

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel.
DAVE YOST, OHIO
ATTORNEY GENERAL
150 E. Gay St., 23rd Floor
Columbus, Ohio 43215

Plaintiff,

vs.

DRIVEN FOUNDATION 605
N. High St., PMB 181
Columbus, Ohio 43215

ROY HALL
537 Jacob Close
Gahanna, Ohio 43230,

JOSSELYN TIMKO
5420 Cameron Ellis Dr. #105
Westerville, Ohio 43081,

And

SONYA EDWARDS
1175 Park Drive
Gahanna, OH 43230.

Defendants.

CASE NO:

JUDGE:

ASSURANCE OF DISCONTINUANCE

Pursuant to the authority granted in the Ohio Charitable Organizations Act, R.C. 1716.01 *et seq.*, specifically, R.C. 1716.16(C), and the Ohio Charitable Trust Act, R.C. 109.23 *et seq.*, specifically, R.C. 109.24(E), Ohio Attorney General Mike DeWine (hereinafter the "Attorney General") accepts this Agreement from Driven Foundation ("Driven"), Roy Hall ("Hall"), Josselyn Timko ("Timko"), and Sonya Edwards ("Edwards") (collectively "Defendants"). The

Attorney General and Defendants, as parties to this Agreement, acknowledge and agree that it is in their best interest and consistent with the best interests of the people of the State of Ohio to resolve the issues between them in the manner set forth herein. As part of this Agreement, the Attorney General and Defendants stipulate as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to R.C. Chapter 1716, R.C. 109.23 *et seq.*, the rules adopted thereunder, and the Attorney General's common law authority to enforce charitable trusts. This Court has jurisdiction over the parties. Venue is proper in this Court.

II. FACTS

2. Driven lists its business address as 605 N. High St. PMB 181, Columbus, Ohio 43215.
3. Driven was incorporated as an Ohio nonprofit corporation on or about March 9, 2009, as the Roy Hall Driven Foundation, but changed its name on or about July 12, 2010, to its current name, Driven Foundation.
4. Hall is currently and has been a member of Driven's board of directors ("Board") and its president since its incorporation in Ohio.
5. Timko is Driven's community outreach director and has worked with Driven since at least December 2015.
6. Edwards is currently and has been a member of the Board since at least December 2015.
7. Driven's articles of incorporation state that Driven "is organized exclusively for charitable, religious, educational, and scientific purposes[.]"

8. Driven's articles of incorporation further state that "[n]o part of the net earnings of the organization shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and make payments and distributions in furtherance of the purposes set for in the purposes clause hereof."
9. Driven's 2015 Form 990 states that Driven's mission is to provide "a continuum of support services along with educational and fitness programming to families and youth throughout Central Ohio and surrounding counties."
10. At all relevant times, Hall, Timko and Edwards had access to Driven's financial assets, including but not limited to debit and/or credit cards linked to Driven's bank accounts.
11. From December 2015 through May 2018, Driven paid the balances on a Capital One credit card account ("Capital One Card") with account number ending in 5999.
12. From January 2016 through May 2018, Driven maintained a bank account at Fifth Third Bank ("5/3 Account") with account number ending in 8818.
13. From December 2015 through May 2018, Timko used the Capital One Card for expenditures unrelated to the charitable purposes of Driven. These expenditures were accounted for by Driven as items of compensation for Timko.
14. From December 2015 through May 2018, Edwards used the Capital One Card for expenditures unrelated to the charitable purposes of Driven. These expenditures were accounted for by Driven as items of compensation for Edwards.

15. From December 2015 through May 2018, Hall the Capital One Card for expenditures unrelated to the charitable purposes of Driven. These expenditures were accounted for by Driven as items of compensation for Hall.
16. From January 2016 through May 2018, and for unspecified reasons, Hall withdrew cash from the 5/3 Account.
17. From January 2016 through May 2018, Hall used a debit card linked to the 5/3 Account for expenditures unrelated to the charitable purposes of Driven. Said expenditures were accounted for by Driven as items of compensation for Hall.
18. From January 2016 through May 2018, funds were withdrawn from the 5/3 Account for vehicle payments on a 2015 Ford F-150 registered to Hall. Said vehicle is commonly used by agents and/or employees of Driven in carrying out its charitable activities and events.
19. From January 2016 through May 2018, Hall, Timko, and Edwards used debit cards linked to the 5/3 Account for expenditures unrelated to the charitable purposes of Driven. Said expenditures were accounted for by Driven as items of compensation for Hall, Timko and Edwards respectively.
20. Hall received cash in exchange for personal autographs when it was unclear whether Hall was appearing on his personal behalf as a private individual or as a representative of Driven. Hall has also made public speaking appearances under circumstances in which it was unclear whether he was appearing on his own behalf as a private individual or as a representative of Driven. Some funds derived from appearances of Hall as a private individual were used for charitable purposes for Driven without properly reflecting the

funds as a donation by Hall to Driven, and there has been commingling of Hall's personal funds with those of Driven without an adequate paper trail for same.

21. Since the time of its incorporation to present, the Board has not held any meetings, voted on any resolutions, authorized any pay, recorded meeting minutes nor otherwise taken any other official action as a board of directors. Driven's Board has been in name only.

III. FINDINGS OF THE ATTORNEY GENERAL

22. The Defendants' charitable trust and solicitation activities in Ohio are the subject of this Agreement. Such activities are described in and regulated by the Ohio Charitable Organizations Act, R.C. 1716.01 *et seq.*, the Ohio Charitable Trust Act, R.C. 109.23 *et seq.*, and the Attorney General's common law authority to enforce charitable trusts.

23. The Attorney General is the party charged with enforcing the Ohio Charitable Organizations Act and the Ohio Charitable Trust Act and has caused an investigation to be conducted by the Charitable Law Section of the Defendants' charitable trust and solicitation activities.

24. Driven is a "charitable organization" as that term is defined in R.C. 1716.01(A) and a "charitable trust" as that term is defined in R.C. 109.23.

25. The funds raised and held by Driven for charitable purposes were subject to a valid "charitable trust" under R.C. 109.23.

26. Hall, Edwards, and Timko, as board members, officers, and/or employees of Driven, had fiduciary duties under R.C. 109.23 *et seq.*, R.C. 1716.17, and the common law.

27. As a result of its investigation, the Attorney General has reason to believe that the Defendants are in violation of the Ohio Charitable Organizations Act, the Ohio Charitable Trust Act, and the common law by violating the following:

- A. R.C. 109.24 and R.C. 1716.17: Hall, Timko and Edwards abused a charitable trust by failing to properly delineate their amount of compensation, specifically through the use of Driven's charitable assets, such as credit cards, for personal benefit in lieu of receiving a specific level of compensation for their services, even if accounted for as items of compensation for these individuals, thereby harming Driven and its beneficiaries and giving the appearance of impropriety. Such actions are also breaches of their fiduciary duties.
- B. R.C. 109.24 and R.C. 1716.17: Hall breached his fiduciary duty to Driven by failing to adequately segregate his personal activities, including speaking engagements as a private individual and/or events in which he was compensated for autographs, from his activities on behalf of and as a representative of Driven.
- C. R.C. 109.24 and R.C. 1716.17: Driven's Board breached its fiduciary duty of reasonable care by failing to keep board meeting minutes. Driven's Board further breached its fiduciary duty of reasonable care and by failing to monitor expenses and failing to make reasonable inquiries.
- D. R.C. 1716.14(A)(12): Defendants operated in violation of and failed to comply with the requirements of Revised Code Chapter 1716.

IV. ASSURANCES

28. Edwards agrees to resign from Driven's Board of Directors effective immediately. Hall agrees that they he will resign as a member of Driven's Board of Directors by filing a written resignation with Driven's president or secretary within 90 days of signing this Agreement.
29. Hall, Edwards and Timko agree to be permanently enjoined from serving on Driven's board of directors. Notwithstanding, each shall be permitted to be employed by and/or volunteer for Driven subject to oversight by the Board.
30. Driven agrees that it shall promptly fill any vacancies in its board of directors and/or official positions within 60 days following the signing of this Agreement.
31. Driven agrees that it shall create and implement internal controls, including but not limited to reimbursement and conflict of interest policies.
32. Driven agrees to hold annual meetings in accordance with its bylaws, to hold no less than four board meetings per year, and to keep meeting minutes in accordance with its bylaws and R.C. 1702.15.
33. Hall, Edwards, and Timko, shall not, for a minimum of five years after signing this Agreement, possess Driven debit cards, credit cards or check books, or otherwise have any access to Driven's bank or credit card accounts or spend funds on behalf of Driven without specific, prior written authorization from Driven's board of directors, or other substantially similar method of approval as authorized in writing by Driven's board of directors.

34. Driven agrees that Timko and Edwards currently are not and will not be listed as signers on any of Driven's bank or credit card accounts, and that any checks written or charges made by Hall will be reviewed and approved by Driven's Vice President or other officer as authorized in writing by Driven's board of directors. Hall agrees that he will not write any checks payable to himself, or make cash withdrawals from any of Driven's accounts.
35. Driven agrees that the Board shall formally evaluate, in writing, compensation for Hall, Edwards, Timko and all other board members, officers and employees, and authorize only such pay as can be determined by the board of directors to be reasonable compensation for services rendered to Driven; such compensation to be reevaluated and approved annually.
36. Driven agrees to limit the maximum annual salary for Hall and Timko in the following way:
- A. Driven shall not pay Hall, for a minimum period of four years beginning with calendar year 2020, in excess of \$75,000 per year.
 - B. Driven shall not pay Timko, for a minimum of four years beginning with calendar year 2020, in excess of \$40,000 per year.
37. Driven agrees that it shall require all board members, officers and employees who receive compensation and/or benefits from Driven to submit a time sheet no less than once per month, which Driven shall keep for a minimum of three years.
38. Driven agrees that it shall keep an accurate and complete record of all expenses for a minimum of three years following each expense, including in such record the name of

the person making the expense and the purpose of the expense as it relates to Driven's stated charitable purpose.

39. Hall agrees that all payments on the 2015 Ford F-150 currently in his name, and owing beginning with the July 2019 payment, will be paid by Hall personally from his own funds, and that upon payoff, title to the vehicle will be transferred to Driven.
40. Hall agrees to pay a civil penalty in the amount of \$5,000.00 (five thousand dollars and zero cents).
41. Timko agrees to pay a civil penalty in the amount of \$1,500.00 (one thousand five hundred dollars and zero cents).
42. Edwards agrees to pay a civil penalty in the amount of \$500.00 (five hundred dollars and zero cents).
43. Driven agrees to pay a civil penalty in the amount of \$2,500 (two thousand five hundred dollars and zero cents).
44. All civil penalties shall be paid by cashier's check or money order payable to "Treasurer, State of Ohio" and mailed to:

Ohio Attorney General
Charitable Law Section
Attn: Chief Accountant
150 E. Gay St., 23rd Floor
Columbus, Ohio 43215

All civil penalties must be paid according to the payment schedule identified in Paragraph
The Attorney General shall deposit the Civil Fine into the charitable law fund established under
R.C. 109.32.

45. The payment schedule for all civil penalties shall be as follows:

A. Hall agrees to the following payment schedule:

- (i). One payment of \$1,000 (one thousand dollars and no cents) due on or before the 15th day of the month following the signing of this Agreement.
- (ii). Thereafter, monthly payments in the amount of \$250 (two hundred fifty dollars and no cents) on or before the 15th day of each month until the balance is paid in full.

B. Timko agrees to the following payment schedule:

- (i). One payment of \$500.00 (five hundred dollars and no cents) due on or before the 15th day of the month following the signing of this Agreement.
- (ii). Thereafter, monthly payments in the amount of \$200 (two hundred dollars and no cents) on or before the 15th day of each month until the balance is paid in full.

C. Edwards agrees to the following payment schedule:

- (i). One payment of \$500.00 (five hundred dollars and no cents) due on or before the 15th day of the month following the signing of this Agreement.

D. Driven agrees to the following payment schedule:

- (i). One payment of \$1,000 (one thousand dollars and no cents) due on or before the 15th day of the month following the signing of this Agreement.
- (ii). Thereafter, monthly payments in the amount of \$250 (two hundred fifty dollars and no cents) on or before the 15th day of each month until the balance is paid in full.

46. Any party that is assessed a civil penalty under this Agreement may pay the balance of the civil penalty via early lump sum payment(s); however, lump sum payment(s) will not be credited towards monthly installment as described in the party's payment schedule except towards the installment immediately following the lump sum payment(s).

47. If any party that is assessed a civil penalty under this Agreement fails to comply with any of the payment requirements in this Agreement, that party agrees that it is in breach of this agreement and the Attorney General shall certify any and all unpaid balances to the Ohio Attorney General's Collections Enforcement Section ("Collections") for collection. In the event of certification, the breaching party agrees to pay additional collection costs assessed by Collections in accordance with R.C. 131.02(A) equal to the amounts charged pursuant to R.C. 109.08 and 109.081 for the cost of certification and

the use of Special Counsel for the collection of the debt. Interest shall also be charged upon certification in accordance with R.C. 131.02(D). Nothing in this paragraph should be construed to limit the Attorney General's discretion to pursue any other available remedy.

48. Driven's board members shall attend board governance training presented by the Ohio Attorney General's Office Charitable Law Section. Board governance training shall be completed within 90 days of the date of this Agreement. Attendance is free and the training can be completed via a monthly webinar offered by the Office: <http://www.ohioattorneygeneral.gov/Training-and-Education/Nonprofit-Board-Governance-Webinars.aspx>.

49. Defendants agree that this Agreement is made in lieu of prosecution of a civil action based upon the findings set forth herein.

50. Defendants agree that any evidence of a violation of this Agreement shall be *prima facie* evidence of a violation of Chapter 1716 of the Ohio Revised Code and any rule adopted thereunder in any subsequent action or proceeding brought by the Attorney General, as provided in R.C. §1716.16(C).

51. Defendants agree that any matter closed by the acceptance of this Agreement may be reopened at any time by the Attorney General for further proceedings in the public interest based upon any violation of the terms of this Agreement or upon the discovery of evidence not known by the parties hereto at the time of signing.

V. RETENTION OF JURISDICTION

52. This Court shall retain jurisdiction of this action for the purpose of enforcing this Agreement.

VI. SAVINGS CLAUSE

53. In the event that any provision of this Agreement is deemed to be invalid or unenforceable, the remaining provisions will remain intact and enforceable as stated, provided that doing so provides the same or similar consideration to the parties.

VII. ACKNOWLEDGEMENTS

54. Defendants acknowledge that they have been given ample opportunity to be advised by legal counsel as to the meaning and effect of each provision of this Agreement and that they have elected of their own free will and accord to enter into this Agreement.

55. This Agreement may be signed in counterparts which, when taken together, will constitute a single integrated document. Signed copies of the Agreement sent by fax or email will be considered to be the same as original signed versions.

56. The Attorney General and Defendants hereby agree that this Agreement is binding upon the successors and assignees of all parties hereto and that this Agreement constitutes the entire agreement and understanding of the parties.

CERTIFICATION

Each individual signing below represents that he or she is authorized and directed to sign this Agreement on behalf of the party represented and further represents that he or she has the requisite authority to bind the party on behalf of whom they are signing.

WHEREFORE, the undersigned have executed this Agreement on this 30 day of JULY, 2019.

DRIVEN FOUNDATION:

ROY HALL, in his personal capacity:

Roy Hall
Signature

Roy Hall
Signature

ROY HALL
Printed Name

PRESIDENT
Title

JOSSELYN TIMKO, in her personal capacity

Joselyn Timko
Signature

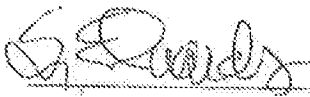
SONYA EDWARDS, in her personal capacity

Signature

JOSSELYN TIMKO, in her personal
capacity:

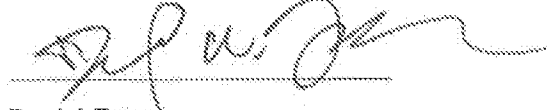
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SONYA EDWARDS, in her personal
capacity:


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Signature

DAVE YOST

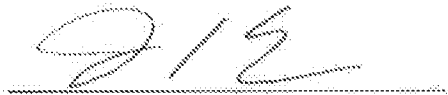
OHIO ATTORNEY GENERAL



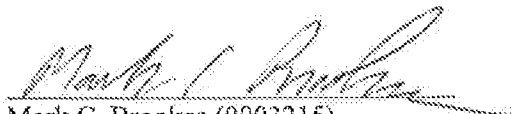
Daniel Fausey,
Section Chief
Charitable Law

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