACQUELYN C STOLTZ**  
 Notary Public  
 In and for the State of Ohio  
 My Commission Expires  
 November 19, 2017

*Jacquelyn C. Stoltz*  
 Notary Public



COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

IN RE: :  
ENCORE MUSIC PRODUCTIONS :  
MATTER: REQUIRED FILINGS PRIOR TO :  
SOLICITATION CAMPAIGNS :  
FINANCIAL REPORTS :  
SOLICITATIONS FOR :  
UNREGISTERED CHARITIES:

OOMS 11 207  
CASE NO.

RECEIVED  
NOV 17 2000  
Attorney General  
Charitable Law Section

ASSURANCE OF DISCONTINUANCE

Pursuant to the authority granted in the Ohio Charitable Organizations Act and in particular, Ohio Revised Code (R.C.) Section 1716.16(C), Ohio Attorney General Betty D. Montgomery (Attorney General) accepts the following Assurance of Discontinuance from Encore Music Productions, Inc. (Encore). The Attorney General and Encore, as the parties to this agreement, agree that it is in their best interest and consistent with the best interest of the people of the State of Ohio to resolve the issues between them in the manner set forth herein. The Attorney General and Encore therefore stipulate as follows:

FACTS

- A. Encore is a for-profit corporation having its principal place of business at 6600 South Avenue, Suite #3, Youngstown, Ohio 44512.
- B. Encore is a professional solicitor as defined in R.C. §1716.01(D) and is registered as such with the Attorney General pursuant to R.C. §1716.07(A) and (B).
- C. East Liverpool Firefighters Local #24 (Local #24), FOP #68 Bucyrus Lodge (FOP #68), FOP #106 Ashtabula County (FOP #106), FOP #134 Perry County (FOP #134), International Association of Firefighters #606 dba Delaware Firefighters Local 606 (IAF #606), Liberty Township Firefighters Local #2075 (Local #2075) and Peerless Lodge #591 Crooksville dba Perry County D.A.R.E Program (Perry County D.A.R.E.), are charitable organizations as defined in R.C. §1716.01(A).

FILED  
COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO  
2000 NOV 22 AM 11:00  
CLERK OF COURT

- D. FOP #68, FOP #134, IAF #606, Local #2075 and Perry County D.A.R.E are registered with the Attorney General's Office as charitable organizations pursuant to R.C. §1716.02(A).
- E. East Liverpool Firefighters Local #24 and FOP #106 Ashtabula County, are not registered with the Attorney General's Office as charitable organizations as required by R.C. §1716.02(A).
- F. Encore conducted a campaign on behalf of East Liverpool Firefighters Local #24 from April, 2000 through July, 2000 per the campaign financial report filed by Encore. A solicitation notice, contract, and sworn consent statement by the charity were not filed prior to the commencement of the campaign.
- G. The campaign referenced in (F) was conducted on behalf of a charity that is not registered with the Attorney General's Office as required by R.C. §1716.02(A).

Additionally, Encore conducted a prior campaign on behalf of East Liverpool Firefighters Local #24 from February, 1999 through June, 1999. The charity was not registered with the Attorney General's Office during that campaign.

- H. Encore conducted a campaign on behalf of FOP #134 from April, 1998 through August, 1998 per the campaign financial report filed by Encore. A solicitation notice, contract, and sworn consent statement by the charity were not filed prior to the commencement of the campaign.
- I. Encore conducted a campaign on behalf of FOP #68 from April, 2000 through August, 2000 per the campaign financial report filed by Encore. A solicitation notice, contract, and sworn consent statement by the charity were not filed prior to the commencement of the campaign.
- J. Encore conducted a campaign on behalf of Local #2075 from August, 1999 through January, 2000 per the campaign financial report filed by Encore. A solicitation notice, contract, and sworn consent statement by the charity were not filed prior to the commencement of the campaign.
- K. Encore conducted a campaign on behalf of Perry County D.A.R.E. from August, 1999 through January, 2000 per the campaign financial report filed by Encore. A solicitation notice, contract, and sworn consent statement by the charity were not filed prior to the commencement of the campaign.
- L. Encore conducted a campaign on behalf of FOP #106 from November, 1998 through April, 1999. The solicitation campaign financial report for this campaign was due in July of 1999. Encore failed to file a solicitation campaign financial report for this campaign.

- M. The campaign referenced in (L) was conducted on behalf of a charity that is not registered with the Attorney General's Office as required by R.C. §1716.02(A).

Additionally, Encore conducted two additional campaigns on behalf of FOP #106 from December, 1997 through April, 1998; and from November, 1999 through April, 2000. The charity was not registered with the Attorney General's Office during those campaigns.

- N. Encore conducted a campaign on behalf of IAF #606 from July, 1999 through October, 1999. The financial report submitted indicated that the end date of the campaign was November, 1999. The solicitation campaign financial report for this campaign was due in February of 2000. Encore filed a late solicitation campaign financial report for this campaign.

#### FINDINGS OF THE ATTORNEY GENERAL

- O. The solicitation campaigns conducted by Encore are activity described in and regulated by R.C. Chapter 1716.
- P. The Attorney General is the party charged with the enforcement of the Act and has caused an investigation to be made into the solicitation activities of Encore with respect to the campaigns Encore conducted on behalf of East Liverpool Firefighters Local #24, FOP #68 Bucyrus Lodge, FOP #106 Ashtabula County, FOP #134 Perry County, International Association of Firefighters #606 dba Delaware Firefighters Local 606, Liberty Township Firefighters Local #2075 and Peerless Lodge #591 Crooksville dba Perry County D.A.R.E Program.
- Q. As a result of the investigation initiated by the Office of the Attorney General, the Attorney General finds that Encore:
1. Failed to file solicitation notices, contracts and consents prior to the commencement of solicitation, as required by R.C. §1716.07(D)(1);
  2. Failed to file solicitation campaign financial reports as required by R.C. §1716.07(E).
  3. Conducted solicitation campaigns on behalf of charitable organizations that were not registered with the Attorney General's Office as required by R.C. §1716.02(A).

#### ASSURANCE

Encore hereby voluntarily agrees to abide by the statutory requisites set forth in Chapter 1716 of the Ohio Revised Code prior to and in the course of serving as a professional solicitor.

In particular, with respect to each solicitation campaign conducted by Encore, it agrees to fully comply with R.C. §1716.07(D) by filing with the Attorney General a completed solicitation notice, a copy of the contract described in R.C. §1716.08(A), and a sworn statement by the charitable organization on whose behalf the professional solicitor is acting certifying that the solicitation notice and any accompanying material are true and correct to the best of its knowledge. Encore agrees to fully comply with R.C. §1716.07(D) by filing the required documents prior to any solicitation activity.

In particular, with respect to each solicitation campaign conducted by Encore, it agrees to fully comply with R.C. §1716.07(E) by providing to the charitable organization and filing with the Attorney General a financial report of the solicitation campaign, including the gross revenue received and itemization of all expenses incurred, not later than ninety (90) days after a solicitation campaign has been completed, and on each anniversary of the commencement of a solicitation campaign lasting more than one (1) year. The financial report shall be completed on a form prescribed by the Attorney General and signed by an authorized official of the professional solicitor who shall certify under oath that the report is true and correct.

In particular, with respect to each solicitation campaign conducted by Encore, it agrees to conduct solicitation campaigns on behalf of charitable organizations that are registered with the Attorney General's Office as required by R.C. §1716.02(A), unless otherwise exempted pursuant to R.C. §1716.03.

The parties agree that this Assurance is made in lieu of prosecution of a civil action based upon the allegations set forth herein.

Encore agrees that any evidence of a violation of this Agreement shall be *prima facie* evidence of a violation of Chapter 1716 of the Ohio Revised Code and any rule adopted thereunder in any subsequent action or proceeding brought by the Attorney General, as provided in R.C. §1716.16(C).

Encore further acknowledges and agrees that this Assurance may be reopened at a subsequent time by the Attorney General for further proceedings in the public interest, based upon either violation of the terms of this Assurance or upon the discovery of evidence not known or anticipated by the Attorney General at the time of execution of the Assurance.

#### ACKNOWLEDGMENTS

Encore acknowledges that it has been advised by legal counsel as to the meaning and effect of each provision of this Assurance of Discontinuance and has elected of its own free will and accord to enter into this Assurance.



The Attorney General and Encore hereby agree that this Assurance of Discontinuance is binding upon the successors, heirs, and assignees of all parties hereto and that this Assurance of Discontinuance constitutes the entire agreement and understanding of the parties.

### CERTIFICATION

Each individual signing below, by his signature, represents that s/he is authorized and directed to sign this Assurance on behalf of the party represented and further represents that s/he has the requisite authority to bind the party for whom s/he is signing.


**WHEREFORE** the undersigned have executed this Assurance of Discontinuance consisting of five pages including this page, as of the dates shown beneath their respective signatures.

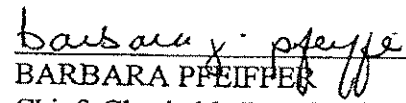
ENCORE MUSIC PRODUCTIONS, INC.

BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO

BY:

BY:

  
\_\_\_\_\_  
JOSEPH CHIOVITTI  
Encore Music Productions, Inc.

  
\_\_\_\_\_  
BARBARA PFEIFFER  
Chief, Charitable Law Section  
101 East Town Street, 4th Floor  
Columbus, Ohio 43215-5148

Date 11/14/00

Date 11-20/00

MMB/s

F:\Charitable\Peggy\Aod\AOD failure to file solicitation notices and K prior to campaign.doc

RECEIVED

2013 AUG 26

Attorney General  
Charitable Law Section

AFFIDAVIT OF JEREMY WELKER

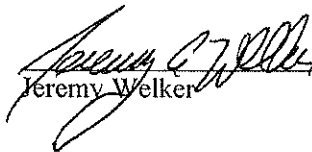
State of Ohio )  
County of Allen ) SS

Now comes Jeremy Welker, being first duly sworn, deposes and states as follows:

1. I am of lawful age and suffer no mental disability at law.
2. I make this Affidavit upon personal information and knowledge.
3. I am 41 years old and am a resident of Allen County. I have been employed by the Lima Fire Department since February of 1998.
4. I am a member of the International Association of Firefighters #334 in Lima, Ohio.
5. I have been the Treasurer of Lima Local #334 since March 2004.
6. Upon becoming Treasurer, I took over the duties of meeting with the local representatives of Encore Music Productions LLC.
7. Encore Music Productions LLC has been dealing with Lima Local #334 for over 16 years. As of July 2013, Encore has held 16 benefit concerts for Lima Local #334.
8. Encore Music Productions LLC would "subcontract" with a calling company to make calls on their behalf to businesses and individuals. This was done originally to allow the calling companies to use a local apartment or office where they would call from a local phone number in Allen County to make solicitation calls on behalf of Lima Local #334.
9. The calling company would make the calls, send out the envelopes, or email us a list of companies from whom we would need to pick up the donations.
10. Encore Music Productions LLC, through its various calling companies, would call businesses and individuals within Allen County for Lima Local #334 solicitation campaigns.
11. I would receive weekly reports regarding the progress of our campaign(s).
12. We had many issues with Encore Music Productions LLC misleading and misrepresenting themselves to potential donors.
13. In the spring of 2005, I personally received a phone call from Encore Music Productions LLC and the solicitor claimed he was a Lima Firefighter. I told the solicitor he was not able to say that he was a firefighter, and that I know he was not a firefighter as I am the Treasurer of Lima Local #334.



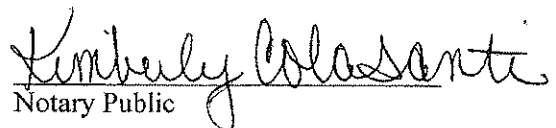
14. Throughout each fundraising period, we would receive at least 8-10 complaints regarding Encore Music Productions LLC misleading the public into believing the callers were members of the Lima Fire Department. The complaints came from the public through direct calls to the fire station or people would pass it along through others in the community.
15. The complaints came from both residents and businesses.
16. As Treasurer, I would tell our Lima Local #334 president of each complaint and then make a note to discuss it with Encore Music Productions LLC the next time we spoke with them. I told Encore Music Productions LLC if the callers did not stop making false statements Lima Local #334 would not renew its solicitation contract.
17. It was difficult to pinpoint the exact solicitor making the false statements because often the donor was not provided their name or the name provided by the solicitor was false.
18. Initially, Encore Music Productions LLC would deny making false statements. However, after the complaints came in consistently, Encore Music Productions admitted that some of its employees were misleading the public and promised to make efforts to stop it from happening in the future.
19. I have personal knowledge that Martin Vernello himself made a misleading call to Lima Local #334's former President.
20. Lima Local #334's communication with Encore Music Productions LLC was limited. Members of the Local typically only spoke with Joe Chiovitti at the Local's annual concerts. Although, throughout the campaign period(s), we would communicate briefly via email about progress & issues. A few times, we had phone conversations, mainly at the Fire Station.
21. Martin Vernello admitted to me he was an alcoholic. Consistently when speaking with him I noticed the influence of alcohol.

  
Jeremy Welker

SWORN TO AND SUBSCRIBED in my presence, this 22 day of Aug, 2013.



**KIMBERLY COLASANTI**  
Notary Public, State of Ohio  
My Commission Expires  
July 21, 2014

  
Notary Public



# MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

## RECEIVED

2013 AUG 19

Attorney General  
Charitable Law Section

Charitable Law Section  
Office 614-466-3181  
Fax 614-466-9788

150 E. Gay St. Floor #23  
Columbus, OH 43215  
www.OhioAttorneyGeneral.gov

### AFFIDAVIT OF Kelly Endicott

State of Ohio                    )  
  )  
County of Allen                 )

Kelly Endicott, being first duly sworn, states as follows:

1. I am of lawful age and suffer no disability at law.
2. I make this voluntary Affidavit upon personal information and knowledge.
3. I am 56 years old and currently live at 4205 Zurmehly Road, Cridersville, Ohio, 45806.
4. I own Kelly's POCO Loco Swim Shop.
5. My husband is Dan Endicott. Dan worked for the fire department in Lima for close to 26 years and was a member of Lima International Association of Fire Fighters Local 334. Dan was also the former President of Lima Local 334, having served from around 1999 to 2005.
6. Because my husband was the President of Lima Local 334, I am very familiar with the members of Local 334.
7. Jeremy Welker is the Treasurer of Local 334.
8. I was called by an unknown solicitor claiming to be with the Lima Fire Department, specifically Local 334, from 2004 to 2012.
9. This solicitor would call my store to solicit donations for an annual concert being held by Local 334. He did not identify himself as a professional solicitor.
10. This solicitor would try and mislead me into thinking he was "with" the Lima Fire Department. When I challenged him on the phone, he would continue to insist that he was a firefighter with the Lima Fire Department.

Affidavit of Kelly Endicott



11. I agreed to make a donation and that they could pick up the check at my shop. He said several times that he was a firefighter.
12. A solicitor then came to pick up the check at Kelly's Poco Loco Swim Shop. The solicitor wore a blue shirt that said "Lima Firefighters 334" on it.
13. This same person would insist that he was with the Lima Fire Department.
14. I did not recognize him as a firefighter from the Lima Fire Department, as he was not a member of the organization. I confronted him about this, and he would insist that he was a firefighter but never produced any identification or badge.
15. A solicitor would call and then show up at Kelly's Poco Loco Swim Shop from 2004 to 2012. Each time, the solicitor would try to mislead me into thinking he was a firefighter with the Lima Fire Department.
16. Each time, I would not recognize the solicitor as a firefighter from the Lima Fire Department. The solicitor would insist that he was with the Lima Fire Department when I challenged him.
17. In 2012, when the solicitor called, he told me Jeremy Welker would be picking up the check. This was after I told the solicitor I would not hand him the check.
18. From 2004 to 2012, solicitors I spoke with on the phone led me to believe that 100 percent of my donations were going to the firefighters of Local 334.

Kelly Endicott  
Kelly Endicott

SWORN TO AND SUBSCRIBED in my presence this 15<sup>th</sup> day of August, 2013.



Crystal M. Cecala  
NOTARY PUBLIC, State of Ohio

Affidavit of Kelly Endicott



**MIKE DEWINE**

★ OHIO ATTORNEY GENERAL ★

Charitable Law Section  
Office 614-466-3181  
Fax 614-466-9788

150 E. Gay St. Floor #23  
Columbus, OH 43215  
www.OhioAttorneyGeneral.gov

**AFFIDAVIT OF Dan Endicott**

State of Ohio

County of Allen

Dan Endicott, being first duly sworn, states as follows:

1. I am of lawful age and suffer no disability at law.
2. I make this voluntary Affidavit upon personal information and knowledge.
3. I am 56 years old and currently live at 4205 Zurnehly Road, Cridersville, Ohio, 45806.
4. I was a member of the Lima County Fire Department from 1979 to 2005.
5. From 2002 to 2005, I was President of the International Association Fire Fighters, Local 334, at 433 S. Main St. Lima, Ohio 45804
6. Due to my long service, I am very familiar with the firefighters in the Lima Fire Department.
7. I am a co-owner of Kelly's POCO Loco Swim Shop.
8. Before the annual concert in March, the Lima Fire Department would contract with Encore to make solicitations in January.
9. There have been complaints about Encore's solicitations for Local 334 since the first contract in the mid 1990,s.

Affidavit of Dan Endicott



10. People would complain about solicitors claiming to be firefighters on the phone or in person.
11. On several occasions, the firefighters from Lima Fire Department had to personally apologize and give free tickets to the concert to those who complained.
12. On one occasion in 2003, I confronted the solicitor that said he was "with" the Lima Fire Department.
13. The solicitor came to Kelly's POCO Loco Swim Shop to pick up a donation check for the Lima Fire Department. He was wearing a blue shirt that said "Lima Firefighters 334" on it.
14. I did not recognize him as a firefighter from the Lima Fire Department, as he was not a member of the organization[ARI]. I confronted him about this, and informed him that I was President of Local 334.
15. He then recanted his statement and said he was authorized to act on behalf of the Lima Fire Department. I told him he was never authorized by Local 334 to represent himself out to be with the Lima Fire Department.
16. On one occasion *around 1999*, we specifically told Encore that we were no longer interested in doing business with them if they continued to claim that they were "with" the Lima Fire Department when soliciting.
17. After this incident, we created scripts containing guidelines as to what the solicitors could and could not say and *continued doing business*. Each year after, there were issues about representations or sales tactics and these were addressed on a case by case basis, only to be repeated after a short period of time. The complaints always centered around representing themselves as a firefighter or calling from the Lima Fire Department.

Dan Endicott  
Dan Endicott

SWORN TO AND SUBSCRIBED in my presence this 15<sup>th</sup> day of August, 2013.



Crystal M. Cecala  
NOTARY PUBLIC, State of Ohio



**CERTIFICATION OF COUNSEL OF ASHLEY E. RODABAUGH**

State of Ohio )  
 )SS  
County of Franklin )

NOW COMES Ashley E. Rodabaugh, being first duly sworn, deposes and states as follows:

1. I am of lawful age and suffer no disability at law.
2. I make this Certification upon personal information, knowledge, and belief. So far as upon my information and belief, I believe this information to be true.
3. I am an Assistant Attorney General with the Charitable Law Section of the Ohio Attorney General's Office.
4. I have been employed with the Charitable Law Section of the Ohio Attorney General's Office since September 2012.
5. I am counsel of record for Ohio Attorney General v. Encore Music Productions, Ltd, et al.
6. No notice has been given to the Defendants of the filing of the Temporary Restraining Order Motion, Temporary Restraining Order, or Complaint.
7. Notice should not be required in this matter because Defendants have consistently misled potential Ohio donors regarding material facts of the charitable solicitation and have breached their fiduciary duties. Charitable assets in the possession, control or custody of Defendants are in serious risk of diversion from the charitable purpose for which they were intended. Additionally, Defendants have knowingly concealed information from the Attorney General's Office.

FURTHER AFFIANT SAITH NAUGHT.

*Ashley E. Rodabaugh*  
Ashley E. Rodabaugh

SWORN TO AND SUBSCRIBED in my presence this 24 day of SEPT, 2013.



Andrew Howard  
Attorney At Law  
Notary Public, State of Ohio  
My commission has no expiration date  
Sec. 147.03 R.C.

*Andrew Howard*  
NOTARY PUBLIC

