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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE SECRETARY OF THE COMMONWEALTH

PROTHONDIARY  
2011 SEP 20 AM 9:01  
Department of State

Commonwealth of Pennsylvania,  
Bureau of Charitable Organizations

vs.

Xerces Society, Inc.,  
Respondent

Docket No. 0038 -98-11  
File No. 11-98-08140

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and the Xerces Society, Inc., ("Respondent") stipulate as follows in settlement of the above-captioned case:

JURISDICTION

1. This matter is before the Secretary of the Commonwealth ("Secretary") pursuant to the Solicitation of Funds for Charitable Purposes Act ("the Act"), Act of December 19, 1990, P.L. 1200, No. 202, *as amended* ("Act"), 10 P.S. §§ 162.1 *et. seq.*
2. At all relevant and material times, Respondent conducted business in Pennsylvania as a charitable organization, as defined by the Act.
3. At all relevant and material times, Respondent did not hold a registration to solicit charitable contributions within the Commonwealth of Pennsylvania.
4. At all relevant and material times, Respondent was not exempt from registration or excluded from the requirements of the Act.

**STIPULATED FACTS**

5. Respondent's last known mailing address 4828 Southeast Hawthorne Blvd, Portland, OR 97215.

6. Respondent is a non-profit corporation incorporated in Delaware.

7. Respondent solicits charitable contributions in Pennsylvania through direct mail and E-newsletter.

8. July 5, 2011, the Bureau sent via certified mail, a request for information including but not limited to the total number of Pennsylvania residents that contributed to Respondent's organization since Respondent first solicited in the Commonwealth, as well as the total amount of contributions received from Pennsylvania residents since Respondent first solicited in the Commonwealth.

9. Respondent mailed a response to the Commonwealth's request on August 2, 2011.

10. Respondent's response indicated that Respondent had received contributions from 1,523 Pennsylvania residents since 1999 totaling at least \$122,427.00.

**AGREED VIOLATIONS**

11. Respondent admits and agrees that by engaging in the foregoing activities it repeatedly violated the Act at, 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.5, by soliciting charitable contributions in Pennsylvania without being properly registered

**PROPOSED ORDER**

12. The parties, intending to be legally bound, agree to the issuance of the following Order in settlement of this matter:

a. Respondent repeatedly violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.5, by soliciting charitable contributions in Pennsylvania without

first being registered.

**ADMINISTRATIVE FINE**

b. An ADMINISTRATIVE FINE of twelve thousand dollars (\$12,000.00) is levied upon Respondent. Respondent shall tender the full sum of twelve thousand dollars (\$12,000.00) with this executed Consent Agreement which shall be paid by certified check, cashier's check, attorney's check, or U.S. Postal money order made payable to the "Commonwealth of Pennsylvania."

**CASE SETTLED AND DISCONTINUED**

13. This case shall be deemed settled and discontinued upon the Secretary issuing an Order adopting this Consent Agreement and the Respondent's successful completion of the requirements of this Order. However, nothing in this Consent Agreement and Order shall preclude the Prosecuting Attorney for the Bureau from filing charges or the Secretary from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement and Order.

**ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING**

14. Respondent waives the filing of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Bureau; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

#### AGREEMENT NOT BINDING ON OTHER PARTIES

15. This Consent Agreement is between the Bureau and Respondent only. It does not bind any other governmental or administrative entity of the Commonwealth of Pennsylvania, including any other bureau within the Department of State. Except as otherwise noted, this Agreement is to have no legal effect if a) the Office of General Counsel expresses an objection to the Agreement's form or legality and/or b) unless and until the Secretary issues the stipulated Order.

#### EFFECT OF SECRETARY'S REJECTION

16. Should the Secretary not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Secretary shall not prejudice the Secretary from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

#### ENTIRE AGREEMENT

17. This Agreement contains the whole agreement between the parties; provided, however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever, concerning this Agreement.

#### AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES

18. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent and its officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or

the Order based upon this Consent Agreement shall preclude representatives of the Bureau from referring any information or data produced as a result of this matter to any federal, state, or local agency or governmental unit having jurisdiction over the activities of Respondent or any officer, director, agent, employee or independent contractor of the Respondent.

**VERIFICATION OF FACTS AND STATEMENTS**

19. Respondent verifies that the facts and statements set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



Jacquelyn E. Pfursich, Esquire  
Prosecuting Attorney  
Department of State

DATED: 9/16/11



Xerces Society, Inc.  
Title: *EXECUTIVE DIRECTOR*  
Respondent

DATED: 8-31-11



**IN THE MATTER OF  
XERCES SOCIETY, INC.  
FILE NO. 11-98-08140**

**ORDER**

AND NOW, this *19<sup>th</sup>* day of *September* 2011, the terms of Paragraph 12 of the foregoing Consent Agreement are hereby adopted and incorporated as the Order of the Secretary of the Commonwealth in resolution of this matter. This Order shall take effect immediately.

BY ORDER

A handwritten signature in cursive script, appearing to read "Carol Aichele".

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Carol Aichele  
Secretary of the Commonwealth