

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

STATE OF OHIO, *ex rel.*  
DAVE YOST, OHIO  
ATTORNEY GENERAL  
150 E. Gay St., 23<sup>rd</sup> Floor  
Columbus, Ohio 43215

Plaintiff,

vs.

JOHN LOOKER  
924 Wells Avenue  
Newark, Ohio 43055

Defendant.

CASE NO.:

JUDGE:

ASSURANCE OF DISCONTINUANCE

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Pursuant to the authority granted in the Ohio Charitable Organizations Act, R.C. 1716.01 *et seq.*, the Ohio Charitable Trust Act, R.C. 109.23 *et seq.*, and common law, Ohio Attorney General Dave Yost (hereinafter the "Attorney General") accepts this Assurance of Discontinuance (the "Agreement") from John Looker ("Mr. Looker" or "Defendant"). The Attorney General and Defendant, as parties to this Agreement, acknowledge and agree that it is in their best interest and consistent with the best interests of the people of the State of Ohio to resolve the issues between them in the manner set forth herein. As part of this Agreement, the Attorney General and Defendant stipulate as follows:

**I. JURISDICTION AND VENUE**

- A. This Court has jurisdiction over the subject matter of this action pursuant to R.C. Chapter 1716, R.C. 109.23 *et seq.*, the rules adopted thereunder, and the

Attorney General's common law authority to enforce charitable trusts. This Court has jurisdiction over the parties. Venue is proper in this Court.

## II. FACTS

- B. Defendant resides at 924 Wells Avenue, Newark, Ohio 43055.
- C. Pelotonia LLC, f/k/a NetJames Holdings LLC, is an Ohio nonprofit limited liability company organized on or about September 22, 2008 whose sole member at all relevant times has been The Ohio State University Foundation, an Ohio nonprofit corporation organized and operating exclusively for charitable, scientific and/or educational purposes.
- D. Pelotonia LLC is a "charitable organization" as that term is defined in R.C. 1716.01(A) and a "charitable trust" as that term is defined in R.C. 109.23.
- E. Pelotonia is an Ohio nonprofit corporation organized on or about August 28, 2017 "to be operated exclusively for charitable purposes" and particularly to establish and sustain "financial support for cancer research at The Ohio State University or elsewhere ... by operating and administering annual bicycling and other fundraising ventures...."
- F. Pelotonia is a "charitable organization" as that term is defined in R.C. 1716.01(A) and a "charitable trust" as that term is defined in R.C. 109.23.
- G. Hereinafter, Pelotonia LLC and Pelotonia will be referred to as Pelotonia, the name and brand used for a three day bike tour and event staged since 2009 to raise funds for cancer research.
- H. Beginning no later than August 28, 2009 and continuing up through August 5, 2018 Defendant solicited charitable contributions to and for Pelotonia.

- I. Defendant, when soliciting charitable contributions to and for Pelotonia, represented that he had been diagnosed with and treated for multiple forms of cancer. Those representations were not true.
- J. Defendant, when hosting an annual yard sale around May 26-28, 2016, represented that 100% of proceeds would go to Pelotonia and/or riders in Pelotonia. Defendant did not donate the proceeds of that yard sale as promised.
- K. The Dave VanWassenhove Memorial Scholarship is a need-based scholarship available to African American students from the greater Linden area attending St. Francis DeSales High School, a school of the Catholic Diocese of Columbus.
- L. The Dave VanWassenhove Memorial Scholarship at St. Francis DeSales High School is a “charitable organization” as that term is defined in R.C. 1716.01(A) and a “charitable trust” as that term is defined in R.C. 109.23.
- M. In October 2017, Defendant repeatedly represented that “100% of all proceeds” from sales of homemade cookies would “go to the Dave VanWassenhove Memorial Scholarship at St. Francis DeSales High School.” Defendant did not donate the proceeds from those cookie sales as promised.
- N. The funds raised and held by Mr. Looker on behalf of charitable purposes were subject to a valid “charitable trust” under R.C. 109.23.
- O. Defendant owed fiduciary duties in soliciting, collecting, holding and expending funds for charitable purposes under R.C. 109.23 *et seq.*, R.C. 1716.17, and the common law.

### III. FINDINGS OF THE ATTORNEY GENERAL

- P. The charitable trust and solicitation activities of Defendant are the subject of this Agreement. Such activities are described in and regulated by the Ohio Charitable Organizations Act, R.C. 1716.01 *et seq.*, the Ohio Charitable Trust Act, R.C. 109.23 *et seq.*, R.C. Chapter 2915, and the Attorney General's common law authority to enforce charitable trusts.
- Q. The Attorney General is the party charged with enforcing the Ohio Charitable Organizations Act and the Ohio Charitable Trust Act. In this capacity, the Attorney General has caused an investigation to be conducted by the Charitable Law Section of the charitable trust and solicitation activities of the Defendant.
- R. As a result of its investigation, the Attorney General has reason to believe that Defendant is in violation of the Ohio Charitable Organizations Act, the Ohio Charitable Trust Act, and the common law by violating the following:
1. R.C. 109.23(A) and R.C. 1716.17: Defendant breached his fiduciary duties of care, of loyalty, to properly manage accounts, and to comply with the law, resulting in loss and other damages to the charitable beneficiaries of Pelotonia and The Dave VanWassenhove Memorial Scholarship Fund.
  2. R.C. 1716.14(A)(1): In the course of soliciting charitable contributions on behalf of Pelotonia and The Dave VanWassenhove Memorial Scholarship Fund, Defendant committed deceptive acts and practices.
  3. R.C. 1716.14(A)(2): In the course of soliciting charitable contributions on behalf of Pelotonia and The Dave VanWassenhove Memorial Scholarship Fund,

Defendant misled individuals as to material facts concerning his personal experiences with cancer.

4. R.C. 1716.14(A)(12): Defendant acted in violation of and failed to comply with the requirements of Revised Code Chapter 1716.

#### IV. ASSURANCES

- S. Defendant agrees that he will not hold any position as an officer, trustee, employee, agent, or volunteer of any charitable organization in the State of Ohio, with the exception that Defendant may volunteer with a charitable organization in the State of Ohio as long as he does not have any involvement with or responsibility concerning any charitable trust money.
- T. Defendant agrees that he will not participate in solicitations in the State of Ohio for charitable purposes or on behalf of any charitable organization, including, but not limited to, solicitations conducted as a volunteer, officer, trustee, employee, representative, independent contractor, or agent of an organization; or solicitations conducted as a professional solicitor, fundraising counsel, or commercial co-venturer, as those terms are defined in R.C. Chapter 1716.
- U. Defendant agrees to pay a civil fine in the amount of \$2,000.00 (two thousand dollars and zero cents) (the "Civil Fine"). The Civil Fine shall be paid by cashier's check or money order payable to "**Treasurer, State of Ohio**" and mailed to:

Ohio Attorney General  
Charitable Law Section  
Attn: Chief Accountant  
150 E. Gay St., 23<sup>rd</sup> Floor  
Columbus, Ohio 43215

The Civil Fine must be paid in-full on or before July 31, 2019. The Attorney General shall deposit the Civil Fine into the charitable law fund established under R.C. 109.32.

- V. Defendant further agrees to pay restitution in the amount of \$1,800.00 (one thousand eight hundred dollars and zero cents) (the “Restitution Amount”). The Restitution Amount shall be paid by cashier’s check or money order payable to “**Treasurer, State of Ohio**” and mailed to:

Ohio Attorney General  
Charitable Law Section  
Attn: Chief Accountant  
150 E. Gay St., 23<sup>rd</sup> Floor  
Columbus, Ohio 43215

The Restitution Amount must be paid in-full on or before July 31, 2019. The Restitution Amount shall be redistributed, at the sole discretion of the Attorney General, in support of other charitable purposes

- W. If Defendant fails to comply with any of the payment requirements in this Agreement, the Attorney General shall certify any and all unpaid balances to the Ohio Attorney General’s Collections Enforcement Section (“Collections”) for collection. In the event of certification, Defendant agrees to pay additional collection costs assessed by Collections in accordance with R.C. 131.02(A) equal to the amounts charged pursuant to R.C. 109.08 and 109.081 for the cost of certification and the use of Special Counsel for the collection of the debt. Interest shall also be charged upon

certification in accordance with R.C. 131.02(D). Nothing in this paragraph should be construed to limit the Attorney General's discretion to pursue any other available remedies.

- X. Defendant agrees that this Agreement is made in lieu of prosecution of a civil action based upon the findings set forth herein.
- Y. Defendant agrees that any evidence of a violation of this Agreement shall be *prima facie* evidence of a violation of R.C. Chapter 1716 and any rule adopted thereunder in any subsequent action or proceeding brought by the Attorney General, as provided in R.C. 1716.16(C).
- Z. Defendant agrees that any matter closed by the acceptance of this Agreement may be reopened at any time by the Attorney General for further proceedings in the public interest based upon any violation of the terms of this Agreement or upon the discovery of evidence not known by the parties hereto at the time of signing.

#### **V. RETENTION OF JURISDICTION**

- AA. This Court shall retain jurisdiction of this action for the purpose of enforcing this Agreement.

#### **VI. ACKNOWLEDGEMENTS**

- BB. Defendant acknowledges that he has been given ample opportunity to be advised by legal counsel as to the meaning and effect of each provision of this Agreement and that he has elected on his own free will and accord to enter into this Agreement.
- CC. This Agreement may be signed in counterparts which, when taken together, will constitute a single integrated document. Signed copies of the Agreement sent by fax or email will be considered to be the same as original signed versions.

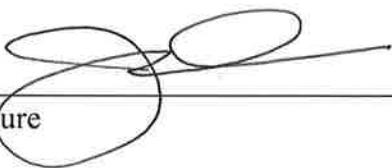
DD. The Attorney General and Defendant hereby agree that this Agreement is binding upon the successors and assignees of all parties hereto and that this Agreement constitutes the entire agreement and understanding of the parties.

**EE. CERTIFICATION**

Each individual signing below represents that he or she is authorized and directed to sign this Agreement on behalf of the party represented and further represents that he or she has the requisite authority to bind the party on behalf of whom they are signing.

WHEREFORE, the undersigned have executed this Agreement on July 17, 2019.

JOHN LOOKER

  
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Signature

DAVE YOST  
OHIO ATTORNEY GENERAL

  
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Daniel Fausey (0079928)  
Chief, Charitable Law Section  
Ohio Attorney General's Office  
150 E. Gay Street, 23<sup>rd</sup> Floor  
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