

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

| | |
|--|--|
| <p>Federal Trade Commission; all Fifty States; and the District of Columbia;</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>Cancer Fund of America, Inc., a Delaware corporation, et al.;</p> <p style="text-align: center;">Defendants.</p> | <p>No. CV-15-00884-PHX-NVW</p> <p>STIPULATED ORDER APPOINTING RECEIVER OVER CHILDREN'S CANCER FUND OF AMERICA, INC.</p> |
|--|--|

Plaintiffs, the Federal Trade Commission ("FTC" or "Commission") and the states of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia, and Defendant Children's Cancer Fund of America, Inc. ("CCFOA"), having stipulated to the entry of a separate and concurrently filed Stipulated Order for Permanent Injunction and Monetary Judgment Against Children's Cancer Fund of America, Inc., and Rose Perkins, further stipulate to

1 the entry of this Stipulated Order Appointing a Receiver Over Children's Cancer Fund of
2 America, Inc. ("Order").

3 THEREFORE, IT IS ORDERED as follows:

4 **FINDINGS**

5 1. Plaintiffs and CCFOA have consented to entry of a Stipulated Order for
6 Permanent Injunction and Monetary Judgment Against Children's Cancer Fund of
7 America, Inc., and Rose Perkins ("Permanent Injunction").

8 2. The Permanent Injunction requires that the assets of CCFOA be liquidated
9 to partially satisfy the monetary judgment entered against it and its corporate existence be
10 dissolved.

11 3. Plaintiffs and CCFOA have consented to entry of this Stipulated Order
12 Appointing Receiver Over Children's Cancer Fund of America, Inc.

13 4. Pursuant to the Federal Rules of Civil Procedure, this Court's general
14 equitable authority, and Sections 13(b) and 19 of the Federal Trade Commission Act,
15 15 U.S.C. § 53(b) and 57b, this Court has the authority to enter the requested relief.

16 **DEFINITIONS**

17 For purposes of this Order, the following definitions shall apply:

18 1. "CCFOA" means Children's Cancer Fund of America, Inc. ("CCFOA"),
19 and its successors and assigns.

20 2. "GAIC Policies" means the Great American Insurance Company ("GAIC")
21 "Nonprofit Solution" Insurance Policies, Policy No. EPP8196687, for the Policy Periods
22 of: (1) August 7, 2009 to August 7, 2010; (2) August 7, 2010 to August 7, 2011; (3)
23 August 7, 2011 to August 7, 2012; (4) August 7, 2012 to August 7, 2013; and (5) a
24 Discovery Period from August 7, 2013 to August 7, 2016.

25 3. "Permanent Injunction" means the Stipulated Order for Permanent
26 Injunction and Monetary Judgment Against Children's Cancer Fund of America, Inc.,
27 and Rose Perkins, agreed to by CCFOA and Rose Perkins.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. "STCO Fund" means the Litigation Deposits Trust Fund (Fund Code "T-xx-909N"), an interest bearing trust fund held by the Hawaii Attorney General's Office in trust for the Plaintiff States into which Section VIII.E.1 of the Permanent Injunction requires the CCFOA Receiver to deposit all monies to be paid to the Plaintiff States.

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

6. "Fundraising" means a plan, program, or campaign that is conducted to induce charitable contributions by mail, telephone, electronic mail, social media, or any other means.

7. "Nonprofit organization" means any person that is, or is represented to be, a nonprofit entity, or that has, or is represented to have, a charitable purpose, specifically including but not limited to any entity that purports to benefit, either in whole or in part, individuals who suffer or have suffered from cancer.

8. "And" and "or" shall be construed both conjunctively and disjunctively to make the applicable sentence or phrase inclusive rather than exclusive.

ORDER

I. APPOINTMENT OF LIQUIDATING RECEIVER

IT IS FURTHER ORDERED that Receivership Management, Inc., 783 Old Hickory Boulevard, Suite 255, Brentwood, Tennessee 37027, is appointed by this Court as Liquidating Receiver ("Receiver") with all the rights and privileges of an equity receiver over CCFOA for the purposes of taking charge of CCFOA's property and assets (except for the GAIC Policies), conducting the necessary steps to wind down the affairs of CCFOA, liquidating its assets, dissolving its corporate existence, and paying all net assets to the STCO Fund. The Receiver shall be the agent of this Court, and solely the agent of this Court, in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. RECEIVER'S DUTIES AND AUTHORITIES

IT IS FURTHER ORDERED that the Receiver shall be authorized and directed to do any and all acts necessary to the proper and lawful conduct of this receivership, subject to the control of this Court, including but not limited to:

A. Take any and all steps that the Receiver concludes are appropriate to wind down the affairs of CCFOA, liquidate its assets, and dissolve its corporate existence;

B. Exercise full control of CCFOA and collect, marshal, and take custody, control, and possession of all the funds, property, premises, accounts, documents, mail, and other assets of, or in the possession or under the control of, CCFOA (except the GAIC Policies), wherever situated, the income and profits therefrom, and all sums of money now or hereafter due or owing to CCFOA, with full power to collect, receive and take possession of all goods, chattels, rights, credits, monies, rents, effects, lands, leases, books and records, limited partnership records, work papers, and records of accounts, including computer maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of other individuals, partnership or corporations whose interest are now held by or under the direction, possession, custody, or control of CCFOA;

C. Perform all acts necessary or advisable to complete an accounting of the assets of CCFOA, prevent unauthorized transfer, withdrawal, or misapplication of the assets of CCFOA, and preserve and pursue recovery of the assets of CCFOA from third parties (except the GAIC Policies);

D. Make disbursements for operating expenses as may be appropriate to wind down the affairs of CCFOA, such as for undertaking repairs, and take any other actions necessary to efficiently manage all real and personal property in order to maintain its value;

E. Purchase insurance as advisable or necessary. The Receiver may keep in force the existing insurance coverage(s), each of which shall name the Receiver as an

1 additional insured thereunder. The Receiver acknowledges and agrees that when this
2 Order is entered, the GAIC Policies are not part of this Order;

3 F. Enter into new or amended contracts, agreements, understandings, or other
4 commitments and terminate or abrogate, in the Receiver's sole sound business discretion,
5 any or all agreements, contracts, understandings, or commitments entered into by
6 CCFOA, to the extent permitted by applicable law. The Receiver shall not be bound by
7 any unsecured contracts, agreements, understandings, or other commitments in the nature
8 of service contracts that CCFOA had, have, or may have with third parties, whether oral
9 or written. The Receiver may agree to become bound by any such contracts, agreements,
10 understandings, or other commitments by affirmative written ratification executed by the
11 Receiver. *Provided that* the Receiver shall terminate any and all fundraising contracts
12 within 30 days of entry of this Order.

13 G. Make payments and disbursements from the assets of CCFOA that are
14 necessary or advisable for carrying out the provisions of, or exercising the authority
15 granted by, this Order. The Receiver shall apply to the Court for prior approval of any
16 payment of any debt or obligation incurred by CCFOA prior to the date of entry of this
17 Order, except payments that the Receiver deems necessary or advisable to secure and
18 liquidate assets of CCFOA, such as rental payments or payment of liens;

19 H. Request that the Clerk of the Court issue subpoenas, or have subpoenas
20 issued by the Receiver's attorney pursuant to Rule 45(a)(3) of the Federal Rules of Civil
21 Procedure, to obtain documents and records pertaining to the assets of CCFOA, and
22 otherwise to conduct discovery on behalf of CCFOA as permitted by the Federal Rules of
23 Civil Procedure, directly or through the Receiver's attorney;

24 I. Institute, prosecute, defend, compromise, intervene, adjust, appear in, and
25 become a party either in the Receiver's own name or in the name of CCFOA to such
26 suits, actions, or proceedings in state, federal, or foreign courts as may be necessary for
27 the protection, maintenance, recovery, recoupment, or preservation of the assets of
28 CCFOA, including proceedings seeking the avoidance of fraudulent transfers,

1 disgorgements of profits, imposition of constructive trusts, and any other legal and
2 equitable relief that the Receiver deems necessary and appropriate to preserve and
3 recover CCFOA's assets;

4 J. Bring such proceedings and actions as are necessary to enforce or modify
5 the provisions of this Order;

6 K. Perform all incidental acts that the Receiver deems to be advisable or
7 necessary to manage the affairs of CCFOA during its winding down phase, liquidate its
8 assets, and dissolve its corporate existence, including, without limitation, the following
9 powers and responsibilities to:

10 1. Retain, hire, or dismiss any employees, independent contractors, and
11 agents as the Receiver deems advisable or necessary;

12 2. Supervise and oversee the management of CCFOA, including
13 making payments and paying taxes as and when the Receiver has funds available from
14 CCFOA, or from the liquidation thereof;

15 3. Employ such counsel, real estate agents, auctioneers, appraisers,
16 accountants, contractors, other professionals, and other such persons as may be necessary
17 in order to carry out the duties as Receiver and to preserve, maintain, recover, recoup,
18 and protect the assets of CCFOA;

19 4. Open new accounts with, or negotiate, compromise or otherwise
20 modify CCFOA's existing obligations with third parties, including utility companies and
21 other service providers or suppliers of goods and services, and to otherwise enter into
22 such agreements, contracts, or understandings with such third parties as are necessary to
23 maintain, preserve, and protect the assets of CCFOA; and

24 5. Open new bank, brokerage or investment accounts with respect to
25 the Receiver's management and operation of CCFOA, and deposit any cash or other
26 assets into said accounts;

27 L. Dispose of, or arrange for the disposal of, the records of CCFOA no later
28 than six months after the Court's approval of the Receiver's final report, except that, to

1 the extent that any federal, state, or local law regulating CCFOA's activities requires the
2 retention of particular records for a specified period, the Receiver shall arrange for such
3 records to be disposed of after the specified period has expired. For any such records, the
4 Receiver may elect to retain records in their original form, or to retain photographic or
5 electronic copies. Records containing personal financial information, personal
6 identifying information, or sensitive health information must be shredded, incinerated, or
7 otherwise disposed of in a secure manner. Records containing the name, address, email
8 address and/or telephone number of any person who made a donation to CCFOA (i.e.,
9 any donor list) may not be sold, rented, leased, transferred, or otherwise disclosed to any
10 third party and must be destroyed; and

11 M. Pay to the STCO Fund any and all sums collected over and above those
12 necessary to wind down the affairs of CCFOA, liquidate its assets, and dissolve it, or
13 those necessary to make payments authorized by this Receivership Order.

14 **III. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

15 IT IS FURTHER ORDERED that CCFOA, its representatives, agents, officers,
16 directors, employees, managers, members, and any other persons with possession,
17 custody, interest in, or control of property or records relating to CCFOA shall:

18 A. Upon notice of this Order by personal service or otherwise, immediately
19 notify the Receiver of all such property and records and, upon receiving a request from
20 the Receiver, immediately transfer or deliver to the Receiver possession, custody, and
21 control of the following:

22 1. All assets of CCFOA, including but not limited to any legal or
23 equitable interest in, right to, or claim to, any real, personal, or intellectual property,
24 including chattel, goods, instruments, equipment, fixtures, general intangibles, effects,
25 leaseholds, contracts, mail or other deliveries, shares or stock, securities, inventory,
26 checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform
27 Commercial Code), insurance policies (except for the GAIC Policies), lines of credit,
28 cash, trusts (including asset protection trusts), lists of donor names, and reserve funds or

1 any other accounts associated with any donations or other payments processed by, or on
2 behalf of, CCFOA, including such reserve funds held by payment processors, credit card
3 processors, caging companies, banks, or other financial institutions;

4 2. All documents of CCFOA, including books and records of accounts,
5 all financial and accounting records, balance sheets, income statements, bank records
6 (including monthly statements, canceled checks, records of wire transfers, and check
7 registers), client lists, donor lists, title documents, and all other materials listed in Federal
8 Rule of Civil Procedure 34(a), including writings, drawings, graphs, charts, photographs,
9 audio and video recordings, computer records, digital records, and other data
10 compilations from which information can be obtained and translated, if necessary, into
11 reasonably usable form through detection devices;

12 3. All computers, electronic devices, machines, and data in whatever
13 form used to conduct the business of CCFOA, and all passwords and other credentials
14 related thereto;

15 4. All assets and documents belonging to other persons or entities
16 whose interests are under the direction, possession, custody, or control of CCFOA; and

17 5. All keys, codes, user names, and passwords necessary to gain or to
18 secure access to any assets or documents of CCFOA, including access to its business
19 premises, means of communication, accounts, computer systems, or other property; and

20 B. Waive all claims to, and unconditionally release and consent to transfer
21 possession and legal and equitable title of all property of CCFOA to the Receiver or a
22 trust designated by the Receiver; and

23 C. Until CCFOA surrenders possession and legal and equitable title of all
24 property of CCFOA to the Receiver:

25 1. Maintain and take no action to diminish the value of CCFOA's
26 property, including any structures, fixtures, and appurtenances thereto;

27 2. Remain current on all amounts due and payable on the property of
28 CCFOA, including but not limited to taxes, insurance, maintenance, and similar fees; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Cause existing insurance coverage for the property of CCFOA to remain in force until the surrender of possession and legal and equitable title, and both notify the insurance carrier(s) immediately of the appointment of the Receiver and request that the Receiver be added to the insurance policy or policies as an additional insured thereunder.

D. Notwithstanding any other term, condition, or provision of this Order, the Receiver shall not have any legal or equitable rights to the GAIC Policies including, but not limited to, the payment of \$389,500 being made by GAIC and into the STCO Fund (the "GAIC Payment"). The Receiver expressly agrees that: (i) the GAIC Policies and the GAIC Payment are not assets that are subject to this Order; and (ii) prior to this Order becoming effective, CCFOA has agreed that the GAIC Policies are completely released, null and void, and of no effect whatsoever.

IV. COOPERATION

IT IS FURTHER ORDERED that:

A. CCFOA, its representatives, agents, officers, directors, employees, managers, members or any other persons with possession, custody, or control of property or records relating to CCFOA, must cooperate fully with the Receiver and take such other steps as the Receiver may require to transfer to the Receiver, or to the Receiver's designated trust, possession and legal and equitable title to all assets of CCFOA within five days of request by the Receiver, including executing any documents, procuring the signature of any person or entity under their control, providing access to the property of CCFOA and any necessary information, and turning over any property of CCFOA.

B. In the event that any person fails to deliver or transfer any asset or document, or otherwise fails to comply with any provision of this Order, the Receiver may file, ex parte, an affidavit of non-compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, writs of possession or sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of

1 any county, or any other federal, state, or local law enforcement officer, to seize the asset,
2 document, or other item covered by this Section and to deliver it to the Receiver.

3 **V. PROVISION OF INFORMATION TO RECEIVER**

4 IT IS FURTHER ORDERED that CCFOA shall provide to the Receiver,
5 immediately upon request, the following:

6 A. A list of all assets and property, including accounts, of CCFOA that are
7 held in CCFOA's name, any name other than the name of CCFOA, or by any person or
8 entity other than CCFOA; and

9 B. A list of all agents, employees, officers, directors, managers, members,
10 employees, agents, or those persons in active concert and participation with CCFOA,
11 who have been associated with or done business with CCFOA.

12 **VI. PROHIBITION ON INTERFERENCE WITH THE RECEIVER**

13 IT IS FURTHER ORDERED that CCFOA and its representatives, whether acting
14 directly or through any entity, corporation, subsidiary, division, director, manager,
15 member, employee, agent, affiliate, independent contractor, attorney, accountant,
16 financial advisor, or other device, except as provided herein, as stipulated by the parties,
17 or as directed by further order of the Court, are hereby restrained and enjoined from:

18 A. Interfering with the Receiver's efforts to manage, or take custody, control,
19 or possession of, the assets or documents subject to this receivership;

20 B. Transacting any of the business of CCFOA;

21 C. Transferring, receiving, altering, selling, encumbering, pledging, assigning,
22 liquidating, or otherwise disposing of any assets owned, controlled, or in the possession
23 or custody of, or in which an interest is held or claimed by, CCFOA or the Receiver; and

24 D. Refusing to cooperate with the Receiver or the Receiver's duly authorized
25 agents in the exercise of their duties or authority under any order of this Court.

26 **VII. STAY OF ACTIONS AGAINST CCFOA**

27 IT IS FURTHER ORDERED that, except by leave of this Court, during pendency
28 of the receivership ordered herein, CCFOA, its representatives, and other persons seeking

1 to establish or enforce any claim, right, or interest against or on behalf of CCFOA, and all
2 others acting for or on behalf of such persons, are hereby enjoined from taking action that
3 would interfere with the exclusive jurisdiction of this Court over the assets or documents
4 of CCFOA, including:

5 A. Petitioning, or assisting in the filing of a petition, that would cause CCFOA
6 to be placed in bankruptcy;

7 B. Commencing, prosecuting, or continuing a judicial, administrative, or other
8 action or proceeding against CCFOA, including the issuance or employment of process
9 against CCFOA, except that such actions may be commenced if necessary to toll any
10 applicable statute of limitations;

11 C. Filing or enforcing any lien on any asset of CCFOA, taking or attempting to
12 take possession, custody, or control of any asset of CCFOA, or attempting to foreclose,
13 forfeit, alter, or terminate any interest in any asset of CCFOA, whether such acts are part
14 of a judicial proceeding, are acts of self-help, or otherwise; and

15 D. Initiating any other process or proceeding that would interfere with the
16 Receiver's efforts to manage or take custody, control, or possession of the assets or
17 documents subject to this receivership.

18 **PROVIDED THAT**, this Order does not stay: (i) the commencement or
19 continuation of a criminal action or proceeding; (ii) the commencement or continuation
20 of an action or proceeding by a governmental unit to enforce such governmental unit's
21 police or regulatory power; or (iii) the enforcement of a judgment, other than a monetary
22 judgment, obtained in an action or proceeding by a governmental unit to enforce such
23 governmental unit's police or regulatory power.

24
25 **VIII. RECEIVER'S BOND**

26 IT IS FURTHER ORDERED that the Receiver shall file with the Clerk of this
27 Court a bond in the sum of \$25,000 with sureties to be approved by the Court,
28

1 conditioned that the Receiver will well and truly perform the duties of the office and
2 abide by and perform all acts the Court directs. 28 U.S.C. § 754.

3 **IX. COMPENSATION OF RECEIVER**

4 IT IS FURTHER ORDERED that the Receiver and all personnel hired by the
5 Receiver as herein authorized, including counsel to the Receiver and accountants, are
6 entitled to reasonable compensation for the performance of duties undertaken pursuant to
7 this Order and for the cost of actual out-of-pocket expenses incurred. The Receiver's
8 compensation and the compensation of any persons hired by the Receiver are to be paid
9 solely from the assets of CCFOA and any proceeds from the liquidation of CCFOA, and
10 such payments shall have priority over all other distributions except for any transfer fees,
11 recording fees, or other payments owed through the transfer of CCFOA's assets. The
12 Receiver shall file with the Court and serve on the parties a request for the payment of
13 reasonable compensation at the time of the filing of periodic reports and no less than
14 every 60 days. The Receiver shall not increase the fees or rates used as the basis for such
15 fee applications without prior approval of Plaintiffs and the Court. CCFOA shall have no
16 right to object to the Receiver's fees or compensation. Absent a violation of this Order
17 that causes the Receiver to incur fees or expenses, CCFOA shall not be liable for the
18 Receiver's fees or expenses.

19 **X. RECEIVER REPORTS**

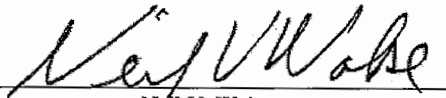
20 IT IS FURTHER ORDERED that the Receiver shall periodically file with the
21 Court, no less than every 60 days, a Receivership Report, under oath, accurately
22 identifying any and all revenues received and expenditures made, including adequately
23 detailed information concerning income, expenses, payables, and receivables. These
24 periodic filings shall be served by the Receiver on Plaintiffs and CCFOA, and their
25 respective counsel.

26 **XI. TERMINATION OF RECEIVERSHIP**

27 IT IS FURTHER ORDERED that, upon the final transfer of all funds to the STCO
28 Fund and the dissolution of CCFOA, the duties of the Receiver shall terminate. The

1 Receiver shall file a final application for fees, complete liquidation, and terminate his or
2 her service within 360 days of the entry of this Order, unless good cause is shown to
3 extend the receivership beyond 360 days. At the termination of the Receiver's duties, the
4 Receiver shall transfer any unliquidated assets of CCFOA to the STCO Fund.

5 Dated this 28th day of May, 2015.

6
7 

8
9 Neil V. Wake
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28