

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

STATE OF OHIO, *ex rel.*
DAVE YOST,
OHIO ATTORNEY GENERAL
Charitable Law Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215,

Plaintiff,

v.

OHIO CLEAN WATER FUND, LLC
c/o Kimberly Land, Esq., Agent
10 West Broad Street, Suite 2100
Columbus, Ohio 43215

MICHAEL PEPPEL
38608 Butcher Road
Leetonia, Ohio 44431

Defendants.

Case No.:

Judge

COMPLAINT OF OHIO ATTORNEY
GENERAL DAVE YOST

Plaintiff State of Ohio, *ex rel.* Dave Yost, Attorney General of Ohio (“Attorney General”), hereby alleges as follows:

I. INTRODUCTION

1. This case is about the operator of an unlawful charity using a high-profile disaster to divert donations away from the intended recipients. Following the February 3, 2023 train derailment in East Palestine, Ohio, Defendants used charitable appeals to convince donors throughout the nation that their donations would be used for emergency aid, such as providing clean bottled water to the families of East Palestine. They falsely claimed to be partnering with a food bank without making any apparent effort to give the food bank the donations or an accounting until after the food bank publicly said it was not partnering with the Defendants. Despite the

Defendants failing to distribute all of the donations to the food bank after it confronted them directly, Defendants continued to solicit donations for charitable purposes without any apparent evidence of direct programming expenses of their own or consent from any established charity.

2. In March 2023, Defendant Ohio Clean Water Fund, LLC (“Ohio Clean Water”) was formed as an Ohio domestic limited liability company.

3. Upon information and belief, Michael Peppel (“Peppel”) is the founder and principal person of Ohio Clean Water.

4. Upon information and belief, the Internal Revenue Service (“IRS”) has not recognized Ohio Clean Water as a 501(c)(3) tax-exempt organization.

5. Shortly after the February 3, 2023 train derailment and environmental disaster, and before it was even incorporated, Ohio Clean Water began soliciting charitable contributions by and through its website at <https://ohiocleanwaterfund.com/>, mass text messages, and mass emails.

6. Peppel never registered Ohio Clean Water with the Attorney General as required by Ohio law.

7. According to Ohio Clean Water’s website, the purpose of these solicitations is to “provid[e] clean bottled water to families in and around East Palestine.” The website continues that “Gifts made to the Ohio Clean Water Fund go to helping those in need, and we appreciate every donation no matter the size.”

8. The East Palestine tragedy is being reported on regularly and widely. And Defendant Peppel is profiting illegally from this well publicized tragedy with his unlawful charity, Ohio Clean Water, and rampant deceptive and fraudulent practices.

9. Until recently, through text messages and Ohio Clean Water's website alleged it had "a partnership" with the Second Harvest Food Bank of the Mahoning Valley (the "Food Bank") and was "on the ground helping."

10. No such partnership has ever existed.

11. Prior to claiming to have a partnership with the Food Bank, Peppel merely sent an email to the Food Bank's Executive Director on or around February 24, 2023, which the Executive Director did not read or acknowledge. In that same email, Peppel inaccurately claimed that he had recently spoken to the Executive Director about Ohio Clean Water prior to sending the email.

12. While falsely claiming that this partnership existed, Ohio Clean Water raised at least \$141,183.48 from 3,269 donors.

13. Unbeknownst to those donors, Defendants apparently spent at least \$91,769.26 of those funds on administrative fees rather than on programming, leaving \$35,295.87 in Ohio Clean Water's coffers.

14. Upon information and belief, of that \$35,295.87, Defendants paid only \$10,000 to the Food Bank.

15. Peppel and Ohio Clean Water issued that \$10,000 check *only after* the Food Bank's Executive Director demanded that Peppel and Ohio Clean Water cease its allegations that any partnership existed between the two organizations.

16. The Food Bank does not know how the remaining funds were used, including any funds Ohio Clean Water may have collected after the Food Bank learned Defendants had raised at least \$141,183.48.

17. While Peppel has claimed to news media that he has stopped the campaign, Ohio Clean Water’s website—including its donation page—remains active, and claims that “The Ohio Clean Water Fund hopes to expand our work to testing and community support long after the news crews leave.”

18. This Complaint is an action for equitable relief, civil penalties, and damages for Defendants’ violations of the common law, the Ohio Charitable Trust Act, and the Ohio Charitable Organizations Act.

II. JURISDICTION AND VENUE

19. 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 Ohio Revised Code Section 109.23 *et seq.* (“Ohio Charitable Trust Act”), Ohio Revised Code Chapter 1716 (“Ohio Charitable Organizations Act”) and the Attorney General’s common law authority.

20. Defendant Peppel currently resides at 38606 Butcher Road, Leetonia, Ohio 44431.

21. Upon information and belief, Defendant Ohio Clean Water is an Ohio domestic limited liability company with a principal place of operations also located at 38608 Butcher Road, Leetonia, Ohio 4431. As a result of Ohio Clean Water’s and Peppel’s acts and omissions, Ohio Clean Water 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, and they are considered fiduciaries and have been acting in a fiduciary capacity as contemplated by R.C. 1716.17.

22. Defendants’ actions and omissions, as described herein, occurred in Ohio.

23. This Court has subject matter jurisdiction in this case pursuant to R.C. 2305.01.

24. This Court may exercise personal jurisdiction over the Defendants in this case pursuant to R.C. 2307.382 because the acts and omissions alleged in this Complaint occurred in Ohio and/or because they involve or relate to the activities of Ohio residents and Ohio corporations and entities.

III. ACTIVITIES GIVING RISE TO THIS COMPLAINT

25. Upon information and belief, Peppel incorporated Ohio Clean Water on or about March 6, 2023 as an Ohio domestic limited liability company. According to filings with the Ohio Secretary of State, Ohio Clean Water was formed “to engage in any lawful act or activity for which not for profit limited liability companies may be formed under chapter 1706 of the Ohio Revised Code or the corresponding provisions of any future Ohio statute.”

26. Upon information and belief, Peppel has had substantial and/or sole control over the finances and financial activities of Ohio Clean Water at all relevant times.

27. Upon information and belief, Peppel is a member, officer, director and/or trustee of Ohio Clean Water.

28. Ohio Clean Water has not registered with the Attorney General as a charitable trust, charitable organization, or professional solicitor.

29. Since February 2023, Ohio Clean Water has actively solicited and received charitable donations, and continues to solicit donations, by conducting various fundraising schemes.

30. For some period of time, including but not limited to, on March 27, 2023, Ohio Clean Water’s website represented that it had a partnership with the Food Bank. This partnership did not and has never existed; and the Food Bank did not authorize Ohio Clean Water to use its name as part of Ohio Clean Water’s solicitations, in writing or otherwise.

31. Between February 28, 2023 and March 20, 2023, Ohio Clean Water raised at least \$141,183.48. However, at least \$91,769.26 purportedly went to “Data Fees” and \$14,118.35 purportedly went to “Agency Fees,” netting Ohio Clean Water \$35,295.87. On a certain date, the “Data Fees” apparently constituted 65% of the gross raised funds from the mass text and email solicitations, and the “Agency Fees” apparently constituted 10% of the gross raised funds from the website and mass text and email solicitations. Ohio Clean Water has raised well in excess of \$25,000.00 in charitable funds.

32. On or about March 17, 2023, Ohio Clean Water issued a cashier’s check for \$10,000 to the Food Bank.

33. Peppel has not registered with the Attorney General as a professional solicitor.

34. Peppel owed fiduciary duties to Ohio Clean Water, the Food Bank, and numerous charitable beneficiaries including, without limitation, the duties of care, of loyalty, to maintain accounts, and to comply with the law.

35. Upon information and belief, Peppel and Ohio Clean Water failed to ensure that the charitable assets raised through Ohio Clean Water were used to fulfill charitable purposes.

36. Peppel 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.

37. This action is being initiated against Peppel both individually and in his capacity as a director, trustee, officer and/or agent of Ohio Clean Water and any other entities he may have used to commit the violations set forth in this Complaint.

IV. ATTORNEY GENERAL'S CLAIMS

COUNT ONE: COMMITTING DECEPTIVE ACTS OR PRACTICES,

R.C. 1716.14(A)(1)

38. Plaintiff Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

39. R.C. 1716.14(A)(1) provides that “The following acts and practices are hereby prohibited and declared unlawful as applied to the planning, conducting, or executing of any solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion: (1) Committing any deceptive act or practice....”

40. The acts and omissions of Peppel and Ohio Clean Water identified in this Complaint constitute deceptive acts or practices in violation of R.C. 1716.14(A)(1).

COUNT TWO: MISREPRESENTING CONTRIBUTIONS AS FOR A CHARITABLE ORGANIZATION WITHOUT WRITTEN AUTHORIZATION, R.C. 1716.14(A)(3)

41. Plaintiff Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

42. R.C. 1716.14(A)(3) provides that “The following acts and practices are hereby prohibited and declared unlawful as applied to the planning, conducting, or executing of any solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion:...(3) Using any representation that implies that the contribution is for or on behalf of a charitable organization, or using any

emblem, device, or printed matter belonging to or associated with a charitable organization, without first having been authorized in writing to do so by the charitable organization....”

43. The acts and omissions of Peppel and Ohio Clean Water identified in this Complaint constitute the use of representations that imply that the contribution is for or on behalf of a charitable organization without the Defendants first having been authorized in writing to do so by the charitable organization in violation of R.C. 1716.14(A)(3).

COUNT THREE: MISLEADING PERSONS AS TO MATERIAL FACTS

CONCERNING SOLICITATION, R.C. 1716.14(A)(2)

44. Plaintiff Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

45. R.C. 1716.14(A)(2) provides that “The following acts and practices are hereby prohibited and declared unlawful as applied to the planning, conducting, or executing of any solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion:...(2) Misleading any person as to any material fact concerning the solicitation of contributions for a charitable organization or charitable purpose or concerning a charitable sales promotion....”

46. Through Defendants’ acts and omissions identified in this Complaint, they misled one or more individuals as to material facts concerning the solicitation of contributions for a charitable organization or charitable purpose in violation of R.C. 1716.14(A)(2).

COUNT FOUR: FAILURE TO REGISTER, R.C. 1716.02(A)

47. Plaintiff Attorney General incorporates all prior paragraphs of this Complaint as if fully rewritten herein.

48. R.C. 1716.02(A) provides, in part: “Every charitable organization, except those exempted under section 1716.03 of the Revised Code, that intends to solicit contributions in this state by any means or have contributions solicited in this state on its behalf by any other person, charitable organization, commercial co-venturer, or professional solicitor, or that participates in a charitable sales promotion, prior to engaging in any of these activities and annually thereafter, shall file a registration statement with the attorney general upon a form prescribed by the attorney general.”

49. R.C. 1716.14(A)(12) provides that it is unlawful to operate in violation of, or fail to comply with, “any of the requirements of this chapter.”

50. Since at least February 2023, the Defendants individually, jointly and/or separately, solicited and continue to solicit charitable contributions in Ohio for charitable purposes and/or charitable organizations.

51. Ohio Clean Water and/or Peppel d/b/a Ohio Clean Water did not file a registration statement with the Attorney General and are not exempt from doing so.

52. Ohio Clean Water and/or Peppel d/b/a Ohio Clean Water have committed multiple violations of R.C. 1716.02 and 1716.14(A)(12), including through its website and at least 17 mass text and email campaigns between February 28 and March 20, 202.

53. Defendants' violations of R.C. 1716.02 and 1716.14(A)(12) were willful, wanton, and in reckless disregard of protected charitable interests and are of the nature for which recovery of punitive damages is appropriate.

COUNT FIVE: UNLAWFUL PROFESSIONAL SOLICITATION, R.C. 1716.07

(CLAIM IN THE ALTERNATIVE)

54. Plaintiff Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

55. In the event that Ohio Clean Water is not a charitable organization under Chapter 1716, Ohio Clean Water is a professional solicitor under Chapter 1716.

56. R.C. 1716.01(J) provides: “‘Professional solicitor’ means any person who, for compensation, performs on behalf of or for the benefit of a charitable organization any service in connection with which contributions are or will be solicited in this state by the compensated person or by any person it employs, procures, or otherwise engages directly or indirectly to solicit contributions.”

57. R.C. 1716.07(A) provides, in part: “Every professional solicitor, before engaging in any solicitation, shall register with the attorney general. The registration shall be for a period of one year or part of one year and shall expire on the thirty-first day of March of each year. Upon application and payment of the fee specified in this division and filing of the bond prescribed in division (C) of this section, the registration may be renewed for additional one-year periods.”

58. R.C. 1716.07(D)(1) and subparts (a)-(c) provide, in part: “Prior to the commencement of any solicitation, the professional solicitor shall file all of the following with

the attorney general:” a “Solicitation Notice,” a contract with a charitable organization, and a sworn statement by the “charitable organization on whose behalf the professional solicitor is acting certifying that the solicitation notice and any accompanying material are true and correct to the best of its knowledge.”

59. R.C. 1716.07(E) provides, in part, that a professional solicitor must file with the Attorney General a financial report of a solicitation campaign “not later than ninety days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year....”

60. R.C. 1716.07(F) provides, in part: “Each contribution collected by or in the custody of the professional solicitor shall be solely in the name of the charitable organization on whose behalf the contribution was solicited. ... the professional solicitor shall deposit the entire amount of the contribution in an account at a bank or other federally insured financial institution, which shall be in the name of that charitable organization. The charitable organization shall have sole control of all withdrawals from the account and the professional solicitor shall not be given the authority to withdraw any deposited funds from the account.”

61. Defendants, individually, jointly and/or separately, have acted as professional solicitors in violation of the registration, reporting and other requirements under R.C. Chapter 1716 as identified in this claim.

COUNT SIX: BREACH OF FIDUCIARY DUTIES, COMMON LAW

62. Plaintiff Attorney General incorporates all prior paragraphs of this Complaint as if fully rewritten herein.

63. Peppel owed fiduciary duties to the charitable beneficiaries of Ohio Clean Water including the duty of care, the duty of loyalty, the duty to properly manage accounts, and the duty to comply with the law, as well as other duties, including, but not limited to, the duty not to waste charitable trust assets and to act in the best interest of the charity.

64. Peppel breached his fiduciary duties by failing to comply with charitable registration laws.

65. Peppel breached his fiduciary duties to account for all assets of Ohio Clean Water collected and expended for charitable purposes.

66. Peppel breached his fiduciary duties to use the money or assets collected on behalf of Ohio Clean Water for charitable purposes.

67. Peppel's breaches of fiduciary duties as alleged in this Complaint directly and proximately caused a waste of charitable assets and/or damages to the charitable beneficiaries in an amount not yet known but exceeding \$25,000.

68. Peppel's actions were willful, wanton, and in reckless disregard of the legal rights of the charitable beneficiaries of Ohio Clean Water, and are of the nature for which the recovery of punitive damages is appropriate.

COUNT SEVEN: BREACH OF FIDUCIARY DUTIES, STATUTORY

69. Plaintiff Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

70. R.C. 1716.17 provides: "Every 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.”

71. The duty under R.C. 1716.17 requires fiduciaries to perform their duties in good faith, in a manner reasonably believed to be in or not opposed to the best interests of the organization, and with the care that an ordinarily prudent person in a like position would use under similar circumstances.

72. R.C. 1716.14(A)(12) provides that it is unlawful to operate “in violation of, or fail[] to comply with, any of the requirements” in R.C. Chapter 1716.

73. Peppel solicited, collected, and/or expended contributions on behalf of a charitable organization or for a charitable purpose as fiduciaries acting in a fiduciary capacity.

74. Peppel, by his actions as alleged above in this Complaint, breached his fiduciary duties in violation of R.C. 1716.17 and/or 1716.14(A)(12).

PRAYER FOR RELIEF

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

- A. Order Peppel and OWCF, jointly and/or separately, to provide an accounting of all charitable assets solicited, collected, held and/or expended by or for the benefit of Ohio Clean Water;
- B. Declare the terms of the charitable trust, and enter an order enforcing those terms in a manner consistent with this Complaint including dissolving Ohio Clean Water and distributing all assets and proceeds to the Attorney General to redistribute for charitable purposes;

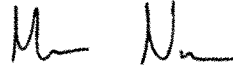
- C. Reform the charitable trust in accordance with the doctrine of *cy pres* or deviation, including dissolving Ohio Clean Water and distributing all assets and proceeds to the Attorney General to redistribute for charitable purposes;
- D. Impose a constructive trust over all assets or funds unjustly or illegally received or retained by Ohio Clean Water and/or Peppel and order Ohio Clean Water and/or Peppel, jointly and/or separately, to disgorge all assets held under that constructive trust to the Attorney General;
- E. Appoint a receiver in accordance with R.C. 2735.01 to take possession and control of Defendants' assets, and with the authority to take any steps the receiver deems proper and necessary to ensure that those assets are devoted to an appropriate, charitable use;
- F. Grant equitable and statutory relief freezing the accounts of Ohio Clean Water and any other accounts used to perpetuate illegal activities, and attach all assets commingled or otherwise accumulated or acquired with charitable proceeds;
- G. Enjoin Peppel, jointly and/or separately, from directly or indirectly soliciting in Ohio for charitable purposes or on behalf of any charitable organization, including, but not limited to, via website, text message, video, social media, or otherwise, and whether through 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;
- H. Grant an injunction and perpetually enjoin Peppel, jointly and/or separately, from creating, incorporating or registering any nonprofit organization in Ohio or

providing any service to or for, or holding any position as an officer, trustee, representative, independent contractor, or agent of, any charitable organization in Ohio.

- I. Order Ohio Clean Water and/or Peppel, jointly and/or separately, to pay restitution and compensatory damages, including all amounts unjustly or illegally retained or received by Ohio Clean Water and/or Peppel, to the Attorney General to redistribute for charitable purposes;
- J. Order Ohio Clean Water and/or Peppel, jointly and/or separately, to pay punitive damages to the Attorney General;
- K. Order Ohio Clean Water and/or Peppel, jointly and/or separately, 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 or upon proof in this case, including any violations occurring after the filing of the Complaint;
- L. Award the Attorney General his reasonable attorney's fees and costs of investigation and litigation, as permitted by R.C. 1716.16(B);
- M. Order Defendants, jointly and separately, to pay prejudgment and post judgment interest on amounts due at the statutory rate;
- N. Assess against Defendants, jointly and separately, court costs of this case; and
- O. Grant the Attorney General other relief as the Court deems proper and necessary.

Very respectfully submitted,

DAVE YOST
ATTORNEY GENERAL OF OHIO



Thaddius A. Townsend (0089197)
Assistant Section Chief
Lance Suede (0098594)
Principal Assistant Attorney General
Megan N. Nelson (0100134)
William S. Donovan (0099143)
Assistant Attorneys General
Ohio Attorney General's Office
Charitable Law Section
30 E. Broad St., 25th Floor
Columbus, Ohio 43215
Voice: 614-466-3395
Facsimile: 614-466-9788
Thaddius.Townsend@OhioAGO.gov
Lance.Suede@OhioAGO.gov
Megan.Nelson@OhioAGO.gov
William.Donovan@OhioAGO.gov

Counsel for Plaintiff Ohio Attorney General