Filed in District Court
State of Minnesota
10/10/2018 9:26 AM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

Case Type: OTHER CIVIL

State of Minnesota, by its Attorney General,
Lori Swanson,

Court File No. ____________

Plaintiff,

vs.

American Federation of Police and Concerned
Citizens, Inc.,

Defendant.

COMPLAINT

INTRODUCTION

1. Defendant American Federation of Police and Concerned Citizens, Inc. ("AFPCC") is a Florida charity that has solicited hundreds of thousands of dollars from Minnesota donors by deceiving them into believing it is raising funds for the sole or primary purpose of providing direct aid to families of fallen police officers. In reality, the majority of its purported charitable spending is used for sending solicitation mailers asking for contributions from potential donors and other supposed "educational" activities—not directly aiding families of fallen police officers. The Minnesota Attorney General's Office ("AGO") sued and obtained a court order against AFPCC more than 20 years ago for similar misconduct. The State of Minnesota, through its Attorney General, Lori Swanson, brings this enforcement action against AFPCC to again remedy its fraudulent practices and enforce Minnesota's charitable solicitation laws.

PARTIES

2. Lori Swanson, Attorney General of the State of Minnesota, is authorized under Minnesota Statutes chapter 8; the Minnesota Charitable Solicitation Act, Minn. Stat. §§ 309.50-.61; and common law, including *parens patriae* authority, to bring this action to enforce Minnesota's laws, vindicate the state's sovereign and quasi-sovereign interests, and to remediate all harm arising out of—and provide full relief for—violations of Minnesota's laws.

3. American Federation of Police and Concerned Citizens, Inc. ("AFPCC") is a nonprofit corporation organized under the laws of the District of Columbia. AFPCC's registered address with the Minnesota Attorney General's Office ("AGO") is 6350 Horizon Drive, Titusville, Florida, 32780. AFPCC first registered in 1991 with the AGO as a soliciting charitable organization pursuant to the Minnesota Charitable Solicitation Act, Minn. Stat. §§ 309.50-.61, most recently renewed its registration in November 2017, and remains registered to solicit donations in Minnesota.

JURISDICTION

4. This Court has subject-matter jurisdiction over this action under Minnesota Statutes sections 8.01, 8.31, 309.57, and common law.

5. This Court has personal jurisdiction over AFPCC because it has purposefully targeted and solicited charitable contributions in Minnesota from Minnesota residents, has transacted business in Minnesota, has committed acts inside and outside Minnesota causing injury in Minnesota and in violation of Minnesota law, and has consented to the jurisdiction of this Court as a matter of law pursuant to Minnesota Statutes section 309.56.

VENUE

6. Venue is proper in Ramsey County under Minnesota Statutes section 542.09 because the cause of action arose, in part, in Ramsey County. Among other things, AFPCC

solicited charitable contributions from residents of Ramsey County through the practices described in this Complaint, and violated a Consent Decree AFPCC and the AGO entered into in Ramsey County.

FACTUAL BACKGROUND

I. AFPCC AND ITS CLAIMED CHARITABLE PROGRAMS.

A. AFPCC Background and Overview.

7. AFPCC is a Florida-based 501(c)(3) nonprofit organization. It was formerly known as "American Federation of Police, Inc." It solicits charitable contributions throughout the United States, including in Minnesota.

8. AFPCC states that its mission is "to support and promote the law enforcement profession." AFPCC is not formally affiliated with any federal, state, or local law enforcement agencies, however, and it is not a fraternal organization, professional association, or bargaining unit for law enforcement personnel.

9. AFPCC's general "membership" is not restricted to police officers, but is open to everyone over the age of 18 who is "interested in the furtherance of the purposes" of AFPCC. Only one of AFPCC's ten board members has any law enforcement experience.

10. According to the public tax return it files with the Internal Revenue Service ("IRS"), known as a "Form 990," AFPCC solicits the vast majority of its donations through two for-profit professional fundraisers it has hired, Odell, Simms, Inc. ("Odell"), and Midwest Publishing-DN, Inc.

11. In the 2017 fiscal year, AFPCC raised approximately $4 million in donations. It spent at least $1.5 million of this revenue on fundraising.

12. AFPCC solicited and received at least $426,000 from more than 10,000 Minnesota donors from 2011 to June 2017.

B. AFPCC's Claimed Charitable Programs.

13. AFPCC claims to have two main charitable programs: (1) "public education" activities, and (2) the "Police Family Survivor's Fund." The former program is almost five times larger than the latter, but is unmentioned in AFPCC's mail solicitations to donors, as discussed further below.

14. AFPCC claims to have spent $2.14 million on charitable programing in the 2017 fiscal year. AFPCC categorizes the vast majority of this claimed charitable spending—more than $1.78 million, or 83% of its charitable spending—as "public education" activities.

15. The majority of AFPCC's claimed charitable spending on "public education" programs consisted of paying its for-profit fundraisers and others to create and include "announcements" in solicitations it mailed potential donors asking them for money. Another substantial portion of these "public education" activities consisted of AFPCC making payments to the National Association of Chiefs of Police ("NACOP")—a related charity operated by some of the same persons who manage AFPCC and that is run out of the same offices as AFPCC.

16. In March 2018, NACOP was banned from soliciting donations in Iowa for five years pursuant to an Assurance of Discontinuance with the State of Iowa. Iowa alleged, among other things, that NACOP had deceptively represented that contributions would specifically benefit a donor's local community when in actuality they were not set aside for local areas, and that the amount of direct aid it provided to police families was more significant than was actually the case.

17. The second, dramatically smaller aspect of AFPCC's charitable programing consists of grants to families of fallen officers (which AFPCC calls "Emergency Financial Assistance"), educational scholarships, gifts, greeting cards, and similar support to police families. AFPCC refers to these activities collectively as its "Police Family Survivors Fund."

The vast majority of Minnesota persons who received a benefit from the Fund between 2011 and 2016—more than 85% of recipients—received only greeting or sympathy cards.

18. The cost of charitable programing conducted as part of the Police Family Survivors Fund constituted about $358,000, or 17%, of AFPCC's claimed charitable spending in its fiscal year 2017, and only 9% of the $4 million in total donations that AFPCC solicited in fiscal year 2017. This is generally consistent with AFPCC's spending for the 2013 through 2016 fiscal years—in which it spent an even lower percentage of its charitable program funds (between 14% and 15%) on Police Family Survivor Fund activities.

C. The Attorney General's Office Sued AFPCC for Its Allegedly Deceptive Solicitation Practices in 1995.

19. In 1995, the AGO sued AFPCC for allegedly violating the Minnesota Charitable Solicitation Act. The AGO alleged that AFPCC deceived Minnesota donors and violated certain disclosure requirements by, among other things: overstating the degree and level of "support" it provided to families of fallen officers through the Police Family Survivors Fund; misrepresenting that donations would be restricted to the Fund; misrepresenting that the Fund was its primary charitable program; misleading prospective donors that it was conducting a special fundraising campaign in their local communities; and falsely implying that specified fundraising goals were unique to a local community or commensurate with a community's ability to give.

20. The AGO also alleged that AFPCC violated Minnesota law by filing financial statements that were not in compliance with generally accepted accounting principles ("GAAP") because the statements improperly treated certain AFPCC fundraising expenses as charitable programing expenses—thereby making AFPCC appear as if it spent a higher proportion of donors' contributions on helping police families than was actually the case.

21. The AGO, AFPCC, and its executive leadership stipulated to the entry of a Consent Decree to settle the lawsuit. In the decree, AFPCC was enjoined from engaging in deceptive solicitation practices, including: misrepresenting that the Fund was its primary charitable program; misrepresenting that donors' contributions would be used for a particular purpose; using certain phrases related to the donor's local area, including the phrase "funding goal" in close proximity to a donor's location, or without disclosing the basis of the "goal"; and failing to "clearly disclose a description of the charitable program for which the campaign is being carried out, and if different, [a] description of the organization's other primary programs and activities."

22. AFPCC further agreed in the court-approved decree to report its expenses in compliance with GAAP, as well as satisfy additional, specifically-enumerated steps prior to treating its fundraising expenses as charitable programing expenses.

D. Local Police Departments and Consumer Reports Have Issued Warnings About AFPCC.

23. Despite the AGO's lawsuit and AFPCC's promises to refrain from deceptive conduct, in subsequent years, police departments in North Dakota, Michigan, California, Hawaii, Indiana, and Iowa issued public alerts warning donors that AFPCC was not affiliated with their departments, and that any donations made to AFPCC would not be set aside to aid local police families.

24. Indeed, as recently as June 7, 2018, a Nebraska police department issued an alert to local news stations warning that AFPCC donations "do not benefit local officers."

25. In December 2017, *Consumer Reports* identified AFPCC as one of five police and firefighter support charities consistently ranked lowest by watchdog groups like the Better Business Bureau ("BBB") Wise Giving Alliance, Charity Navigator, and Charity Watch.

II. AFPCC HAS EMPLOYED DECEPTIVE PRACTICES WHEN SOLICITING CONTRIBUTIONS FROM MINNESOTANS.

26. Since at least January 1, 2013, and continuing through 2018, AFPCC has mailed numerous deceptive and misleading solicitations to prospective Minnesota donors. AFPCC's deceptions included giving donors the false impression that AFPCC was fundraising solely or primarily for its Police Family Survivors Fund, and that there was an urgent need to donate right away because of nonexistent budgetary shortfalls.

A. AFPCC Deceptively Represented that It Was Fundraising Solely or Primarily for the Police Family Survivors Fund, When in Reality the Vast Majority of Its Claimed Charitable Programing Consisted of Separate "Public Education" Activities.

27. AFPCC has deceived Minnesota donors by misleading them in its solicitation mailers that donations would exclusively or primarily be used for Police Family Survivor Fund ("Fund") programs. In reality, except for a few months in its 2015 and 2017 fiscal years, AFPCC raised contributions for all of its programs through these Fund-specific mailers, including its largest claimed "public education" program of sending mailers to past and potential donors.

1. AFPCC's mailers give the misleading impression that contributions will only be used to support the Fund.

28. Several aspects of AFPCC's mailed solicitations have deceptively indicated that donations would be used solely or primarily for Fund programs. First, the envelopes in which solicitations were often mailed featured the Fund prominently next to AFPCC's name—in many instances, more prominently than AFPCC itself. This is illustrated below (all yellow highlighting below has been added):

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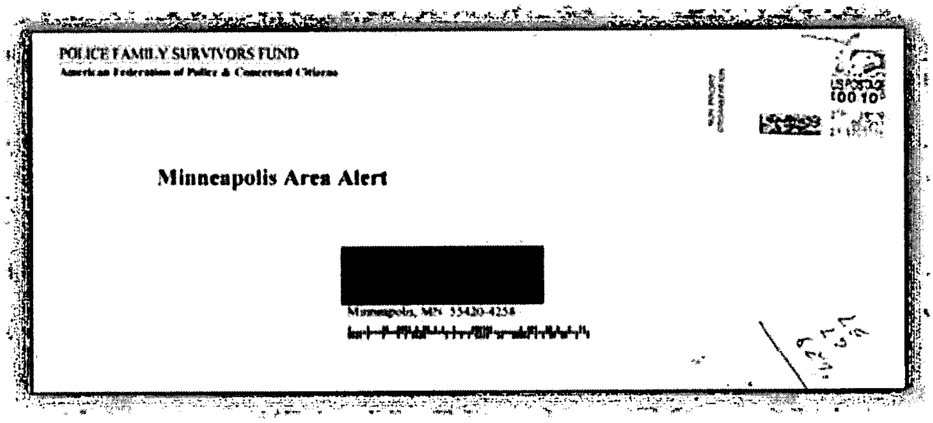
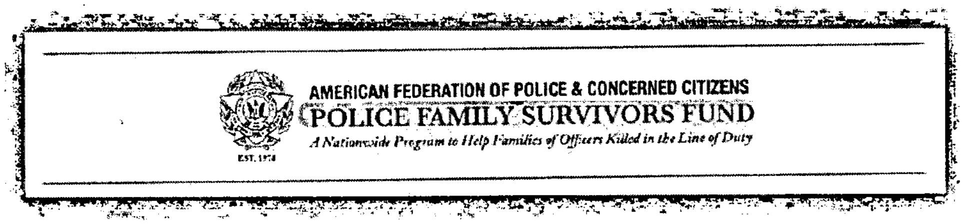


29. The letterhead of many AFPCC solicitations also prominently featured the Fund. For example:



30. The body of numerous AFPCC solicitations appealed for donations solely for the Fund, even though the Fund constituted only 17% of AFPCC's claimed charitable programming in its 2017 fiscal year. Some solicitations began, for example, by stating that AFPCC was "reach[ing] out on behalf of spouses and children of police officers killed in the line of duty." Other solicitations stated that AFPCC was "<u>conducting a special drive to raise funds</u>" for Fund programs. (Emphasis in original.) Others deceptively stated: "Whatever donation you send will be greatly appreciated and put toward our Police Family Survivors Fund immediately."

31. Some mailers further asked donors to "join your friends and neighbors in supporting our 2016 Hennepin County Area Annual Appeal for the Police Family Survivor's Fund." Many mailers would also claim a "funding goal" of a set amount of money for the Fund, suggesting that this amount would be set aside with other donations for Fund purposes, when that was not actually the case.

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32. Many, if not all, of AFPCC's solicitations mailed in Minnesota failed to clearly disclose AFPCC's largest "public education" program, including failing to even mention its charitable activity of sending solicitation mailers to potential donors that AFPCC claimed contained educational content.

33. Other mailers that AFPCC produced to the AGO as being used in Minnesota falsely stated that "100% of your gift — every penny — will immediately be used to provide Emergency Financial Assistance," which is a Fund program. Indeed, the enclosed reply card for donors to return stated, "I understand that 100% of my gift will be directly used to provide emergency financial assistance to a grieving family." Minnesota law requires charities to "keep and maintain" records regarding their solicitation and other financial activities. Minn. Stat. § 309.54. A charity typically does this through maintaining a general ledger of all financial transactions to which it is party. AFPCC's general ledger reflects that it placed certain use restrictions on donations it received in its fiscal year 2015 (AFPCC's Forms 990 also listed assets with use restrictions on its books as of yearend for its fiscal years 2015 and 2017). AFPCC's general ledger reflects that it did not, however, place use restrictions on donations it received during multiple other fiscal years corresponding with the times when these solicitations were mailed to potential Minnesota donors. Indeed, AFPCC stated in a sworn interrogatory answer to the AGO that "the only time period for which AFPCC restricted contributions" was for certain months in its fiscal year 2015.

34. Contribution remittance slips contained in many AFPCC solicitations reiterated that donations were for the Fund, and further instructed donors to "Return To: AMERICAN FEDERATION OF POLICE & CONCERNED CITIZENS POLICE FAMILY SURVIVORS FUND," as follows:

POLICE FAMILY SURVIVORS FUND · 2017 Renewal Gift Reply

Special Sauk Rapids Area AFP&CC Renewal Appeal

2017 Suggested Renewal Gift: | Renewal Deadline:

☐ $300 ☐ $450 ☐ $600 | July 31, 2017

[redacted]

Return To:
AMERICAN FEDERATION OF POLICE
& CONCERNED CITIZENS
POLICE FAMILY SURVIVORS FUND
6350 Horizon Drive
Titusville, Florida 32780
(321) 264-0911

*Please make checks payable to **AFP&CC**. Thank you for supporting this national appeal to help over 12,100 surviving wives, children and family members of police officers killed in the line of duty. See back of form to make your gift using your credit card. All donations are tax-deductible.*

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35. When donors mailed checks to AFPCC, they often did so in return envelopes marked for the Fund. For example:

FROM:

PLACE STAMP HERE

PLEASE RETURN BY OCTOBER 30, 2017
Thanks!

AMERICAN FEDERATION OF POLICE
AND CONCERNED CITIZENS
POLICE FAMILY SURVIVORS FUND
6350 HORIZON DRIVE
TITUSVILLE FL 32780-8002

JJ

36. Thus, from before a potential donor opened the envelope containing AFPCC's solicitation, until she filled out the remittance slip to send in her donation, AFPCC fostered a deceptive and misleading overall net impression that donations would exclusively or primarily be used for the Fund.

37. Indeed, multiple Minnesota donors specifically wrote checks to the "Police Family Survivors Fund"—not AFPCC—confirming the effectiveness of AFPCC's Fund-specific deception.

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2. AFPCC compounds its Fund-specific deception by misrepresenting that GuideStar "certifies" donations will be used for Fund purposes.

38. AFPCC compounded its Fund-specific deception in some of its mailers by further deceptively stating that GuideStar, a prominent public disseminator of information about charities, "certified" that donations to AFPCC would be used for Fund programs.

39. In 2017, internal AFPCC emails and emails with Odell reflect that it pushed to "improv[e] our ranking" and "raise our profile" with "nonprofit watchdogs" by obtaining a "Platinum Seal of Transparency" from GuideStar.

40. After receiving the certification, AFPCC started including a full-page insert in multiple mailers used in Minnesota, which were prefaced with the question: "Wondering if you should contribute?" It then stated that the "Platinum Seal of Transparency certifies that we use your contributions the way you intend – to comfort and assist police family survivors." AFPCC further represented in the mailer that donors could contribute "with confidence knowing that GuideStar, a trusted, independent service has verified" AFPCC's programs.

41. Some AFPCC solicitations also included the GuideStar seal graphic in the main body of the solicitation, and indicated that because GuideStar "has awarded [AFPCC] their Platinum Seal of Transparency," a donor's "gift will be used wisely."

42. These statements were false and deceptive because GuideStar did not review, verify, or certify the accuracy of a charity's solicitations, how it used its contributions, or whether it used its contributions "wisely" before granting Platinum status to a particular charity. This seal instead simply communicated that a charity had answered certain questions and provided certain documents to GuideStar for its online profile.

43. The statement that AFPCC "use[s] your contributions the way you intend – to comfort and assist police family survivors," thus compounded the deceptive representations

illustrated above indicating that donations will exclusively or primarily be used for Fund programs.

3. AFPCC's Fund-specific deception is knowing and intentional.

44. AFPCC is aware that its program of providing direct aid to families of fallen officers is much more popular than its other programs. In fact, AFPCC's fundraiser, Odell, conducted donor surveys showing which Fund programs were "the most popular" of its activities and generated the most revenue.

45. For example, in one email to AFPCC, its fundraiser Odell specifically confirmed that "Emergency Financial Assistance is clearly the most 'important' as far as donors are concerned," because 70% of donors who responded to its survey so indicated. Odell added that it "may be useful [for AFPCC] to use this information" when "deciding what editorial content is featured and how prominently" in future newsletter solicitations sent to potential donors, "e.g., lead article about Emergency Financial Assistance, etc."

46. Another email between AFPCC and Odell reflects that AFPCC deliberately decided to focus solicitations on "either the general appeal of the [Police Family Survivors Fund's] benefit to family survivors . . . or on the need to support the Emergency Financial Assistance program," to the exclusion of AFPCC's less-popular programs.

47. AFPCC was not just aware, therefore, that its tactics had the effect of overemphasizing Fund programs to the exclusion of its far more dominant (but less appealing) "public education" activities—it intentionally engaged in this deceptive practice to raise more money.

48. Indeed, more than 20 years ago, AFPCC agreed with the AGO in the Consent Decree settling the AGO's earlier lawsuit not to represent "that the [Fund] program is a primary

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program of [AFPCC], unless, in fact, it is," or misrepresent that "contributed funds would be used for a particular purpose."

4. Minnesota donors were deceived by AFPCC's misleading Fund-specific representations.

49. Minnesota donors were deceived by these tactics to their detriment. For example,[1] Minnesota donors G.A., T.A., F.C., A.D., C.D., D.H., M.G., S.G., W.J., and M.M., all stated AFPCC's mailers led them to believe that their donation would be used only for the charitable program of direct aid to police families, that AFPCC did not disclose its public education programs to them, and that they would not have donated if they knew Fund-related programs constituted such a small part of AFPCC's charitable programs. For example:

50. C.D., a 58-year-old Minneapolis business owner, said she donated to AFPCC because, based on its mailers, she believed that its only charitable program consisted of giving direct aid to the families of fallen police officers. C.D. stated helping police families was "close to [her] heart," because she had a close friend whose police officer husband was injured in the line of duty.

51. Austin resident A.D., an 86-year-old retired medical receptionist, donated because she believed her contribution would be used to provide direct aid to families of slain police officers based on AFPCC's solicitations. She thought that it was "outrageous" that such a small portion of AFPCC's funds are used to provide aid to police families.

52. J.M., a 54-year-old marketing professional from Hutchinson, donated $15 to AFPCC in 2018. AFPCC's mailers led her to believe it was asking for money for the primary purpose of providing direct aid to police families. J.M. identified the prominence of "Police Family Survivor Fund" next to AFPCC's name as contributing to her impression.

[1] The persons described in this complaint are illustrative, but nonexclusive, examples.

B. AFPCC Uses Other High-Pressure Tactics to Solicit Donations.

53. AFPCC has also used high-pressure tactics to create a false sense of urgency to get people to donate right away. AFPCC made deceptive representations to Minnesota donors in mailers that contributions were urgently needed to overcome its "budget shortfalls." Some solicitations used in Minnesota stated, for example, that AFPCC was conducting an "Emergency Appeal" in the donor's local area, and "despite all [it has] done to cut costs and manage expenses, [AFPCC] is facing a serious budget shortfall of about $51,000."

54. Other Minnesota mailers stated that the "<u>situation is growing more critical every day</u>," that AFPCC was "facing a *serious funding challenge*," and that the "threat of cutting back on" providing "Emergency Financial Assistance, Grief Counseling Grants and Scholarship Awards to grieving police family survivors," was "all too real." (Emphasis in original.)

55. In reality, there were no AFPCC budget shortfalls or funding challenges. To the contrary, AFPCC's own internal documents stated that it was in "good, stable financial condition."

C. AFPCC Intentionally Targets its Deceptive Solicitations at Senior Citizens.

56. AFPCC's misleading solicitation practices have deceived Minnesota donors of various ages. AFPCC aggravated its deceptive tactics, however, by specifically targeting elderly people, including elderly Minnesotans.

57. AFPCC intentionally solicited senior citizens. AFPCC sent mailers to people on lists purchased from third-party vendors. AFPCC and Odell preselected the desired demographics of the potential donors included in these lists. Depending on the mailing, their demographic selections included recent donors to "Association for Mature Americans" and "Alliance for Retired Americans," as well as recent "donors female age 70+" to other charities.

58. AFPCC has also periodically mailed a "Planned Giving Newsletter," which encouraged donors to put AFPCC in their wills. The newsletter advised donors to include in their wills "gifts to favorite organizations whose values you share, such as the American Federation of Police & Concerned Citizens," and provided "suggested wording" to "include the AFP&CC in your will or trust."

59. AFPCC's primary target audience for this "newsletter" was senior citizens. For example, 40,959 of the 50,000 people AFPCC sent one such mailer to in June 2015 were "donors age 75-or older."

III. AFPCC'S SOLICITATION PRACTICES REPEATEDLY VIOLATED THE 1996 CONSENT DECREE RESOLVING THE AGO'S FIRST LAWSUIT AGAINST IT.

60. AFPCC's deceptive practices not only violated Minnesota law. They also violated multiple provisions of the Consent Decree that the AGO and AFPCC entered into over 20 years ago.

A. AFPCC Violated the Consent Decree Through its Fund-Specific Deception.

61. In the 1995 lawsuit, the AGO alleged that AFPCC misled prospective donors by, among other things, misrepresenting that donations would be restricted to the Fund; and misrepresenting that the Fund was its primary charitable program. In the Consent Decree, AFPCC thus agreed not to engage in specific tactics which deceptively overemphasized its Fund programs.

62. As described in detail in Part II.A, AFPCC's recent solicitations contained various deceptive statements overemphasizing the Fund. This conduct not only violated Minnesota law for the reasons described above, it also violated the Consent Decree's prohibitions on these tactics.

63. The Consent Decree prohibited AFPCC from falsely representing "that the [Fund] program is a primary program of [AFPCC], unless, in fact, it is." But, as described above, AFPCC's mail solicitations often falsely represented that the Fund was AFPCC's primary program—despite that fact that it only constituted 17% of its charitable program expenses in 2017, and similarly small or even lesser amounts in prior years.

64. The Consent Decree prohibited AFPCC from misrepresenting that "contributed funds would be used for a particular purpose." But, as described above, various aspects of AFPCC's mailed solicitations have deceptively indicated that donations would be used solely or primarily for Police Family Survivors Fund programs, when that was not the case.

65. The Consent Decree required AFPCC to "clearly disclose a description of the charitable program for which the campaign is being carried out, and if different, [a] description of the organization's other primary programs and activities." But, as described above, AFPCC's mailed solicitations often failed to clearly disclose the "public education" programs for which AFPCC was raising money, including sending mailers with program content and other claimed public education activities that constituted the majority of its charitable expenditures.

66. Accordingly, since at least January 1, 2013, and continuing through 2018, AFPCC engaged in extensive conduct violative of these Consent Decree provisions.

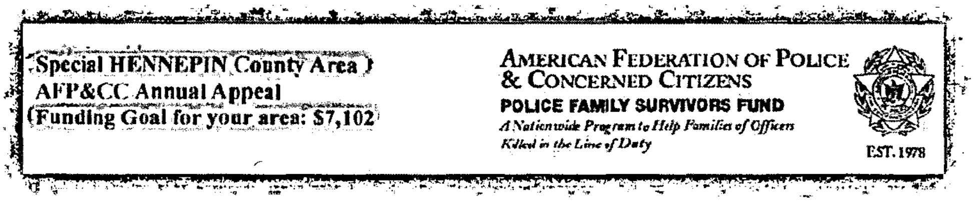
B. AFPCC Violated the Consent Decree by Claiming It had a "Funding Goal" for a Donor's Local Area.

67. The AGO also alleged in the 1995 lawsuit that AFPCC misled prospective donors by claiming that it was conducting special fundraising campaigns in their local communities.

68. To remedy this practice, the Consent Decree enjoined AFPCC from, among other things, "plac[ing] or us[ing] the name of any town, city, or community in close proximity to the phrase 'funding goal,'" or "us[ing] the phrase 'funding goal' in its solicitations unless the basis

of the funding goal is clearly and conspicuously disclosed in the solicitation."

69. Since at least January 1, 2013, and continuing through 2018, AFPCC has repeatedly violated this provision of the Consent Decree. Many of its mailers prominently featured this "funding goal" language in its letterhead in close proximity to a donor's specific county or city. This is illustrated as follows:



70. AFPCC's correspondence showed that it intentionally used this type of "localizing" language to solicit more money from donors. For example, in one email between AFPCC and its fundraiser Odell, Odell discouraged AFPCC from adopting the substance of a different charity's materials that it believed did not sufficiently "personalize" the solicitation for the donor's local area. Odell told AFPCC that it would be "a big mistake," for example, to even reduce the size of the font personalizing its mailers to a donor's city of residence.

71. Odell further noted in email correspondence the importance of emphasizing a donor's specific local area, stating: "We tested and retested state vs. city personalization a number of years ago. If we used state only there would be no program. Very poor results." AFPCC was thus aware that if it did not prominently localize its solicitations—"*there would be no program*." Accordingly, AFPCC's violation of this portion of the Consent Decree was not a mere technical violation or mistake—it was intentional and motived by money.

IV. AFPCC Filed False Documents With the AGO that Made It Appear Its Charitable Programing was More Significant than was Actually the Case.

72. In addition to its deceptive solicitation practices, AFPCC violated the Minnesota Charitable Solicitation Act ("Act") by filing inaccurate and noncompliant documents with the

AGO for the 2013 through 2016 fiscal years, which artificially inflated the amount of donations AFPCC reported that it used for a charitable purpose, as explained further below.

A. AFPCC Improperly Used an Accounting Tactic Called "Joint Cost Allocation" to Appear as a More Efficient Steward of Donors' Charitable Contributions than was Actually the Case.

73. Minnesota law requires soliciting charitable organizations to ensure that the financial information they must file with the AGO complies with generally accepted accounting principles ("GAAP"). *See* Minn. Stat. § 309.53. GAAP accounting principles are codified in standards established by the Financial Accounting Standards Board ("FASB"). FASB's *Accounting Standards Codification* ("ASC") is the single authoritative source of GAAP for nongovernmental organizations in the United States.

74. AFPCC filed inaccurate and noncompliant financial-related documents with the AGO by impermissibly using an accounting practice called "joint cost allocation" in violation of GAAP. Although complicated, as described further below, the use of this accounting practice, when permitted, effectively allows a charity to treat a portion of the money it spends on fundraising as if it were a charitable programing expense.

75. Charities have the incentive to abuse the joint cost allocation accounting method because their public IRS tax returns, i.e., their "Forms 990," show donors how efficiently (or inefficiently) they spend their donations. The more money a charity spends on items like fundraising and overhead, the less efficient it appears to the public and certain charities "watchdog" groups like the BBB Wise Giving Alliance.

76. Under the Act, charities in Minnesota are required to comply with GAAP when accounting for their expenses in federal tax returns and financial statements filed with the AGO. *See* Minn. Stat. § 309.52, subd. 3. Under GAAP, money spent asking for donations must generally be accounted for as fundraising expenses. FASB ASC §§ 958-720-20 (generally

defining fundraising expenses). In very limited circumstances, however, GAAP allows charities to categorize a portion of their fundraising costs as charitable programing expenses through use of the joint-cost allocation practice. FASB ASC § 958-720-45 (establishing when use of the joint-cost allocation method is permissible).

77. Charities are only permitted to use this practice if they can satisfy strict "purpose," "audience," and "content" tests laid out by GAAP. FASB ASC § 958-720-45-29. These tests are designed to ensure that a charity that treats a portion of its fundraising costs as charitable expenses is properly doing so because these expenditures truly serve a program purpose, instead of merely acting as a means for the organization to make its charitable programs look larger than they actually are. As described below, AFPCC failed to meet at least two of these criteria: purpose and audience.

78. For charities like AFPCC that spend a large portion of their revenue on fundraising, joint cost allocation can have a significant impact on the information they report in their Forms 990 and other filings. Indeed, if AFPCC did not use this accounting practice, the percentage of donors' contributions that it reported spending in fiscal year 2017 on charitable programing versus fundraising and overhead, or its "efficiency ratio," would drop from 53%, to only 27%.

79. AFPCC was aware of the importance of such "efficiency ratios" with donors, and that watchdog organizations use this information to rate charities for potential donors. AFPCC has internally acknowledged that its "dependence on direct mail hurts" its status with watchdog groups, and has emphasized in emails to Odell the "need to make a plan to lower our fundraising percentage," since "donors frown upon that." AFPCC has also noted that it has received "many calls and notes from donors asking for our financials" to "justify[ ] their donations."

80. In another email, AFPCC expressed concern that it had "WAY too many negative reviews" from donors on charity watchdog web sites, and encouraged its employees and Odell to "add positive reviews" to "force bad posts to move further down," and obscure the public's negative perception of its activities. AFPCC told Odell that the "benefits [of doing so] to our fundraising/your fundraising" would be "substantial."

B. AFPCC Violated GAAP and Consequently the Act Because It Treated Percentage-Based Fundraising Costs as Charitable Spending.

81. AFPCC violated the Act by filing documents with the AGO for its fiscal years 2013 through 2016[2] that improperly allocated fundraising costs to program service expenses—notwithstanding the fact that some of its expenses failed GAAP's "purpose" criterion necessary to permissibly use the joint cost allocation practice. *See generally* FASB ASC § 958-720-05 through 958-720-55-170.

82. GAAP rules unequivocally state: "The purpose criterion is not met if a majority of compensation or fees for any party's performance of any component of the discrete joint activity varies based on contributions raised for that discrete joint activity." FASB § 958-720-45-40.

83. Since 2013, AFPCC has paid Midwest Publishing-DN, Inc. ("Midwest"), one of its for-profit fundraisers, pursuant to an arrangement by which Midwest retained 88% of all funds that it raised for AFPCC. The entire amount of Midwest's fees thus varied based upon how much it raised for AFPCC, and were not permitted to be treated as charitable programing expenses under GAAP.

[2] AFPCC's fiscal year runs from July 1 to June 30. It filed documents with the AGO for its fiscal year 2013 on or around December 4, 2013, for fiscal year 2014 on or around November 4, 2014, for fiscal year 2015 on or around November 17, 2015, and for fiscal year 2016 on or around November 7, 2016.

84. Nevertheless, AFPCC has treated a total of $557,860 in fees that it paid to Midwest as charitable programing expenses from at least 2013 through at least 2016, incorporated such allocations into its Forms 990 for each of these years, falsely certified that each of these forms were "true, correct, and complete to the best of [its] knowledge," and filed these Forms 990 with the AGO for each of these years—thereby improperly and falsely boosting the amount AFPCC reported that it spent on charity in violation of GAAP and Minnesota law.

C. AFPCC Separately Violated GAAP and Consequently the Act Because It Selected the Persons to Which It Sent Mailers Based on the Perceived Likelihood that They Would Donate.

85. AFPCC also filed statements with the AGO for its 2013 through 2016 fiscal years that improperly allocated mailed solicitation fundraising expenses to program service expenses for a second, independent reason—the materials did not meet GAAP's "audience" criteria necessary to permissibly use the joint cost allocation practice.

86. Under GAAP rules, mailers sent to "prior donors" and persons who are "otherwise selected based on their ability or likelihood to contribute," are presumed not to meet GAAP's "audience" criterion. FASB ASC § 958-720-45-48.

87. In its fiscal years 2013, 2014, 2015, and 2016, AFPCC sent its mailers to persons on two main types of lists—those included in what it calls its "house file," and those included in what it calls its "prospect file." AFPCC's financial records reflect that it treated substantial portions of expenses related to mailers sent to persons on these lists as charitable program expenses.

88. AFPCC's "house file" consisted of prior donors to AFPCC. Expenses related to mailers sent to these prior donors presumptively failed the "audience" criterion. FASB ASC § 958-720-45-48.

89. AFPCC's "prospect file" consisted of persons who had not yet donated to AFPCC, but who had met certain preselected criteria, including making recent donations to other charities. Expenses related to mailers sent to the prospect lists also presumptively failed the audience criterion, because the recipients were chosen based upon the likelihood that they would donate to AFPCC. This is evidenced by the following facts, among others:

90. First, AFPCC purchased prospect names from third-party vendors that were recommended by Odell. Indeed, AFPCC often perfunctorily signed off on Odell's proposed purchase and use of prospect files—as opposed to conducting its own research and analysis into what lists would best further any claimed charitable goal.

91. Second, numerous prospect list proposals Odell produced to the AGO indicate that the predominant, if not sole, criterion AFPCC and Odell applied when selecting these prospect names was the likelihood of donations. These proposals showed, for example, that the selected names were overwhelmingly recent donors to other charities, suggesting that these persons would also donate to AFPCC as well.

92. The proposals also projected the amount of revenue AFPCC could anticipate receiving from its proposed prospect file donors. In contrast, the proposals contained no projections as to whether the audience would have a need or use for the purported program content, would be able to take specific action to assist AFPCC in meeting it program goals, or would otherwise meet GAAP's requirements to categorize expenses related to mailers sent to such persons as part of AFPCC's charitable program. *See* FASB ASC 958-720-45-49.

93. As further evidence of their pecuniary motive for selecting its audience, AFPCC and its fundraisers also extensively tracked and tested during the relevant time periods the likelihood of donations from persons on both its prospect- and house-file mailing lists. In

contrast, AFPCC did not track the effectiveness of its purported program content on *any* of the persons who received its mailers, and admitted that it had "no way of knowing" whether and how mail recipients were impacted by the claimed "program" content included in its solicitation mailers.

94. In sum, AFPCC selected the recipients of its mailers based upon who it thought would generate the most money—and not who would help AFPCC accomplish a claimed charitable program purpose. Under GAAP rules and the Act, mailers sent to such persons were not permitted to be treated as "program" expenses on financial statements or tax returns filed with the AGO. *See* FASB ASC § 958-720-45-48.

95. AFPCC nevertheless allocated to program services the costs of solicitations sent to persons on both its house and prospect files in its 2013 through 2016 fiscal years, incorporated such allocations into its Forms 990 for each of these years, and filed each of these Forms 990 with the AGO. It is possible that every dollar for expenses related to AFPCC's Odell solicitation mailers sent to these lists that it jointly allocated to charitable programing in its 2013 through its 2016 fiscal years—more than $3.3 million—was done so improperly, boosting its efficiency ratio accordingly.

D. AFPCC Violated the Consent Decree by Failing to Comply with its Requirements for Joint Cost Allocation.

96. AFPCC also violated the Consent Decree by failing to comply with the AGO's requirements for using the joint-cost allocation practice. Due to AFPCC's earlier alleged misuse of the practice, the AGO set forth certain requirements in the 1996 Consent Decree that AFPCC was required to follow if it used the practice in the future.

97. Under the Consent Decree, AFPCC was prohibited from allocating expenses to program services unless it "gather[ed] objective and reasonable evidence of the effectiveness" of

its charitable program, known as a "call-to-action." As discussed above, AFPCC did not have a method to track the effectiveness of its call to action, and thus violated the Consent Decree by treating such costs as charitable programing expenses in documents filed with the AGO under the Act for its 2013 through 2016 fiscal years.

98. Further, AFPCC admitted that, contrary to the Consent Decree's requirements, it did not develop "in advance of the publication and mailing of a direct mail solicitation or the initiation of telemarketing solicitations, a public awareness plan," or provide any such public awareness plan to its fundraising agents prior to the publishing and mailing of the solicitations. These are also direct violations of the Consent Decree.

COUNT I
DECEPTIVE SOLICITATION OF DONATIONS

99. The AGO re-alleges all prior paragraphs of this Complaint.

100. Minnesota Statutes section 309.55, subdivision 5, states:

> No charitable organization and no person acting on behalf of a charitable organization shall use or employ any fraud, false pretense, false promise, misrepresentation, misleading statement, misleading name, mark or identification, or deceptive practice, method or device, with the intent that others should rely thereon in connection with any charitable solicitation, including any such actions or omissions designed to confuse or mislead a person to believe that such organization is another organization having the same or like purposes; or to believe that the funds being solicited are or will be used for purposes and programs conducted within or for persons located within the state of Minnesota when such is not the case; or to otherwise present purposes and uses of the funds which are not as provided within the purposes and uses filed upon registration of said organization under this chapter, or if no such registration has been filed, then as provided under the exemption of said organization from federal and state income taxes as an organization formed and operating for charitable purposes as defined herein.

101. Minnesota Statutes section 309.50, subdivision 10, states in part:

> "Solicit" and "solicitation" mean the request directly or indirectly for any contribution, regardless of which party initiates communication, on the

> plea or representation that such contribution will or may be used for any charitable purpose, and include any of the following methods of securing contributions:
>
> (1) oral or written request;
> (2) the distribution, circulation, mailing, posting, or publishing of any handbill, written advertisement, or publication; . . .

102. At all relevant times, AFPCC, a registered charitable organization with the AGO, solicited, through its professional fundraisers, and using solicitation materials that AFPCC approved, contributions in Minnesota.

103. Since at least January 1, 2013, and continuing through 2018, AFPCC has repeatedly violated Minnesota Statutes section 309.55, subdivision 5, by, in connection with charitable solicitations in Minnesota, engaging in false, deceptive, and misleading conduct, practices, actions, and representations with the intent that others rely thereon as described in this Complaint, including by representing or otherwise suggesting, among other things, that: it would use donations exclusively or primarily for Police Family Survivor Fund programs; GuideStar had certified the substantive accuracy of its solicitations; it urgently needed donations to overcome budget shortfalls or address an emergency need; and other false, deceptive, and/or misleading conduct, practices, actions, and representations as described in this Complaint.

104. Due to the false, deceptive, and misleading conduct, practices, actions, and representations described in this Complaint, Minnesota residents donated to AFPCC when they otherwise would not have done so, thereby causing them harm and unlawfully enriching AFPCC.

105. AFPCC's conduct, practices, actions, and representations described in this Complaint, and failure to act when it was required to do so, constitute multiple, separate violations of Minnesota Statutes section 309.55.

COUNT II
FAILURE TO MAKE REQUIRED DISCLOSURES

106. The AGO re-alleges all prior paragraphs of this Complaint.

107. Minnesota Statutes section 309.556, subdivision 1, states, in part:

> Prior to orally requesting a contribution or contemporaneously with a written request for a contribution, the following information shall be clearly disclosed:
>
> . . . .
>
> (c) a description of the charitable program for which the solicitation campaign is being carried out; and, if different, a description of the programs and activities of the organization on whose behalf the solicitation campaign is being carried out.
>
> If the solicitation is made by direct personal contact, the required information shall also be disclosed prominently on a written document which shall be exhibited to the person solicited. If the solicitation is made by radio, television, letter, telephone, or any other means not involving direct personal contact, the required information shall be clearly disclosed in the solicitation.

108. At all relevant times, AFPCC, a registered charitable organization with the AGO, solicited contributions in Minnesota through its professional fundraisers using written solicitation materials that AFPCC had approved.

109. Except for in certain parts of its fiscal years 2015 and 2017, AFPCC solicited these charitable contributions in Minnesota for all of its charitable programs and activities, and did not restrict contributions for any specific charitable program.

110. Since at least AFPCC's 2013 fiscal year, and continuing through at least its 2017 fiscal year, the vast majority of its claimed charitable programs and activities consisted of "public education" programing, including its largest charitable program of sending solicitation mailers to potential donors that it claimed contained educational content.

111. Since at least January 1, 2013, and continuing through 2018, when soliciting charitable contributions in Minnesota, AFPCC repeatedly failed to clearly disclose in its mailed solicitations its largest claimed charitable program of sending educational content in mailers and other purported public education activities, and as such, unlawfully failed to clearly disclose a description of the charitable programs and activities for which the solicitation campaign was being carried out.

112. AFPCC's conduct, practices, actions, representations, and omissions described in this Complaint, and failure to act when it was required to do so, constitute multiple, separate violations of Minnesota Statutes section 309.556.

COUNT III
FILING FALSE AND NONCOMPLIANT DOCUMENTS WITH THE AGO

113. The AGO re-alleges all prior paragraphs of this Complaint.

114. Minnesota Statutes section 309.53, subdivision 1, states in part:

> Every charitable organization that is required to file or that files a registration statement pursuant to section 309.52 shall file an annual report with the attorney general upon forms provided by the attorney general or on forms identical thereto . . . .

115. Minnesota Statutes section 309.53, subdivision 2, states in part:

> Such annual report shall include a financial statement covering the immediately preceding 12-month period of operation, shall be executed by any two duly constituted officers of the charitable organization, and shall be executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the annual report. Except as provided in section 309.55, subdivision 1, the annual report shall also include a copy of all tax or information returns, including all schedules and amendments, submitted by the charitable organization to the Internal Revenue Service for the period covered by the annual report. . . .

116. Minnesota Statutes section 309.53, subdivision 3, states in part:

> The financial statement shall include a balance sheet, statement of income and expense, and statement of functional expenses, shall be consistent

> with forms furnished by the attorney general, and shall be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of such allocations:
>
> (a) total receipts and total income from all sources;
> (b) cost of management and general;
> (c) program services;
> (d) cost of fund-raising;
> (e) cost of public education; . . .

117. Minnesota Statutes section 309.53, subdivision 3a, states:

> The federal tax return may be filed in lieu of other financial statements if it is prepared in accordance with generally accepted accounting principles and meets the requirements for financial statements set forth in subdivisions 2, 3, and 4.

118. AFPCC filed a registration statement with the AGO on or about March 8, 1991, pursuant to Minnesota Statutes section 309.52.

119. At all relevant times, AFPCC, a registered charitable organization with the AGO, was required to file with the AGO an annual report and related documents, including a financial statement, pursuant to Minnesota Statutes section 309.53.

.120. On or around December 4, 2013, November 4, 2014, November 17, 2015, and November 7, 2016, AFPCC filed its federal tax returns (i.e., its Forms 990) with the AGO for fiscal years 2013 through 2016 in lieu of different financial statements. AFPCC's Forms 990 filed with the AGO for these years were required to have been prepared in accordance with generally accepted accounting principles ("GAAP") under Minnesota law.

121. GAAP requires that expenses incurred in connection with fundraising activities meet specified purpose, audience, and content criteria before they may be permissibly allocated as program service expenses on a charitable organization's financial statements and Forms 990. *See generally* FASB ASC § 958-720-45.

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122. In its Forms 990 filed with the AGO for its fiscal years 2013 through 2016, AFPCC allocated substantial amounts of its fundraising costs to program service expenses despite failing to satisfy GAAP-mandated criteria making it permissible to do so.

123. Specifically, AFPCC failed to comply with GAAP and thus Minnesota law on at least two separate bases, each of which is independently sufficient to invalidate substantial portions of AFPCC's reported charitable program expenses, as follows:

(a) AFPCC allocated substantial fundraising expenses to charitable program expenses despite the fact that a majority of the compensation or fees paid for this discrete joint activity varied based on contributions raised for this discrete joint activity, thus failing GAAP's "purpose" requirement for permissibly jointly allocating such fundraising expenses, *see* FASB ASC § 958-720-45-40; and

(b) AFPCC allocated substantial fundraising expenses to charitable program expenses despite selecting the persons who were to be sent written materials primarily based upon the ability and/or likelihood that these persons would donate to AFPCC, thus also failing GAAP's "audience" requirement for permissibly jointly allocating such fundraising expenses, *see* FASB ASC §§ 958-720-45-48 to -49.

124. For these two separate and distinct reasons, AFPCC failed to file with the AGO financial statements/Forms 990 prepared in accordance with GAAP, or containing full and accurate disclosures of its program service and fundraising costs, as required by section 309.53.

125. Despite containing unlawfully non-GAAP compliant information about AFPCC's fundraising and program service expenses, AFPCC falsely certified that each of the annual reports filed with the AGO for fiscal years 2013 through 2016 containing these financial statements/Forms 990 were "true, correct, and complete to the best of [its] knowledge."

126. AFPCC's conduct, practices, actions, and representations described in this Complaint, and failure to act when it was required to do so, constitute multiple, separate violations of Minnesota Statutes sections 309.53.

COUNT IV
BREACH OF CONSENT DECREE

127. The AGO re-alleges all prior paragraphs of this Complaint.

128. On or around November 17, 1995, the Attorney General sued AFPCC for allegedly deceptively soliciting charitable contributions in Minnesota, filing inaccurate and noncompliant documents with the AGO, and for other violations of Minnesota law in *State vs. American Federation of Police, Inc.*, Court File No. C6-95-11682 (Ramsey County District Court).

129. On or around December 18, 1996, the AGO and AFPCC formed a valid contract by stipulating to the terms of a Consent Decree to settle the AGO's above-referenced claims.

130. The Stipulation and Consent Decree allows the Court to grant relief, whether legal or equitable, as the Court deems appropriate, for purposes of enforcement or modification of the Consent Decree.

131. The AGO performed under the terms of the Stipulation and Consent Decree by dismissing the above-referenced lawsuit in exchange for AFPCC's adherence to the Consent Decree's terms.

132. Since at least January 1, 2013, and continuing through 2018, AFPCC breached the Stipulation and Consent Decree numerous times by, among other things: falsely representing that the Police Family Survivors Fund is a primary program of AFPCC; misrepresenting that contributed funds would be used for a particular purpose; failing to clearly disclose a description of the charitable program for which its solicitation campaign is being carried out; using the name of a Minnesota town, city or community in close proximity to the phrase "funding goal"; failing to gather objective and reasonable evidence of the effectiveness of its call-to-action included in solicitations; failing to develop in advance of the publication and mailing of a direct mail

solicitation, or the initiation of telemarketing solicitations, a public awareness or education plan before allocating fundraising expenses to program services; and failing to provide a public awareness plan to its fundraising agents prior to the publishing and mailing of the solicitation before allocating its fundraising expenses to program services.

133. AFPCC's actions and inactions have directly and proximately caused injury to donors within Minnesota and to the State of Minnesota.

RELIEF

WHEREFORE, Plaintiff State of Minnesota, by its Attorney General, Lori Swanson, respectfully asks this Court to enter judgment against American Federation of Police and Concerned Citizens, Inc., awarding the following relief:

1. Declaring that Defendant's acts and omissions as described in this Complaint constitute multiple, separate violations of Minnesota Statutes sections 309.53, 309.55, 309.556, and the December 18, 1996 Stipulation and Consent Decree ("Consent Decree");

2. Enjoining Defendant and its employees, agents, successors, assignees, affiliates, merged or acquired predecessors, parents or controlling entities, subsidiaries, and all other persons acting in concert or participation with them from engaging in the unlawful acts and omissions described in this Complaint, or in any other way violating the Minnesota Charitable Solicitation Act, Minn. Stat. §§ 309.50-.61, or the Consent Decree;

3. Enjoining Defendant and its employees, agents, successors, assignees, affiliates, merged or acquired predecessors, parents or controlling entities, subsidiaries, and all other persons acting in concert or participation with them from engaging in further activities or operations in Minnesota or with respect to a Minnesota resident related to the solicitation, acceptance, processing, or handling of charitable contributions, or from consulting for or otherwise assisting any other person or entity involved in such activities or operations, or from

overseeing, managing, directing, or otherwise exercising any control over any charity, professional fundraiser, or other entity involved in such activities or operations;

4. Requiring Defendant and its employees, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with them, to undertake remedial actions to address the unlawful acts and omissions described in this Complaint;

5. Awarding monetary relief, including restitution, disgorgement, and/or all other available legal and equitable monetary remedies, pursuant to Minnesota Statutes sections 8.31, 309.57, Minnesota common law, the *parens patriae* doctrine, and the general equitable powers of this Court, as necessary to remedy the harm and injury from Defendant's acts and omissions described in this Complaint;

6. Awarding civil penalties pursuant to Minnesota Statutes sections 8.31 and 309.57;

7. Awarding Plaintiff its attorneys' fees, litigation costs, and costs of investigation as authorized by Minnesota Statutes sections 8.31 and 309.57; and

8. Granting such further relief as provided for by law or equity, or as the Court deems appropriate and just.

Dated: 10/10/2018

Respectfully submitted,

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MINN. STAT. § 549.211

ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2018).

Dated: 10/10/2018

CAROL R. WASHINGTON
Assistant Attorney General