

**IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO**

STATE OF OHIO, *ex rel.* DAVE YOST  
30 E. Broad St., 25th Floor  
Columbus, OH 43215

Plaintiff,

v.

THOMAS MERRILL  
3355 Spring Valley Rd.  
Akron, OH 44333

Defendant.

Case No.

Judge:

COMPLAINT

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Plaintiff, State of Ohio *ex rel.* Attorney General Dave Yost (the “Attorney General”), states the following allegations as his Complaint against Thomas Merrill (“Merrill”).

**I. INTRODUCTION**

1. The 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 RC 109.23 *et seq.* (“Ohio Charitable Trust Act”), RC 1716.01 *et seq.* (“Ohio Charitable Organizations Act”) and the Attorney General’s common law authority to enforce charitable trusts.
2. This is an action seeking injunctive relief, damages and statutory penalties for violations of the Ohio Charitable Trust Act, the Ohio Charitable Organizations Act and the common law.

**II. DEFENDANTS, JURISDICTION AND VENUE**

3. Merrill is an individual currently residing at 3355 Spring Valley Rd., Akron, Ohio 44333.

4. Merrill personally participated in the violations of law described in this Complaint, or through his actions or inaction authorized, directed, adopted, ratified, allowed, or otherwise caused or permitted such violations to occur.
5. This Court has subject matter jurisdiction in this case pursuant to R.C. 2305.01.
6. This Court may exercise personal jurisdiction over Merrill pursuant to R.C. 2307.382 because, among other reasons, the acts and omissions alleged in this Complaint arose from the Merrill's actions in Ohio.
7. Venue is proper in Franklin County pursuant to R.C. 109.16, the Attorney General certifying that the amount in controversy exceeds five hundred dollars (\$500).
8. The amount in controversy exceeds twenty-five thousand dollars (\$25,000).

**III. DEFENDANT'S ACTIVITIES GIVING RISE TO THIS COMPLAINT**

9. United Fellowship of the Pen, also known as Pen Ohio, was an Ohio non-profit corporation formed on or about Feb. 24, 2017. Pen Ohio voluntarily dissolved on or about May 23, 2019.
10. Pen Ohio's articles of incorporation state, in part, that Pen Ohio was "organized exclusively for charitable, religious, educational, and scientific purposes[.]"
11. Pen Ohio was a "charitable organization" as that term is defined in R.C. 1716.01(A) and a "charitable trust" as that term is defined in R.C. 109.23.
12. Pen Ohio solicited funds in Ohio as that term is R.C. 1716.01(K).
13. Pen Ohio's governance consisted of a board of trustees, an executive committee and an advisory committee, collectively referred to as Pen Ohio's "governing body." The members of said body are hereinafter referred to as "governing members."
14. Planetc, LLC is an Ohio limited liability company formed on or about July 28, 2003.
15. Merrill is the sole owner/member of Planetc.

16. Between July 2017 and February 2019, Merrill was Pen Ohio's Project Director and the organization's principal operator.
17. Between July 2017 and February 2019, Merrill had access to Pen Ohio's financial assets, including but not limited to Pen Ohio's debit and/or credit cards.
18. At all relevant times, Pen Ohio's office was located at Merrill's then personal residence, 43 East Market Street, Suite 102, Akron, Ohio 44308.
19. Pen Ohio paid half of the rent due for the unit at East Market Street.
20. Throughout the time when Merrill shared Pen Ohio's office as his personal residence, Merrill had access to and control over Pen Ohio's files during the same time frame.
21. Merrill was never a member of Pen Ohio's board of trustees or executive committee.
22. From July 2017 through February 2019, Merrill and/or Planetc acquired for personal benefit at least \$110,000 of Pen Ohio's charitable funds without the knowledge and consent of Pen Ohio's governing body.
23. From July 2017 through January 2018, Merrill transferred to himself and/or Planetc approximately \$40,000 of Pen Ohio's charitable funds without the knowledge and consent of Pen Ohio's governing body.
24. From Jan. 25, 2018 through Feb. 1, 2019, Planetc and/or Merrill fraudulently received no less than \$70,000 of Pen Ohio's funds.
25. On at least two occasions, Merrill altered meeting minutes of the board of Pen Ohio's governing body without the consent of said body. In one instance, Merrill altered minutes of Pen Ohio's governing members that took place on or about Jan. 25, 2018, to state that Planetc and/or Merrill would be paid \$6,000 per month.

26. From Jan. 25, 2018 through Feb. 1, 2019, Merrill signed checks and electronically transferred funds to himself and/or Planetc without the consent of Pen Ohio's governing body.
27. On multiple occasions, Merrill attempted to evade or thwart efforts by Pen Ohio's governing members to inquire about Merrill's use of the organization's charitable funds.
28. Merrill, on at least one occasion, falsely stated to Pen Ohio's treasurer that Merrill's and/or Planetc's \$6,000 payments were authorized by Pen Ohio's governing body when in fact said payments were not authorized by said body.
29. Merrill, on at least one occasion, acted in a hostile and generally aggressive manner when questioned by Pen Ohio's governing members upon discovering that Merrill had been using Pen Ohio's credit and/or debit cards for personal use.
30. Merrill, on at least one occasion, used economic intimidation against a Pen Ohio officer and/or governing member by seeking the termination of said person's employment as a school teacher.
31. Merrill, on at least one occasion, threatened legal action against a Pen Ohio governing member.
32. Merrill, on at least one occasion prior to his resignation from Pen Ohio, refused to allow access to records located at Pen Ohio's office, or otherwise in Merrill's possession, to duly elected officers and/or governing members.
33. Upon his resignation from Pen Ohio, Merrill withheld documentation belonging to Pen Ohio.

**IV. ATTORNEY GENERAL'S CLAIMS**

**COUNT ONE – CONVERSION OF CHARITABLE ASSETS**

34. The Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.
35. By transferring funds to himself and Planetc, Merrill exercised dominion and/or control over Pen Ohio's property in a manner inconsistent with Pen Ohio's rights of ownership.

**COUNT TWO – BREACH OF FIDUCIARY DUTY UNDER R.C. 1716.17**

36. The Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.
37. Pursuant to 1716.17, “[e]very person who solicits, collects, or expends contributions on behalf of a charitable organization or for a charitable purpose, or who conducts a charitable sales promotion, 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.”
38. By the actions detailed herein, Merrill has breached his fiduciary duty to Penn Ohio on multiple occasions, each instance counting as a distinct breach.
39. As a direct result of Merrill's actions, Pen Ohio was divested of its funds and unable to host writing competitions, substantially contributing to Pen Ohio's dissolution.
40. As a direct result of Merrill's actions, Pen Ohio's reputation was irreparably harmed and denied grants necessary to host writing competitions, substantially contributing to Pen Ohio's dissolution.

41. Pursuant to R.C. 1716.16(B), the Court may order the payment of a civil penalty of not more than \$10,000 for each violation of R.C. Chapter 1716.
42. Merrill is liable for a civil penalty up to \$10,000 for each breach of fiduciary duty constituting a violation of R.C. 1716.17.

**COUNT THREE – UNJUST ENRICHMENT**

43. The Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.
44. Merrill was conferred a benefit when he and/or Planetc received \$111,222 from Pen Ohio from July 2017 through February 2019;
45. Merrill was at all relevant times aware of said funds being transferred to himself and/or Planetc.
46. Merrill is retaining said funds and is benefitting from said transfers under circumstances where it would be unjust to do so, considering Pen Ohio’s governing members were either misled into believing said transfers were authorized or unaware of them, all the while Merrill was aware of his fraudulent amendment to meeting minutes.
47. The Attorney General, in his role as *parens patriae*, protects charitable trusts and the beneficiaries who should have benefitted from the operation of charitable trusts.
48. The Attorney General is entitled to an order from this Court imposing a constructive trust on all property or assets unjustly retained by Merrill and/or Planetc.

**COUNT FOUR – ABUSE OF CHARITABLE TRUST**

49. The Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

50. Pursuant to RC 109.24, the Attorney General is authorized to bring an action to enforce the performance or prevent the abuse of a charitable trust.

51. Merrill's acts and omissions identified herein constitute an abuse of a charitable trust, in violation of R.C. 109.24.

**V. PRAYER FOR RELIEF**

Wherefore, pursuant to his statutory and common law authority, the Attorney General respectfully requests that this Court grant the following relief:

- A. Grant a permanent injunction and perpetually enjoin Merrill from incorporating, organizing, or serving in any fiduciary capacity for a "charitable organization", as that term is defined in Section 1716.01(A) of the Ohio Revised Code, or a "charitable trust", as that term is defined in Section 109.23 of the Ohio Revised Code, in Ohio;
- B. Grant a permanent injunction and perpetually enjoin Merrill from soliciting in the State of Ohio for charitable purposes or on behalf of any charitable organization, including, but not limited to, solicitations conducted as a volunteer, officer, trustee, employee, representative, independent contractor, or agent of an organization; or solicitations conducted as a professional solicitor, fundraising counsel, or commercial co-venturer, as those terms are defined in Revised Code Chapter 1716;
- C. Impose a constructive trust over all assets or funds unjustly or illegally received or retained by Merrill and Planetc and order each to disgorge all assets held under that constructive trust to the Attorney General;

- D. Order Merrill and Planetc, jointly and severally, to pay restitution and compensatory damages, including interest for all amounts unjustly or illegally retained or received by Merrill and Planetc, to the Ohio Attorney General;
- E. Order Merrill to pay the Attorney General a civil penalty of up to \$10,000 for each violation of R.C. Chapter 1716 as alleged in this Complaint;
- F. Award the Attorney General his reasonable attorney's fees and costs of investigation and litigation, as permitted by R.C. 1716.16(B); and
- G. Grant the Attorney General other relief as the Court deems proper and necessary.

Respectfully submitted,

Dave Yost, Ohio Attorney General

/s/ Ricardo Simmonds  
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*Attorneys for Plaintiff, Ohio Attorney General*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *Complaint* was served on this 6<sup>th</sup> day of April 2021 upon the following via Franklin County e-Filing system:

**Andrew Wides** (00 91633)  
Robert A. Pecchio Co., L.P.A.  
1653 Merriman Rd., Ste. 203  
Akron, OH 44313

*Attorney for Defendant, Thomas Merrill*

Respectfully submitted,

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