

Cause No. D-1-GV-14-000323

STATE OF TEXAS,  
Plaintiff,

v.

THE VETERANS SUPPORT  
ORGANIZATION,  
RICHARD VANHOUTEN,  
MICHELLE VANHOUTEN,  
STEVEN CASELLA, and  
ROBERT CRUZ,  
Defendants.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

53RD

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATIONS  
FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

NOW COMES, Attorney General GREG ABBOTT, on behalf of the public interest in charity and on behalf of the State of Texas ("State"), hereinafter referred to as "Plaintiff," complaining of Defendants, THE VETERANS SUPPORT ORGANIZATION ("VSO"), RICHARD VANHOUTEN, individually and as CEO of VSO, MICHELLE VANHOUTEN, individually and as Administrative Director of VSO, STEVEN CASELLA, individually and as Director of VSO, ROBERT CRUZ, individually and as Director of VSO, and for cause of action would respectfully show the Court the following:

**DISCOVERY CONTROL PLAN**

1. Discovery is intended to be conducted under a Level 2 discovery control plan, pursuant to Texas Rule of Civil Procedure 190.3.
2. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because:
  - a. The State seeks non-monetary injunctive relief; and

b. The State's claims for monetary relief including penalties, consumer redress and attorney's fees and costs are in excess of \$100,000.00 and could exceed \$1,000,000.00.

### **JURISDICTION**

3. This action is brought by the Attorney General, through the Consumer Protection Division, in the name of the State of Texas and in the public interest under the authority granted by section 17.47 of the Texas Deceptive Trade Practices – Consumer Protection Act, Texas Business and Commerce Code sections 17.41-.63 (hereafter “DTPA”), on the grounds that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, sections 17.46(a) and 17.46(b) of the DTPA. The DTPA permits the Texas Attorney General to bring an action to restrain, by Temporary and Permanent Injunction, the use of any method, act, or practice declared to be unlawful by section 17.46 of the DTPA, when such proceedings are in the public interest.

4. This action is also brought under the authority of Chapter 1804 of the Texas Occupations Code because Defendant VSO, a veterans organization and/or a veterans organization solicitor as defined in that chapter, has violated its requirements. Chapter 1804 permits the Texas Attorney General to bring an action to restrain, by Temporary and Permanent Injunction, the use of any method, act, or practice declared to be unlawful by section 1804.153 of the Texas Occupations Code.

5. This action is also brought under the authority of sections 12.151 and 12.155 of the Texas Business Organizations Code because VSO has failed to permit the Texas Attorney General to examine or make copies of its business records, regardless of whether the records are located in this or another state, and thus the State moves to forfeit VSO's right to do business in this state as authorized by section 12.155 of the Texas Business Organizations Code.

6. Finally, this action is also brought under the common law authority of the Texas Attorney General to enforce and protect public charitable trusts. Defendants, in their individual and corporate capacities, have committed fraud and misrepresentations; have violated a constructive charitable trust; and have breached the common law fiduciary duties owed by officers, directors and employees of charitable organizations to: 1) the charitable organization for whose benefit they were supposed to serve and on whose behalf they solicited and accepted charitable funds; and 2) the citizens of the State of Texas whose financial donations have provided the source of the funding for this entity and individuals.

### **DEFENDANTS**

7. Defendant, the Veterans Support Organization or VSO, is organized as a non-profit, charitable organization under section 501(c)(3) of the Internal Revenue Code, Tax ID number 05-0516084, which did business at 12110 Manchaca Road, Suite 400, Austin, Texas 78748 and 305 Wells Fargo Drive #A8, Houston, Texas 77090, and throughout the state of Texas as alleged herein. VSO may be served with process by serving its President and Director, Richard Vanhouten, at his residence located at 539 SW Lost River Road, Stuart, Florida 34997. VSO is headquartered in Florida.

8. Defendant RICHARD VANHOUTEN is the President and a Director of VSO and may be served with process at his residence located at 539 SW Lost River Road, Stuart, Florida 34997, or wherever he may be found.

9. Defendant MICHELLE VANHOUTEN is the Administrative Director of VSO and may be served with process at her residence located at 539 SW Lost River Road, Stuart, Florida 34997, or wherever she may be found.

10. Defendant STEVEN CASELLA is a Director of VSO and may be served with process at

his residence located at 4900 NW 96th Avenue 4470, Sunrise, Florida 33351, or wherever he may be found.

11. Defendant ROBERT CRUZ is a Board Member of VSO and may be served with process at his residence located at 3730 NW 116<sup>th</sup> TER, Sunrise, Florida 33323, or wherever he may be found.

### **VENUE**

12. Venue of this suit lies in Travis County, Texas for the following reasons:

- a. All or a substantial part of the events or omissions giving rise to the claim occurred in Travis County. *See* Tex. Civ. Prac. & Rem. Code §15.002(a) (1).
- b. Defendants have done business in Travis County. *See* DTPA §17.47(b).

### **PUBLIC INTEREST**

13. Plaintiff, State of Texas, has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below, that Defendants have, by means of these unlawful acts and practices, caused damage to and/or acquired money or property from persons, and that Defendants have adversely affected the lawful conduct of trade and commerce in this State. The Attorney General also has reason to believe that Defendants have caused and will continue to cause injury, loss, and damage to the State of Texas, its veterans, and its charitable donors.

### **TRADE AND COMMERCE**

14. Defendants have, at all times described below, engaged in conduct constituting “trade” and “commerce,” as those terms are defined in section 17.45(6) of the DTPA.

### **ACTS OF AGENTS**

15. Whenever in this petition it is alleged that a Defendant did any act, it is meant that

Defendants performed or participated in the act, or Defendants' officers, agents, trustees or employees performed or participated in the act on behalf of and under the authority of Defendants.

### **NOTICE BEFORE SUIT**

16. Pursuant to section 17.47(a) of the Deceptive Trade Practices Act, Defendants were informed generally of the alleged wrongful conduct through issuance of a Request to Examine business records to the organization and through letters to their attorney.

### **APPLICABLE LAW**

17. DTPA prohibits "false, misleading, or deceptive acts or practices in the conduct of any trade or commerce . . . ." DTPA § 17.46(a).

18. The DTPA also prohibits:

- a. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another. *Id.* at (b)(3).
- b. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have. *Id.* at (b)(5).
- c. Failing to disclose information concerning the goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed. *Id.* at (b)(24).

19. Chapter 1804 of the Texas Occupations Code regulates solicitations by veterans organizations. Specifically, this chapter:

- a. Defines a veterans organization as:

A formally or informally formed nongovernmental entity that:

- (A) purports to include or represent veterans; or
- (B) includes a term in its name leading a reasonable person to assume the organization is associated with veterans or concerned with veterans' issues.

Tex. Occ. Code Ann. §1804.001(2).

- b. Defines a veterans organization solicitor as:

A person who receives monetary compensation for solicitation services for a veterans organization and who solicits:

(A) a contribution of financial support . . . for a veterans organization in person, by telephone, or by mail.

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*Id.* at §1804.001(3).

- c. Requires a veteran organization to file a registration statement with the Texas Secretary of State and pay a \$150 filing fee before beginning solicitations for donations in Texas. *Id.* at § 1804.053.
- d. Requires a veterans organization solicitor to register with the Texas Secretary of State’s office before beginning solicitations for a veterans organization. Tex. Occ. Code Ann. §1804.054.
- e. If the veterans organization uses a veterans organization solicitor, the veterans organization must post a surety bond with the Texas Secretary of State in the following amounts:
- (1) a \$5,000 bond if the organization solicits in only one county;
  - (2) a \$10,000 bond if the organization solicits in more than one but fewer than six counties; or
  - (3) a \$25,000 bond if the organization solicits in six or more counties.
- Tex. Occ. Code Ann. § 1804.101(a) (1)-(3).
- f. A veterans organization solicitor must also post a surety bond with the Texas Secretary of State in the following amounts:
- (1) a \$5,000 bond if the solicitor solicits in only one county;
  - (2) a \$10,000 bond if the solicitor solicits in more than one but fewer than six counties; or
  - (3) a \$25,000 bond if the solicitor solicits in six or more counties.
- Tex. Occ. Code Ann. § 1804.102(a) (1)-(3).
- g. Each time a solicitation is made, whether orally or in writing, the following disclosure must be made: “The secretary of state has on file important information about persons that seek contributions in the name of veterans, and the number to call about that information is the Solicitation Information Hotline (the number maintained by the secretary of state.)” Tex. Occ. Code Ann. § 1804.151.

- h. Both veterans organizations and veterans organization solicitors are required to file reports with the Texas Secretary of State if they raise more than a certain amount of money, \$500 annually for the veterans organization and \$5000 quarterly for the solicitor. *See id.* at §§ 1804.103 and .104.
- i. Finally, section 1804.153(c) prohibits a veterans organization solicitor from making “a materially false or misleading statement of fact during a solicitation that would lead a responsible person to believe that the proceeds of the solicitation are being used or will be used for a purpose other than the purpose for which the proceeds are actually used.”

20. Texas Business Organizations Code Chapter 12 sets out regulations applicable to corporations and other business organizations that are required to file or register with the Texas Secretary of State’s Office. The pertinent provisions are:

- a. Section 12.151, which permits the attorney general to “inspect, examine, and make copies, as the attorney general considers necessary in the performance of a power or duty of the attorney general, of any record of the entity. A record of the entity includes minutes and a book, account, letter, memorandum, document, check, voucher, telegram, constitution, and bylaw.”
- b. Section 12.152, which provides that when the attorney general proceeds, “[to] examine the business of a filing entity or foreign filing entity, the attorney general shall make a written request to a managerial official, who shall immediately permit the attorney general to inspect, examine, and make copies of the records of the entity.”
- c. Section 12.155, which provides that “[a] foreign filing entity or a filing entity that fails or refuses to permit the attorney general to examine or make copies of a record, without regard to whether the record is located in this or another state, forfeits the right of the entity to do business in this state, and the entity’s registration or certificate of formation shall be revoked or terminated.”

21. Chapter 22 of that code also provides the statutory standards applicable to a director and officer of a nonprofit corporation. Both must act with good faith and ordinary care and in a manner that they believe is in the best interest of the nonprofit corporation. *See Tex. Bus. Org. Code* §§ 22.221 and 22.235.

## **NATURE OF DEFENDANTS' OPERATIONS**

22. Defendant VSO is a nonprofit organization run by the individual Defendants. Defendant VSO began soliciting funds in Texas as a nonprofit in 2010. It represented to the general public from which it was soliciting donations that its charitable purpose was to support **local** homeless veterans and provide them housing and a work program. However, Defendants have failed to fulfill their charitable purpose in Texas. Defendants raised over \$2.5 million in Texas from 2010 to 2012, however, from 2010 through September 2012, Defendants made grants of only \$56,993.69 to Texas veterans, which amounts to 2.24% of the donations received in Texas. Defendants did pay their Texas “work program participants,” which included a number of veterans, but they paid them to raise the \$2.5 million. The records for 2010 and 2011 show that Defendants “helped” jobless individuals (both veterans and non-veterans) by hiring them to solicit on behalf of VSO; VSO paid the solicitors \$417,180.00 in 2010 and 2011, which is 16.7% of the total Texas donations. From the available figures, it appears that the vast majority of donations (over 70%) raised in Texas were sent to Florida and Rhode Island, contrary to Defendants’ statements to the public that the funds were being raised for “local” veterans. Defendants also failed to fulfill their stated charitable purpose of providing work programs and housing primarily to veterans. Defendants often made a profit on the housing they sublet to their employees (both veterans and non-veterans), and their “work program” was nothing more than structured panhandling which they use to solicit funds.

## **SPECIFIC FACTUAL ALLEGATIONS**

23. VSO is incorporated in Rhode Island and registered with the Internal Revenue Service as a 501(c)(3) non-profit corporation. (EXHIBITS A and B). Since its inception in 2001, VSO has promoted itself as a non-profit corporation that honors veterans by offering them employment,

housing, and financial assistance. According to their website, this “honor” is accomplished through VSO’s work, housing, and grant programs. (EXHIBIT C).

24. In VSO’s nonprofit corporate filings with Rhode Island’s Secretary of State, the Defendants state:

The Veterans Support Organization (VSO) is a band of veterans and non-veterans whose focus is to support needy United States **veterans in the local area**. Donations collected provide funding for veterans’ delinquent utility bills, rent or mortgage; and **provide housing assistance for homeless veterans**. VSO also provides monetary assistance to the local VA hospitals’ Volunteer Services Department for the support of various programs offered to veterans. VSO offers a work program for veterans and non-veterans striving to improve their own personal financial status while also helping the needy veterans of **the community**. (Emphasis added)

(EXHIBIT A).

25. In its Texas registration, Defendants represent that VSO’s charitable purpose is to “support needy veterans in the *local area*, housing assistance for homeless veterans, [and] support volunteer services at the local VA hospitals.” (EXHIBIT D). VSO maintained up to 13 chapters throughout the United States, including chapters located in Dallas, Austin, and Houston. (EXHIBIT E). The Dallas and Austin Chapters became inactive on or about December 2013. The Houston chapter may have become inactive in February 2014. However, before the chapters became inactive, Defendant VSO was soliciting funds in numerous counties, including but not limited to, Bell, Bexar, Dallas, Harris, Hays, Nueces, and Travis.

26. Defendant VSO solicited funds from the general public through individuals it placed in front of stores to ask for donations. In seeking permission to place its solicitors in front of a store, Defendant VSO represented to the store owners and/or managers that:

VSO is a 501C3 Non Profit Organization providing help to homeless, needy, disabled Veterans *in the area*...Our work program...allows veterans to transition back in to the workforce. It builds job skills, work history and opportunity for financial stability. *What we will do is send a veteran out to the location*. This veteran will educate the public about the programs offered to our nation’s heroes, and provide resource information needed for

immediate assistance. . . . We would like to send a veteran out with a small table to pass out information. . . . ***People are allowed to donate if they want but it is not the main focus.*** The main focus is getting the word out. (EXHIBIT F) (emphasis added).

27. However, the individuals soliciting in front of the store, who may or may not be veterans, were instructed to ask people going into the store to “Help local needy veterans?” (EXHIBIT G). Moreover, these solicitors were required to solicit a certain amount or face termination. Thus, contrary to the VSO’s representations to the store management, it is clear that VSO’s real focus was on getting donations.

28. Defendants also claimed that the donations were for local veterans. The individuals soliciting donations were instructed to ask for help for “local veterans” and store managers and owners were told that the organization was helping veterans in “the area.” However, according to VSO’s bank and accounting records, most of the money raised by the solicitors was sent to Florida or Rhode Island. From January 2010 through October 2012, VSO raised \$2,553,825.98 in Texas. However, the gifts, donations and grants it gave to needy veterans in Texas during 2010, 2011 and up to September 2012 was only \$56,993.69 or 2.24% of the total Texas donations.

29. If hiring veterans and nonveterans alike to solicit for VSO could be termed a “work program” for veterans and the solicitors’ pay were considered a donation, VSO’s representations regarding donations in Texas is somewhat improved. But even if that were the case, the majority of the donations were still not used in Texas. VSO bank records show that in 2010 and 2011 VSO raised \$1,618,173.81 in Texas. For those same years, VSO issued W-2s and 1099s to its Texas solicitors that show it paid the solicitors a total of \$417,180 in 2010 and 2011, 25.8% of the money raised in Texas to directly support the Texas “work program” participants. Gift donations for 2010 and 2011 were \$54,577.69 or 3.37% of the total amount of Texas donations.

In all, for 2010 and 2011, giving credence to VSO's assertions that hiring veterans and nonveterans to solicit funds for itself is a work program, VSO used only 29% of the donations raised in Texas for the benefit of individuals in Texas. This, of course, does not consider the housing program, however the "housing" program or assistance essentially paid for itself, thus, the donations do not appear to be used to support housing assistance in Texas.

30. VSO did not use the money for its stated charitable purpose in Texas and it is questionable whether the money going to Rhode Island and Florida was being used to further VSO's charitable purpose in those or other states. Defendants represented to the public that 86% of donations received went into the work, housing, and grant programs that directly assist veterans. (EXHIBIT H). Later, Defendants represented that 70% of donations went towards its work and housing programs. (EXHIBIT I). They also disseminated information claiming that in 2011 VSO distributed \$318,890.00 as part of its grant program. (EXHIBIT J). But VSO's 2011 IRS form 990 reveals a different distribution. VSO reported to the IRS that, in its fiscal year 2011, it received donations of \$7,139,442.00 on a nationwide basis. (EXHIBIT K). It also reported that during that same year, it paid \$428,324.00 for "Veteran Housing," \$2,404,017.00 for "work program labor"<sup>1</sup> and made grants of \$46,597.00 **nationwide**. *Id.* Thus, in 2011, according to its report to the IRS, VSO used \$2,878,928.00 to support its grant, housing, and work program. To put it another way, VSO used a little less than 41% of the total donations to support its grant, housing, and work programs; a marked contrast to the representations it made to the public that 70 or 86% of its donations went to support the different programs. Further, its

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<sup>1</sup>In its 990, VSO divided the work program (WP) expenses between "program services expenses" and "fundraising." The OAG did not receive any information on whether the "fundraising" expense also included wages/commissions paid to its solicitors so the OAG is using the total reported as WP expenses; if VSO did not include payments to the solicitors in the "fundraising" expenses, the total attributed to the work program would be \$961,607 less.

2011 grant donations figures are clearly contradictory—\$318,000.00 it represents to the public in contrast to the \$46,597.00 it reports to the IRS.<sup>2</sup>

### **THE HOUSING PROGRAM**

31. VSO describes its housing program as a program that provides transitional, clean and sober housing for homeless veterans. (EXHIBIT I). VSO claims that the housing program's focus is "to get veterans off the streets." *Id.* On January 15, 2013, Defendant Richard VanHouten stated that, as part of the housing program "VSO operates six housing facilities providing beds for nearly 150 homeless veterans." (EXHIBIT L). Once again, the actual practices of VSO are in marked contrast to its rhetoric.

32. VSO's "housing" program in Texas consisted of renting two houses, one in Austin and one in Dallas. VSO would then sublet rooms in these houses to its employee solicitors, who may or may not be veterans. Before the Austin Chapter of VSO ceased operations, VSO offered its housing program in Austin at a five bedroom house it leased for \$1495 a month. (EXHIBIT M). Each bedroom held two people and VSO charged each person \$125 a week for their share of the room. If the house was completely full, VSO would collect rent of \$5000.00 a month from these individuals. The individuals were only allowed to participate in the "housing program" if they participated in VSO's "work program." The individual's rent was then deducted from his/her pay, so VSO ran minimal risk of non-payment. However, once the individual was terminated from VSO, s/he was also subject to eviction. An ex-employee of VSO reported that he was not a veteran, but was allowed to live in the "housing" if he paid weekly rent of \$125.00 a week. He

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<sup>2</sup> Part of the discrepancy could be explained by the fact that VSO uses a fiscal year beginning in October and ending in September for its form 990 and is using a calendar year for other reports. However, this is just a supposition since the information was not provided to the OAG despite the OAG's repeated requests for full responses to its request to examine VSO's business records.

also reported that if he lost his job, he would also lose his housing. Further, VSO's records reveal that almost one third of the solicitors living in one of the Texas houses were not veterans.

33. That money was a motivating factor in VSO's housing policy is clear from its records of the housing facilities in Florida. According to VSO records, 466 individuals left its housing facilities in Florida between 2010 and 2012. Of those 466, VSO reported that 104 left (or were evicted) because of nonpayment of rent. In contrast to its statement that it was seeking to help "homeless veterans," in practice VSO was interested in individuals, veterans or not, who could afford to pay for a room. In fact for some individuals, VSO noted "inability to pay" as a reason for their departure. An inability to pay would seem to be the rationale for having a housing program to assist veterans, but VSO instead saw it as a reason to displace them. This practice is clearly inconsistent with its charitable purpose of providing housing assistance to homeless veterans.

### **THE WORK PROGRAM**

34. VSO touted its work program as "one of the flagship community-based programs of the VSO," allowing "veterans an opportunity to regain financial independence . . . ." (EXHIBIT N) In truth, the work program VSO offered was little more than structured panhandling.

35. VSO explained its work program to the public it solicited for funds as: "VSO hires veterans, provides basic training and work history, and develops relationships with local and national corporations." (EXHIBIT I) However, VSO's "work program" was not limited to veterans. According to one ex-employee, VSO hired both veterans and non-veterans.

36. Further, the training provided consisted of giving an individual hired to solicit (1) an opportunity to observe a more experienced solicitor for a few days, and (2) a one page document entitled "Position Description and Requirements" which instructed the solicitor to practice good

hygiene and ask each passerby to “Help the local needy veterans?” Some solicitors did receive additional training from upper management but that simply involved exhortations from Defendants and VSO management to the solicitors that they should stand at “parade rest.” An ex-employee/solicitor reported that he was told by Richard and Michelle VanHouten to stand at “parade rest” to attract attention. He was not a veteran, and they were aware of that fact, but nonetheless urged him to stand in that manner for purposes of soliciting donations. The ex-employee understood that “parade rest” was a military term referring to a specific drill stance that a military person is commanded to take. (EXHIBIT O).

37. After this very “basic” training, the new solicitor was driven to a storefront location in a VSO van, provided a uniform, a collection bucket with VSO logos on it, a book touting VSO’s programs, sometimes flyers, a table on which to place the book, and instructed to ask for donations by asking each passerby, “Help local needy veterans?” The solicitor was required to stay there or in the general location until the VSO driver came to pick him up, often working from 9-9 Thursday through Sunday, for \$7.25 an hour. These stores were located throughout Texas and solicitors from Austin could be driven to solicit in San Antonio, San Marcos and Corpus Christi.

38. The solicitor was required to raise \$225.00 (later \$250.00) daily on average. If he did not, VSO’s Position Description and Requirements warned the solicitor he could be terminated. Further, once back at the VSO office, the solicitor was subjected to pat downs to ensure that he did not take any donations and had to remain on the VSO premises while the donations were counted; the counting was video-taped with a security camera. Finally, until recently VSO did not even treat solicitors as employees, instead treating them as “independent contractors,” for which neither federal income tax nor social security taxes were paid.

39. The VSO work program simply provided needy people a smock or other uniform and required them to stand in front of a storefront for up to 12 hours to solicit donations for VSO. This is hardly a “flagship program,” to get veterans back to work.

40. Because of the foregoing, Defendants have engaged in false, misleading and deceptive acts and practices in the solicitation and acceptance of funds from the public representing that such funds would be used for the specific designated charitable purpose of providing benefits for needy veterans in Texas, as well as needy veterans in the greater Austin community. Defendants have failed to comply with statutory requirements and Defendants knowingly participated in breaches of fiduciary duties as joint tortfeasors and are personally liable as such. The State of Texas further alleges that, by their acts and omissions, Defendants have failed to exercise a degree of care in the conduct of their fiduciary duties that reasonably prudent persons would under similar circumstances to avoid the harm their actions have caused. Defendants, while holding themselves out to be assisting local needy veterans, were instead directing the benefits elsewhere. Defendants have breached their statutory fiduciary duties and their common law charitable trust fiduciary duties.

#### **VIOLATIONS OF THE DTPA**

41. Defendants, in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by DTPA sections 17.46(a) and 17.46(b), as follows:

- a. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another. *Id.* at (b)(3).

- b. Representing that services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have. *Id.* at (b)(5).
- c. Failing to disclose information concerning services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed. *Id.* at (b)(24).

### **VIOLATIONS OF THE TEXAS OCCUPATIONS CODE**

42. Defendants' actions violated section 1804.153(c) in that Defendants and their solicitors made materially false or misleading statements of facts during solicitations that would lead a reasonable person to believe that proceeds of the solicitation are being used or will be used for a purpose other than the purpose for which the proceeds are actually used.

43. Section 1804.103 requires that the veterans organization file a report with the Secretary of State's Office on the donations raised and expenses incurred in the State of Texas. VSO failed to make such a report in the years it raised donations in Texas in violation of this section.

44. Section 1804.104 requires the veterans organization solicitor to file a quarterly report on the donations raised in the State of Texas. In this instance, Defendants were the *de facto* solicitors, using employees for the solicitations. However, Defendants wholly failed to make the required reports in violation of this section.

45. Section 1804.151(a) requires a veterans organization solicitor to disclose at the time of each solicitation the following information:

The secretary of state has on file important information about persons that seek contributions in the name of veterans, and the number to call about that information is the Solicitation Information Hotline (the number maintained by the secretary of state).

46. These disclosures must be made orally if the solicitation is in person. However, an ex-employee/solicitor reported that he was never instructed to make this disclosure and in fact never did. VSO's training material (the WPPC expectations) does not refer to the disclosure and provides no instructions relating to the required disclosure.

**FAILURE TO FULLY RESPOND TO REQUESTS TO EXAMINE**

47. On September 28, 2012, the Texas Attorney General launched an investigation to look into possible misrepresentations made by VSO regarding its non-profit services and the failure to disclose information in accordance with Texas law. A Request to Examine ("RTE") was mailed to VSO, requesting documents for the purpose of assessing the organization's operations.

(EXHIBIT P).

48. Defendants provided some responsive documents through their attorneys but failed to respond at all to several requests despite assertions that they would fully respond.

49. On November 19, 2012, an email was sent to Defendants' counsel inquiring about the status of the delinquent RTE responses. A voicemail left with Defendants' attorney in December 2013, regarding the status of the responses went unanswered.

50. On February 13, 2014, the Texas Attorney General again notified Defendants' counsel about the delinquent responses. (EXHIBIT Q) VSO's attorney has not responded to these voice messages and letter correspondence. To the date of filing this petition, Defendants have not provided a complete response to the Attorney General's Request to Examine.

**VIOLATIONS OF CHAPTER 22 OF  
THE TEXAS BUSINESS ORGANIZATIONS CODE**

51. The individual Defendants violated their statutory duties under chapter 22 of the Texas Business Organization Code because the individual defendants diverted funds collected from

Texas to other areas while at the same time omitted representations to the Texas donating public that the funds donated would be used for “local needy veterans.” Further, these individual Defendants did not use ordinary care and act in a manner which a reasonably prudent person would believe to be in the best interest of the nonprofit corporation in allowing the nonprofit corporation to operate in Texas without complying with the statutory requirements for such a corporation.

#### **FUNDS WERE NOT USED FOR STATED CHARITABLE PURPOSE**

52. Defendants diverted a substantial amount of charitable funds and donations to purposes unrelated to the charitable mission of the VSO in Texas. The vast majority of donations made in Texas have been sent out of state rather than used in the local area for needy local veterans.

#### **BREACH OF FIDUCIARY DUTIES**

53. Defendants owe a fiduciary duty to the consumers who contributed to the charity to use the funds in a way that fulfills the donors’ intent. By soliciting and collecting funds from the general public, and then sending almost all of those donations to Florida under the guise of donating to local, needy veterans, Defendants violated this duty. All monies, pledges, and other property received by Defendants as a result of their solicitations constitute a charitable trust to be used for the charitable purposes for which they were solicited. As a result of their oral and written solicitations, Defendants are Trustees of such charitable trust and are charged with fiduciary duties with regard to said charitable trust. Defendants, by their actions described above in this petition, have breached, and will continue to breach, their fiduciary duties in this regard and have caused and will continue to cause, immediate and irreparable harm by failing to administer this charitable trust in a prudent and reasonable manner to assure that the funds will be used for the purposes for which they were solicited by Defendants.

## **FRAUD**

54. Defendants, by and through their intentional acts and omissions described in this petition, have made repeated and materially false representations to the public concerning their solicitation of funds for purported charitable purposes, which were either known to be false when made or were made without knowledge of the truth of the matter asserted. Such false representations were made with the intention that they would be acted upon by the parties to whom the misrepresentations were made. VSO has an active website to which anyone may donate, thus, reliance upon these false representations has resulted in injury to the donors, individuals, and businesses located in the State of Texas and throughout the United States.

## **VIOLATION OF CONSTRUCTIVE TRUST**

55. Generous members of the public of the State of Texas donated funds to Defendants for the benefit of worthy charitable causes such as helping veterans in need. Acceptance of funds pursuant to such representations established a constructive trust for the benefit of the public, in such a way as to fulfill the donors' intent. Defendants, therefore, owe a duty to the donors and to the public to ensure that funds raised on behalf of these charitable causes be used for the specific purposes for which they were donated. Defendants breached their duties to their donors who contributed money by failing to use the funds collected for the express purpose for which they were donated. Defendants have thereby violated the constructive trust.

## **NEGLIGENCE**

56. Defendants, by their acts and omissions described herein, failed in their capacities as officers, employees and board members to exercise the degree of care in the conduct of their fiduciary duties that reasonably prudent persons would have used under similar circumstances to avoid the harm that their actions have caused. Defendants' acts and omissions, when viewed

objectively from the standpoint of another at the time of occurrence, involved an extreme degree of risk, considering the probability and magnitude of potential harm their actions could cause. Defendants had or should have had subjective awareness of the risks involved in their actions, but nevertheless proceeded with conscious indifference to the potential harm.

**REMEDIES SOUGHT:**  
**DISGORGEMENT**

57. All of Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains, benefits or profits obtained from Texas consumers that are the result of Defendants' false, misleading, or deceptive conduct as described above. Defendants should be ordered to disgorge all monies fraudulently solicited in Texas, together with all proceeds, profits, income, interest and accessions thereto. All funds disgorged should be used to further the stated mission to help needy veterans, and their families, in Texas.

**IMPOSITION OF A CONSTRUCTIVE CHARITABLE TRUST**

58. When Defendants accepted funds from the citizens of Texas that were earmarked for a specific charitable purpose, a constructive trust for the benefit of the public was created. Therefore, all of Defendants' assets are subject to the Court's imposition of a constructive charitable trust, to be held solely for the specific purposes to which they were intended.

**TERMINATION OF VSO'S CERTIFICATE OF REGISTRATION**

59. VSO's Certificate of Registration Should be terminated because of its continued failure to completely respond to the Attorney General's Request to Examine pursuant to Texas Business Organizations Code section 12.555. As a result, VSO should be ordered to cease all business operations in Texas. The Court should also appoint a receiver to aid in the winding up of any remaining business in this State.

## **COLLECTION ON BOND**

60. The State seeks collection of the \$25,000.00 on the Veteran Solicitor bond issued by Great American Insurance Company to Veterans Support Organization for the benefit of the State of Texas. A copy of said bond is attached. (EXHIBIT R).

## **PRAYER**

61. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' officers, agents, successors, assigns, servants, employees, subcontractors, corporations and any other persons in active concert or participation with Defendants who receive actual notice of the injunction, from engaging in the following acts or practices:

- a. Operating any type of corporation, organization, group, association, magazine or periodical which uses as any part of its name "Veterans Support Organization";
- b. Soliciting funds on behalf of or for the benefit of VSO or for any charity or nonprofit organization which uses the name "Veterans Support Organization" in any part of its name;
- c. Transferring, concealing, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;
- d. Destroying, altering, mutilating or otherwise disposing of or changing any records related to any defendant or entity in which any defendant has an ownership interest;
- e. Mailing, faxing, or forwarding any invoice, letter, or thing to any business or person wherein such invoice, letter, or thing seeks, demands, or requests any type of payment or contribution from said business or person;

- f. Telephoning, calling, or in any way initiating contact with any business or person for the purpose of seeking, selling, or requesting any type of contribution, money, or funds from said business or person.
62. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:
- a. Adjudge against Defendants civil penalties in favor of Plaintiff in an amount up to \$20,000 per violation, pursuant to section 17.47(c)(1) of the Texas Business and Commerce Code;
  - b. Adjudge against Defendants civil penalties in favor of Plaintiff in an amount up to \$10,000 per violation, pursuant to section 1804.204 of the Texas Occupations Code;
  - c. Order the termination of VSO's registration to do business in Texas;
  - d. Order that the proceeds of the veteran solicitation bond issued by Great American Insurance Company be paid to the STATE OF TEXAS for VSO's failure to comply with the requirements of Chapter 1804 of the Texas Occupations Code;
  - e. Order Defendants to pay Plaintiff STATE OF TEXAS's attorney fees and costs of court pursuant to Texas Government Code section 4002.006(c) and Texas Property Code sections 114.064 and 123.006;
  - f. Order the *cy pres* of all assets and funds that were donated and intended for the charitable purposes;
  - g. Order that VSO's charter to do business in Texas be revoked; and
  - h. Grant all other relief to which the Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

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