

IN THE COURT OF COMMON PLEAS  
LICKING COUNTY, OHIO

CLERK OF COMMON PLEAS CT.  
LICKING COUNTY, OHIO  
GARY R. WALTERS, CLERK

2011 NOV -8 PM 3: 18

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

Case No. 11 CV 1508 TMM  
FILED

Judge

Other Civil

and

Excel Academy  
116 West Church Street  
Newark Ohio 43055

Plaintiffs,

V.

Thomas Jacob  
102 Jefferson Rd.  
Newark, Ohio 43055-4638

and

David Jacob  
9305 Dove Rd  
Frazeyburg, Ohio 443822

and

Marlene Jacob  
113 Pimlico Avenue  
Newark, Ohio 43055

Defendants.

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**PLAINTIFFS OHIO ATTORNEY GENERAL AND EXCEL ACADEMY'S  
COMPLAINT AND JURY DEMAND**

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Plaintiffs Ohio Attorney General Mike DeWine and Excel Academy hereby allege:

**I. Jurisdiction and Venue**

1. Plaintiff, Ohio Attorney General Mike DeWine, (“Attorney General”), having reasonable cause to believe that violations of Ohio’s charitable laws have occurred, brings this action in the public interest and under the authority vested in the Attorney General by Ohio Revised Code (“R.C.”) § 109.23 *et seq.* (“Ohio Charitable Trust Act”), R.C. Chapter 1716 (“Ohio Charitable Organizations Act”), R.C. Chapter 2915 (“Ohio Gambling Act”), R.C. § 2921.13(G) and the Attorney General’s common law authority to enforce charitable trusts.

2. Plaintiff, Excel Academy, is an Ohio nonprofit corporation and educational organization with a school and principal place of business at 116 West Church Street, Newark, Licking County, Ohio 43055.

3. The actions of Defendants Thomas Jacob, David Jacob, and Marlene Jacob that give rise to the allegations set forth in this Complaint occurred in Licking County, Ohio.

**A. Defendants**

4. Defendant Thomas Jacob resides at 102 Jefferson Rd., Newark, Licking County, Ohio 43055-4638.

5. Defendant David Jacob resides at 9305 Dove Rd., Frazeyburg, Muskingum County, Ohio 43822.

6. Defendant Marlene Jacob resides at 113 Pimlico Avenue, Newark, Licking County, Ohio 43056.

7. Throughout this Complaint, Defendants Thomas Jacob, David Jacob and Marlene Jacob are referred to collectively as "Defendants."

### **B. Individual Liability**

8. Defendant Thomas Jacob has been at all relevant times, a director, trustee, officer, employee and/or statutory agent of Excel Academy. In such capacity, Defendant Thomas Jacob has formulated, directed, established, or controlled the policies, practices, or procedures of Excel Academy. Defendant Thomas Jacob has personally participated in the violations of law described in this Complaint, or, through his action or inaction, authorized, directed, adopted, ratified, allowed, or otherwise caused or permitted such violations to occur. Consequently, Plaintiffs initiated this action against Defendant Thomas Jacob.

9. Defendant David Jacob has been at all relevant times, a director, trustee, officer, employee and/or statutory agent of Excel Academy. In such capacity, Defendant David Jacob has formulated, directed, established, or controlled the policies, practices, or procedures of Excel Academy. Defendant David Jacob has personally participated in the violations of law described in this Complaint, or, through his action or inaction, authorized, directed, adopted, ratified, allowed, or otherwise caused or permitted such violations to occur. As a result, Plaintiffs initiated this action against Defendant David Jacob.

10. Defendant Marlene Jacob has been at all relevant times, a director, trustee, officer, employee and/or statutory agent of Excel Academy. In such capacity, Defendant Marlene Jacob has formulated, directed, established, or controlled the policies, practices, or

procedures of Excel Academy. Defendant Marlene Jacob has personally participated in the violations of law described in this Complaint, or, through her action or inaction, authorized, directed, adopted, ratified, allowed, or otherwise caused or permitted such violations to occur. Accordingly, Plaintiffs initiated this action against Defendant Marlene Jacob.

## **II. Activities of Defendants Which Give Rise to this Complaint**

11. Excel Academy is incorporated as a nonprofit corporation under the laws of the State of Ohio.

12. On or about June 21, 1995, Defendants filed original incorporation documents with the Ohio Secretary of State on behalf of Excel Academy, creating a legal entity.

13. Excel Academy's purpose, as stated in its articles of incorporation, is to "preserve, further, foster, and maintain a tutoring and learning center for students and persons of all ages which embraces "individual dignity" and "never ending quality improvement" to provide and foster an atmosphere where children and adults can learn in an environment of love, dignity, and respect; to serve and educate children and adults with special educational needs; and all things incident thereto."

14. Excel Academy is exempt from federal taxation and recognized by the Internal Revenue Service as an organization described in sub-section 501(c)(3) of the Internal Revenue Code.

15. In July 2002, Excel Academy executed a promissory note that required Excel Academy to pay Defendant Thomas Jacob four hundred and sixty four thousand dollars (\$464,000.00). Defendants Thomas Jacob and Marlene Jacob claim the note was executed to repay Defendant Thomas Jacob funds from a retirement account he used to begin the

operation of Excel Academy. Upon information and belief, Excel Academy began operation in 1995. Excel Academy has paid on the note and still owes approximately two hundred thousand dollars (\$200,000.00) on the note.

16. Beginning in 1998, Excel Academy has conducted charitable bingo as a fundraising activity. Excel Academy was licensed to conduct Type I, Type II and Type III charitable bingo under R.C. Chapter 2915 until it surrendered its bingo license in 2010. Bingo revenue was Excel Academy's only significant fundraising activity during this time period. Between 1998 and 2010, Excel Academy reported an annual income from bingo of approximately five hundred thousand dollars (\$500,000.00) per year.

17. Defendant Marlene Jacob was the principal person for the organization from 1998 to 2006. As principal person, Defendant Marlene Jacob affirmed or swore that all information in Excel Academy's bingo license application was true and accurate. As principal person, Defendant Marlene Jacob had overall responsibility for the bingo game operation of Excel Academy. Defendant Marlene Jacob was active in recruiting individuals to work at Excel Academy's bingo game and assisted in paying individuals to work the games. Defendant Marlene Jacob assisted in counting bingo proceeds and depositing proceeds into Excel Academy's gaming bank account. Defendant Marlene Jacob participated in the diversion of bingo proceeds to individuals at the expense of Excel Academy's charitable purpose.

18. Defendant David Jacob was principal person from 2007 until 2010. As principal person David Jacob affirmed or swore in Excel Academy's yearly bingo license application that all information in the bingo license application was true and accurate. As principal person Defendant David Jacob had overall responsibility for the bingo game

operations. Defendant David Jacob was active in recruiting individuals to work at Excel Academy's bingo game and assisted in paying individuals to work the games. Defendant David Jacob assisted in counting bingo proceeds and depositing proceeds into Excel Academy's gaming bank account. Defendant David Jacob participated in the diversion of bingo proceeds to individuals at the expense of Excel Academy's charitable purpose.

19. Defendant Thomas Jacob was active in recruiting individuals to work at Excel Academy's bingo game and assisted in paying individuals to work the games. Defendant Thomas Jacob assisted in counting bingo proceeds and depositing proceeds into Excel Academy's gaming bank account. Defendant Thomas Jacob participated in the diversion of bingo proceeds to individuals at the expense of Excel Academy's charitable purpose.

20. In 2010, Excel Academy's Chief Financial Officer ("CFO") became concerned that individuals were paid to operate the bingo game. The CFO reported these concerns to Excel Academy's Board of Directors in May 2010. The Ohio Attorney General's Office learned of these concerns in June 2010 and started an investigation.

21. On June 6, 2010, investigators from the Attorney General's Office visited the Excel Academy bingo game and interviewed the workers at the game. All the workers denied that they were paid to work the bingo game. One worker later found a charitable investigator and admitted being paid one hundred dollars (\$100.00) a night to work the bingo game.

22. Investigators discovered that all of the individuals working at Excel Academy's bingo game on June 6, 2010, with the exception of one person, were employees of Excel Academy. As a condition of their employment for Excel Academy, employees were required to work at various events operated by Excel Academy. One option involved working at

Excel Academy's bingo game. Additionally, upon information and belief, all workers interviewed by investigators on June 6, 2010, were close personal friends of the Defendants.

23. On June 8, 2010, another worker admitted being paid to work the bingo game. This worker was paid in cash and the money was left in a small brown envelope with this worker's name on the envelope.

24. On July 29, 2010, the Excel Academy Board of Directors voted to surrender Excel Academy's 2010 charitable bingo license. It was at this time members from the Ohio Attorney General's Office Charitable Law Section began the process of a complete inventory of all bingo supplies, including bingo tickets, bingo paper, computer systems, inventory documents and invoices that were in the Excel Academy bingo hall.

25. Defendant David Jacob was present during the Attorney General's inventory of Excel Academy's bingo game. Defendant David Jacob was interviewed at that time and stated that he knew, in advance, of the Attorney General's inventory of Excel Academy's bingo game and that nothing would be found during the inventory.

26. On August 18, 2010, the Attorney General issued a Notice of Examination Under Oath to Defendants Marlene Jacob, Thomas Jacob and David Jacob to be held on September 15, 2010. In September, 2010, counsel for the Attorney General and Defendants agreed to postpone the Examination until after a mediation was held.

27. Throughout September, October and November 2010, Defendant Marlene Jacob and the Board of Excel Academy attempted to negotiate a mediation agreement. Multiple mediation conferences were convened. During this time the Attorney General's Office encouraged and attempted to facilitate a mediated solution.

28. By December 2010 the mediation process failed and Defendant Marlene Jacob brought suit against individual members of the Excel Academy Board. The Attorney General's Office was not a party to the lawsuit.

29. Upon information and belief, the lawsuit by Defendant Marlene Jacob against members of the Board of Excel Academy was voluntarily dismissed by Defendant Marlene Jacob.

30. On January 20, 2011, the Attorney General's Office conducted an Examination Under Oath of Defendant Marlene Jacob. During this Examination she admitted that she knew that bingo workers were paid to work the bingo sessions.

31. In February 2011 several new board members were added to the Excel Academy Board of Directors as part of the court-approved resolution of the lawsuit filed by Defendant Marlene Jacob.

32. On April 28, 2011, the Attorney General's Office conducted an Examination Under Oath of Defendant Thomas Jacob. He was asked about the payment of workers at the Excel Academy bingo game. Thomas Jacob invoked his Fifth Amendment right against self incrimination and refused to answer questions regarding the payment of individuals to work at the Excel Academy bingo game.

33. On April 28, 2011, the Attorney General's Office conducted an Examination Under Oath of Defendant David Jacob. He was asked regarding the payment of workers at the Excel Academy bingo game. David Jacob invoked his Fifth Amendment right against self incrimination and refused to answer questions regarding the payment of individuals to work at the Excel Academy bingo game.



34. After the selection of a new Board of Directors for Excel Academy, one of the newly selected Board members began his own investigation into Excel Academy's bingo game operations. As part of this investigation the board member asked Defendant David Jacob about paying individuals to work at the bingo game. In response, Defendant David Jacob stated "Sometimes no one was paid rarely...sometimes as many as 10...but it probably averaged four to six people paid one hundred dollars (\$100.00) per night over most of the twelve years of the bingo." Upon information and belief, these payments were made in cash.

35. Defendant David Jacob also admitted to the board member that cash bonuses of ten dollars (\$10.00), twenty dollars (\$20.00) and thirty dollars (\$30.00) dollars a night were also paid to workers, depending on the profits from the game and the difficulty of the work for the worker.

36. As part of the same investigation, the board member asked Defendant Marlene Jacob about bingo workers being paid. Defendant Marlene Jacob explained how individuals were paid at the bingo game. She stated that she put the names of the workers on the envelopes with the cash payments and hid them under a basket for them to pick up at the game. Upon information and belief no taxes were withheld from these cash payments and no tax documents were provided for workers to report the income. She claimed that she did not like paying the workers. She explained it away because she felt it was justified because of the revenue it made for the school.

37. Upon information and belief, Defendant David Jacob operated and supervised bingo and instant bingo for Excel Academy and used his position of trust over bingo proceeds to convert those proceeds for personal use. Charitable investigators interviewed

Defendant David Jacob. At that time, David Jacob stated that he was the Fundraising Coordinator for Excel Academy and that about 95% of his duties were operating the bingo game. David Jacob could not provide any information to the Investigator as to any additional fundraising that he supervised or coordinated. All of Defendant David Jacob's income is directly attributed to the operation of the Excel Academy bingo game in contravention of R.C. 2915.09 and R.C. 2915.091.

38. Upon information and belief, Defendants Marlene Jacob and Thomas Jacob assisted in the operation of the Excel Academy bingo game, recruited workers, and assisted in the conversion of charitable trust assets to benefit personal friends and family members through cash payments.

39. The Defendants hid these illegal payments by failing to report or misreporting all bingo fundraising proceeds to the Attorney General as required on Excel Academy's yearly bingo license applications and daily sheets.

40. The Defendants failed to maintain complete records regarding fundraising activities and did not report the cash payments to workers as required in R.C. § 2915.10.

41. Defendants falsified information regarding Excel Academy's bingo activities, fundraising receipts and expenses in charitable trust and bingo filings with the Attorney General, including, but not limited to, IRS 990 forms and charitable bingo applications.

42. During 2011 Defendant Marlene Jacob, without the authority of Excel Academy, wrongfully took or retained property belonging to Excel Academy, including names, addresses, and social security numbers of Excel Academy's students or prospective students.

43. On October 12, 2011, Thomas Jacob, David Jacob and Marlene Jacob entered a diversion program in response to a Bill of Information on the Illegal Conduct of a Bingo game in violation of R.C. § 2915.09, among other charges.

### **General Allegations and Status of Defendants**

#### **A. Ohio Charitable Organizations Act**

44. Excel Academy is a “charitable organization” as defined in R.C. § 1716.01(A).

45. Defendants, individually and jointly, are “persons” as defined in R.C. § 1716.01(I).

46. Charitable bingo, including instant bingo, is a charitable fundraising event involving the sale of a chance. Bingo, including instant bingo, includes numerous “solicitation” activities as that term is defined in R.C. § 1716.01(K). Some, but not all, of the charitable solicitation activities involved with conducting bingo include: advertising the event (radio, television, written media, etc.), selling bingo paper, selling instant bingo tickets, and making any other statement that proceeds will be used for a charitable purpose or will benefit a charitable organization.

47. Defendants conducted “solicitations” on behalf of Excel Academy by conducting bingo and instant bingo.

48. Defendants solicited, collected, and/or expended contributions on behalf of Excel Academy, and therefore have fiduciary duties under R.C. § 1716.17 and the common law.

#### **B. Ohio Charitable Trust Act**

49. Excel Academy is a “charitable trust” within the meaning of R.C. § 109.23.

50. The funds raised by Defendants on behalf of Excel Academy are subject to a valid “charitable trust” under R.C. § 109.23.

51. Defendants created a charitable trust in favor of Excel Academy’s potential beneficiaries when Defendants conducted and advertised bingo and instant bingo on behalf of Excel Academy.

52. Defendants also created a charitable trust within the meaning of R.C. § 109.23 when Defendants made express and/or implied representations to the public that Excel Academy’s charitable purpose was to “preserve, further, foster, and maintain a tutoring and learning center for students and persons of all ages which embraces ““individual dignity”” and ““never ending quality improvement”” to provide and foster an atmosphere where children and adults can learn in an environment of love, dignity, and respect; to serve and educate children and adults with special educational needs; and all things incident thereto.”

53. Defendants are fiduciaries of Excel Academy, and have fiduciary duties under R.C. § 109.23 *et seq.* and the common law.

### **C. Ohio Gambling Act**

54. “Bingo” is defined in R.C. § 2915.01(S) and includes “instant bingo, punch boards and raffles.”

55. Bingo and instant bingo must be conducted by a charitable organization as defined in R.C. § 2915.01(H).

56. “Conduct” is defined in R.C. § 2915.01(T) and means “to back, promote, organize, manage, carry on, sponsor, or prepare for the operation of bingo or a game of chance.”

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

**COUNT ONE**  
**BREACH OF FIDUCIARY DUTIES**

58. Revised Code § 1716.17 states, in pertinent part:

Every person who solicits, collects, or expends contributions on behalf of a charitable organization or for a charitable purpose . . . and every officer, director, trustee, or employee of that person who is concerned with the solicitation, collection, or expenditure of those contributions shall be considered a fiduciary and as acting in a fiduciary capacity.

59. Revised Code § 109.23(A) states:

“charitable trust” means any fiduciary relationship with respect to property arising under the law of this state or of another jurisdiction as a result of a manifestation of intention to create it, and subjecting the person by whom the property is held to fiduciary duties to deal with the property within this state for any charitable, religious or educational purpose.

60. Under R.C. Chapter 1716, R.C. Chapter 109, and Ohio common law, trustees, solicitors and common law fiduciaries owe fiduciary duties to charitable organizations including, but not limited to: (a) the duty of good faith; (b) the duty of loyalty; (c) the duty to make the charitable trust assets productive; (d) the duty to use reasonable care to preserve charitable trust property; (e) the duty to disclose material facts to their principals; and (f) the duty of compliance with applicable laws.

61. From June 21, 1995, when Excel Academy was originally incorporated, to the present, Defendants owed fiduciary duties to Excel Academy and the charitable beneficiaries

of Excel Academy. These fiduciary obligations extended over all charitable trust assets and bingo proceeds.

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

63. Defendants violated their fiduciary duty of loyalty by diverting charitable assets for their own personal use and the personal use of others and placing their personal and other people's personal interests above the interests of Excel Academy and Excel Academy's charitable beneficiaries.

64. Defendants violated their fiduciary duty to make the charitable trust property of Excel Academy productive.

65. Defendants violated their fiduciary duties to preserve the charitable trust property of Excel Academy for intended charitable trust purposes, and to properly manage and maintain the charitable trust property for the benefit of the charitable beneficiaries.

66. Defendants violated their fiduciary duty by failing to account for all bingo and instant bingo activities on behalf of Excel Academy.

67. Defendants violated their fiduciary responsibilities when they failed to use all the money or assets received from bingo and instant bingo for Excel Academy's charitable purpose.

68. As a direct and proximate cause of Defendants' breach of fiduciary duties as alleged in this complaint, there was a waste of charitable assets to the detriment of the charitable beneficiaries in an amount not yet known, but more than twenty-five thousand dollars (\$25,000.00).

69. Defendants are jointly and severally liable for an amount not yet known, but more than twenty-five thousand dollars (\$25,000.00), for the amount that has been wrongfully diverted from its intended charitable purposes.

70. Defendants' conduct, as described in this count, violates R.C. § 1716.17, for which the Attorney General is entitled to restitution and injunctive relief, and for which Defendants are liable to pay a civil penalty of up to ten thousand dollars (\$10,000) per each violation pursuant to R.C. § 1716.16(B).

71. The Attorney General, in its role as *parens patriae*, protects charitable trusts and their beneficiaries who should have benefited from charitable fundraising activities, including the solicitation proceeds raised by Defendants on behalf of the charitable organizations.

72. Defendants' actions have distributed charitable trust assets, bingo and instant bingo proceeds collected on behalf of Excel Academy to themselves and others at the expense of Excel Academy's intended charitable beneficiaries. The Attorney General and Excel Academy are entitled to an order imposing a constructive trust over all proceeds raised by Defendants on behalf of Excel Academy, and an order enforcing such constructive trust. Moreover, the Attorney General and Excel Academy request an order appointing a receiver over the funds impressed with the constructive charitable trust, for the purpose of redistributing those funds to Excel Academy.

**COUNT TWO**  
**UNJUST ENRICHMENT**

73. When a party would be unjustly enriched by wrongly retaining property,

the Court may impose a constructive trust upon that party, placing upon the party the duty in equity to convey the property to its rightful owner.

74. Ohio courts recognize the equitable remedy of constructive trust, and will apply the doctrine to prevent unjust enrichment of those who abuse their roles as trustees.

75. From at least June 21, 1995, until the present, Defendant David Jacob personally benefited at the expense of Excel Academy's charitable beneficiaries including, but not limited to, converting bingo and instant bingo proceeds raised on behalf of Excel Academy, receiving excessive salaries and paying personal expenses with charitable trust assets. During the same period, Defendants Thomas Jacob and Marlene Jacob benefited friends and family with illicit cash payments with funds intended to benefit Excel Academy's charitable beneficiaries. Defendants Thomas Jacob and Marlene Jacob may have used charitable trust assets to pay their own personal expenses.

76. As a result of Defendants' conduct, Defendants were unjustly enriched when they retained charitable proceeds for themselves or gave them to bingo workers at the expense of Excel Academy's charitable beneficiaries.

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

78. The Attorney General, in its role as *parens patriae*, protects charitable trusts and their beneficiaries who should have benefited from charitable fundraising activities, including the proceeds raised by Defendants on behalf of Excel Academy.

79. Because Defendants have proven incapable of appropriately managing and distributing charitable trust assets and bingo and instant bingo proceeds collected on behalf of Excel Academy to Excel Academy's intended charitable beneficiaries, the Attorney



General is entitled to an order imposing a constructive trust over all proceeds raised by Defendants on behalf of Excel Academy, including all amounts unjustly retained by Defendants, and an order enforcing such constructive trust. Moreover, the Attorney General requests an order appointing Excel Academy over the funds impressed with the constructive charitable trust, for the purpose of redistributing those funds to Excel Academy's charitable purpose.

**COUNT THREE**  
**CONVERSION**

80. Ohio courts recognize the common law cause of action known as conversion. A conversion is the wrongfully exerted control over the personal property of another in a manner inconsistent with the owner's rights. An action in conversion may exist even when the possessor of the property did not come into possession wrongfully, but when the possessor subsequently uses the property wrongfully.

81. From at least June 21, 1995, until the present, Defendant David Jacob personally benefited at the expense of Excel Academy's charitable beneficiaries including, but not limited to, converting bingo and instant bingo proceeds raised on behalf of Excel Academy, paying bingo workers and receiving excessive compensation. During the same period, Defendants Thomas Jacob and Marlene Jacob benefited friends and family with illicit cash payments with funds intended to benefit Excel Academy's charitable beneficiaries. Defendants Thomas Jacob and Marlene Jacob may have used charitable trust assets to pay their own personal expenses.

82. The Defendant's actions constitute conversion for which they are liable to pay damages in an amount not yet determined as compensation for loss of property.

83. The Attorney General requests an order imposing a constructive trust over all proceeds converted by Defendants, and an order enforcing such constructive trust. Moreover, the Attorney General requests an order appointing Excel Academy receiver over the funds impressed with the constructive charitable trust, for the purpose of redistributing those funds to Excel Academy's charitable purpose.

84. During 2011 Defendant Marlene Jacob, without the authority of Excel Academy, wrongfully took or retained property belonging to Excel Academy, including names, addresses, and social security numbers of Excel Academy's students or prospective students.

85. Upon information and belief, Excel Academy caused notice to be issued to Defendant Marlene Jacob to cease such wrongful use of its property and the private information of its students or prospective students and made demand to return the property.

86. Defendant Marlene Jacob converted this property to her own use. As a result thereof, Excel Academy has been damaged by the loss of students and revenue to Excel Academy.

**COUNT FOUR**  
**FALSIFICATION**

87. R.C. § 2921.13(A) states, in pertinent part:

No person shall knowingly make a false statement [...] when any of the following applies: (5) the statement is made with purpose to secure the issuance by a governmental agency of a license, permit, authorization[;] (7) the statement is in writing on or in connection with a report or return that is required or authorized by law[;] (9) the statement is made with purpose to commit or facilitate the commission of a theft offense[;] (11) the statement is made on an account, form, record [...] or other writing that is required by law.

88. The Attorney General brings this action pursuant to R.C. § 2921.13(G) as a person injured by the false statements.

89. Upon information and belief, from 1998 to 2006, Defendant Marlene Jacob falsified charitable bingo applications by underreporting gross profits and not reporting the additional expenses of worker cash payments. These applications were filed with the Attorney General pursuant to R.C. § 2915.08. Defendant Marlene Jacob also falsified bingo daily sheets by failing to account for all gross profit and the expense of cash payment to bingo workers. These documents are required to be maintained under R.C. § 2915.10. Upon information and belief, Defendant Marlene Jacob also falsified registration documents, specifically the Federal Form 990, that misstated the revenue and expenses of Excel Academy. These documents were filed with the Ohio Attorney General's Office pursuant to R.C. Chapters 109 and 1716.

90. Upon information and belief, from 2007 through 2010, Defendant David Jacob falsified charitable bingo applications by underreporting gross profits and not reporting the additional expenses of worker cash payments. These applications were filed with the Attorney General pursuant to R.C. § 2915.08. Defendant David Jacob also falsified bingo daily sheets by failing to account for all gross profit and the expense of cash payment to bingo workers. These documents are required to be maintained under R.C. § 2915.10.

91. Upon information and belief, Defendants falsified the above documents to facilitate the diversion of charitable proceeds to their own purposes at the expense of Excel Academy's charitable beneficiaries.

**COUNT FIVE**  
**REFORMATION OF CHARITABLE TRUST**

92. Ohio case law recognizes the equitable doctrine of *cy pres* and courts will apply the doctrine when:

- (A) There is a viable charitable trust;
- (B) The donor evidenced a general charitable intent on establishing the trust; and
- (C) It has become impossible or impractical to carry out the specific purposes or terms of the trust

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

94. Defendants' fundraising activities on behalf of Excel Academy manifested an intention to create a charitable trust in favor of Excel Academy's charitable beneficiaries. As such, the funds raised by Defendants on behalf of Excel Academy may be used only for the charitable purposes set forth in the terms of the trust. Additionally, all charitable proceeds unjustly or illegally retained by Defendants are subject to the same charitable trust.

95. In participating and/or donating money to Defendants for the benefit of Excel Academy, the public manifested the intent to create a charitable trust in favor of Excel Academy's intended charitable beneficiaries. As such, the funds raised by Defendants on behalf of Excel Academy must be used only for the charitable purposes set forth in the terms of the trust. Additionally, all charitable proceeds unjustly or illegally retained by Defendants are subject to the same charitable trust.

96. The specific purpose and/or specific terms of the charitable trust in favor of Excel Academy's intended charitable beneficiaries have become impossible or impractical to perform due to the actions or inactions of Defendants.

97. The Attorney General is entitled to a declaratory judgment reforming the terms of the charitable trust, in order to most nearly fulfill the purposes of the charitable trust in accordance with the doctrine of *cy pres* or deviation.

98. Because Defendants have proven incapable of appropriately managing and distributing charitable trust assets and bingo and instant bingo proceeds collected on behalf of Excel Academy to Excel Academy's intended charitable beneficiaries, the Attorney General requests an order appointing Excel Academy receiver over the funds impressed with the constructive charitable trust, for the purpose of redistributing those funds to Excel Academy's charitable purpose.

**COUNT SIX**  
**NEGLIGENCE PER SE**

99. Ohio law recognizes the claim of Negligence per se. Under this claim, a party need only show a violation of existing Ohio statutes designed to protect the general public from harm.

100. Defendant's conduct violated R.C. § 2915.09, R.C. § 2915.091 and R.C. § 2915.10, statutes designed to protect the public from the harms of illegal and illicit gambling. Defendant's conduct also violated R.C. § 1716.11 and R.C. § 1716.14, statutes designed to protect the public from misleading or false charitable solicitation.

101. Defendants' conduct, as described in this Count, constitutes Negligence per se and entitles the Attorney General to damages in an amount not yet known, but greater than twenty-five thousand dollars (\$25,000.00).

**COUNT SEVEN**  
**DECEPTIVE ACTS AND PRACTICES**

102. R.C. § 1716.14(A) states:

The following acts and practices are hereby prohibited and declared unlawful as applied to the planning, conducting, or executing of any solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion:

(1) Committing any deceptive act or practice;

103. R.C. § 1716.01(F) defines a “deceptive act or practice” as “knowingly misrepresenting any material fact related to the planning, conducting, or executing of any solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion, when the misrepresentation induces any person to make a contribution to a charitable organization, for a charitable purpose, or in response to a charitable sales promotion.”

104. Defendants committed a deceptive act or practice and/or misled the public by indicating that all proceeds from the conduct of charitable bingo would benefit Excel Academy when, in fact, some proceeds were used to benefit individual workers

105. Defendants conduct, as described in this Count violate R.C. § 1716.14(A)(1), R.C. § 1716.14(A)(2) and R.C. § 1716.14(A)(12) for which the Attorney General is entitled to injunctive relief, restitution, attorneys fees and costs of investigation and litigation and civil penalties of up to \$10,000 per violation pursuant to R.C. § 1716.16(B).

**COUNT EIGHT**  
**MISREPRESENTATION**

106. R.C. § 1716.14(A)(5) prohibits misleading the public by representing that proceeds of a solicitation will benefit a charitable organization when that is not the case.

107. R.C. § 1716.14(A)(2) prohibits misleading any person as to a material fact

concerning the solicitation of contributions for a charitable organization.

108. Defendants misrepresented to the public and/or misled the public by stating that all of the proceeds from the conduct of charitable bingo would benefit Excel Academy and its charitable purpose, when, in fact, portions of the proceeds were used to benefit individuals who worked the bingo game.

109. Defendants' conduct, as described in this Count violates R.C. § 1716.14(A)(5) and R.C. § 1716.14(A)(12) for which the Attorney General is entitled to injunctive relief, restitution, attorneys fees and costs of investigation and litigation and civil penalties of up to \$10,000 per violation pursuant to R.C. § 1716.16(B).

**COUNT NINE**  
**FAILURE TO MAINTAIN RECORDS**

110. R.C. § 1716.11 requires all charitable organizations to maintain true records of solicitation activities for a period of three years.

111. Defendants failed to maintain true and accurate records of the solicitation of bingo proceeds as no accurate record of the amounts paid to workers from bingo proceeds was maintained.

112. Defendants' conduct, as described in this Count violates R.C. § 1716.11 and R.C. § 1716.14(A)(12) for which the Attorney General is entitled to injunctive relief, restitution, attorneys fees and costs of investigation and litigation and civil penalties of up to \$10,000 per violation pursuant to R.C. § 1716.16(B).

**COUNT TEN**  
**NUISANCE**

113. R.C. § 1716.14(B) states:

The act of soliciting contributions for any charitable organization or charitable purpose or engaging in a charitable sales promotion without complying with the requirements of this chapter of any rule adopted pursuant to this chapter, is a nuisance

114. Defendants violated R.C. § 1716.14(A)(1) ,R.C. § 1716.14(A)(2), R.C. § 1716.14(A)(5), R.C. § 1716.14(A)(9), R.C. § 1716.14(A)(12) and R.C. § 1716.11 for which the Attorney General is entitled to an abatement of the nuisance and injunctive relief.

**COUNT ELEVEN**  
**FILING FALSE AND MISLEADING INFORMATION**

115. R.C. § 1716.14(A)(9) prohibits filing false or misleading information in Any document required to be filed with the Attorney General pursuant to R.C. Chapter 1716.

116. Defendants filed false and misleading information on registration documents required to be filed with the Attorney General under R.C. § 1716.02. Defendant's filed or caused to be filed Federal I.R.S. Form 990 which misrepresented the amount of gross revenue and expenses for Excel Academy.

117. Defendants' conduct, as described in this Count violates R.C. § 1716.11 and R.C. § 1716.14(A)(12) for which the Attorney General is entitled to injunctive relief, restitution, attorneys fees and costs of investigation and litigation and civil penalties of up to \$10,000 per violation pursuant to R.C. § 1716.16(B).

**PRAYER FOR RELIEF**

**WHEREFORE**, pursuant to his statutory and common law authority to protect charitable assets and to prevent their abuse, the Ohio Attorney General along with Excel Academy, which has been injured by Defendants' actions, respectfully requests the following judgments and relief:



- (A) Impose a constructive trust over all proceeds unjustly or illegally retained by Defendants and order Defendants to disgorge all proceeds held under that constructive trust for distribution in accordance with Excel Academy's general charitable purpose;
- (B) Order Defendants to pay restitution and compensatory damages, including interest for all amounts unjustly or illegally retained by Defendants to be redistributed in accordance with Excel Academy's general charitable purpose;
- (C) Appoint Excel Academy or the Attorney General as receiver over the funds impressed with the constructive trust, for the purpose of redistributing those funds to Excel Academy's charitable purpose;
- (D) Declare the terms of the charitable trust, and enter an order enforcing those terms in a manner consistent with this complaint;
- (E) Reform the charitable trust in accordance with the doctrine of *cy pres* or deviation, appointing the Attorney General or Excel Academy as receiver over the funds impressed with the charitable trust for the purpose of redistributing those funds to Excel Academy's charitable purpose in accordance with the doctrine of *cy pres* or deviation, and the common law governing charitable trusts;
- (F) Relieve Excel Academy from payment on the promissory note executed between Excel Academy and Defendant Thomas Jacob;
- (G) Award punitive damages in an amount that is just and appropriate for Defendants' malfeasance;

- (H) Award the Attorney General and Excel Academy reasonable attorney fees, expenses, and costs of investigation and litigation;
- (I) Impose an injunction against Defendants from further solicitation on behalf of Excel Academy or other charitable organizations or purposes in Ohio;
- (J) Impose a civil penalty against Defendants of not more than ten thousand dollars for each violation of R.C. Chapter 1716;
- (K) Award joint and several liability against Defendants for the above-determined amounts; and
- (L) Grant the Attorney General and Excel Academy other relief as the Court deems proper and necessary.

Respectfully submitted,

MIKE DeWine  
Attorney General



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*Attorney for Plaintiff Ohio Attorney General*

Respectfully submitted,

Excel Academy

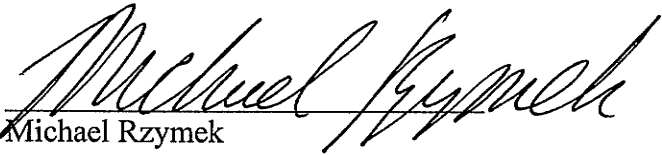


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*Attorney for Plaintiff Excel Academy*

**JURY DEMAND**

Plaintiffs, the Attorney General and Excel Academy, hereby demand a trial by jury on all issues so triable.

  
Michael Rzymek  
Principal Assistant Attorney General

  
David Q. Wigginton