

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
By JOSH SHAPIRO, :
Attorney General, :

Petitioner, :

v. :

PHILLY FIGHTING COVID, INC., :

a Nonprofit Corporation; :

VAX POPULI, INC., :

a Business Corporation; and :

ANDREI DOROSHIN, Individually, and as :

Director and Chief Executive Officer of Philly :

Fighting COVID, as well as Director and Chief :

Executive Officer of Vax Populi; :

Respondents. :

No. _____

RECEIVED
COMMONWEALTH COURT
OF PENNSYLVANIA
2022 FEB 11 PM 2:30

COMMONWEALTH'S COMPLAINT
IN THE FORM OF A PETITION FOR REVIEW

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

Plaintiff, the Commonwealth of Pennsylvania, acting through its Attorney General, Josh Shapiro as *parens patriae*, respectfully brings this action to redress and enjoin violations of the Unfair Trade Practices and Consumer Protection Law (UTPCPL), 73 P.S. §§ 201-1 *et seq.*, the Solicitation of Funds for Charitable Purposes Act (SFCPA), 10 P.S. §§162.1 *et seq.*, and the Nonprofit Corporation Law (NCL), 15 P.S. §§ 5101 *et seq.*, and offers the following in support:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to Section 761(a)(1) of the Judicial Code. 42 Pa.C.S. § 761(a)(2).

PARTIES

2. Plaintiff is the Commonwealth of Pennsylvania acting in its capacity as *parens patriae* through its Attorney General, Josh Shapiro (COMMONWEALTH), with offices located at Strawberry Square, 14th Floor, in Harrisburg, Pennsylvania, 17120.
3. Defendant PHILLY FIGHTING COVID, INC. (PFC) is a Pennsylvania nonprofit corporation which was incorporated on April 16, 2020 and whose registered address is 3225 Powelton Avenue, Apartment D, Philadelphia, PA, 19104. A copy of PFC's Articles of Incorporation are attached as Exhibit A.
4. Defendant VAX POPULI, INC. is a Pennsylvania business corporation which was incorporated on December 9, 2020 and whose registered address is 410 Memphis Street, Philadelphia, PA, 19125. A copy of VAX POPULI's Articles of Incorporation are attached as Exhibit B.
5. Defendant Andrei DOROSHIN was the founder of both PFC and VAX POPULI; at all times relevant and material, he was a director and the Chief

Executive Officer of both corporations; his last known address is 410 Memphis Street, Apartment 309, Philadelphia, PA 19125.

FACTS

6. The COMMONWEALTH incorporates paragraphs 1 through 5 as if fully stated herein.
7. As stated in its Articles of Incorporation, PFC was incorporated for “501(c)(3) charitable purposes.”
8. Upon its initial formation, PFC’s operations focused primarily on manufacturing personal protective equipment for healthcare workers during the COVID-19 pandemic.
9. During all relevant time periods, PFC maintained an official website at www.phillyfightingcovid.com.
10. At all times relevant and material, PFC maintained a Twitter account and an Instagram account, both of which PFC used to communicate with the public:
 - a. PFC’s username on Twitter was @PhillyFighting;
 - b. PFC’s username on Instagram was phillyfightingcovid.
11. Beginning sometime in 2020, PFC began soliciting donations from the public by making direct or indirect requests for contributions on the representation that such contributions would be used wholly for its charitable activities.

12. The means by which PFC solicited donations included, but were not limited to, social media posts and requests on its official webpage.
13. PFC's website stated that "90% of our proceeds go directly to our testing operation. No donations are used for compensation. The last 10% of donations goes towards R&D of our MK1 Face Mask for children."
14. Throughout 2020, the solicitation on PFC's website stated that PFC was a "registered 501(c)(3) nonprofit organization."
15. PFC's solicitations posted on Twitter also included statements which claimed that PFC was a "certified 501(c)(3) nonprofit organization."
16. At all times relevant and material, however, PFC had not been recognized by the IRS as a tax exempt organization under section 501(c)(3) of the Internal Revenue Code.

**THE TESTING PROGRAM OF THE
PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH**

17. On May 12, 2020, the Philadelphia Department of Public Health (PDPH) published a "COVID-19 Community Testing Program Request for Proposals" ("the testing RFP").
18. The testing RFP sought proposals from qualified organizations interested in implementing a COVID-19 testing program in Philadelphia.
19. On or about July 8, 2020, PFC submitted a proposal in response to the testing RFP.

20. On July 20, 2020, PDPH sent DOROSHIN a letter which stated that the City of Philadelphia (“the City”), in partnership with the Philadelphia Mental Health Care Corporation (PMHCCC), was interested in funding PFC’s proposed testing program; the letter indicated PFC’s program would be funded with up to \$194,234 over a six month period.
21. On August 5, 2020, PFC entered into a contract (hereafter referred to as the “testing contract”) with PMHCC whereby PFC agreed to operate COVID-19 testing sites in Philadelphia, targeting primarily, though not exclusively, essential workers and underserved populations in the city.
22. The testing contract was for the period beginning August 1, 2020 and ending on January 31, 2021.
23. As early as August of 2020, however, DOROSHIN began to explore business opportunities related to prospective COVID-19 vaccines.
24. DOROSHIN founded VAX POPULI in order to generate profit from activities related to COVID-19 vaccine administration.
25. DOROSHIN set his salary as VAX POPULI’s CEO at \$200,000 per year.
26. On January 10, 2021, PFC announced via its Twitter account that it was “canceling testing until further notice to focus on vaccine operations.”

27. Similarly, on January 12, 2021, DOROSHIN notified PDPH that PFC was ceasing its operations related to COVID-19 testing in order to focus on operations related to vaccine administration.
28. PFC's last COVID-19 testing clinic was held on December 23, 2020 and had performed 15,968 COVID-19 tests before it abandoned the testing contract with PMHCC.
29. To date, PMHCC paid \$158,592.79 to PFC leaving a balance of \$35,642 in unused funding committed to COVID-19 testing.

**THE PHILADELPHIA DEPARTMENT
OF PUBLIC HEALTH VACCINATION PROGRAM**

30. On December 31, 2020, PDPH emailed DOROSHIN a Request for Proposal seeking a bid to operate vaccine clinics in the City (the "vaccine RFP").
31. DOROSHIN used VAX POPULI to submit a bid in response to the vaccine RFP.
32. VAX POPULI's bid for the vaccine contract stated that "Vax Populi, Inc. is a newly formed for-profit LLC, created from the original non-profit company, Philly Fighting COVID and its staff" when, in fact, VAX POPULI and PFC were separate and distinct legal entities with no formal relationship agreements between them.

33. On January 5, 2021, VAX POPULI executed a “CDC [Center for Disease Control] COVID-19 Vaccination Program Provider Agreement” (“Vaccination Program Agreement”).
34. By entering into the Vaccination Program Agreement, VAX POPULI became authorized by the CDC to receive vials of the COVID-19 vaccine and administer the vaccine to members of the public.
35. As its CEO, DOROSHIN signed the Vaccination Program Agreement on behalf of VAX POPULI.
36. On January 7, 2021, VAX POPULI executed a license agreement with the Philadelphia Convention Center to secure a location for vaccination clinics.
37. Pursuant to its lease with the Convention Center, VAX POPULI obtained insurance for the clinics identifying PFC as VAX POPULI’s subsidiary, when, in fact, PFC and VAX POPULI were separate and distinct legal entities with no formal relationship agreements between them.
38. VAX POPULI operated vaccine clinics at the Convention Center on January 8, 2021, January 9, 2021, January 15, 2021, January 16, 2021, and January 23, 2021.
39. The City and VAX POPULI did not enter into a written contract for the vaccine clinics prior to VAX POPULI’s five clinics held between January 8, 2021 and January 23, 2021.

40. VAX POPULI vaccinated 6,753 individuals through the course of the vaccine clinics.
41. Although, no contract existed between the City and VAX POPULI, the PDPH delivered doses of the COVID-19 vaccine to the Convention Center to be used during each of VAX POPULI's clinics.
42. Although no contract for the vaccine clinics existed between VAX POPULI and the City prior to January 23, 2021, DOROSHIN anticipated that one would ultimately be executed and he intended to seek reimbursement for those clinics which occurred prior to such time.
43. DOROSHIN and VAX POPULI intended that all revenue which might be obtained from the City as a result of any vaccine clinics would belong to VAX POPULI; none of this prospective revenue was intended to benefit PFC.
44. DOROSHIN and VAX POPULI intended to further profit from the vaccine clinics by billing their patients' insurance companies for the cost of administering the vaccine; none of the prospective revenue from this billing was intended to benefit PFC.
45. Throughout December 2020 and January 2021, DOROSHIN and PFC advertised the vaccine clinics through PFC's website, PFC's social media accounts, and through statements made by DOROSHIN to the media.

46. On December 8, 2020, DOROSHIN engaged Brownstein Advertising to promote PFC's vaccination services to the public.
47. When advertising the vaccine clinics, DOROSHIN and PFC falsely represented to the public that the vaccine clinics were operated by PFC.
48. In connection with the vaccine clinics, PFC hosted and advertised a vaccine pre-registration website which gathered personal information from individuals interested in receiving the COVID-19 vaccine at VAX POPULI's clinics. PFC's vaccine pre-registration website used software called COVIDReadi.
49. The public was first made aware of VAX POPULI's existence on January 22, 2021, when VAX POPULI's privacy policy was first posted to PFC's COVIDReadi website.
50. VAX POPULI's initial privacy policy allowed the sale of personal information collected through COVIDReadi, but after public and media criticism that provision was removed. There has been no indication that VAX POPULI ever sold personal information.
51. More than 60,000 people registered to receive the vaccine through PFC's pre-registration website.
52. VAX POPULI did not maintain a website or any social media accounts during the relevant time period.

53. VAX POPULI did not release any statements to the media or the public prior to the vaccine clinics held at the Convention Center in January of 2021.
54. PFC's pre-registration website featured the Philadelphia City Council Seal.
55. PFC did not have authorization from the Philadelphia City Council to use its seal on the pre-registration website.
56. Upon learning that PFC's pre-registration website featured the Philadelphia City Council Seal, the City Council demanded that PFC remove it or face legal action; the City Council also publicly clarified that it had no role in PFC. In response, PFC removed the seal from the website on January 21, 2021.
57. The City cut ties with PFC and VAX POPULI on January 25, 2021 due to complaints from the public about PFC's privacy policy, PFC's decision to halt its testing program, and VAX POPULI's for-profit status.
58. PFC and VAX POPULI ceased operations after the City cut ties with them on January 25, 2021.

**DOROSHIN'S CONTROL
AND COMMINGLING OF FUNDS**

59. At all times relevant and material DOROSHIN had control of both PFC's and VAX POPULI's finances.
60. At all times relevant and material DOROSHIN maintained a checking account with Wells Fargo in PFC's name.

61. At all times relevant and material DOROSHIN failed to establish a checking account or any other bank account in VAX POPULI's name.
62. By January 31, 2021, PFC had received at least \$45,000 in cash donations from the public.
63. During December of 2020 and January of 2021, VAX POPULI also received investment funds totaling \$225,000 from an outside investor.
64. DOROSHIN comingled the assets of VAX POPULI and PFC by depositing all funds COVID Testing funds, public donations, and money belonging to VAX POPULI into PFC's checking account and paid all of VAX POPULI's expenses out of PFC's checking account.
65. DOROSHIN also made it a practice of transferring the funds of PFC and VAX POPULI into and out of his personal bank account.
66. At all times relevant and material, DOROSHIN was PFC's primary spokesperson and had knowledge of, participated in, and approved of all content posted on PFC's website and social media accounts.
67. At all times relevant and material, DOROSHIN controlled and dominated PFC and VAX POPULI to such a degree that they acted as his alter ego, agent or instrumentality in perpetrating the acts complained of.

68. At all times relevant and material, DOROSHIN actively participated in the actions complained of, including, but not limited, to personally supervising the volunteers and/or employees of PFC and/or VAX POPULI.
69. At all times relevant and material, DOROSHIN, PFC and VAX POPULI, acted in concert with, or as the agent, representative, servant and/or employee of the others in perpetrating the actions complained of herein.

COUNT I

VIOLATIONS OF THE UNFAIR TRADE

PRACTICES AND CONSUMER PROTECTION LAW, 73 P.S. §§ 201 et seq.

70. The COMMONWEALTH incorporates paragraphs 1 through 69 as if fully set forth.
71. Section 201-2 of the UTPCPL defines “trade” and “commerce” as follows:
- [T]he advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and includes any trade or commerce directly or indirectly affecting the people of this Commonwealth.

73 P.S. § 201-2(3)

72. Section 201-2 of the UTPCPL defines “person” as follows:

[N]atural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entities.

73 P.S. § 201-2(2)

73. Section 201-2 of the UTPCPL defines “unfair methods of competition” and “unfair or deceptive acts or practices” in pertinent part, as any one or more of the following:

- (i) Passing off goods or services as those of another;
- (ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- (iii) Causing likelihood of confusion or of misunderstanding as to the affiliation, connection or association with, or certification by, another;
- (v) Representing 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;
- (xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. § 201-2(4)

74. PFC, VAX POPULI, and DOROSHIN were each a “person,” as that term is defined by the UTPCPL.

75. PFC, VAX POPULI, and DOROSHIN were each engaged in “trade” and “commerce,” as that term is defined by the UTPCPL, and subject to the requirements of the UTPCPL. PFC, VAX POPULI, and DOROSHIN, engaged in trade and commerce through the advertising and distribution of

VAX POPULI's vaccination services, which consisted of the pre-registration for and administration of COVID-19 vaccines.

76. PFC, VAX POPULI, and DOROSHIN passed off VAX POPULI's vaccination services as those of PFC in violation of Section 202-2(4)(i).
77. PFC, VAX POPULI, and DOROSHIN omitted the existence of VAX POPULI from all public communications until January 22, 2021, which caused confusion and misunderstanding as to the source of the vaccination services provided in violation of 201-2(4)(ii).
78. PFC, VAX POPULI, and DOROSHIN's deceptive conduct regarding the existence of VAX POPULI created the likelihood of confusion or misunderstanding regarding which entity was providing vaccination services in violation of 201-2(4)(xxi).
79. PFC, VAX POPULI, and DOROSHIN's use of the City Council Seal caused the likelihood of confusion or misunderstanding as to the source or sponsorship of VAX POPULI's vaccine pre-registration service in violation of 201-2(4)(ii).
80. PFC, VAX POPULI, and DOROSHIN's use of the City Council Seal caused the likelihood of confusion or misunderstanding as to the affiliation, connection, association, or certification of VAX POPULI's vaccine pre-registration service with the City Council in violation of 201-2(4)(iii).

81. PFC, VAX POPULI, and DOROSHIN misrepresented the pre-registration service's sponsorship or approval by the City Council in violation of 201-2(4)(v).

82. Section 201-3(a) provides in pertinent part:

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of clause (4) of section 2 of this act... are hereby declared unlawful.

73 P.S. § 201-3(a)

83. Section 201-4 provides:

Whenever the Attorney General or a District Attorney has reason to believe that any person is using or is about to use any method, act or practice declared by section 3 of this act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice.

73 P.S. § 201-4

84. Section 201-8(b) provides, in pertinent part:

In any action brought under Section 4 of this act, if the court finds that a person, firm or corporation is willfully using or has willfully used a method, act or practice declared unlawful by section 3 of this act, the Attorney General or appropriate District Attorney, acting in the name of the Commonwealth of Pennsylvania, may recover, on behalf of the Commonwealth of Pennsylvania, a civil penalty of not exceeding one thousand dollars (\$1,000) per violation, which civil penalty shall be in

addition to other relief which may be granted under sections 4 and 4.1 of this act.

73 P.S. § 201-8(b)

WHEREFORE, the COMMONWEALTH respectfully requests that this Honorable Court:

- a. Find PFC, VAX POPULI, and DOROSHIN to be in violation of the UTPCPL, for engaging in acts prohibited by Section 201-3;
- b. Enjoin PFC, VAX POPULI, and DOROSHIN from conducting any further acts that violate the UTPCPL;
- c. Impose a civil penalty on PFC, VAX POPULI, and DOROSHIN of up to One Thousand Dollars (\$1,000) for each violation;
- d. Award the COMMONWEALTH the cost of investigation, attorneys' fees, filing fees and costs of this action; and
- e. Any other relief the Court deems appropriate.

COUNT II

VIOLATIONS OF THE SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES ACT, 10 P.S. §§ 162.1 et seq.

85. The COMMONWEALTH incorporates paragraphs 1 through 84 as if fully set forth.
86. Section 162.2 of the SFCPA provides that the statute is intended to:

[P]rotect the citizens of this Commonwealth by requiring full public disclosure of the identity of persons who solicit

contributions from the public, the purposes for which such contributions are solicited and the manner in which they are actually used, by promoting consumer education about charitable concerns, by providing civil and criminal penalties for deception and dishonest statements and conduct in the solicitation and reporting of contributions for or in the name of charitable purposes and by publicizing matters relating to fraud, deception and misrepresentation perpetrated in the name of charity.

10 P.S. § 162.2.

87. Section 162.3 of the SFCPA defines “charitable organization” as follows :

Any person granted tax exempt status under section 501(c)(3) of the Internal Revenue Code... or any person who is or holds himself out to be established for any charitable purpose or any person who in any manner employs a charitable purpose 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 solicitation.

10 P.S. 162.3.

88. Section 162.3 of the SFCPA defines “charitable purpose” as follows:

Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary objective, including an objective of any bona fide duly constituted organization of law enforcement personnel, firefighters or other persons who protect the public safety if a stated purpose of the solicitation includes any benefit to any person outside the actual active membership of the organization.

10 P.S. § 162.3.

89. Section 162.3 of the SFCPA defines “solicitation,” in pertinent part, as follows:

Any direct or indirect request for a contribution on the representation that such contribution will be used in whole or in part for a charitable purpose, including, but not limited to, any of the following:

...

- (2) Any written or otherwise recorded or published request that is mailed, sent, delivered, circulated, distributed posted in a public place or advertised or communicated by press, telegraph, television or any other media.

10 P.S. § 162.3.

90. Section 162.5(a) of the SFCPA provides, in pertinent part, that:

No charitable organization shall solicit contributions or have contributions solicited in its behalf before approval of its registration statement by the department.

10 P.S. § 162.5(a).

91. Section 162.5(s) of the SFCPA requires that charitable organizations “shall maintain and administer all contributions raised on its behalf through an account in the name of the charitable organization and under its sole control.”

92. Section 162.12 of the SFCPA requires, in pertinent, part that:

Every charitable organization . . . subject to the provisions of this act shall, in accordance with the rules and regulations prescribed by the department, keep true fiscal records as to its activities in this Commonwealth

10 P.S. § 162.12.

93. Sections 15(a)(1), (2), (5), (6), and (7) of the SFCPA provides in pertinent part:

(a) **General Rule.** – Regardless of a persons' intent or the lack of injury, the following acts and practices are prohibited in the planning, conduct or execution of any solicitation or charitable sales promotion:

(1) Operating in violation of, or failing to comply with, any of the requirements of this act, regulations of the department . . . or soliciting contributions prior to the solicitation notice and contract having been approved by the department.

(2) Utilizing any unfair or deceptive acts or practices or engaging in any fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

...

(5) Misrepresenting or misleading anyone in any manner to believe that the person on whose behalf a solicitation . . . is being conducted is a charitable organization or that the proceeds of such solicitation . . . will be used for charitable purposes when such is not the fact.

(6) Misrepresenting or misleading anyone in any manner to believe that any other person sponsors, endorsed or approves such solicitation or charitable sales promotion when such other person has not given consent in writing to the use of his name for these purposes.

(7) Misrepresenting or misleading anyone in any manner to believe that goods or services

have sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have.

10 P.S. § 162.15(a)(1), (2), (5), (6), and (7).

94. At all times relevant and material, PFC and DOROSHIN were each a “charitable organization”, as that term is defined by the SFCPA, and subject to the requirements of the SFCPA.
95. PFC and DOROSHIN solicited charitable donations prior to filing a registration statement approved by the department in violation of Sections 5(a) and 15(a)(1) of the SFCPA.
96. DOROSHIN, as VAX POPULI’s CEO, comingled VAX POPULI’s investment funds with PFC’s charitable assets such that PFC lacked sole control of the Wells Fargo checking account, in violation of Sections 162.5(s) and 162.15(a)(1) of the SFCPA.
97. PFC and DOROSHIN failed to maintain true fiscal records in violation of Sections 162.12 and 162.15(a)(1) of the SFCPA.
98. PFC and DOROSHIN solicited charitable funds by falsely stating that PFC had been granted tax exempt status under section 501(c)(3) of the Internal Revenue Code in violation of Sections 15(a)(1), (2), and (7) of the SFCPA.

99. PFC and DOROSHIN solicited charitable funds by falsely claiming that the vaccine clinics were operated by PFC and in furtherance of its charitable purpose in violation of Section 15(a)(1), (2), (5) (6) and (7).
100. PFC and DOROSHIN used the seal of the Philadelphia City Council on PFC's pre-registration website without the city council's written authorization in violation of Section 15(a)(1), (2) and (7) of the SFCPA.
101. Sections 19(a)(4), (5), (6) and (7) of the SFCPA provide, in part, that:

Whenever the Attorney General . . . shall have reason to believe . . . that the person is operating in violation of the provisions of this act, the Attorney General . . . may bring an action in the name of the Commonwealth against such person . . . to enjoin . . . such violation and for such other relief as the court deems appropriate. In any proceeding under this subsection, the court may make appropriate orders, including:

...

- (4) the distribution of contributions in accordance with the . . . representations made to the person solicited;
- (5) the reimbursement of the Commonwealth for attorney fees and the costs of investigation, including audit costs;
- (6) the assessment of a civil penalty not exceeding \$1,000 per violation of the act, which penalty shall be in addition to any other relief which may be granted; and
- (7) the granting of other appropriate relief.

10 P.S. § 162.19(a)(4), (5), (6) and (7).

WHEREFORE, the COMMONWEALTH respectfully requests that this Honorable Court:

- a. Find PFC and DOROSHIN to be in violation of the SFCPA, for engaging in acts prohibited by Section 15(a)(2);
- b. Enjoin PFC and DOROSHIN from conducting any further charitable solicitations in violation of the SFCPA;
- c. Impose a civil penalty on PFC and DOROSHIN of up to One Thousand Dollars (\$1,000) for each violation;
- d. Award the COMMONWEALTH its costs of investigation, attorneys' fees, filing fees and costs of this action; and
- e. Any other relief the Court deems appropriate.

COUNT III

**VIOLATIONS OF THE
NONPROFIT CORPORATION LAW, 15 Pa.C.S. §§ 5101, et seq.**

- 102. The COMMONWEALTH incorporates paragraphs 1 through 101 as if fully set forth.
- 103. At all times relevant and material hereto, DOROSHIN and PFC were subject to the requirements of the Nonprofit Corporation Law, 15 Pa.C.S. §§ 5101, et seq., (NPCL).

104. Section 5508(a) of the NCL requires that all nonprofit corporations “shall keep appropriate, complete and accurate books or records of account.” 15 Pa.C.S. § 5508(a).
105. As alleged, DOROSHIN failed to keep appropriate, complete and accurate books or records by intentionally comingling funds intended as investments in VAX POPULI as contributions to PFC along with PFC’s other charitable assets in violation of Section 5508 of the NCL.
106. Pursuant to Section 5712(a) of the NCL, DOROSHIN owed fiduciary duties of care and loyalty to PFC and “shall perform his duties as a director... in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care... as a person of ordinary prudence would use under similar circumstance. 15 Pa.C.S. § 5712(a).
107. As alleged, DOROSHIN intentionally caused PFC to prematurely abandon its testing contract with the PMHCC, which denied PFC \$35,641.21 in forsaken revenue under the unfulfilled contract.
108. Moreover, as an officer and director of PFC, DOROSHIN was prohibited from usurping PFC’s corporate opportunities to further his own pecuniary interests at PFC’s expense. *See Seaboard Industries, Inc. v. Monaco*, 442 Pa. 256, 276 A.2d 305 (1971).

109. As alleged, DOROSHIN created VAX POPULI as a business corporation to operate the vaccination clinics to further his own pecuniary interests.
110. DOROSHIN created VAX POPULI in spite of the fact that the vaccination clinics constituted a corporate opportunity for PFC as the clinics were in the scope of PFC's broad charitable purposes and PFC was equally capable of operating the clinics as was represented to the public.
111. By usurping PFC's opportunity to operate the vaccination clinics, DOROSHIN deprived PFC of the revenue it would have received from a contract with the city.
112. DOROSHIN also deprived PFC of revenue which could have been received from billing the vaccination patients' insurance companies for the cost of administering the vaccine.
113. DOROSHIN's efforts in misleading the public with respect to PFC's role in the vaccination clinics severely damaged PFC's goodwill and reputation in the community and resulted in the city abruptly ending its relationships with DOROSHIN, VAX POPULI and PFC.
114. The acts complained of caused considerable anxiety among vaccination recipients who had only received a first dose of the COVID vaccine without knowing if and/or when they might receive the necessary second dose.

WHEREFORE, the COMMONWEALTH respectfully requests that this Honorable Court:

- a. Find that DOROSHIN breached his fiduciary duties of loyalty and care owed to PFC;
- b. Order DOROSHIN to pay restitution to PFC in the amount of \$35,641.21 for the lost revenue which resulted from DOROSHIN's decision to abandon the testing contract;
- c. Impose a reasonable surcharge on DOROSHIN for usurping a corporate opportunity which belonged to PFC;
- d. Impose a reasonable surcharge on DOROSHIN for otherwise breaching his fiduciary duties owed to PFC;
- e. Grant any other relief the Court deems appropriate.

COUNT IV

REVOCATION OF THE CORPORATE FRANCHISES OF PHILLY FIGHTING COVID AND VAX POPULI

115. The COMMONWEALTH hereby incorporates paragraphs 1 through 114 as if fully set forth.
116. Section 503 of the Associations Code, 15, PA.C.S. § 503, provides:
 - (a) General rule.—The Attorney General may institute proceedings to revoke the articles and franchises of a corporation if it:

- (1) misused or failed to use its powers, privileges or franchises;
- (2) procured its articles by fraud; or
- (3) should not have been incorporated under the statutory authority relied on.

(b) Powers of court.—In every action or proceeding instituted under subsection (a), the court shall have power to wind up the affairs of and to dissolve the corporation in the manner provided in this part or as otherwise provided by law.

15 Pa.C.S. § 503.

117. PFC is no longer operating for charitable purposes as set forth in its Articles of Incorporation.

118. PFC has ceased operations, misused or failed to use its powers, privileges or franchises.

119. Subchapter G of the NCL provides a statutory framework for the involuntary liquidation and wind up of nonprofit corporations. 15 PA.C.S. §§ 5981 through 5989.

120. Section 5547(b) of the NPCL provides that:

Property committed to charitable purposes shall not, by any proceeding under Chapter 59 (relating to fundamental changes) or otherwise, be diverted from the objects to which it was donated, granted or devised, unless and until the board of directors or other body obtains from the court an order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property.

15 Pa.C.S. § 5547(b)

121. Pursuant to 20 Pa.C.S. § 7740.3(a), “when a particular charitable purpose becomes unlawful, impracticable or wasteful... the trust does not fail... and... the court shall apply cy pres to fulfill as nearly as possible the settlor’s charitable intention.”
122. Consequently, after dissolution, this Honorable Court is required to direct any remaining PFC assets to an organization that provides charitable services as similar as possible to the prior stated charitable mission of PFC.
123. As alleged, VAX POPULI was incorporated for the unlawful purpose of facilitating DOROSHIN’s plan to usurp the corporate opportunity of PFC in order to further DOROSHIN’s private pecuniary interests at the expense of PFC’s stated charitable purposes.

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WHEREFORE, the COMMONWEALTH respectfully requests that this Honorable Court enter an Order revoking the Articles of Incorporation of both PHILLY FIGHTING COVID and VAX POPULI and providing for the distribution of any of their remaining net assets to one or more appropriate successors pursuant to the *cy pres* doctrine.

Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA
JOSH SHAPIRO
Attorney General

By: 

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[Date] Feb. 9, 2022

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :

By JOSH SHAPIRO, :

Attorney General, :

Petitioner, :

v. :

PHILLY FIGHTING COVID, INC., :

a Nonprofit Corporation; :

VAX POPULI, INC., :

a Business Corporation; and :

ANDREI DOROSHIN, Individually, and as :

Director and Chief Executive Officer of Philly :

Fighting COVID, as well as Director and Chief :

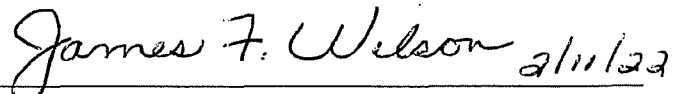
Executive Officer of Vax Populi; :

Respondents. :

No. _____

VERIFICATION

I, James F. Wilson, hereby state that I am a Senior Financial Investigator with the Office of Attorney General, that I am authorized to make this verification on behalf of the Office of Attorney General, and that the facts in the *Commonwealth's Complaint in the Form of a Petition for Review* are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

 2/11/22

James F. Wilson

Senior Financial Investigator

Charitable Trusts and Organizations Section

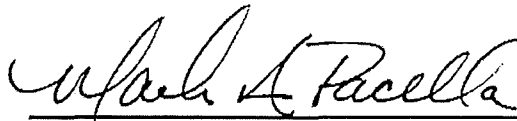
Feb. 11, 2022

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

[DATE]

2/9/2022

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

Mark A. Pacella

Attorney for the Commonwealth