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STATE OF NORTH DAKOTA
 OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.
 WAYNE STENEHJEM,
 ATTORNEY GENERAL,

Petitioner,

**CEASE AND DESIST ORDER,
 NOTICE OF CIVIL PENALTY
 AND NOTICE OF RIGHT
 TO REQUEST A HEARING**

-vs-

OFFICERS DOWN 5K, LLC, THOMAS
 BURKE,

Respondents.

CPAT 180006.001

To the individuals identified below ("Respondents"):

OFFICERS DOWN 5K, LLC
 THOMAS BURKE
 1646 E. STATE ST.
 PO BOX 1173
 HERMITAGE, PA 16148

OFFICERS DOWN 5K, LLC
 THOMAS BURKE
 C/O RYAN A. MERGL, ESQ.
 31 VINE AVE.
 SHARON, PA 16146-2155

BACKGROUND

1. The Attorney General of North Dakota has a reasonable basis to believe Respondents have engaged in, or are engaging in, acts or practices declared unlawful by N.D.C.C. ch. 50-22, commonly referred to as the "Charitable Organizations Soliciting Contributions Law," and N.D.C.C. ch. 51-15, commonly referred to as the "Consumer

Fraud Law.” It is necessary and appropriate in the public interest and for the protection of consumers to restrain the Respondents’ unlawful acts or practices.

2. Respondents, individually and by and through their agents, are doing business under some or all of the names identified above, and have engaged in violations of North Dakota law by: 1) operating a charitable organization that engages in or purports to engage in solicitation for a charitable purpose without first registering with the North Dakota Secretary of State, in violation of N.D.C.C. ch. 50-22; 2) for financial compensation or profit, performs for a charitable organization a service in connection with which contributions are, or will be solicited, without first registering with the North Dakota Secretary of State, in violation of N.D.C.C. ch. 50-22; and 3) acting, using, or employing deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise, in violation of N.D.C.C. ch. 51-15.

3. Respondent Thomas “TJ” Burke (“Burke”) has a last known address in Pennsylvania at 1646 E. State St., PO Box 1173, Hermitage, PA 16148.

4. Respondent Officers Down 5K, LLC (“Officers Down 5K”), is a Pennsylvania limited liability company with an address of 1646 E. State St., Hermitage, PA 16148. According to records on file with the Pennsylvania Secretary of State, Officers Down 5K was formed on May 3, 2012 and had a prior name of Positive Movementz, LLC. Officers Down 5K did not register with the North Dakota Secretary of State as a charitable organization, professional fundraiser, or foreign limited liability company prior to engaging in business in the State.

5. Respondent Thomas Burke is also an officer of the Officers Down 5K Foundation, an entity formed in Pennsylvania on March 7, 2014, with an address of 927 N. Lincoln Ave., Pittsburgh, PA 15233.

6. Respondents are in the business of soliciting and selling merchandise, including soliciting contributions, within the meaning of N.D.C.C. § 50-22-01(4). Respondents, or Respondents' agents on Respondents' behalf, solicited North Dakota customers.

7. Respondents solicited contributions from persons in North Dakota, or operated as a professional fundraiser in North Dakota, without first registering with the North Dakota Secretary of State's Office. Under N.D.C.C. § 50-22-05, when a charitable organization or professional fundraiser operates in violation of N.D.C.C. ch. 50-22, the Attorney General has all of the powers provided in N.D.C.C. chs. 50-22 or 51-15, and the Attorney General may seek all remedies in N.D.C.C. chs. 50-22 or 51-15. The remedies, duties, prohibitions, and penalties in N.D.C.C. ch. 50-22 are not exclusive and are in addition to all other causes of action, remedies, and penalties in N.D.C.C. ch. 51-15, or otherwise provided by law.

8. On February 15, 2018, the Attorney General received a complaint filed by Kayla Seifert of Bismarck, ND. Ms. Seifert, and other family members, signed up to participate in the "2nd Annual Officers Down 5K & Community Day" race-walk scheduled to take place on April 14, 2018 in Bismarck, ND. On January 9, 2018, Ms. Seifert received an e-mail from Respondents informing her that the April 14, 2018 race was being cancelled but that she would be refunded within 45 days. Subsequently, Ms.

Seifert was informed by e-mail that, due to financial difficulties, she would not receive a refund.

9. The Attorney General learned that Respondents organized races in North Dakota in previous years, including 2016. In 2016, local organizers ensured the event's success despite difficulty in dealing with Respondents. Among other difficulties, Respondent Burke failed to be present for the 2016 event, cancelling his appearance two days beforehand. Additionally, Respondents failed to pay vendors, leaving local organizers with the vendors' bills. It took four months and threats to retain counsel for local organizers to receive their share of the event's profits from Respondents. After difficulties with Respondents, both Fargo and Bismarck organizers refused to assist Respondents organize future events, including the 2018 "2nd Annual Officers Down 5K & Community Day." It appeared to the 2016 Bismarck organizers that Respondents were insolvent and, even though Respondents were without the necessary funds to organize and hold their 2018 event, were selling registrations to North Dakota consumers.

10. In connection with their 2016 Bismarck event, Respondents' poster represented to consumers that their event was intended to benefit the Bismarck Police Department Spouse's Auxiliary and the Fraternal Order of Police's Cops-N-Kids event.

11. Prior to engaging in the solicitation of charitable contributions in North Dakota, as either a charitable organization or professional fundraiser, Respondents failed to register with the Secretary of State as required by N.D.C.C. § 50-22-02. Respondent Officers Down 5K also failed to obtain a certificate of authority from the North Dakota Secretary of State, in violation of N.D.C.C. § 10-32.1-74.

12. Pursuant to N.D.C.C. § 51-15-06.1, the Attorney General offered an Assurance of Voluntary Compliance to Respondents. In two letters, the Attorney General requested that Respondents execute and return the proffered Assurance of Voluntary Compliance on or before February 15, 2018 and March 7, 2018. Respondents failed to execute and return the proffered Assurance of Voluntary Compliance and ignored the Attorney General's communications.

13. The Attorney General learned that, on February 13, 2018, a custom t-shirt company was awarded a judgment of \$16,605.99 against Respondent Burke by an Aitkin County, Minnesota court for invoices that Respondent Burke failed to pay.

14. On February 28, 2018, Respondent Burke was charged with Theft by Failure to Make Required Disposition of Funds Received in Venango County, Pennsylvania. The charges stem from his failure to disburse proceeds from an event organized in Oil City, Pennsylvania.

15. It appears that Respondents organized their events throughout the country, and news reports suggest that Respondents failed to distribute proceeds or pay vendors in other states, including elsewhere in Minnesota and Pennsylvania.

16. Pursuant to N.D.C.C. §§ 51-15-04 and 51-15-05, on March 7, 2018, the Attorney General issued a Civil Investigative Demand to Respondents. Respondents were required to comply with the Attorney General's March 7, 2018 Civil Investigative Demand on or before March 21, 2018. Respondents failed to comply or otherwise communicate with the Attorney General.

17. It appears to the Attorney General that Respondents, or Respondents' agents on Respondents' behalf, engaged in violations of N.D.C.C. chs. 50-22 and 51-15

by: 1) soliciting contributions in North Dakota without first registering with the North Dakota Secretary of State's Office as a charitable organization or professional fundraiser, and 2) acting, using, or employing deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise.

ORDER

Based upon the foregoing information, it appears to the Attorney General that Respondents have engaged in violations of N.D.C.C. chs. 50-22 and 51-15, and Respondents have failed or refused to comply with the Attorney General's March 7, 2018 Civil Investigative Demand as required by N.D.C.C. § 51-15-04; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents, or agents on their behalf, immediately **CEASE AND DESIST** from: 1) operating a charitable organization that engages in or purports to engage in the solicitation of contributions for a charitable purpose in North Dakota; 2) for financial compensation or profit, performing for a charitable organization a service in connection with which contributions are, or will be, solicited in North Dakota; 3) for compensation or profit, plan, manage, advise, consult, or prepare material for, or with respect to, the solicitation in North Dakota of contributions for a charitable organization; and 4) acting, using, or employing deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise, including the solicitation of charitable contributions. Respondents also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for any services or merchandise and **CEASE AND**

DESIST from taking any payments from North Dakota consumers including, but not limited to, direct debits or withdrawals from North Dakota consumers' bank accounts, cash, checks, or credit card payments for the sale of merchandise as defined in N.D.C.C. § 51-15-01(3).

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 12.1-09-03 a person is guilty of a criminal offense if he or she intentionally "alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability" in an official proceeding. As such, intentional destruction of any documents related to this matter may result in criminal prosecution.

NOTICE OF CIVIL PENALTIES

YOU ARE FURTHER NOTIFIED that pursuant to N.D.C.C. § 51-15-07 any violation of this Cease and Desist Order is subject to civil penalties not to exceed \$1,000.00 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-15 may result in additional civil penalties of not more than \$5,000.00 per violation. Such penalties are separate and in addition to any civil penalties, costs, expenses, investigation fees, and attorney fees pursuant to N.D.C.C. ch. 51-15 or any other applicable statute. Nothing in this Order is intended to limit or waive any rights and remedies available to the State of North Dakota or consumers.

NOTICE OF RIGHT TO REQUEST HEARING

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 51-15-07 you may request a hearing before the Attorney General if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondent has the right to be represented by legal counsel at the hearing at Respondent's expense.

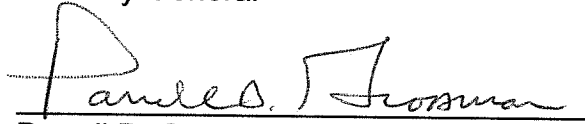
Dated this 29th day of March, 2018.

STATE OF NORTH DAKOTA

Wayne Stenehjem

Attorney General

BY:



Parrell D. Grossman, NDBID 04684

Assistant Attorney General

Director

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