

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

State of Minnesota, by its
Attorney General, Lori Swanson

Court File No. 27-CV-16-7913
Hon. Mel I. Dickstein

Plaintiff,

vs.

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT**

Associated Community Services, Inc.,

Defendant.

STIPULATION

The State of Minnesota, by its Attorney General, Lori Swanson, and Associated Community Services, Inc., through their undersigned counsel of record, hereby stipulate and agree to the entry of the Consent Judgment and Order attached hereto.

DATED: December 5, 2016

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Attorney General
State of Minnesota

BENJAMIN VELZEN
Assistant Attorney General

/s/ Carol R. Washington
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DATED: December 5, 2016

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ATTORNEYS FOR ASSOCIATED
COMMUNITY SERVICES, INC.

STATE OF MINNESOTA

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State of Minnesota, by its
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Plaintiff,

vs.

**CONSENT JUDGMENT
AND ORDER**

Associated Community Services, Inc.

Defendant.

WHEREAS, Plaintiff State of Minnesota, by its Attorney General, Lori Swanson (“State” or “AGO”) filed and served an Amended Complaint against Defendants Associated Community Services, Inc. (“ACS”), and Central Processing Services, LLC (“CPS”) in this matter on August 22, 2016 (“Complaint”), which is incorporated herein by reference;

WHEREAS, the AGO voluntarily dismissed CPS from this action with prejudice and CPS voluntarily agreed to the terms of this Consent Judgment and Order (“Consent Judgment”);

WHEREAS, ACS has not been soliciting in Minnesota since the date the Court entered the stipulated Order for Temporary Injunction in this matter, June 28, 2016 (“Injunction Date”);

WHEREAS, the AGO and ACS desire to resolve fully the claims set forth in the Complaint through this Consent Judgment;

WHEREAS, Robert W. Burland and Richard T. Cole are the joint owners of ACS and members of CPS (collectively “Owners”);

WHEREAS, CPS and Owners shall collectively be referred to herein as the “Injunctive Parties;” and

NOW, THEREFORE, the AGO, ACS, and the Injunctive Parties hereby agree to entry of an Order with the following terms and conditions:

INJUNCTIVE RELIEF

1. ACS and the Injunctive Parties shall not hereinafter, whether directly, indirectly, individually, representatively, or in conjunction with or through any other person or entity, engage in any of the following conduct in Minnesota for a period of two years from the Injunction Date:

- (a) acting as a professional fundraiser;
- (b) soliciting contributions for or on behalf of any charitable organization or in connection with the use of the name of any charitable organization;
- (c) forming, participating in forming, owning in whole or in part, purchasing shares or an interest in, acting as an officer or director of, managing, or overseeing any entity that engages in any conduct of the type referenced in Paragraphs 1(a) and 1(b);
- (d) being employed by, assisting, advising, contracting with, or consulting with or for any person or entity that engages in any conduct of the type referenced in Paragraphs 1(a) and 1(b); and
- (e) accepting any contribution, payment, gifts-in-kind, or anything else of value as part of, or that results from, engaging in any conduct of the type referenced in Paragraphs 1(a) and 1(b).

For the purposes of this Order, “charitable organization,” “contribution,” “person,” “professional fundraiser,” “solicit,” and “solicitation” have the meanings given these terms by Minnesota Statutes section 309.50.

2. Upon expiration of the time period specified in Paragraph 1, ACS and the Injunctive Parties shall at all times comply with the following requirements if any one of them engages in any of the conduct referenced in Paragraphs 1(a) or 1(b) in Minnesota:

- (a) shall record the entirety (i.e., both the solicitation portion and the verification portion) of all telephone calls in which ACS or the

Injunctive Parties solicit a Minnesota resident for a contribution for a period of one year from the date on which such conduct resumes, and shall retain all such recordings for a period of not less than 30 days, and shall promptly provide all such recordings responsive to any request made by the AGO;

- (b) shall not represent, suggest, or imply in connection with any Minnesota solicitation for a contribution that a potential donor has pledged, promised, or otherwise manifested an intention to make a contribution to any charitable organization when that potential donor has not made such a pledge, promise, or manifestation;
- (c) shall not represent, suggest, or imply in connection with any Minnesota solicitation for a contribution that ACS or the Injunctive Parties are themselves the charitable organization on whose behalf any one of them is soliciting, including but not limited to being prohibited from using the words "our," "we," "us," "we are," and "we're" in a manner that has the tendency or capacity to deceive, mislead, or confuse potential Minnesota donors about ACS's or the Injunctive Parties' identity or purpose;
- (d) shall not falsely represent, suggest, or imply in connection with any Minnesota solicitation for a contribution that ACS or the Injunctive Parties are contacting the potential donor from a location in Minnesota;
- (e) shall not represent, suggest, or imply in connection with any Minnesota solicitation for a contribution that a potential Minnesota donor's contribution will be used for purposes or programs conducted within, or for persons located in, the person's local community, local county, or in Minnesota when such is not actually the case;
- (f) shall not represent, suggest, or imply in connection with any Minnesota solicitation for a contribution that the person being solicited has previously contributed to the charitable organization for which the person is currently being solicited unless the person has in fact previously contributed to the charitable organization at issue;
- (g) shall not represent, suggest, or imply in connection with any Minnesota solicitation for a contribution that the person being solicited previously contributed a different amount to the charitable organization for which the person is currently being solicited than was actually the case;

- (h) shall not represent, suggest, or imply in connection with any Minnesota solicitation for a contribution that the person being solicited is being solicited as part of a one-time or periodic solicitation campaign if the solicitation campaign is substantially continuous year round;
- (i) shall not in connection with any Minnesota solicitation for a contribution use or employ any fraud, false pretense, false promise, misrepresentation, misleading statement, misleading name, mark or identification, or deceptive practice, method, device, or omission;
- (j) shall, prior to orally requesting a contribution or contemporaneously with any written solicitation for a contribution, clearly disclose that the solicitation is being conducted by a "professional fundraiser";
- (k) shall, prior to orally requesting a contribution or contemporaneously with any written solicitation for a contribution, clearly disclose their full legal name as on file with the AGO;
- (l) shall, prior to orally requesting a contribution or contemporaneously with any written solicitation for a contribution, clearly disclose the name and location by city and state of each charitable organization on behalf of which the solicitation is made;
- (m) shall, prior to orally requesting a contribution or contemporaneously with any written solicitation for a contribution, clearly disclose a description of the charitable program for which the solicitation campaign is being carried out, and, if different, a description of the programs and activities of the organization on whose behalf the solicitation campaign is being carried out;
- (n) shall, prior to orally requesting a contribution or contemporaneously with any written solicitation for a contribution, clearly disclose whether or not the contribution may be tax deductible; and
- (o) shall comply with Minnesota Statutes sections 309.55, subdivision 5, 325D.44, 325F.71, and 309.556.

3. ACS and the Injunctive Parties are permanently enjoined from effecting any change in ACS's, CPS's, or any other entity's form of doing business, organizational identity, organizational structure, affiliations, ownership, or management composition as a method of

avoiding the terms of this Consent Judgment. The Owners are further permanently enjoined from effecting any change in their ownership stake in, or management authority over, any entity in which they have such ownership stake or management authority as a method of assisting the entity in avoiding the terms of this Consent Judgment. The Owners are further permanently enjoined from engaging in any conduct prohibited by this Consent Judgment through or in conjunction with a family member.

CIVIL PENALTY

4. ACS is liable for, shall execute a Confession of Judgment for, and shall pay a civil penalty to the AGO under Minnesota Statutes section 8.31 of \$200,000.00, as follows:

- (a) \$20,000.00 on or before January 15, 2017;
- (b) \$6,000.00 on or before the fifteenth day of each subsequent month for thirty additional months.

5. The AGO shall have the option to distribute monies it receives pursuant to this Consent Judgment in an equitable manner to Minnesota persons who donated to a charitable organization that utilized ACS to solicit on the charitable organization's behalf. Monies the AGO receives pursuant to this Consent Judgment may also be used for settlement administration expenses, including but not limited to payment to a settlement administrator. Any monies received pursuant to this Consent Judgment that are not distributed to Minnesota persons who donated to a charitable organization that utilized ACS to solicit on the charitable organization's behalf or used for settlement administration expenses shall be deposited into the State General Fund.

6. The monies to be paid under Paragraph 4 shall be sent payable to the "Minnesota Attorney General's Office" at the following address: Ray Smith, Director of Finance, Minnesota Attorney General's Office, 102 State Capitol, 75 Rev. Dr. Martin Luther King Jr. Blvd., Saint

Paul, Minnesota 55155. All other notices, correspondence, and materials relating to this Consent Judgment shall be directed to the AGO representative identified in Paragraph 22 below.

STAYED RELIEF

7. ACS is liable for an additional civil penalty of \$400,000.00 if the Court finds, after a motion by the AGO, and pursuant to a hearing as determined by the Court, that ACS violated any provision of this Consent Judgment. The AGO shall provide notice to ACS of any alleged violation prior to seeking relief from the Court under this paragraph and offer a reasonable opportunity for ACS to respond the AGO's allegations, which ACS shall do in a timely manner. The release provided for in Paragraph 10 of this Consent Judgment does not prevent, restrict, or otherwise limit in any way the AGO from moving for and, should a violation be found, collecting the stayed civil penalty referenced in this paragraph.

8. ACS and the Injunctive Parties shall be prohibited for an additional two years from engaging in any conduct of the type referenced in Paragraphs 1(a) and 1(b) if the Court finds, after a motion by the AGO, and pursuant to a hearing as determined by the Court, that any one of them violated any provision of Paragraphs 1 or 2 of this Consent Judgment. The AGO shall provide notice to ACS or the Injunctive Parties of any alleged violation prior to seeking relief from the Court under this paragraph and offer a reasonable opportunity for ACS or the Injunctive Parties to respond the AGO's allegations, which they shall do in a timely manner. The release provided for in Paragraph 10 of this Consent Judgment does not prevent, restrict, or otherwise limit in any way the AGO from moving for and, should a violation be found, imposing the further injunctive relief called for by this paragraph. Any further injunctive relief imposed against ACS or the Injunctive Parties pursuant to this paragraph will begin to run from the date the Court enters the Order finding that ACS or the Injunctive Parties violated any provision of

Paragraphs 1 or 2 of this Consent Judgment, or upon expiration of the time period specified in Paragraph 1, whichever is later.

GENERAL TERMS

9. ACS neither admits nor denies the allegations in the Complaint.

10. In consideration of the stipulated relief, the sufficiency of which is acknowledged, the AGO, upon approval of this Consent Judgment by the Court, hereby fully and completely releases ACS and the Injunctive Parties of any and all claims and causes of action of the AGO—regardless of whether presently known or unknown by the AGO and asserted or unasserted in the Complaint—under Minnesota Statutes chapter 309, sections 325D.43-.48, sections 325E.26-.31, and section 325F.71 arising out of any solicitation or telecommunications activities in Minnesota undertaken on behalf of any charitable organization up to and including the date of the Court’s approval of this Consent Judgment.

The AGO through this Consent Judgment does not settle, release, or resolve any claim against ACS or the Injunctive Parties or any other person or entity involving any private causes of action, claims, and remedies, including but not limited to private causes of action, claims, or remedies provided for under Minnesota Statutes section 8.31. This release does not apply in any way to claims of any other Minnesota state agency, department, official, or division, including but not limited to the Minnesota Department of Revenue. This release does not apply in any way to Foundation for American Veterans or any other charitable organization.

11. The claims, remedies, and relief provided for in this Consent Judgment are in addition to all other claims, remedies, and relief available to the AGO.

12. ACS and the Injunctive Parties, after having an opportunity to consult with counsel, knowingly, intelligently, and voluntarily waive their First Amendment rights to the extent, if at all, such rights are inconsistent with any of the terms of this Consent Judgment.

13. ACS and the Injunctive Parties shall not state or imply, directly or indirectly, that the State of Minnesota or the AGO have approved of, condoned, or agree with any conduct or actions by ACS or the Injunctive Parties.

14. Nothing in this Consent Judgment shall relieve ACS or the Injunctive Parties of their obligations to comply with all applicable Minnesota and federal laws and regulations, and court or administrative orders and directives.

15. The facts alleged in the Complaint will be taken as true, without the need for any further proof, evidence, or other showing, in any subsequent proceeding by or on behalf of the AGO to enforce the AGO's rights to any payment or monetary judgment pursuant to this Consent Judgment, such as a nondischargeability complaint in any bankruptcy case.

16. The AGO and ACS agree that facts alleged in the Complaint establish all elements necessary to sustain an action by the AGO pursuant to 11 U.S.C. § 523(a)(2)(A) against ACS, this Consent Judgment will have collateral estoppel and/or res judicata effects for such purposes, and ACS agrees not to contend otherwise. ACS further agrees that the entirety of the award of restitution/disgorgement and civil penalties pursuant to this Consent Judgment is nondischargeable debt under 11 U.S.C. § 523(a)(2)(A), and waives any right to contest or otherwise dispute the matter.

17. The AGO and ACS agree that the facts alleged in the Complaint establish all elements necessary to sustain an action by the AGO pursuant to 11 U.S.C. § 523(a)(7) against ACS, this Consent Judgment will have collateral estoppel and/or res judicata effects for such

purposes, and ACS agrees not to contend otherwise. ACS further agrees that the entirety of the award of restitution/disgorgement and civil penalties pursuant to this Consent Judgment is nondischargable debt under 11 U.S.C. § 523(a)(7), and waives any right to contest or otherwise dispute the matter.

18. Within ten business days of the Court's entry of an order approving this Consent Judgment, the AGO and ACS shall file a Stipulation of Dismissal with Prejudice, dismissing the matter with prejudice and without additional costs and fees (other than any payments required herein) to either party.

19. The person signing this Consent Judgment for ACS and CPS warrant that ACS and CPS have authorized the person to execute this Consent Judgment, that ACS and CPS have been fully advised by their counsel before entering into the Consent Judgment, and that he or she executes this Consent Judgment in an official capacity that binds ACS and CPS and their successors.

20. This Consent Judgment may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Consent Judgment may be executed by facsimile or electronic copy in any image format.

21. This Consent Judgment constitutes the full and complete terms of the agreement entered into by ACS, the Injunctive Parties, and the AGO.

22. Service of notices or other documents required or permitted by this Consent Judgment shall be served on the following persons, or any person subsequently designated by the parties to receive such notices, by mail at the addresses identified below, if any, and by email at the email address identified below, if any:

Carol Washington, Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101
carol.washington@ag.state.mn.us

Associated Community Services, Inc.
c/o Eric S. Berman
Venable LLP
575 7th Street, NW
Washington, DC 20004
esberman@venable.com

Central Processing Services LLC
c/o Eric S. Berman
Venable LLP
575 7th Street, NW
Washington, DC 20004
esberman@venable.com

William R. Burland
23800 W. Ten Mile Road
Suite 200
Southfield, MI 48033
candary@cpsvcs.com

Richard T. Cole
23800 W. Ten Mile Road
Suite 200
Southfield, MI 48033
candary@cpsvcs.com

23. The failure of any signatory to this Consent Judgment to exercise any rights under this Consent Judgment shall not be deemed to be a waiver of any right or any future rights.

24. This Consent Judgment, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

25. Nothing in this Consent Judgment shall be construed to limit the jurisdiction, power, or authority of the State of Minnesota or the AGO, except as expressly set forth herein in regard to ACS and the Injunctive Parties.

26. Each of the signatories to this Consent Judgment participated in the drafting of this Consent Judgment and agree that the Consent Judgment's terms may not be construed against or in favor of any of the signatories by virtue of draftsmanship.


27. Each signatory shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Consent Judgment, including that ACS and the Injunctive Parties shall promptly comply with any reasonable request from the AGO for information regarding verification of their compliance with this Consent Judgment.

28. The Court may enter this Consent Judgment *ex parte* and without further proceedings.

29. The Court shall retain jurisdiction of this matter for purposes of enforcing the Order for Judgment.

LORI SWANSON
Attorney General
State of Minnesota

Dated: 12/5/16

By: 
Carol Washington
Assistant Attorney General

ASSOCIATED COMMUNITY SERVICES,
INC.

Dated: Nov 30 2016

By: 
On behalf of Defendant Associated
Community Services, Inc.


CENTRAL PROCESSING SERVICES, LLC

Dated: November 30 2016

By: 
On behalf of Defendant Central Processing
Services, LLC


ROBERT W. BURLAND

Dated: November 30 2016

By: 
Robert W. Burland, individually

RICHARD T. COLE

Dated: Nov 30 2016

By: 
Richard T. Cole, individually

ORDER

Having reviewed the terms of the foregoing Consent Judgment, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Dickstein, Mel
(Judge)



2016.12.07
12:24:11 -06'00'

Date: _____

Judge of District Court

LET JUDGMENT BE ENTERED ACCORDINGLY.

