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BEFORE THE

ATTORNEY GENERAL OF CALIFORNIA

In the Matter of the Order to Cease and Desist, Revocation of California Charity Registration and Assessment of Penalties Against: **FOOD FOR THE POOR, INC.,** Respondent,	Case No. 2018-CT086331 **RESPONDENT FOOD FOR THE POOR INC.'S APPEAL OF ATTORNEY GENERAL'S ORDER TO CEASE AND DESIST; REVOCATION OF REGISTRATION AND ASSESSMENT OF PENALTIES.** **REQUEST FOR HEARING**

APPEAL OF CEASE AND DESIST ORDER AND REQUEST FOR HEARING

Food for the Poor (FFP), by and through its attorneys, Perlman & Perlman, LLP, hereby submits this appeal and requests a hearing of the California Attorney General (AG)'s First Amended Order to Cease & Desist, Notice of Revocation of Charity Registration and Notice of Assessment of Penalties ("AG Order").

Statement for Basis of Appeal

1. The factual actual allegations and conclusions of law set forth in the AG Order are denied, except as otherwise stated herein.

2. FFP admits that: it was incorporated in Florida; it is tax exempt pursuant to Internal Revenue Code Section 501(c)(3); and its principal place of business is in Coconut Creek, FL. FFP's mission is to:

> to link the church of the first world with the church of the third world in a manner that helps both the materially poor and the poor in spirit. The materially poor are served by local churches, clergy, and lay leaders who have been empowered and supplied with goods by FFP. The poor in spirit are renewed by their relationship with and service to the poor through our direct ministry of teaching, encouragement, and prayer. Ultimately, we seek to bring both benefactors and recipients to a closer union with our Lord.

FFP fulfills its mission by:

> Shipping medicines, medical supplies, and equipment that help maintain clinics, hospitals, and nutritional centers to provide much needed medical care to the poorest of the poor;
>
> Providing aid to support the feeding, clothing, and sheltering of the poor, through the distribution of food and the construction of housing;

Aiding the development and support of communities through grants of tools, seeds, training and other grants, which enable communities to have their own source of clean water, which reduces illness and premature death caused by contaminated water, to grow their own food, including aquaculture ponds, fishing villages, fruit tree nurseries, animal husbandry projects, and other programs that give the poor fresh hope for a better tomorrow; and

Providing school furniture, supplies, textbooks, bibles and construction of schools to support the education of local communities that help lift the poor out of poverty and to enrich their union with our Lord.

3. FFP further admits that it has and does solicit charitable contributions from California in California and that, as required by and California Supervision of Trustees and Fundraisers for Charitable Purposes Act ("Charity Supervision Act"), is registered with the California Attorney General's Registry ("AG Registry").

4. FFPs IRS Form 990s filed with the AG Registry which were prepared by an independent Certified Public Accountant ("CPA") and signed by FFP and FFP's CPA under penalties for perjury, did not, as alleged by the AG, contain any material misstatements and were not misleading to the public.

5. FFP's California Form RRF-1 filed with the AG Registry did not, as alleged by the AG, contain any false statements and were not misleading to the public.

6. FFP's financial statements were prepared in accordance with Generally Accepted Accounting Principles ("GAAP") as required by Cal. Bus. & Prof. Code § 17510.5(a) and Charity Supervision Act § 12856(e)(1).

7. FFP's financial statements were audited by an independent CPA in conformity with generally accepted accounting standards ("GAAS") as required by California Supervision of Trustees and Fundraisers for Charitable Purposes Act § 12856(e)(1).

8. Pursuant to GAAS, FFP's auditors planned and performed the audits to obtain reasonable assurance about whether FFP's financial statements were free from material misstatement. As part of that process, FFP's auditors evaluated the appropriateness of FFP's accounting policies used and reasonableness of the significant accounting estimates made by FFP's management.

9. Following the audit, FFP's independent auditors issued an opinion that FFP's financial statements presented fairly and, in all material respects, the financial position of FFP, in accordance with GAAP.

10. FFP valued its pharmaceutical gifts in kind ("GIK") in accordance with GAAP. Specifically, FFP's use of the U.S. as the principal market for purposes of valuing its pharmaceutical GIK, is in accordance with GAAP. To the extent that FFP was subject to any restriction by a pharmaceutical donor, which FFP denies, such restriction was an "entity" restriction and thus, was not relevant to the fair value measurement of the GIK. Further, FFP denies that it accepts pharmaceutical GIK that is close to expiration; FFP adheres to strict controls on what can be shipped and when, in order to prevent the shipping of pharmaceuticals that cannot be used in any recipient country before the stated expiration date.

11. FFP allocated its expenses associated with its joint activities in accordance with GAAP. FFP allocated expenses from its joint activities to both fundraising and program only in connection with two of its programs: (1) its "speakers bureau," where ministry speakers appear at churches to lead the congregation in prayer and to raise public awareness about poverty in the developing world and to give American Christians the opportunity to respond directly to the needs of the poor; and (2) its donor relations department, which emphasizes prayer and customer service to its donors. In the speaker's program, the audience criterion is met because FFP does not select the audience members, nor does FFP have any knowledge of the identities of the members of the congregations who will be present. In the donor

relations activities, the audience criterion is met because FFP does not select the members based on their likelihood of giving, but rather, to accomplish FFP's mission by praying together. FFP does not allocate any expenses in connection with any of its other fundraising activities.

12. FFP's solicitation materials did not contain any misrepresentations. The program expense ratio highlighted in FFP solicitations is true and accurate when FFP's expenses are viewed as a whole. FFP fulfills its mission by providing both GIK and cash to relieve the conditions of the poor. Thus, FFP's program ratio, which comes directly from its IRS Form 990, which combines the value of donated goods sent to the poor with cash expenses for program-related activities, properly reflects FFP's activities in support of its mission.

13. FFP denies that grounds exist for the issuance of the Cease and Desist Order and respectfully prays that the Cease and Desist be rescinded.

14. FFP denies that grounds exist for the assessment of penalties and respectfully prays that the assessment be rescinded.

15. FFP denies that grounds exist for the revocation of its license and respectfully prays that the AG's request for an Order granting the requested relief be denied.

PRAYER FOR RELIEF

WHEREFORE, Respondent Food for the Poor, Inc., prays for

1. For a formal hearing on all of the factual allegations, conclusions of law, imposition of fines in the Attorney General's Order to Cease and Desist;

2. For a prehearing conference, at which time FFP will request, *inter alia*, that the hearing officer bifurcate the hearing such that the first issue to be resolved is whether FFP's accounting complies with GAAP;

3. That the Cease and Desist be ordered vacated in its entirety and rescinded.

4. That the Notice of Revocation of Registration of Respondent FFP be ordered vacated and Respondent's registration be restored;

5. That the assessment of any penalties against Respondent be ordered vacated and rescinded.

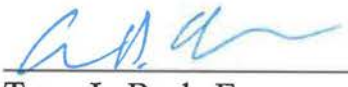
6. That FFP be granted is costs associated with this action; and

7. For such other relief, further and different relief as may be deemed just and proper.

DATED: April 10, 2018

Respectfully submitted,

PERLMAN & PERLMAN, LLP

By: 

Tracy L. Boak, Esq.
Adam D. Miller, Esq.
Attorneys for Respondent
Food for the Poor, Inc.

PROOF OF SERVICE

RE: In the Matter of the Order to Cease and Desist, Revocation of California Charity Registration and Assessment of Penalties Agaist: FOOD FOR THE POOR (Case No. 2018-CT086331)

I, Tracy L. Boak, declare:

I am employed in the County of New York. I am over eighteen (18) years of age and not a party to the above-entitled action. My business address is Perlman & Perlman, LLP, 41 Madison Avenue, Suite 4000, New York, NY 10010.

On **April 10, 2018**, I served by mail the foregoing document(s) described as:

- **APPEAL OF ATTORNEY GENERAL'S CEASE AND DESIST TO FOOD FOR THE POOR, INC.**

to be served on the below party in this action by forwarding a true and correct copy thereof via email addressed to Sonja.Berndt@doj.ca.gov and

by enclosing the original in a sealed envelope to be sent via overnight courier as follows:

Sonja K. Berndt
Deputy Attorney General
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **April 10, 2018**, at New York, NY.