

STATE OF MICHIGAN
30th JUDICIAL CIRCUIT COURT
COUNTY OF INGHAM

BILL SCHUETTE, Attorney General
of the State of Michigan,
for the People of Michigan

Plaintiff,

Case No. 17-791-CZ

Honorable ROSEMARIE E. AQUILINA

v

A.T.R.S., Inc., Metroplex Distribution Corporation,
MIFL Recycled Clothing, Inc. d/b/a A.T.R.S.,
David M. Peganyee, Sr., individually and as trustee of
David M. Peganyee Jr. Trust, and Gilbert J. Regalado

Defendants.

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There is no other pending or resolved civil action arising out of the
transaction or occurrence alleged in this Complaint.

Complaint and Jury Demand

Plaintiff Bill Schuette, Attorney General of the State of Michigan,
representing the People of the State of Michigan, brings this Complaint against
Defendants A.T.R.S., Inc., Metroplex Distribution Corporation, MIFL Recycled

Clothing, Inc. d/b/a A.T.R.S., David M. Peganyee, Sr., individually and as trustee of David M. Peganyee Jr. Trust, and Gilbert J. Regalado, and alleges that Defendants violated the Charitable Organizations and Solicitations Act, MCL 400.271 *et seq.*, in numerous ways. By this Complaint, the Attorney General seeks injunctive relief, restitution, civil fines, and other relief against Defendants. In support of the Complaint the Attorney General alleges:

I. The Parties

1. Plaintiff is the Attorney General of the State of Michigan, appearing on behalf of the People of the State of Michigan under his statutory authority under the Charitable Organizations and Solicitations Act, MCL 400.271 *et seq.*
2. Defendant A.T.R.S., Inc. (ATRS) is foreign profit corporation located in Houston, Texas that was incorporated in Texas in 2001.
 - a. ATRS has operated in Michigan since 2008 using contracted entities to perform services in Michigan.
 - b. Beginning September 11, 2013, ATRS was licensed as a professional fundraiser (license #48510) with the Michigan Department of Attorney General's Charitable Trust Section. ATRS's license expired on June 30, 2017.
 - c. Under an October 1, 2011 contract with the Michigan Humane Society, ATRS has owned and operated clothing donation bins in Michigan which it has used to solicit used clothing for the benefit of the Michigan

Humane Society. At various times, ATRS has contracted with both Defendant Metroplex and Defendant MIFL to operate the ATRS bins. MIFL now contracts with the Michigan Humane Society to operate the bins, but ATRS maintains ownership of the bins.

- d. In ATRS's 2016 professional fundraising renewal application, it listed its mailing address as 10739 W. Little York Rd., Suite 100, Houston, TX 77041. ATRS has not filed a certificate of authority to do business in Michigan with the Michigan Department of Licensing and Regulatory Affairs (LARA) and consequently has not designated a resident agent.
3. Defendant Metroplex Distribution Corporation (Metroplex) is a foreign profit corporation located in Houston, Texas that was incorporated in Texas in 2001.
 - a. Metroplex has operated in Michigan under a certificate of authority issued by LARA since June 23, 2009. Its resident agent is Beverly M. English at 209 W. Monroe St., Jackson, MI 49202.
 - b. Between January 14, 2014 and June 30, 2014, Metroplex was licensed as a professional fundraiser (license #50106) with the Michigan Attorney General's Charitable Trust Section. Between October 1, 2011 and June 21, 2017, Metroplex contracted with ATRS to service the ATRS bins under the Michigan Humane Society contract.

4. Defendant MIFL Recycled Clothing, Inc. (MIFL) is a foreign profit corporation located in Houston, Texas and incorporated in Delaware in 2016.
 - a. MIFL has operated in Michigan under a certificate of authority issued by LARA since May 17, 2016. MIFL's registered agent is Gilbert J. Regalado, 209 W. Monroe, Jackson, MI 49202. Per its pending Professional Fundraiser License Application on file with the Attorney General, MIFL's mailing address is 209 W. Monroe, Jackson, MI 49202.
 - b. Since June 21, 2017, under a contract with the Michigan Humane Society, MIFL has operated ATRS's bins in Michigan.
5. Defendant David M. Peganyee Sr. (Peganyee) is the sole officer, director, and controlling member of Defendants ATRS and Metroplex. Peganyee is the sole shareholder of both ATRS and Metroplex, holding one-third of the shares of each company individually and two-thirds as trustee of the David M. Peganyee Jr. Trust.
6. Defendant Gilbert J. Regalado is the sole officer, director, shareholder, and controlling member of MIFL.

II. Standing, Jurisdiction, and Venue

7. Section 20(1) of the Charitable Organizations and Solicitations Act, MCL 400.290(1), authorizes the Attorney General to enforce violations of the Act:

In addition to any other action authorized by law, the attorney general may bring an action to enjoin an act or practice prohibited under this act. After finding that a person has engaged in or is engaging in a prohibited act or

practice, a court may enter any appropriate order or judgment, including, but not limited to, an injunction, an order of restitution, or an award of reasonable attorney fees and costs. A court may award to this state a civil fine of not more than \$10,000.00 for each violation of this act against a person that is subject to this act; against an officer, director, shareholder, or controlling member of a person subject to this act; against any other person that directly engaged in, authorized, or was otherwise legally responsible for the prohibited act or practice; or against any combination of those persons. A court may order an injunction under this subsection if it finds that a violation of this act has occurred, or finds that an injunction would promote the public interest, without a finding of irreparable harm.

8. Persons subject to the Solicitations Act include registered charities and their licensed professional fundraisers as well as persons that solicit contributions in Michigan for a charitable purpose. MCL 400.293a. The Solicitations Act also regulates the behavior of a person “that owns *or* operates a clothing donation box”.¹ MCL 400.289 (emphasis added).
9. Beginning October 1, 2011, Defendant ATRS owned clothing donation bins in Michigan and, using contractors, operated those bins under a contract with the Michigan Humane Society. Between September 11, 2013 and June 30, 2017, ATRS was licensed by the Michigan Attorney General as a professional fundraiser (#48510) under the Charitable Organizations and Solicitations Act. As a licensed professional fundraiser that solicited donations in Michigan, ATRS is a person subject to the authority of the Solicitations Act and the Attorney General. MCL 400.271 *et seq.*; MCL 400.272(e) and (f).
10. Between October 1, 2011 and June 21, 2017, Metroplex contracted with ATRS to service the ATRS bins under the Michigan Humane Society

¹ The Solicitations Act uses the term “clothing donation box.” Another common term in the industry is “clothing donation bin.” The terms are used interchangeably throughout the complaint.

contract. Thereby, Metroplex “operated” the bins and is a person subject to the Solicitations Act and the Attorney General. Metroplex also was licensed as a professional fundraiser (#50106) with the Michigan Attorney General between January 14, 2014 and June 30, 2014. Though Metroplex let its fundraising license lapse, since it continued operating the ATRS clothing donation bins, Metroplex should have maintained its professional fundraising license until its operations ceased on June 21, 2017. Therefore, as an operator of clothing donation bins in Michigan during the times in question, Metroplex is a professional fundraiser subject to the Solicitations Act and the Attorney General. MCL 400.271 *et seq.*; MCL 400.272(e) and (f); MCL 400.289; MCL 400.293a.

11. Since June 21, 2017, MIFL has been operating bins owned by ATRS for the benefit of the Michigan Humane Society. MIFL has filed a professional fundraising license application with the Attorney General’s Charitable Trust Section, which remains under review. Because MIFL operates clothing donation bins in Michigan, MIFL is a person subject to the Solicitations Act and the Attorney General. MCL 400.271 *et seq.*; MCL 400.272(e) and (f).
12. Defendant David M. Peganyee Sr. is an officer, director, shareholder, or controlling member of Defendants ATRS and Metroplex and hence is potentially liable for civil fines imposed for violations of the Solicitations Act. MCL 400.290(1).

13. Defendant Gilbert J. Regalado is the sole officer, director, shareholder, and controlling member of MIFL and hence is potentially liable for civil fines imposed for violations of the Solicitations Act. MCL 400.290(1).
14. Venue is proper in Ingham County because Defendant ATRS operates its clothing donation bins in Ingham County. MCL 600.1621. (“The county in which a defendant resides, has a place of business, or conducts business, or in which the registered office of a defendant corporation is located, is a proper county in which to commence and try an action.”)
15. Venue is also proper in Ingham County because it is the seat of state government and the action is commenced by the Attorney General in the name of the state or of the people of the state. MCL 600.1631.

III. Background Facts

16. Since October 1, 2011, Defendants ATRS, Metroplex, and MIFL have owned and operated clothing donation bins soliciting contributions of clothing for the Michigan Humane Society. At all times, ATRS has owned the bins. At first Metroplex operated the bins; then, in June 2017, MIFL began operating the bins. Defendants generate revenue by collecting and sorting the donated clothing and selling it on a per pound basis. During the relevant times, the clothes have generated an average of \$.34 per pound. Under ATRS’s and MIFL’s contracts with the Michigan Humane Society, the Michigan Humane Society is paid \$.02 per pound.

17. ATRS's activities first came to the Attorney General's attention in 2013. The Attorney General's Charitable Trust Section requested that ATRS be licensed as a professional fundraiser. ATRS complied.

18. In May 2016, ATRS submitted its 2016 fundraising license renewal application. **Exhibit A, 2016 License Renewal.** In July 2016, the Attorney General issued ATRS's renewed license, valid from July 1, 2016 through June 30, 2017.

19. As part of ATRS's 2016 license renewal, ATRS submitted a Charitable Solicitation Campaign Financial Statement (Form CTS-10) reporting on its fundraising for calendar year 2015. **Exhibit A. The Campaign Financial Statement** reported that, in 2015, ATRS collected gross receipts of \$50,434.46 on behalf of the Michigan Humane Society; that there were no campaign costs paid to or retained by ATRS, nor other campaign costs incurred by the charity; and that the net amount to the Michigan Humane Society was \$50,434.46.

20. On December 14, 2016, the Attorney General sent a letter to ATRS questioning the accuracy of the Campaign Financial Statement and advising that ATRS should review the signage on its bins to ensure that there were no misrepresentations on its bins. **Exhibit B, AG Letter to ATRS of 12/14/16.**

The letter stated:

As part of the licensing requirement under COSA, A.T.R.S., Inc. submitted a Campaign Financial Statement for the period January 1, 2015 through December 31, 2015 (copy attached). The Statement appears to inaccurately represent the financial information for the campaign.

Under the contract between Michigan Humane Society and A.T.R.S., “in consideration for the services provided by [A.T.R.S.],” the charity agrees to sell all donated items, less “trash or unusable items,” exclusively to A.T.R.S. “at a rate of \$0.02 cents per pound.” (Paragraph 2 of the contract).

However, the Campaign Financial Statement reports zero costs for the campaign and zero payments made to A.T.R.S. On its face, this appears false.

The Campaign Financial Statement reports “Gross receipts collected in campaign” as \$50,434.46. Campaign costs paid to or retained by A.T.R.S. or otherwise incurred by the charity are reported as \$0. This leaves the full \$50,434.46 in gross receipts also reported as the net amount to the Michigan Humane Society.

Please review the enclosed Campaign Financial Statement and amend Part II to reflect accurately the financial information for the campaign.

Please also provide a listing of all Michigan Humane Society bins with their addresses and a representative sample of photographs of these bins. Sections 18 and 19 of COSA, MCL 400.288 and 400.289, prohibit various actions and misrepresentations and impose certain disclosures for clothing donation bins.

A.T.R.S. should review the signage on its bins to ensure its compliance with these sections. If A.T.R.S. finds that its signage should be revised, your response should include proposed revisions for our review. [Exhibit B]

21. Also on December 14, 2016, the Attorney General wrote a letter to the Michigan Humane Society advising it of the Attorney General’s concerns regarding the accuracy of the ATRS Campaign Financial Statement. **Exhibit C**, AG Letter to MHS of 12/14/16.

22. On December 18, 2016, the Attorney General’s Charitable Trust Section observed and photographed an ATRS-Michigan Humane Society bin in the Lansing area. **Exhibit D**, Photo of Kohl’s/Carrabba bin, 6528 W. Saginaw, Lansing, Michigan. Above the large Michigan Humane Society was a disclosure sticker, stating:

This textile recycler is owned and operated by ATRS, Inc. at 209 West Monroe, Jackson, MI 49202. *The Michigan Humane Society* at 30300 Telegraph Road, Suite 220, Bingham Farms, MI 48025, *is a charitable*

organization and receives 100% of the market value of every donation received at this location. For more information visit www.ATRScorp.com or call our 24-Hr Hotline 1. 866.900.9308. [Exhibit D (emphasis added)]

The disclosure sticker, which claims that “100% of the market value” of donated items goes to the Michigan Humane Society, appeared to be deceptive. Rather than contributing 100% of the market value to ATRS, under its contract with ATRS, the Michigan Humane Society was obligated to sell every item received to ATRS for just \$0.02 per pound—a price which appeared to be below the market value of donated items, whether using the market value of individual items resold in a thrift store or the market value for bulk used clothing.

23. On January 5, 2017, ATRS responded to the Attorney General’s December letter, including an explanation of its contract with the Michigan Humane Society:

ATRS contracts with the Michigan Humane Society to fundraise for the charity. ATRS performs solicitation campaign at no cost to MHS. All campaign costs are born by ATRS and not charged to, nor taken out of the contribution amount raised for MHS.

The December 14th letter mentioned paragraph 2 of the contract that states MHS will sell textiles exclusively to ATRS at \$.02 per pound. It is in this provision where confusion seems to lie. Professional soliciting via donation bin is different than most campaigns, as we are not handling cash donations. Below is an explanation as to how solicitation campaigns via donation bin function.

ATRS collects donated textiles from the public. The textiles collected by ATRS belong to MHS, similar to as if it were cash ATRS was collecting. The manner in which a charity will make money from collecting donated textiles is to sell the items for cash, whether to a thrift store or a recycling company. MHS sells the textiles to ATRS at an agreed upon amount, which ATRS pays as cash to MHS - \$.02 per pound.

Therefore, the entire market value of the textiles becomes cash to MHS, and ATRS neither receives nor retains expenses from the proceeds.

This arrangement translates to the full cash value of the collections on Line A, and \$0 on Line B of the Campaign Financial Report. [Exhibit E, Jan. 5, 2017 ATRS letter and attachments.]

ATRS's response also included the locations of ATRS's 251 bins and included four bin photographs; while these photos are blurry or from a distance, two of the photos appear to include the disclosure sticker, referenced above and depicted in Exhibit D, stating that 100% of the market value of every donation goes to the Michigan Humane Society. An Attorney General investigator has since photographed ATRS's 24 Lansing-area bins, confirming the presence of the "100% of the market value" bin stickers. Exhibit H, Investigator's report and bin photos.

24. Dissatisfied by the response, which appeared to state falsely that the market value of clothing donated in the bins was \$.02 per pound, on February 10, 2017, the Attorney General again wrote ATRS seeking a clarification of the market value of the clothing donated in the bins; asking ATRS a series of questions; and requesting that ATRS produce relevant financial statements identifying ATRS's revenue, profit, and expenses from the Michigan Humane Society bins. Exhibit F, AG Letter to ATRS of 2/10/17. Further, the Attorney General's letter questioned the accuracy of the bin disclosure sticker (see Exhibit D), which stated that the Michigan Humane Society received "100% of the market value of every donation received at this location."

25. On March 10, 2017, ATRS responded by letter, answering the Attorney General's questions and including the requested financial statements. Exhibit G, ATRS 3/10/17 response to AG with attachments. In response to

the Attorney General's question regarding the fair market value of the sort of clothing donated under the Michigan Humane Society contract, ATRS responded that the value of the clothing is between \$0.15 and \$0.35 per pound; ATRS also proposed new disclosure language for the bins. The relevant portions of the response follow:

Question 1: What is the per pound fair market value of donated clothing, of the sort collected under the MHS contract? The fair market value of credentialed clothing is an average of \$0.15 - \$0.35 per pound depending on but not limited to quality, market conditions, and seasonality.

As to the disclaimer may we suggest the following?

The Michigan Humane Society at 30300 Telegraph Road, Suite 200, Bingham Farms, MI 48025 (xxx-xxx-xxxx) directly benefits from every donation made at this location. ATRS is the paid solicitor contracted for management and redistribution of the items. [Exhibit G]

26. ATRS's profit and loss statement regarding the Michigan Humane Society bins for 2016 shows that bin collection generated \$835,067.55 of total income from 2,467,997 pounds of collected clothing and other items. Exhibit G. This averages to \$0.34 per pound. Of the \$835,067.55 of total income to ATRS, the Michigan Humane Society was paid \$49,359.94 (\$.02 per pound x 2,467,997 pounds), which equals 5.9% of the total revenue generated from the items donated in the bins.

27. ATRS's 2017 Collection Figures, Exhibit G, show 429,106 pounds collected during January and February. At \$0.34 per pound (the 2016 average rate), this would generate \$145,896.04 in total income.

28. On April 4, 2017, the Attorney General issued a Notice of Intended Action and Cease and Desist Order to ATRS.
29. Since the Notice of Intended Action was issued, the Attorney General and ATRS attempted to negotiate a resolution but were unsuccessful. In response to the Attorney General's cease and desist order, ATRS also agreed to cover the portion of the disclosure showing that 100% of the proceeds went to the Michigan Humane Society.
30. Since issuing the Notice of Intended Action, the Attorney General obtained affidavits from three donors detailing how they were each deceived by the ATRS bins operated for the benefit of the Michigan Humane Society.
- a. Donor Kelley Popielarz donated over one dozen bags (whose value she estimated at between \$100 and \$300) to the bins believing that her full donation—not \$.02 per pound—would benefit the Michigan Humane Society. **Exhibit I**, Popielarz affidavit.
 - b. Donor Kim Powanda donated between 50 and 100 bags to the bins, including nice men's suits, dress shirts, quality new and used shoes, winter coats, and more. Powanda estimated that each of her bags was worth \$100 or more at resale, for a total value of between \$5,000 and \$10,000. Powanda expected 100% of this value to benefit the Michigan Humane Society and would not have donated to the bins had she understood that the Michigan Humane Society was receiving just \$.02 per pound. **Exhibit J**, Powanda affidavit.

c. Donor Julie Moylan believed that her many donations to the bins, including slightly used and new shoes, men's suits and dress shirts, tops, and more, would fully benefit the Michigan Humane Society. Moylan estimated that her donations had a combined resale value of more than \$1,000, which she expected was the value that would be generated for the Michigan Humane Society—not \$0.02 per pound.

Exhibit K, Moylan affidavit.

31. The Attorney General issued an investigative order on August 1, 2017 requesting information regarding the respective operations of ATRS, Metroplex, and MIFL. Defendants responded on September 29, 2017.

Exhibit L.

32. Since ATRS failed to satisfactorily resolve the allegations within the Notice of Intended Action, the Attorney General is bringing the present complaint.

IV. Law

33. Section 18 of the Charitable Organizations and Solicitations Act (Solicitations Act) prohibits persons from engaging in a variety of acts. MCL 400.288. These prohibited acts include:

(a) Engage in a method, act, or practice in violation of this act or a rule promulgated under this act; any restriction, condition, or limitation placed on a registration or license; or any order issued under this act.

* * *

(e) Use a fictitious or false name, address, or telephone number in any solicitation.

(f) Make a misrepresentation to a person by any manner that would lead that person to believe that another person, on whose behalf a solicitation effort is

conducted, is a charitable organization or that all or any part of the proceeds of a solicitation effort are for charitable purposes.

* * *

(i) Represent or imply that the amount or percentage of a contribution that a charitable organization will receive for a charitable program after costs of solicitation are paid is greater than the amount or percentage of a contribution the charitable organization will actually receive.

(j) Divert or misdirect contributions to a purpose or organization other than that for which the funds were contributed or solicited.

* * *

(n) Employ any device, scheme, or artifice to defraud or obtain money or property from a person by means of a false, deceptive, or misleading pretense, representation, or promise.

* * *

(u)(ii) Submit any of the following to the attorney general . . . [a] document containing any materially false statement.

34. Section 19(1) of the Solicitations Act prohibits clothing donation bin operators from engaging in a variety of acts. MCL 400.289. These prohibited acts include:

(d) If charitable organizations receive some but not all of the personal property placed in the clothing donation box or the proceeds of that personal property, fail or neglect to clearly and conspicuously disclose on the donation box or on a sign at the donation box the name, address, and telephone number of each charitable organization that receives any of that property or those proceeds and the name, address, and telephone number of any other person that receives any of that property or those proceeds.

35. Section 20(1) of the Solicitations Act authorizes the Attorney General to bring an action seeking a wide range of relief against persons subject to the Act, including against officers, directors, shareholders, or other controlling members of persons subject to the Act:

(1) In addition to any other action authorized by law, the attorney general may bring an action to enjoin an act or practice prohibited under this act. After finding that a person has engaged in or is engaging in a prohibited act or practice, a court may enter any appropriate order or judgment, including,

but not limited to, an injunction, an order of restitution, or an award of reasonable attorney fees and costs. A court may award to this state a civil fine of not more than \$10,000.00 for each violation of this act against a person that is subject to this act; against an officer, director, shareholder, or controlling member of a person subject to this act; against any other person that directly engaged in, authorized, or was otherwise legally responsible for the prohibited act or practice; or against any combination of those persons. A court may order an injunction under this subsection if it finds that a violation of this act has occurred, or finds that an injunction would promote the public interest, without a finding of irreparable harm. [MCL 400.290(1).]

36. Section 1055 of the Business Corporations Act imposes liability of up to \$10,000 upon a foreign corporation acting in Michigan without a certificate of authority:

In addition to any other liability imposed by law, a foreign corporation transacting business in this state without a certificate of authority shall forfeit to the state a penalty of not less than \$100.00, nor more than \$1,000.00, for each calendar month, not more than 5 years prior thereto, in which it has transacted business in this state without a certificate of authority. This penalty shall not exceed \$10,000.00. The penalty shall be recovered with costs in an action prosecuted by the attorney general. [MCL 450.2055.]

V. Violations

Count I - Misrepresenting Percentage. MCL 400.288(1)(i).

37. Each count incorporates the facts referenced above and those facts referenced in other counts.

38. Throughout 2016 and during January and February 2017, ATRS and Metroplex owned or operated 251 bins in Michigan for the Michigan Humane Society. The bins included the following disclosure statement:

This textile recycler is owned and operated by ATRS, Inc. at 209 West Monroe, Jackson, MI 49202. The Michigan Humane Society at 30300 Telegraph Road, Suite 220, Bingham Farms, MI 48025, is a charitable organization and receives 100% of the market value of every donation received at this location. For more information visit www.ATRScorp.com or call our 24-Hr Hotline 1. 866.900.9308.

ATRS's bins may have also displayed the disclosure in 2015 or earlier.

39. In 2016, 2,467,997 pounds of clothing were donated in the bins. The donated clothing generated \$835,067.55 of revenue for ATRS. Yet ATRS paid the Michigan Humane Society just \$49,359.94, representing \$0.02 per pound of the donated clothes. Thus, in 2016, the Michigan Humane Society received 5.9% ($\$49,359.94 / \$835,067.55$) of the total revenue generated from the items donated in the bins.
40. Likewise, in January and February 2017 and at other times ATRS's bins were labeled with the bin disclosure sticker, the same arrangement applied. The donated clothes generated ATRS revenue of between \$0.15 and \$0.35 per pound, but ATRS paid the Michigan Humane Society just \$0.02 per pound (between 6% and 13% of the total revenue generated).
41. Every day ATRS's bins displayed the bin disclosure label, ATRS and Metroplex violated MCL 400.288(1)(i) by representing or implying that the amount or percentage of a contribution that the Michigan Humane Society would receive for its charitable programs was greater than the percentage the Michigan Humane Society actually received.
42. The Attorney General alleges one violation per each of the 251 bins for every day the bins displayed the disclosure.

Count II - Diverting Donations. MCL 400.288(1)(j)

43. Throughout 2016 and January and February 2017, ATRS and Metroplex owned or operated 251 bins in Michigan for the Michigan Humane Society.

The bins included the following disclosure:

This textile recycler is owned and operated by ATRS, Inc. at 209 West Monroe, Jackson, MI 49202. The Michigan Humane Society at 30300 Telegraph Road, Suite 220, Bingham Farms, MI 48025, is a charitable organization and receives 100% of the market value of every donation received at this location. For more information visit www.ATRScorp.com or call our 24-Hr Hotline 1. 866.900.9308.

ATRS's bins may have also displayed the disclosure in 2015.

44. For 2016, based on sales generated by ATRS, the average fair market value in the bulk used textiles market was \$0.34 per pound.

45. Despite representing to donors that 100% of the market value of donated items would be contributed to the Michigan Humane Society, ATRS only paid the Michigan Humane Society \$.02 per pound.

46. The market value for used clothing in other markets was likely higher than either \$0.34 per pound or \$0.02 per pound, depending on the item donated and its quality. IRS Publication 561, which helps donors determine the value of donated items for tax deduction purposes, states:

Used clothing and other personal items are usually worth far less than the price you paid for them. Valuation of items of clothing does not lend itself to fixed formulas or methods.

The price that buyers of used items actually pay in used clothing stores, such as consignment or thrift shops, is an indication of the value.

47. In paying the Michigan Humane Society \$0.02 per pound out of the \$0.34 per pound bulk textile market value, in 2016, ATRS generated \$835,067.55 of

total revenue and paid the Michigan Humane Society \$49,359.94—a difference of \$785,707.61. In January and February 2017, ATRS collected 429,106 pounds (\$145,896.04 at \$.34 per pound) and paid the Michigan Humane Society \$7,881.17—an estimated difference of \$138,014.87.

48. In diverting or misdirecting contributions that were intended solely for the Michigan Humane Society to ATRS's and Metroplex's for-profit recycling businesses, ATRS and Metroplex violated MCL 400.288(1)(j).

49. The Attorney General alleges one violation per each of the 251 bins for every day the bins displayed the disclosure.

Count III - Deceptive Scheme. MCL 400.288(1)(n)

50. Throughout 2016 and January and February 2017, ATRS and Metroplex owned or operated 251 bins in Michigan for the Michigan Humane Society.

The bins included the following disclosure:

This textile recycler is owned and operated by ATRS, Inc. at 209 West Monroe, Jackson, MI 49202. The Michigan Humane Society at 30300 Telegraph Road, Suite 220, Bingham Farms, MI 48025, is a charitable organization and receives 100% of the market value of every donation received at this location. For more information visit www.ATRScorp.com or call our 24-Hr Hotline 1. 866.900.9308.

ATRS's bins may have also displayed the disclosure in 2015.

51. ATRS's disclosure on the Michigan Humane Society bins was deceptive in several ways.

- a. The disclosure falsely stated that the Michigan Humane Society would receive 100% of the market value of every donation. In fact, the Michigan Humane Society did not receive 100% of the market value of

every donation. Rather, for the year 2016, the Humane Society received 5.9% ($\$49,359.94 / \$835,067.55$) of the total revenue generated from the items donated in the bins. Likewise, for January and February 2017, ATRS paid the Michigan Humane Society less than 100% of the market value of every donation. While the total income earned by ATRS for these months is not yet known, based on the range of fair market value provided by ATRS (\$.15 - \$.35 per pound), it is believed that, at most, ATRS paid the Michigan Humane Society 13% ($\$.02 / \$.15$) of the revenue it earned from every donation.

- b. In stating that 100% of the market value of every donation would go to the Michigan Humane Society, the disclosure falsely implied that no part of the market value of every item donated would benefit ATRS, the textile recycler operating the bin, or anyone else. In fact, in 2016, the donated clothing from the bins generated a total of \$835,067.55 in revenue, with ATRS receiving 94% of the market value of every item donated and the Michigan Humane Society receiving just 6%.
- c. In stating that 100% of the market value of every donation would go to the Michigan Humane Society, the disclosure misled donors regarding the way the market value of items would be calculated. Donors are not familiar with the pennies per pound that textile recyclers obtain for selling donated items; rather, donors would reasonably presume that the market value of each item donated is the value that that item could

generate at a thrift store or other reseller—the value the IRS uses for tax deduction purposes. In using the phrase “market value,” ATRS misled donors regarding the meaning it was applying to the term, thereby concealing the terms of the relationship between ATRS and the Michigan Humane Society: that ATRS would receive every item donated, sell those items for an average of \$0.34 per pound, and pay the Michigan Humane Society \$.02 per pound.

- d. In stating that 100% of the market value of every donation would go to the Michigan Humane Society, ATRS employed a deceptive scheme by omitting material facts about the market value ATRS attributed to the donated clothing and about the benefit ATRS would derive from the donated clothing.
- e. In stating that 100% of the market value of every donation would go to the Michigan Humane Society, the disclosure misled donors into believing that the ATRS bins generated a greater charitable benefit than other clothing donation bins that lacked such a disclosure.

52. In using this deceptive disclosure on its bins, ATRS and Metroplex violated MCL 400.288(1)(n) by employing a device, scheme, or artifice to defraud or obtain money or property from a person by means of a false, deceptive, or misleading pretense, representation, or promise.

53. The Attorney General alleges that every donation ATRS and Metroplex obtained in the 251 Michigan Humane Society bins displaying the deceptive bin disclosure was a result of this deceptive scheme.

Count IV - Misrepresentation. MCL 400.288(1)(f)

54. Throughout 2016 and January and February 2017, ATRS and Metroplex owned or operated 251 bins in Michigan for the Michigan Humane Society.

The bins included the following disclosure:

This textile recycler is owned and operated by ATRS, Inc. at 209 West Monroe, Jackson, MI 49202. The Michigan Humane Society at 30300 Telegraph Road, Suite 220, Bingham Farms, MI 48025, is a charitable organization and receives 100% of the market value of every donation received at this location. For more information visit www.ATRScorp.com or call our 24-Hr Hotline 1. 866.900.9308.

ATRS's bins may have also displayed the disclosure in 2015.

55. The disclosure misrepresented to donors that 100% of the market value of all donations to an ATRS bin would benefit the Michigan Humane Society. In fact, most of the revenue generated by the donation benefited ATRS and Metroplex.

56. Donors were, in fact, misled by ATRS's misrepresentation.

- a. Donor Kelley Popielarz donated over one dozen bags (whose value she estimated at between \$100 and \$300) to the bins believing that her full donation—not \$.02 per pound—would benefit the Michigan Humane Society. **Exhibit I**, Popielarz affidavit.
- b. Donor Kim Powanda donated between 50 and 100 bags to the bins, estimating that the total resale of these bags was between \$5,000 and

\$10,000. Powanda expected 100% of this value to benefit the Michigan Humane Society and would not have donated to the bins had she understood that the Michigan Humane Society was receiving just \$.02 per pound. **Exhibit J, Powanda affidavit.**

- c. Donor Julie Moylan believed that her many donations to the bins, whose resale value she estimated at more than \$1,000, would fully benefit the Michigan Humane Society. Moylan would not have donated had she understood that her donations generated just \$.02 per pound for the Michigan Humane Society. **Exhibit K, Moylan affidavit.**

57. In using the bin disclosure, ATRS and Metroplex violated MCL 400.288(1)(f) by making a misrepresentation to a person by any manner that would lead that person to believe that all of the proceeds of a solicitation effort are for charitable purposes.

58. The Attorney General alleges that every donation ATRS and Metroplex obtained in the 251 Michigan Humane Society bins that displayed the deceptive bin disclosure was a result of this misrepresentation.

Count V – Failure to Disclose. MCL 400.289(1)(d)

59. Throughout 2016 and January and February 2017, ATRS and Metroplex owned or operated 251 bins in Michigan for the Michigan Humane Society.

The bins included the following disclosure:

This textile recycler is owned and operated by ATRS, Inc. at 209 West Monroe, Jackson, MI 49202. The Michigan Humane Society at 30300 Telegraph Road, Suite 220, Bingham Farms, MI 48025, is a charitable organization and receives 100% of the market value of every donation

received at this location. For more information visit www.ATRScorp.com or call our 24-Hr Hotline 1. 866.900.9308.

ATRS's bins may have also displayed the disclosure in 2015.

60. While the disclosure includes both the address of ATRS and of the Michigan Humane Society, the disclosure fails to disclose that ATRS receives all of the clothing donated in the bins and most of the proceeds generated from the sale of the clothing donated in the bins. The disclosure likewise fails to disclose Metroplex's share in the proceeds from the bin donations. Nor does the disclosure list ATRS's correct address, which is in fact in Houston, Texas, but which is listed on the bin as being in Jackson, Michigan.

61. In failing to disclose ATRS's and Metroplex's benefit from donations to the bins and in failing to disclose ATRS's correct address on the bins, ATRS and Metroplex violated MCL 400.289(1)(d) by receiving some of the proceeds of the personal property placed in the bin but failing or neglecting to clearly and conspicuously disclose both its address on the bin and that ATRS and Metroplex benefited from the donations in the bin.

62. For every day that ATRS's 251 bins failed to comply with MCL 400.289(1)(d), the Attorney General alleges one violation.

Count VI – Fictitious or False Name or Address. MCL 400.288(1)(e).

63. ATRS's 251 Michigan bins have, at all relevant times, included the following statement within their disclosure: "This textile recycler is owned and operated by ATRS, Inc. at 209 West Monroe, Jackson, MI 49202."

64. ATRS's response to the Attorney General's August 1, 2017 investigative order clarified that "ATRS, Inc. does not have any employees in Michigan and all of the services provided in Michigan are provided by contracted entities doing business in Michigan." **Exhibit L**, Response 14 to 8/1/17 Investigative Order. Further, the investigative order asked Defendants to "Identify which entity operates the facility at 209 West Monroe, Jackson, Michigan." Defendants responded: "MIFL Recycled Clothing Inc."

65. Since ATRS is located in Houston, Texas, and neither operates the facility in Jackson, Michigan nor has any employees there, the Attorney General alleges that ATRS has used a fictitious or false address in its solicitation in violation of MCL 400.288(1)(e).

66. For each of Defendants' 251 bins, the Attorney General alleges one violation.

Count VII - Materially False Statements. MCL 400.288(1)(u)(ii).

First False Statement

67. As part of ATRS's 2016 license renewal, ATRS submitted a Campaign Financial Statement reporting on its fundraising for calendar year 2015. **Exhibit A**. The Campaign Financial Statement reported that, in 2015, ATRS collected gross receipts of \$50,434.46 on behalf of the Michigan Humane Society; that there were no campaign costs paid to or retained by ATRS, nor other campaign costs incurred by the charity; and that the net amount to the Michigan Humane Society was \$50,434.46.

68. ATRS's Campaign Financial Statement was materially false. In fact, during 2015, ATRS earned income by selling donated items at a rate of \$.15 to \$.35 per pound; but of the donated items, ATRS only paid the Michigan Humane Society \$.02 per pound. Based on the market values for used textiles and based on ATRS's contract arrangement with the Michigan Humane Society, ATRS's gross receipts should have been between 7 and 17 times greater than the amount paid to the Michigan Humane Society; and the difference between ATRS's total income from the sale of donated items and the \$50,434.46 proceeding to the Michigan Humane Society should have been included on lines B. and/or C. of the Campaign Financial Statement. (By way of comparison, in 2016, in response to the Attorney General's inquiries, ATRS reported total income of \$835,067.55 with \$49,359.94 proceeding to the Michigan Humane Society. Thus, for 2016, ATRS's gross receipts would be \$835,067.55; the net to the Michigan Humane Society, \$49,359.94.)

69. In submitting a materially false campaign financial statement, ATRS violated MCL 400.288(1)(u)(ii).

70. The Attorney General alleges one violation against all Defendants.

Second False Statement

71. Within the Attorney General's August 1, 2017 investigative order, Defendants were asked to identify the language on the disclosure sticker as of August 1, 2017. Defendants response identified the language as stating: "This collection site is operated by American Textile Recycling Service (ATRS)

located at 209 West Monroe Street, Jackson, MI 49202 888-900-9308

ATRSMI@ATRSONLINE.COM WWW.ATRSCORP.COM.

72. However, on October 12, 2017, Charitable Trust Section Auditor Joe Kylman observed and photographed several of ATRS's bins on West Saginaw in Lansing, Michigan, including the bin in front of Kohl's that was photographed months ago. See **Exhibit D**, Kohl's/Carrabba bin, 6528 W. Saginaw, Lansing, Michigan. The bins do not state the language asserted by ATRS. Rather, the bins continue to state the original language from the original disclosure:

This textile recycler is owned and operated by ATRS, Inc. at 209 West Monroe, Jackson MI 49202. The Michigan Humane Society at 30300 Telegraph Road, Suite 220, Bingham Farms, MI. 48025, is a charitable organization and receives [whited out] value of every donation received at this location. For more information visit www.ATRScorp.com or call our 24-hour Hotline 1.866.900.9308. [Exhibit M, Kylman October 12, 2017 photos.]

73. In submitting its response to the Attorney General's investigative order, Defendants submitted a document containing a materially false statement and violated MCL 400.288(1)(u)(ii).

74. The Attorney General alleges one violation against all Defendants.

Third False Statement

75. On June 29, 2017, MIFL submitted to the Attorney General's Charitable Trust Section an application for license as a professional fundraiser. **Exhibit N**, MIFL Application and Returned Mail. On the application, which was certified by Defendant Regalado, MIFL identified Gilbert Regalado at 209 W. Monroe, Jackson, MI 49202 as MIFL's resident agent.

76. On August 2, 2017, the Attorney General mailed via certified U.S. mail his Investigative Order to MIFL's resident agent Gilbert Regalado at 209 W. Monroe, Jackson, MI 49202. On August 19, 2017, the Postal Service returned the mail to the Attorney General listing the mail as "unclaimed."² Exhibit N, Returned Mail.

77. In falsely identifying its resident agent, Defendants MIFL and Regalado submitted a document containing a materially false statement and violated MCL 400.288(1)(u)(ii).

78. The Attorney General alleges one violation against Defendants MIFL and Regalado.

Count VIII – Owning a Clothing Donation Bin without a Professional Fundraising License. MCL 400.288(1)(a).

79. ATRS's professional fundraising expired on June 30, 2017. In response to the Attorney General's August 1, 2017 investigative order, which questioned this expiration, ATRS answered that it "had turned over the fundraising component of its operation to MIFL and MIFL applied for a professional fundraising license." Exhibit L, Response 12 to Investigative Order. ATRS's response also affirmed that, while MIFL now operates the bins, ATRS still owns the bins.

80. However, the Solicitations Act's definition of "professional fund raiser" applies to a person that "owns or operates a clothing donation box." Because

² The Attorney General's Investigative Order to Metroplex's resident agent, Beverly English at 209 W. Monroe, Jackson, Michigan was also returned to the Attorney General by the Postal Service as unclaimed.

ATRS still owns the bins that are used to solicit for the benefit of the Michigan Humane Society, ATRS remains a professional fundraiser under the Solicitations Act and must be licensed under the Act.

81. Between October 1, 2011 and June 21, 2017, Metroplex contracted with ATRS to service the ATRS bins under the Michigan Humane Society contract. Between January 14, 2014 and June 30, 2014, Metroplex was licensed as a professional fundraiser with the Michigan Attorney General's Charitable Trust Section as #50106. Because Metroplex continued to operate the ATRS bins between 2014 and 2017, Metroplex should have maintained its professional fundraising license.

82. For owning clothing donation bins without being licensed as a professional fundraiser, ATRS and Metroplex violated MCL 400.288(1)(a), by engaging in an act in violation of the Solicitations Act.

83. The Attorney General alleges one violation against ATRS and three violations against Metroplex (one for each year in which it operated without a license).

Count IX – Operating without Certificate of Authority. MCL 450.2055.

84. From at least October 1, 2011, when ATRS entered its contract with the Michigan Humane Society, through the present date, ATRS has been transacting business in Michigan without a certificate of authority. (In contrast, MIFL and Metroplex both have Certificates of Authority.)

85. "A foreign corporation shall not transact business in this state until it has procured a certificate of authority to transact business from the administrator." MCL 450.2011. The Business Corporations Act lists certain minimal activities that do not constitute transacting business in Michigan, including "Owning, without more, real or personal property." MCL 450.2012. ATRS does more than simply own clothing donation bins in Michigan. ATRS is a licensed professional fundraiser in Michigan and, through its bins and its contract with the Michigan Humane Society, actively solicits contributions from Michigan residents.

86. Under Section 1055 of the Business Corporations Act, the penalty is not less than \$100 per month, nor more than \$1,000 per month for up to five years, with the penalty not to exceed \$10,000. MCL 450.2055.

87. The Attorney General alleges one violation that has continued for more than five years (60 months), with a minimum penalty of \$6,000 and maximum penalty of \$10,000.

88. **Total Violations Alleged.** The violations alleged in Counts I through IX total 532,379.

VI. Jury Demand

89. Under MCR 2.508, the Attorney General requests that all the above counts be tried by a jury.

VII. Prayer for Relief

Plaintiff Bill Schuette, Attorney General of the State of Michigan, prays that this Court enter judgment in his favor and order relief as follows:

1. Ordering all Defendants to cease using the false, deceptive, and misleading bin disclosure;
2. Ordering Defendants ATRS, Metroplex, and MIFL to pay restitution of all revenue they obtained using the false, deceptive, and misleading bin disclosure;
3. Ordering all Defendants to pay civil fines of up to \$10,000 per violation for each of the violations alleged in the Complaint, and ordering Defendant ATRS to pay a minimum penalty of \$6,000 for operating without a certificate of authority;
4. Ordering Defendants ATRS, Metroplex, and MIFL to pay attorney fees and costs; and
5. Ordering all Defendants to cease soliciting in Michigan, whether through ATRS, Metroplex, MIFL or other entities, until they have fully satisfied the judgment.

Respectfully submitted,

Bill Schuette



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