

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into between the State of Ohio, ex rel., Dave Yost, Ohio Attorney General, Ohio Clean Water Fund, LLC, and Patrick Lee (collectively, the “Parties”).

### **Recitals**

- A. The Ohio Attorney General (the “Attorney General”) has authority for enforcing charitable trusts and overseeing charitable solicitations in the State of Ohio pursuant to the Ohio Charitable Trust Act, R.C. 109.23 *et seq.*, the Charitable Organizations Act, R.C. 1716.01 *et seq.*, and Ohio common law.
- B. Ohio Clean Water Fund, LLC (“Ohio Clean Water”) was formed with the Ohio Secretary of State as a limited liability company on or around March 3, 2023. Ohio Clean Water maintains a place of business or bank account (or both) using the address of 5422 Wycklow Ct., Alexandria, Virginia.
- C. At all relevant times, Patrick Lee (“Lee”) was a member of Ohio Clean Water and maintained a place of business at 5422 Wycklow Ct., Alexandria, Virginia.
- D. The board members, officers, and volunteers of Second Harvest Food Bank of the Mahoning Valley (the “Food Bank”) have held the Food Bank out to the public as an organization established for a benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environment conservation, civic, or other eleemosynary purpose.
- E. The Food Bank’s board members, officers, employees, and volunteers employed charitable appeals and received things of value for charitable use on behalf of the Food Bank.

- F. The Food Bank is a “charitable organization” as that term is defined in R.C. 1716.01(A) and a “charitable trust” as that term is defined in R.C. 109.23.
- G. The funds raised and held by the Food Bank’s board members, officers, employees, and volunteers for charitable purposes were subject to a valid “charitable trust” under R.C. 109.23.
- H. The Food Bank is registered as a charity with the Ohio Attorney General’s Charitable Law Section, and the Internal Revenue Service has deemed the Food Bank to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.
- I. From about March 3, 2023, to about April 11, 2023, Ohio Clean Water and certain individuals and other entities used charitable appeals on behalf of the Food Bank and charitable causes, including, but not limited to, by representing that donations would be used to provide bottled water and other emergency aid to the families of East Palestine, Ohio.
- J. The Ohio Charitable Trust Act and the Ohio Charitable Organizations Act prohibit certain acts and practices in the administration of any charitable trust and the solicitation of charitable contributions.
- K. To avoid protracted and expensive litigation, the Attorney General and Ohio Clean Water have agreed to settle claims asserted against Ohio Clean Water in Columbiana County Common Pleas Court, Case No. 2023 CV 00162 (the “Lawsuit”), on the terms set forth in the demand letter dated May 15, 2023 (“Demand”) and as further set forth in this Agreement. The Attorney General and Patrick Lee have also agreed to settle claims asserted against Patrick Lee in the Demand, on the terms set forth in the Demand and below in this Agreement.

L. The Parties negotiated this Agreement on the basis of the Attorney General's findings, as outlined in the Lawsuit and in the Demand. However, this Agreement is the culmination of disputed claims and does not constitute the admission of any wrongdoing by Ohio Clean Water or Patrick Lee.

**In consideration** of the mutual promises and obligations contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The *Recitals* clauses set forth above are incorporated into this Agreement by reference and become an integral part hereof.
2. Ohio Clean Water's and Lee's Commitments. Ohio Clean Water and Lee agree to the following:

A. Prior to or contemporaneous with Ohio Clean Water's and Lee's signing of this Agreement, they agree to pay the Attorney General a total of \$131,904.88 (the "Settlement Amount") to settle the Attorney General's claims against Ohio Clean Water and Lee, as set forth in the Lawsuit and Demand, respectively. The Parties understand and agree that \$116,904.88 of the Settlement Amount shall be considered restitution (the "Restitution Amount"), and \$15,000.00 of the Settlement Amount shall be considered civil penalties (the "Civil Penalty"). The Settlement Amount shall be paid by wire transfer (pursuant to instructions provided by the Attorney General) or by cashier's check or money order payable to "Treasurer, State of Ohio" and mailed to:

Ohio Attorney General  
Finance Department - CL  
30 East Broad Street, 15th Floor  
Columbus, Ohio 43215  
RE: Ohio Clean Water Fund Settlement/Charitable Law

The Civil Penalty shall be deposited into the Attorney General's charitable law fund established under ORC 109.32. The Attorney General shall redistribute the Restitution Amount, in the Attorney General's sole discretion, for charitable purposes, including, but not necessarily limited to, disbursement to the Food Bank to provide clean bottled water and other emergency aid for the benefit of East Palestine, Ohio.

- B. Ohio Clean Water and Lee agree to be jointly and severally liable for the Settlement Amount.
- C. If Ohio Clean Water and Lee fail to comply with any of the payment requirements of this Agreement, the Attorney General may, in the Attorney General's sole discretion, certify any and all unpaid balances of the Settlement Amount to the Ohio Attorney General's Collections Enforcement Section ("Collections") for collection. In the event of certification, Ohio Clean Water and Lee agree to pay additional collection costs assessed by Collections in accordance with R.C. 131.02(A) equal to the amounts charged pursuant to R.C. 109.08 and 109.081 for the cost of certification and the use of Special Counsel for the collection of the debt. Interest shall also be charged upon certification in accordance with R.C. 131.02(D). Nothing in this paragraph should be construed to limit the Attorney General's discretion to pursue any other available remedy.
- D. Within thirty days after Lee signs this Agreement, he shall perform all acts necessary to dissolve Ohio Clean Water and wind up Ohio Clean Water's affairs, including, but not limited to, filing all paperwork and paying any necessary fees required by the Ohio Secretary of State. Lee or his counsel shall promptly provide proof of such dissolution to counsel for the Attorney General.

- E. After he signs this Agreement, Lee agrees that he will never form, or participate in the formation of, any Ohio charitable trust or charitable organization.
- F. After he dissolves Ohio Clean Water, Lee shall not hold any position as a board member, trustee, officer, director, member, employee, independent contractor, agent, or volunteer of any charitable trust or charitable organization in the State of Ohio, with the exception that he may volunteer with a charitable trust or charitable organization as long as he does not have any involvement with or responsibility concerning any charitable funds.
- G. Lee shall not participate in solicitations in the State of Ohio for charitable purposes or on behalf of any charitable organization or charitable trust, nor shall he maintain custody of contributions from any charitable solicitations in Ohio, including, but not limited to, as a board member, trustee, officer, director, member, employee, independent contractor, agent, or volunteer; or as a professional solicitor, fund-raising counsel, or commercial coventurer, as those terms are defined in R.C. Chapter 1716, or as a person employed or otherwise engaged by a professional solicitor, fund-raising counsel, or commercial coventurer.
- H. Lee shall cooperate, reasonably and promptly, with the Attorney General regarding the ongoing and potential future investigation(s) and/or litigation related to the solicitation of contributions on behalf of Ohio Clean Water and/or the Food Bank. Such cooperation shall include, but is not necessarily limited to:
  - i. For a period of not less than three years following the dissolution of Ohio Clean Water, maintaining custody of and/or refraining from destroying any documents or records pertaining to Ohio Clean Water, including, but not limited

to, emails, text messages, all other digital communications, phone records, bank records, invoices, and all other records documenting financial activity;

- ii. Voluntarily and without service of subpoena or investigative demand, authorizing any third-party to release documents and records to the Attorney General;
- iii. Fully, fairly, and truthfully identifying, disclosing, and/or producing, voluntarily and without service of subpoena or investigative demand, all non-privileged information and all non-privileged documents, records, or other tangible evidence requested by the Attorney General, to the extent within Lee's knowledge, possession, custody, or control; and
- iv. Upon reasonable notice, attending, appearing and/or participating, voluntarily and without service of subpoena or investigative demand, at any discussions or interviews and answering questions that may be put forth by the Attorney General, provided that the Attorney General shall reasonably accommodate Lee's requests for videoconference or telephone communications.

3. Undertakings by the Attorney General. Upon the Attorney General's receipt and successful deposit of the full Settlement Amount, the Attorney General shall dismiss all claims against Ohio Clean Water with prejudice in the Lawsuit and will forego pursuit of any and all claims against Ohio Clean Water and Lee arising out of the conduct as set forth in the Lawsuit and Demand. The Attorney General has sole discretion in ascertaining whether Ohio Clean Water and Lee have satisfied the payment obligations specified above. Upon the Attorney General's acceptance of the full Settlement Amount, the Attorney General will be deemed to have waived and released the claims, actions, and causes of action against Ohio Clean Water and Lee, as set forth in the Lawsuit

and Demand, except that Ohio Clean Water's and Lee's continuing obligations under this Agreement shall remain in place.

4. Miscellaneous.

- A. The Parties agree that this Agreement is made in lieu of prosecution of a civil action based upon the findings set forth herein.
- B. The Columbiana County Court of Common Pleas shall retain jurisdiction in the event of any dispute arising under this Agreement, which is entered into in the State of Ohio and shall be governed under the laws of the State of Ohio.
- C. In the event that any provision of the Agreement is deemed to be invalid or unenforceable, the remaining provisions will remain intact and enforceable as stated, provided that doing so provides the same or similar consideration to the Parties.
- D. Ohio Clean Water and Lee agree that any evidence of a violation of this Agreement shall be *prima facie* evidence of a violation of R.C. Chapter 1716 or any rule adopted thereunder in any subsequent action or proceeding brought by the Attorney General.
- E. Ohio Clean Water and Lee agree that any matter closed by the acceptance of this Agreement may only be reopened at any time by the Attorney General for further proceedings in the public interest based upon any violation of the terms of this Agreement.
- F. Ohio Clean Water and Lee acknowledge, represent, and warrant that during the course of the negotiations leading to this Agreement, they have received ample opportunity to consult with legal counsel of their own choosing, as to the meaning and effect of each provision of this Agreement, and that they have knowingly and voluntarily elected to enter into this Agreement with full knowledge of the Agreement's significance.

- G. This Agreement represents the entire agreement and understanding of the Parties with respect to the subject matter contained herein. The Agreement may be modified only in writing signed by both Parties.
- H. This Agreement may be signed in counterparts which, when taken together, will constitute a single integrated document. Signed copies of the Agreement sent by electronic means, including, but not limited to, fax or email, will be considered to be the same as original signed versions.
- I. The Parties hereby agree that this Agreement is binding upon the heirs, successors, and assignees of all Parties hereto.
- J. This Agreement shall become effective upon signature by a duly authorized representative of the Attorney General.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

**CERTIFICATION**

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

OHIO CLEAN WATER FUND, LLC



Signature

Patrick Lee

Print Name/Title

5/31/23

Date

DAVE YOST  
OHIO ATTORNEY GENERAL

\_\_\_\_\_  
Daniel W. Fausey  
Charitable Law Section Chief

\_\_\_\_\_  
Date

PATRICK LEE, in his personal capacity



Signature

5/31/23

Date

**CERTIFICATION**

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

OHIO CLEAN WATER FUND, LLC

DAVE YOST  
OHIO ATTORNEY GENERAL

\_\_\_\_\_  
Signature



\_\_\_\_\_  
Daniel W. Fausey  
Charitable Law Section Chief

\_\_\_\_\_  
Print Name/Title

06/01/23

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

PATRICK LEE, in his personal capacity

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date