

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

FEDERAL TRADE COMMISSION, et ano.,  Plaintiffs,  v.  DISABLED POLICE AND SHERIFFS FOUNDATION, INC., et ano.,  Defendants.	Case No: 4:19-cv-00667
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The Plaintiffs and the Defendants in this case have agreed to settle this matter pursuant to the terms set forth in the proposed Stipulated Judgment annexed hereto as Attachment 1. The Stipulated Judgment, if entered by the Court, would resolve the Plaintiffs' claims as to all of the Defendants.

Respectfully submitted,

Dated: March 27, 2019

FEDERAL TRADE COMMISSION

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FEDERAL TRADE COMMISSION

STATE OF MISSOURI

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

FEDERAL TRADE COMMISSION and  
STATE OF MISSOURI, ex rel. Attorney  
General Eric Schmitt,



5. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.

6. Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.

7. Defendants waive and release any claims that they may have against the Federal Trade Commission, the Missouri Attorney General, and all of their employees, agents, or representatives, that relate to this action.

8. Entry of this Order is in the public interest.

### **DEFINITIONS**

For purposes of this Order, the following definitions apply:

1. “Defendants” means the individual defendant David Kenik and the corporate defendant, DPSF

indirectly, the well-being of the public at large or any number of Persons, whether such well-being is in general or limited to certain activities, endeavors, or projects.

5. “Donor” or “Consumer” means any Person solicited to make a Charitable Contribution.

6. “Fundraiser” means any Person who is retained under contract or otherwise compensated by or on behalf of a Nonprofit Organization primarily for the purpose of soliciting Charitable Contributions.

7. “Fundraising” means a plan, program, or campaign that is conducted to induce Charitable Contributions by mail, telephone, electronic mail, social media, or any other means.

8. “Nonprofit Organization” means any Person that is, or is represented to be, a nonprofit entity, or that has, or is represented to have, a charitable purpose.

9. “Person” means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

10. “Telemarketing” means any plan, program, or campaign that is conducted to induce the purchase of goods or services or Charitable Contributions by use of one or more telephones, and which involves more than one interstate telephone call, whether or not covered by the Telemarketing Sales Rule.





concert or participation with them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined, in connection with Telemarketing, from violating, or assisting others in violating, any provision of the TSR, 16 C.F.R. Part 310, as currently promulgated and appended hereto as Attachment A, or as it may be amended.

#### **IV. COMPLIANCE WITH STATE LAW**

IT IS FURTHER ORDERED that Defendants, Defendants' officers, directors, agents, independent contractors, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from violating, or assisting others in violating, any provision of the Missouri Merchandising Practices Act, Chapter 407, RSMo.

#### **V. COOPERATION**

IT IS FURTHER ORDERED that Defendants must cooperate fully with the Commission in the enforcement of this Order. ~~IT IS FURTHER ORDERED that Defendants must cooperate fully with the Commission in the enforcement of this Order.~~







2. The Financial Statement of Corporate Defendant DPSF, Inc., signed by David Kenik on July 6, 2018, including attachments, and additional documents provided on July 11, August 13 and August 17, 2018.

E. The suspension of the judgment will be lifted as to either Defendant if, upon motion by either Plaintiff, the Court finds that such Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

F. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Defendant in the amount specified above (which the Parties stipulate only for purposes of this Order represents the consumer injury alleged in the Complaint), less any payment previously made, plus interest computed from the date of entry of this Order. Payments on the judgment shall be made to the Missouri Attorney General as set forth in Section VIII.E, below.

G. The suspension of the judgment will be lifted as to Kenik if, upon motion by Plaintiff State of Missouri, the Court finds that Kenik has violated any provision of Sections I - V, above. Upon such a finding, a judgment in the amount set forth in ~~Sub~~section VII.A, above, less any prior payments by Defendant Kenik or DPSF, shall be

A. Defendants relinquish their legal right, title, and interest in all assets transferred pursuant to Order and any note the return on assets.

B. The facts alleged in the Complaint taken as true, without further proof, in any subsequent civil litigation brought on behalf of either of the Plaintiffs, including in a proceeding to enforce their right to payment or monetary judgment pursuant to Order, such as a reorganization complaint in any bankruptcy case;

C.

D. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers), which Defendants previously submitted to the IRS, may be used for collecting and reporting delinquent amounts due out of this Order, in accordance with 31 U.S.C. § 6402(a)(2)(B).

E. All payments shall be sent to:

Office of the Missouri Attorney General  
Financial Services Section  
ATTN: Collections Specialist  
P.O. Box 899  
Jefferson City, MO 65102-0899

F. Following approval by this Court, all funds paid to the Missouri Attorney General pursuant to this Order shall be distributed pursuant to the doctrine of cy pres to charitable organizations whose charitable purposes and missions are substantially similar to the purposes for which DPSF solicited funds. The State of Missouri shall submit a motion and proposed order recommending one or more cy pres recipients and the amount(s) to be paid to such recipients within 30 days of entry of this Order. Defendants shall have no right to challenge any recommendations regarding monetary distributions.

#### **IX. ORDER ACKNOWLEDGMENTS**

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within seven days of entry of this Order, must submit to Plaintiff Federal Trade Commission an acknowledgment of receipt of this Order sworn under penalty of perjury;

B. For three years after entry of this Order, Kenik, for any business for which he, individually or collectively with DPSF, is the majority owner, or which he controls directly or indirectly, and DPSF must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial

responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled “Compliance Reporting.” Delivery must occur within seven days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities; and

C. From each individual or entity to which Defendants delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

## **X. COMPLIANCE REPORTING TO THE FEDERAL TRADE COMMISSION**

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Plaintiffs may use to communicate with Defendant; (b) identify all of that Defendant’s businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant

(which Individual Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Kenik must (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all his business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and (c) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

3. For any activity with any Nonprofit Organization, Kenik must (a) identify each such Nonprofit Organization by all of its names, telephone number[s], and physical, postal, email, and Internet addresses; (b) describe in detail his involvement in each such Nonprofit Organization, including any title, role, responsibilities, participation, authority, and control; (c) describe in detail whether and how Kenik is in compliance with each Section of this Order; and (d) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 10 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of DPSF or any entity that Kenik has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, Kenik must report any change in: (a) name, including aliases or fictitious names, or residence address; or (b) title or role in any business activity, including any business for which he performs services, whether as an employee or otherwise, and any entity in which he has any ownership interest or controls, directly or indirectly, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the



foregoing is true and correct. Executed on [date] at [location]” and supplying the date, location, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:

Associate Director for Enforcement,  
Bureau of Consumer Protection,  
Federal Trade Commission,





**STIPULATED AND AGREED:**

**PLAINTIFF FEDERAL TRADE COMMISSION**

/s/ Tracy S. Thorleifson  
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Date: March 27, 2019

**PLAINTIFF STATE OF MISSOURI**

**ERIC SCHMITT**  
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Date: March 27, 2019

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Date: //

By: DAVID enik, Executive Director

Date:

**DEFENDANT DAVID NIK**

David Kenik

Date:

**ATTACHMENT A**

**TELEMARKETING SALES RULE**



































