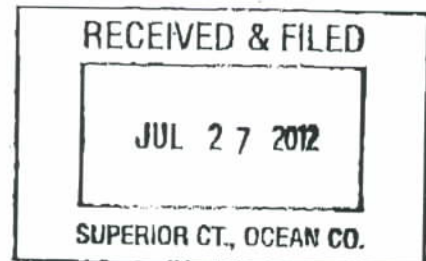


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ATTORNEY GENERAL OF NEW JERSEY  
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Attorney for Plaintiffs

By: Anna M. Lascursain  
Deputy Attorney General



SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: GENERAL  
EQUITY  
OCEAN COUNTY  
DOCKET NO. C 164-12

JEFFREY S. CHIESA,  
Attorney General of  
New Jersey, and

Plaintiff,

v.

MARK ANTHONY NIEMCZYK and THOMAS  
SCALGIONE d/b/a as the 9/11 GROUND  
ZERO TRUCK.

Defendants.

CIVIL ACTION  
VERIFIED COMPLAINT

Plaintiffs Jeffrey S. Chiesa, Attorney General of the State of New Jersey ("Attorney General"), with offices located at 25 Market Street, PO Box 112, Trenton, New Jersey, by way of the Verified Complaint states:

PRELIMINARY STATEMENT

The Defendants Mark Anthony Niemczyk and Thomas J. Scalgione use the terrorist attack on the World Trade Center on September

11, 2001, to promote an unlawful scheme to bilk the public. Niemczyk and Scalgione solicit charitable donations at a number of public events. They present themselves at these events as representatives of the victims, and the families of victims, of the 9/11 attack. In soliciting donations, Niemczyk and Scalgione represent that the collected funds will be used to benefit the victims and the families of victims of the 9/11 attack. Indeed, Niemczyk and Scalgione use as a prop for these solicitation efforts a red Ford F-150 truck emblazoned with the names of first responders who perished at the World Trade Center.

Niemczyk and Scalgione neither represent nor have any meaningful association with any of the victims of the 9/11 attack. The donations they collect are not used to benefit any victims but instead are diverted by Niemczyk and Scalgione for their own personal use.

The State of New Jersey has enacted the Charitable Registration and Investigation Act, N.J.S.A. 52:17A-18, et seq. (the "Charities Act") as a comprehensive statutory program that ensures the integrity of solicitations of charitable donations. Niemczyk and Scalgione have utterly failed to comply with the most basic requirements of the act. They have used untruthful statements in soliciting charitable contributions; they have failed to register as a charitable organization; and they have failed to maintain and to provide to the Attorney General complete and accurate records of their charitable solicitation activities.

The Charities Act grants the Attorney General broad powers to enforce the act and to regulate the solicitation of charitable contributions. In accordance with those powers, the Attorney General seeks in this action, among other things, to prevent Niemczyk and Scalgione from continuing their unlawful and deceptive solicitation of charitable contributions.

#### JURISDICTION AND VENUE

1. As set forth more fully below, the Attorney brings this civil action against Niemczyk and Scalgione pursuant to the Charities Act, N.J.S.A. 45:17A-18 et seq., and the administrative regulations promulgated thereunder, N.J.A.C. 13:48-1 et seq. ("Charities Regulations"), for violations of: (1) N.J.S.A. 45:17A-23(a) (failing to file registration statement) and N.J.A.C. 13:48-13.1 (unregistered fund raising practice); (2) N.J.S.A. 45:17A-23(b) (soliciting contributions prior to registration statement review); (3) N.J.S.A. 45:17A-24(a) (failing to file a long form registration statement); (4) N.J.S.A. 45:17A-31(a) (failing to keep accurate records); (5) N.J.S.A. 45:17A-32(15)(b) (failing to provide truthful statements about their fund-raising) and N.J.A.C. 13:48-7 (failing to comply with fund raising requirements generally). Jurisdiction is proper over defendants pursuant to N.J.S.A. 45:17A-39, because Niemczyk and Scalgione have engaged in activities regulated by the Charities Act and Charities Regulations in the State of New Jersey.

2. Venue is proper pursuant to R. 4:3-2 because the one of the defendants, Scalgione, resides in Ocean County.

ALLEGATIONS COMMON TO ALL COUNTS

3. The Attorney General is charged with enforcing the laws of the State of New Jersey pursuant to N.J.S.A. 52:17A-4(h) and is expressly empowered to enforce the provisions of the Charities Act.

4. The defendant Mark Anthony Niemczyk resides at [REDACTED] [REDACTED] Tinton Falls, Monmouth County, New Jersey.

5. The defendant Thomas J. Scalgione resides at [REDACTED] [REDACTED] Manahawkin, Ocean County, New Jersey.

6. Niemczyk and Scalgione have engaged, and continue to engage, in an unlawful and fraudulent scheme to swindle money from members of the public. Niemczyk and Scalgione solicit funds from the public claiming the collected donations are charitable contributions that will be used to benefit the survivors, and the families of survivors, of the September 11, 2001 attack on the World Trade Center. Niemczyk and Scalgione, however, use the funds for their own personal benefit. Moreover, in soliciting the funds, Niemczyk and Scalgione make a number of untruthful statements and engage in a variety of deceptive misconduct.

7. Niemczyk and Scalgione attend first responder, military, veterans and patriotic events throughout the State of New Jersey.



8. At these events, Niemczyk and Scalgione collect cash, from members of the public, in a large empty water jug.

9. Niemczyk and Scalgione also sell tee shirts bearing logos resembling the official emblems of the New York City Police Department, the Port Authority Police Department and the Fire Department of New York. The logos are used without the permission of the agencies they represent.

10. Niemczyk and Scalgione state to members of the public that the funds they collect will be used exclusively to benefit survivors, and the families of survivors, of the 9/11 attack. Such statements are false in that Niemczyk and Scalgione have not used the funds for the exclusive benefit of 9/11 survivors and their families.

11. On the contrary, the donations that Niemczyk and Scalgione have collected are used for the personal benefit of Niemczyk and Scalgione. Among other things, Niemczyk and Scalgione deposit all such collections in a bank account in the name of, and maintained by, Niemczyk. The account into which Niemczyk and Scalgione deposit the collected donations is the personal account of Niemczyk that Niemczyk uses for his personal expenses. The collected donations are commingled in the account with Niemczyk's personal funds, such as Niemczyk's social security benefits and Niemczyk's winnings from gambling.

12. Niemczyk and Scalgione appear at events with a red Ford F-150 truck emblazoned with the names of police officers, firefighters, and other first responders who perished at the

World Trade Center. Niemczyk and Scalgione refer to their vehicle as the "9/11 Truck" or the "9/11 Ground Zero Truck."

13. The 9/11 Truck is registered to, and owned by, Niemczyk.

14. Niemczyk and Scalgione use the 9/11 Truck to suggest to members of the public that they are associated with and represent victims of the 9/11 attack. Such a suggestion is false in that Niemczyk and Scalgione have no meaningful relationship to any 9/11 victim.

15. Niemczyk and Scalgione also use the 9/11 Truck to foster the impression that the donations they collect will benefit 9/11 victims.

16. Niemczyk and Scalgione represent to members of the public that they are soliciting on behalf of the "Cain Foundation," and that the foundation enjoys tax-exempt status under Section 501(c)(3) of the federal Internal Revenue Code.

17. Niemczyk's and Scalgione's representations regarding the Cain Foundation are false in that, among other things, the Cain Foundation does not exist.

18. In order to encourage donations, Niemczyk and Scalgione represent to members of the public that they are associated with Rosemary Cain and her foundation, the "Cain Foundation." Mrs. Cain is the mother of George Cain, a firefighter who died on 9/11 at the World Trade Center site.

19. Niemczyk's and Scalgione's representations regarding Mrs. Cain are false in that there is no association between Mrs.

Cain and Niemczyk and Scalgione. Mrs. Cain has neither asked nor authorized Niemczyk and Scalgione to solicit donations on her son's behalf, on her behalf, or on behalf of the non-existent Cain Foundation.

20. In order to encourage donations, Niemczyk represents to members of the public that he was a Navy SEAL and is a graduate of the Naval Academy at Annapolis.

21. Such statements are false in that Niemczyk was never a Navy SEAL and never attended, much less graduated from, the Naval Academy.

22. On May 14, 2012, the Attorney General issued subpoenas to Niemczyk and Scalgione requiring them to produce records of their charitable fund raising activities in this State.

23. Niemczyk and Scalgione failed to provide to the Attorney General complete and accurate records of their charitable fund raising activities. Among other things, Niemczyk and Scalgione failed to provide accurate and complete records of the funds they collected and the disposition of those funds.

24. Although Niemczyk and Scalgione have engaged in repeated and widespread solicitations for charitable contributions within the State of New Jersey, prior to soliciting neither Niemczyk nor Scalgione filed registration statements as required under the provisions of N.J.S.A. 45:17A-23.

COUNT I

USE OF UNTRUTHFUL STATEMENTS IN SOLICITING  
CHARITABLE CONTRIBUTIONS IN VIOLATION OF  
N.J.S.A. 45:17A-32

25. The allegations of paragraphs 1 through 24 of this Verified Complaint are repeated and realleged as if set forth at length herein.

26. N.J.S.A. 45:17A-32 provides that any statement, whether oral or written, made by a person in the course of soliciting charitable donations must be truthful.

27. Each of Niemczyk and Scalgione violated N.J.S.A. 45:17A-32 in that, during the course of soliciting charitable contributions, they each made false statements for the purpose of inducing members of the public to make donations. Among other things:

a. Niemczyk and Scalgione falsely stated that the donations they collected would be used exclusively for the benefit of the victims, or the family of victims, of the 9/11 attack. On the contrary, the funds they collected were used for their personal benefit.

b. Niemczyk and Scalgione falsely represented to member of the public that they are soliciting on behalf of the "Cain Foundation," and that the foundation enjoys tax-exempt status under Section 501(c)(3) of the federal Internal Revenue Code. The Cain Foundation does not exist.

c. In order to encourage donations, Niemczyk and Scalgione falsely represented to members of the public that they



are associated with Rosemary Cain and her foundation, the "Cain Foundation." Niemczyk and Scalgione have no association whatsoever with Rosemary Cain and the "Cain Foundation" does not exist.

d. Niemczyk and Scalgione used the 9/11 Truck during their solicitations for charitable donations to create the false impression that they are associated with and represent victims of the 9/11 attack, and that the donations they collect will benefit 9/11 victims. Such a suggestion is false in that Niemczyk and Scalgione have no meaningful relationship to any 9/11 victim, and the funds they collect are used for their personal benefit, not for the benefit of 9/11 victims.

e. In order to encourage donations, Niemczyk falsely stated to members of the public that he was a Navy SEAL and is a graduate of the Naval Academy at Annapolis. Niemczyk was never a Navy SEAL and never attended, much less graduated from, the Naval Academy.

28. Each false statement that either of Niemczyk and Scalgione made during the course of soliciting charitable donations constitutes a separate violation of the Charities Act and is cause for the imposition of a separate and additional civil penalty.

COUNT II

FAILURE TO FILE A REGISTRATION STATEMENT IN  
VIOLATION OF N.J.S.A. 45:17A-23.

29. The allegations of paragraphs 1 through 24 of this Verified Complaint are repeated and realleged as if set forth at length herein.

30. N.J.S.A. 45:17A-20 provides that, for purposes of the Charities Act, a "charitable organization" includes any person who "holds himself out to be, established for any benevolent, philanthropic, humane, social welfare, public health, or other eleemosynary purpose, or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety, or any person who in any manner employs a charitable appeal as the basis of any solicitation, or an appeal which has a tendency to suggest there is a charitable purpose to any such solicitation."

31. Each of Niemczyk and Scalgione is a charitable organization within the meaning of the Charities Act in that each of them held himself out as collecting charitable donations for the benefit of law enforcement personnel, firefighters and public safety personnel who were harmed by the 9/11 attack, and for the benefit of the families of such personnel.

32. N.J.S.A. 45:17A-23 provides that it is unlawful for any charitable organization to solicit contributions without filing with the Attorney General the registration that is required under the act.

33. Each of Niemczyk and Scalgione violated N.J.S.A. 45:17A-23 and N.J.A.C. 13:48-13.1 in that each of them solicited charitable contributions from members of the public prior to filing a registration statement as required by the Charities Act.

34. Each solicitation that either of Niemczyk and Scalgione made while they had not filed the registration statement required by the act constitutes a separate violation of the Charities Act and is cause for the imposition of a separate and additional civil penalty.

#### COUNT III

FAILURE OF THE DEFENDANTS TO MAINTAIN AND PROVIDE TO THE ATTORNEY GENERAL COMPLETE AND ACCURATE RECORDS IN VIOLATION OF N.J.S.A. 45:17A-31(a) AND N.J.A.C. 13:48-12.2

35. The allegations of paragraphs 1 through 24 of this Verified Complaint are repeated and realleged as if set forth at length herein.

36. On May 14, 2012, the Attorney General issued subpoenas to each of Niemczyk and Scalgione requiring them to produce records of his charitable fund raising activities in this State and to appear for an investigative deposition

37. N.J.S.A. 45:17A-31 requires every person who is a charitable fund raiser to maintain complete and accurate records of fund raising activities in this State.

38. In response to the Attorney General's subpoena, Niemczyk provided some records, but failed to provide complete and accurate records of his charitable fund raising activities in the State of New Jersey. Scalgione provided limited records relating to charitable organizations he has contacted in the past.

39. Each of Niemczyk and Scalgione admitted, during the course of the investigative deposition, that he did not maintain complete and accurate records of his charitable fund raising activities in the State of New Jersey.

40. The failure of Niemczyk and Scalgione to maintain complete and accurate records of their fund raising activities in this State constitutes a violation of N.J.S.A. 45:17A-31.

41. N.J.S.A. 45:17A-31 further provides that every person who is a charitable fund raiser must provide to the Attorney General, upon demand, complete and accurate records of his or her fund raising activities in this State.

42. The failure of each of Niemczyk and Scalgione to provide to Attorney General with complete and accurate records of his fund raising activities after the Attorney General issued a subpoena for such records constitutes a further violation of N.J.S.A. 45:17A-31.

43. N.J.A.C. 13:48-12.2 imposes a duty upon all charitable fund raisers to cooperate fully with the Attorney General during investigative inquiries.



44. The failure of Niemczyk and Scalgione to provide to the Attorney General complete and accurate records of their fund raising activities after the Attorney General issued a subpoena for such records constitutes a violation of N.J.A.C. 13:48-12.2.

PRAYER FOR RELIEF

WHEREFORE, Attorney General petitions this Court for an Order and Judgment:

a. Finding that defendants have engaged in unlawful acts and practices in this complaint.

b. Permanently enjoining defendants, individually, and through any corporation, business entity, stockholder, employee, officer, director, principal, trustee, and/or any other person who is directly or indirectly under their control or direction, from violating the Charities Act and Charities Regulations;

c. Permanently enjoining defendants, individually, and by or through any corporation, business entity, stockholder, employee, officer, director, principal, trustee, and/or any other person, who is directly or indirectly under Niemczyk's or Scalgione's control or direction, from directly or indirectly acting as a charitable organization, or holding itself out as a charitable organization, independent paid fund raiser, or solicitor, or holding itself out as having a charitable purpose, from or within the State of New Jersey;

d. Permanently enjoining Niemczyk and Scalgione, individually and by or through any corporation, business entity, stockholder, employee, officer, director, principal, trustee, and/or any other person, who is directly or indirectly under their control or direction, from directly or indirectly acting on behalf of any 9/11 families, police officers, firefighters, first responders as a charitable organization, or holding themselves out as acting on behalf of a charitable organization, independent paid fund raiser, or solicitor, for a charitable purpose, and from acting as employees, officers, directors, principals, trustees, owners, shareholders, founders, managers, agents, servants, volunteers, representatives, independent contractors, independent paid fund raisers, or solicitors of any fund raising organization which solicits charitable contributions from or within the State of New Jersey;

e. Permanently enjoining Niemczyk and Scalgione, by or through any corporation, business entity, stockholder, employee, officer, director, principal, trustee, and/or any other person who is directly or indirectly under their control or direction, from directly or indirectly destroying, altering, concealing, transferring, disposing or removing in any manner, directly or indirectly, any books, records, documents, information stored in electronic format, including on computers or electronic devices, maintained in any form, within their knowledge, possession, direction, or control, relating in any way to the business affairs of The 9/11 Truck.

f. Directing Niemczyk and Scalgione to restore to any affected person any moneys and real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, pursuant to N.J.S.A. 45:17A-33;

g. Providing that any person with actual or constructive notice of this Order, or any final order or judgment who aids, abets, counsels, commands or instructs any person or entity to perform any prohibited act shall be subject to punishment;

h. Assessing joint and several liability for civil monetary penalties against Niemczyk and Scalgione for each separate act of violating the Charities Act in accordance with N.J.S.A. 45:17A-33(d); Assessing attorney's fees and costs.

i. Directing Niemczyk and Scalgione to disgorge all funds gained through violations of the Charities Act;

j. Seizing and impounding the 9/11 Truck, license plate GZT-911, to prevent further misrepresentations and solicitations on behalf of police officers, firefighters, first responders and 9/11 families by the attendance of the vehicle at military, patriotic, veteran's or law enforcement events;

k. Seizing and impounding the following items located at the personal residences located at 70 Pine Street Tinton Falls, NJ and 281 Bulkhead, Manahawkin: all documents, files, records, computers, keyboards, monitors, printers, and any other tangible item relating to the business affairs of 9/11 Truck and any financial records relation to charitable solicitations by

made by Niemczyk and Scalgione on behalf of police officers, firefighters, first responders and 9/11 families permitting Plaintiffs to retain such documents, files, records, computers, keyboard, monitors, printers, and any other tangible item until such items are copied plaintiff. Plaintiff will then provide Niemczyk and Scalgione copies all items duplicated;

1. Freezing the assets of Niemczyk and Scalgione, in which either or both of them hold a legal or equitable interest, including all real and personal property, to ensure that such assets not be disposed of, transferred, dissipated, encumbered, or withdrawn, removed, or sold, with the exception of disability awards, and reasonable living expenses allowance as determined by the Court. These assets shall include, but not be limited to, accounts in any and all financial institutions, brokerage, trading, and retirement accounts, real property in or out of state, and personal property; and

m. Granting such other relief as the interests of justice may require.

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY

By: 

Anna M. Lascorain  
Deputy Attorney General

Dated: July 27 2012



CERTIFICATION

1. The undersigned hereby certifies that, pursuant to Rule 4:5-1, that the matter in controversy is not the subject of any pending contemplated actions.

2. The undersigned further certifies that confidential personal identifiers have been redacted from documents submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

3. The trial counsel on this matter will be Deputy Attorney General Anna M. Lascurain.

4. I certify that the foregoing statements made by me are true. I am aware that if any of those statements are willfully false, I am subject to punishment.

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY

By: \_\_\_\_\_

Anna M. Lascurain  
Deputy Attorney General

Dated: *July 27, 2012*

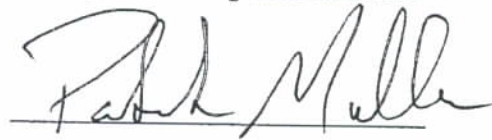
VERIFICATION

I, Patrick Mullan, being of full age hereby certifies as follows:

1. I am an Investigator with the New Jersey Division of Consumer Affairs ("Division") in the Office of Consumer Protection.

2. I have read the foregoing Verified Complaint and on my own personal knowledge and review of documents in possession of the Division, I know that the facts set forth herein are true and accurate and they are incorporated in this certification by reference, except for those alleged by information and belief.

3. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

A handwritten signature in black ink, appearing to read "Patrick Mullan", written over a horizontal line.

Patrick Mullan

Date:

7/27/12