

**BEFORE THE ATTORNEY GENERAL OF WEST VIRGINIA
STATE CAPITOL
CHARLESTON, WEST VIRGINIA**

IN THE MATTER OF:

**HEARTS 2 HEROES, a West Virginia partnership
d/b/a Active Duty Support Services**

and

**CHRISTOPHER ENGLE, individually and as a partner of
Hearts 2 Heroes,**

and

**KAYLA ENGLE, individually and as a partner of
Hearts 2 Heroes.**

ASSURANCE OF DISCONTINUANCE

The Attorney General of West Virginia ("Attorney General") has been investigating certain acts and practices of Hearts 2 Heroes d/b/a Active Duty Support Services, ("H2H") which may be subject to an order by the Attorney General or by a court of law. In accordance with W. Va. Code § 46A-7-107, H2H, without in any way admitting that any of its prior practices were in violation of the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W. Va. Code § 46A-1-101, *et seq.*, the Solicitation of Charitable Funds Act, W. Va. Code §§ 29-19-1, *et seq.*, or other applicable state and federal laws, has consented to observe the following terms, conditions, and agreements in the future conduct of its business from and after the date of this Assurance of Discontinuance ("Assurance").

BACKGROUND AND APPLICABLE LAW

1. Hearts 2 Heroes d/b/a Active Duty Support Services (“H2H”) is a for-profit organization, operating as a partnership, which was formerly incorporated on June 8, 2015 in West Virginia as Hearts 2 Heroes, Inc. and which was terminated as a corporation on November 1, 2016. Since that date until on or about August 1, 2018, H2H continued to operate as a partnership.

2. The partners of H2H are Christopher Engle and Kayla Engle, aka Kayla D’Angelo, who reside in Berkeley County, West Virginia.

3. All rights and privileges, including to property and interests, liabilities and obligations of the corporation have been transferred to and assumed by the Engles.

4. The West Virginia Secretary of State’s records indicate that H2H’s principal office is located at 108 E. Martin Street, Martinsburg, WV 25401.

5. H2H purportedly solicited money for care packages including items such as hygiene products and snacks, which it claims to ship to soldiers overseas.

6. Since 2015, H2H has solicited donations and gifts in the State of West Virginia, the Commonwealth of Virginia, the Commonwealth of Pennsylvania and the State of Maryland, and has also accepted donations and gifts from persons or businesses located in other states.

7. On November 18, 2015, the West Virginia Secretary of State (“WVSOS”) issued a letter to Christopher Engle, Kayla Engle, and Hearts 2 Heroes informing them that the WVSOS had received information that they may be soliciting contributions from West Virginia citizens for total amounts in excess of the standard of \$25,000.00, required by W. Va. Code § 29-19-5(a) and § 29-19-16.

8. The WVSOS informed Mr. and Mrs. Engle in the November 18, 2015 letter that if they were raising more than \$25,000.00 in a calendar year that they were required to submit to the WVSOS proof of their exemption.

9. Christopher Engle, Kayla Engle, or H2H never registered with the WVSOS as a charitable organization.

10. The Office of the Attorney General of West Virginia received a complaint regarding the activities of H2H in the fall of 2016 alleging that a for-profit company, not registered with the WVSOS as a charitable organization, was aggressively soliciting West Virginia residents for donations to H2H for soldier care packages.

11. H2H hired persons to solicit door-to-door in West Virginia, asking persons to contribute money for care packages to be sent to active duty servicemembers.

12. Some of the solicitation flyers indicated H2H was selling packages, yet the script given to solicitors indicated that they were to say that they were “not out here trying to sell you anything...”

13. As of June 26, 2018, H2H’s website indicated it sent 30,078 care packages.

14. H2H’s website claimed, “Our company relies solely on your help to send CARE PACKAGES overseas to our soldiers who are currently deployed and who are not recieving [sic] any correspondences from family, friends, or anyone state side.”

15. While H2H’s website noted that it was not a “non-profit,” it also stated the company is “devoted to making sure we lift the spirits and the morale of our deployed men and women overseas!”

16. H2H also solicited individuals to “donate” in-kind contributions on the “Contact Us” page of its website.

17. Consumer donors were approached at their doors and were shown different contribution levels and donation options including to which military branch donations would be directed, but once they made a payment, consumer donors generally were not provided any documentation or substantiation that funds were used as promised.

18. Consumer donors were left not knowing how or whether their payments were used as promised; in some cases consumers only found out later through online searches that the company was not what it represented itself to be, or when examining a receipt noted that donations are not tax deductible as they were led to believe.

19. H2H engaged in a pattern and practice of making a variety of misrepresentations to consumers and donors regarding the care packages it purported to provide.

20. H2H sales staff regularly misled consumers regarding the nature of the business, including leading those it solicited to believe that it was a charity, when it was not, or that donations made were tax deductible, when they were not.

21. On information and belief, care packages, if delivered at all, were provided to military bases in the United States, not overseas as represented.

22. Moreover, on information and belief, H2H staff have engaged in other deceptive conduct such as representing to consumers that staff were veterans or volunteers when in fact those staff were not veterans or volunteers.

23. On information and belief, H2H staff would also regularly “skim” cash donations for themselves.

24. On information and belief, many consumers would not have donated funds had they known the true nature of the business, and the donations they gave were made in lieu of providing to legitimate groups.

25. At least Five Hundred Fourteen (514) West Virginia residents gave checks to representatives or agents of H2H as donations toward the care packages for active duty servicemembers, totaling at least \$23,858.50.

26. Many West Virginia residents believed that they were donating to a charity as at least 56 checks (11% of check donations) noted in the memo section the words “charity,” “contribution,” or “donation.”

27. The company solicited on Facebook and a website located at www.activedutysupportservices.com.

28. The amount of cash donations that H2H collected from West Virginia residents toward the care packages for active duty servicemembers is unknown.

29. One June 5, 2018, the Office of the Attorney General of Virginia sent a letter on behalf of itself and the offices of the Attorneys General of Pennsylvania and Maryland, notifying H2H that they had reason to believe that H2H violated state consumer protection and charitable solicitation statutes.

30. On June 28, 2018, the Virginia Attorney General filed a Complaint against H2H in the Circuit Court of Henrico County alleging violations of the Virginia Consumer Protection Act, Virginia Code §§ 59.1-196 through 59.1-207, and the Virginia Solicitation of Contributions law, Virginia Code §§ 57-48 through 57-69.

31. On July 17, 2018, the Pennsylvania Attorney General filed a Complaint against H2H and the Engles in the Commonwealth Court of Pennsylvania alleging violations of Pennsylvania’s Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, no. 202, *as amended*, 10 P.S. §§ 162.1, *et seq.* (“PA Charities Act”) and the Unfair

Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.* (“PA Consumer Protection Law”).

32. On December 20, 2017, the Department of State of Pennsylvania filed an Order to Show Cause charging Christopher Engle, Kayla Engle and H2H with violations of the Charities Act.. After a hearing in which Mr. Engle participated, a final adjudication was issued with findings of fact and conclusions of law which stated that the Engles and H2H violated the Charities Act and utilized unfair or deceptive acts or practices and engaged in fraudulent conduct which created likelihood of confusion or misunderstanding in violation of the Charities Act.

33. The Office of the Attorney General of Maryland is also investigating H2H for possible violations of Maryland’s charitable solicitation and consumer protection laws.

34. The West Virginia Attorney General’s Office opened an investigation into H2H and its possible violations of West Virginia’s charitable solicitation and consumer protection laws.

35. West Virginia’s charitable solicitation act sets forth that the purpose of the Act is “to protect the people of the state of West Virginia by requiring full public disclosure by persons and organizations who solicit funds from the public and the purposes for which such funds are solicited and how they are actually used” and “to prevent deceptive and dishonest statements and conduct in the solicitation and reporting of funds for or in the name of charity.” W. Va. Code § 29-19-1a.

36. A “charitable organization” means a “person who is or holds itself out to be a benevolent, educational, philanthropic, humane, patriotic, religious or eleemosynary organization, or any person who solicits or obtains contributions solicited from the public for charitable purposes, or any person who in any manner employs any appeal for contributions

which may be reasonably interpreted to suggest that any part of those contributions will be used for charitable purposes.” W. Va. Code § 29-19-2(2).

37. Charitable organizations, unless exempt, which intend to solicit contributions or donations in West Virginia, shall file a registration statement with the Secretary of State on a yearly basis. W. Va. Code § 29-19-5(a).

38. Charitable organizations may only solicit funds from the public for charitable purposes and expend funds raised for charitable purposes as stated in its solicitation materials. W. Va. Code § 29-19-8.

39. No person may misrepresent to or mislead anyone to believe that the person on whose behalf the solicitation is being conducted is a charitable organization or that the proceeds will be used for charitable purposes, if such is not the fact. W. Va. Code § 29-19-13(b).

40. No person may misrepresent, mislead, or omit information concerning how proceeds will be used. Proceeds gathered must be used for the charitable purposes represented in the materials sent or presentation given by the solicitor. W. Va. Code § 29-19-13(c).

41. “[U]fair or deceptive acts or practices” means and includes... (E) [r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have.” W. Va. Code § 46A-6-102(7)(E).

42. “[U]nfair or deceptive acts or practices” means and includes... (I) Advertising goods or services with intent not to sell them as advertised. W. Va. Code § 46A-6-102(7)(I).

43. “[U]fair or deceptive acts or practices” means and includes... “(L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;” W. Va. Code § 46A-6-102(7)(L).

44. “[U]nfair or deceptive acts or practices” means and includes...(M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.” W. Va. Code § 46A-6-102(7)(M).

45. The WVCCPA provides “[u]nfair methods of competition and unfair or deceptive act or practices in the conduct of any trade or commerce are hereby declared unlawful.” W. Va. Code § 46A-6-104.

46. Repeated and willful violations of the WVCCPA may subject the violator to civil penalties of up to \$5,000 for each violation, in accordance with W. Va. Code § 46A-7-111(2).

47. A violation of West Virginia’s Solicitation of Charitable Funds Act, W. Va. Code §§ 29-19-1, *et seq.*, or any other state or federal law or regulation intended to protect the public and foster fair and honest competition constitutes an unfair or deceptive practice as defined by the WVCCPA, W. Va. Code § 46A-6-104.

48. H2H and its directors and officers, Christopher Engle and Kayla Engle (the “Engles”), desire to resolve the allegations of West Virginia, Maryland, Pennsylvania, and Virginia (the “Participating States”), the pending investigations with the Participating States.

THE ATTORNEY GENERAL’S ALLEGATIONS

49. At the request of a multistate investigation, H2H produced certain documents and information that enabled the Attorney General to review its practices from 2015 up to mid-2018.

50. H2H and the Engles neither confirm nor deny any of the allegations made by the Participating States against them.

51. Concurrently with this Assurance of Discontinuance, H2H and the Engles are entering into substantially similar settlements in each of the Participating States. This Assurance of Discontinuance is only binding among H2H, the Engles and the State of West Virginia.

52. Christopher Engle, Kayla Engle, and H2H were conducting “consumer transactions” in West Virginia as the transactions involved a “sale... to a natural person or persons for a personal, family, [or] household... purpose.” W. Va. Code § 46A-6-102(2). A “sale” under the WVCCPA includes “any sale, offer for sale or attempt to sell any goods for cash or credit or any service or offer for services for cash or credit.” W. Va. Code § 46A-6-102(5).

53. Based upon the pertinent documents and other records, the Attorney General has determined that H2H has engaged in practices which include, but are not limited to, the following:

- (a) Misrepresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have, in violation of W. Va. Code § 46A-6-102(7)(E);
- (b) Advertising goods or services with intent not to sell them as advertised, in violation of W. Va. Code § 46A-6-102(7)(I);
- (c) Acting, using, or employing deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or

not any person has in fact been misled, deceived or damaged thereby.” W. Va. Code § 46A-6-102(7)(M); and

(d) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding, in violation of W. Va. Code § 46A-6-102(7)(L).

54. Individual consumers have suffered losses as a result of Christopher Engle, Kayla Engle, and H2H’s violations of W. Va. Code 46A-6-102.

55. Christopher Engle, Kayla Engle, and H2H willfully engaged in the acts and practices described in this Assurance of Discontinuance in violation of the WVCCPA.

56. The term “willful” is defined to mean conduct that is intentional. *State v. Saunders*, 219 W.Va. 570, 575, 638 S.E.2d 173, 178 (2006).

57. H2H is or was at during all relevant times a “charitable organization” which held itself out to be organized or operated for “charitable purposes” and “solicit[ed]” or obtain[ed] “contributions” from the public as those terms are defined in the Solicitation of Charitable Funds Act.

58. Charitable organizations may only solicit funds from the public for charitable purposes and expend funds raised for charitable purposes as stated in its solicitation materials. W. Va. Code § 29-19-8. By misrepresenting to individuals that H2H was a charity or that donations made were tax deductible, misrepresenting that care packages are sent overseas, misrepresenting that sales staff were veterans or volunteers, and using or permitting the use of funds raised by a charitable solicitation for purposes other than the solicited purpose, Christopher Engle, Kayla Engle, and H2H engaged in the following prohibited practices under the Solicitation of Charitable Funds Act:

(a) Misrepresenting or misleading anyone to believe that the person on whose behalf the solicitation is being conducted is a charitable organization or that the proceeds will be used for charitable purposes, if such is not the fact, in violation of W. Va. Code § 29-19-13(b).

(b) Misrepresenting, misleading, or omitting information concerning how proceeds will be used and permitting proceeds gathered for uses other than the charitable purposes represented in the materials sent or presentation given by the solicitor in violation of W. Va. Code § 29-19-13(c).

AGREEMENT

59. Without admitting that they have engaged in or committed any of the acts or violations as alleged herein, the Engles and H2H hereby agree to take the following actions to resolve the concerns of the Attorney General.

60. Christopher Engle, Kayla Engle, individually and on behalf of H2H, hereby promise and voluntarily assure the Attorney General that they will comply with the West Virginia Consumer Credit and Protection Act (“WVCCPA”), W. Va. Code § 46A-1-101, *et seq.*, the Solicitation of Charitable Funds Act, W. Va. Code §§ 29-19-1, *et seq.*, and all other applicable state and federal laws.

61. Christopher Engle and Kayla Engle hereby promise and voluntarily assure the Attorney General that they shall refrain from:

(a) Becoming an employee, officer, director, board member, trustee, or assume any fiduciary role with any nonprofit corporation, organization, or trust.

(b) Soliciting charitable contributions on behalf of any nonprofit corporation, organization, or trust.

(c) Working for any nonprofit corporate, organization or trust, or any other entity, for profit or otherwise, including but not limited to any that are informally or formally formed, controlled, or created by Christopher Engle or Kayla Engle, for which either Christopher Engle or Kayla Engle would be responsible for soliciting, collecting, or handling charitable solicitations or the collection of charitable assets.

(d) Serving as a professional solicitor or fundraiser as defined by state laws.

62. Christopher Engle and Kayla Engle, individually and on behalf of H2H hereby promise and voluntarily assure the Attorney General that they have ceased or upon execution of this Assurance of Discontinuance shall cease all solicitations, shall be dissolved and shall cease operations indefinitely, and shall not resume business in any form or through any successor entity.

63. Christopher Engle and Kayla Engle, individually and on behalf of H2H, shall pay a Ten Thousand Dollar (\$10,000.00) civil penalty in connection with the multistate investigation of this matter. Upon execution of the Assurance of Discontinuance with the State of West Virginia, the Assurance of Discontinuance with the State of Maryland, the Consent Judgment with the Commonwealth of Virginia, and the Consent Judgment with the Commonwealth of Pennsylvania, Christopher Engle and Kayla Engle, individually and on behalf of H2H, jointly and severally, shall pay the sum of Two Thousand Dollars (\$2,000.00) by certified or cashier's check made payable to "Treasurer of Virginia," and remitted to Stephen John Sovinsky, Assistant Attorney General, Consumer Protection Section, 202 North Ninth Street, Richmond, Virginia 23219. On the first of each month beginning with the first day of September 2019, H2H and the Engles agree to deliver to the Commonwealth of Virginia a certified or cashier's check,

in the amount of One Thousand Dollars (\$1,000.00) made payable to "Treasurer of Virginia," and remitted to: Stephen John Sovinsky, Assistant Attorney General, Consumer Protection Section, 202 North Ninth Street, Richmond, Virginia 23219. Such payments shall continue until the Ten Thousand Dollar (\$10,000) civil penalty is satisfied. Any monies received in addition to, or separate from, these payments, which satisfy the penalty in part, shall not alter or reduce the obligations to make subsequent payments in full as required by this subparagraph. The payment shall be disbursed and allocated among the States as they, in their sole discretion, determine.

64. At the discretion of the Attorney General, the payment shall be used by the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers.

65. H2H agrees to restitution in the amount of \$286,959.95 for the use and benefit of, and for purposes of making refunds or restitution to, all consumers who paid any money to H2H for care packages to be sent to members of the military. This amount represents \$194,471.95 for Virginia consumers, \$23,858.50 for West Virginia consumers, \$49,828.00 for Maryland consumers, and \$18,801.50 for Pennsylvania consumers. These amounts are based upon known payments made by check to H2H, but nothing in this Assurance of Discontinuance shall exclude any consumer from receiving any funds as the State of West Virginia deems appropriate in its sole discretion, and nothing shall restrict the State of West Virginia from pursuing said restitution amount in full. This restitution amount shall be held in abeyance and the State of West Virginia shall not seek to enforce or collect on the restitution, unless and until H2H and/or the Engles fail to fully comply with the injunctive or other terms described herein.

66. H2H agrees that it shall resolve any future or existing complaints to the reasonable satisfaction of the Attorney General.

67. H2H acknowledges and understands that the Attorney General is only authorized to release the claims of the State of West Virginia and cannot release any private claims that individual West Virginia residents have or may have had against H2H arising from the matters described herein.

68. H2H shall not represent directly or indirectly, or in any manner whatsoever, that the Attorney General has sanctioned, condoned or approved, in any manner whatsoever, any part or aspect of its business operations, unless written authorization is obtained from the Attorney General, and then only to the extent of said written authorization. It is agreed and understood that the contents of this Assurance are and shall be public information.

69. It is further agreed and understood that, while the parties to this Assurance presently intend to cooperate in securing and obtaining compliance with the terms of this Assurance, the matters settled by the filing of this agreement may not be reopened by the Attorney General of West Virginia except for the sole purpose of enforcing the specific terms of this Assurance.

70. The parties represent and warrant that each has the full legal right and authority to execute this Assurance of Discontinuance and that no party has made an assignment or transfer of any claim or any right arising out of the transactions and/or occurrences relating to the claims of the Participating States.

71. The parties agree that any modification or revision to this Assurance of Discontinuance must be in writing, signed by all parties.

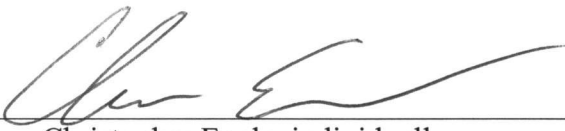
72. The parties agree that this Assurance of Discontinuance contains the entire

agreement regarding the matters set forth herein and that it supersedes all oral agreements, promises, warranties, representations, or understandings, if any, between the parties relating to the subject matter of this Assurance of Discontinuance.

73. The waiver or failure of any party to exercise any rights under this Assurance of Discontinuance shall not be deemed a waiver of any right or any future rights. If any part of this Assurance of Discontinuance shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Assurance of Discontinuance, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

IN WITNESS WHEREOF, Christopher Engle and Kayla Engle, individually and on behalf of H2H have caused this Assurance to be executed. The Attorney General of West Virginia or his designate has approved this Assurance.

7-29-19
Date


Christopher Engle, individually

7-29-19
Date

Hearts 2 Heroes d/b/a Active Duty Support Services

BY: 
Christopher Engle

STATE OF West Virginia,
COUNTY OF Berkeley, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this 1st
day of August, 2019 by Christopher Engle, individually and as a partner of Hearts 2
Heroes d/b/a Active Duty Support Services, as authorized by Hearts 2 Heroes d/b/a Active Duty
Support Services.



May 17th, 2023
Laura L. Mills
NOTARY PUBLIC

7/29/19
Date

Kayla Engle
Kayla Engle, individually

7/29/19
Date

Hearts 2 Heroes d/b/a Active Duty Support Services
BY: Kayla Engle
Kayla Engle

STATE OF West Virginia,
COUNTY OF Berkeley, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this 1st
day of August, 2019 by Kayla Engle, individually and as a partner of Hearts 2
Heroes d/b/a Active Duty Support Services, as authorized by Hearts 2 Heroes d/b/a Active Duty
Support Services.



My commission expires May 17th, 2023
Laura L. Mills
NOTARY PUBLIC

8-2-19
DATE

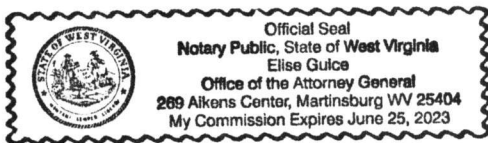
APPROVED BY:

Tanya L. Godfrey
Tanya L. Godfrey
Assistant Attorney General
West Virginia Attorney General's Office
Consumer Protection/Antitrust Division
269 Aikens Center
Martinsburg, WV 25404
304-267-0239

STATE OF WEST VIRGINIA,
COUNTY OF BERKELEY, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this
2 day of August, 2019.

My commission expires June 25, 2023.



Elise Guice
NOTARY PUBLIC