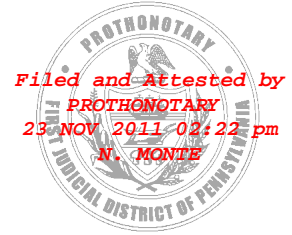


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John Doe #4

"John Doe #4", a pseudonym,	:	COURT OF COMMON PLEAS
c/o Andreozzi & Associates, P.C.	:	PHILADELPHIA COUNTY,
215 Pine Street, Suite 200	:	PENNSYLVANIA
Harrisburg, PA 17101	:	
Petitioner	:	DOCKET NO.
v.	:	
The Second Mile	:	
1402 South Atherton Street	:	
State College, PA 16801	:	
Respondent	:	COMPLAINT-EQUITY

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT
OF EMERGENT MOTION FOR INJUNCTIVE RELIEF**

I. MATTER BEFORE THE COURT

Currently before this Honorable Court is an Emergent Motion for Injunctive Relief filed by Plaintiff John Doe #4, which respectfully requests that this Honorable Court enter an appropriate Order enjoining the Defendant from dissipating or otherwise encumbering assets.

II. STATEMENT OF QUESTIONS PRESENTED

Should this Honorable Court enjoin Defendant from dissipating or otherwise encumbering assets which should remain available for victims of child sexual abuse when the Defendant, through its interim CEO and on its website, has publicly announced that it will either:

(1) restructure the organization and keep its programs going; (2) maintain its programs by transferring them to other organizations; or (3) not continue and where substantial assets will likely be irreparably dissipated if option (2) or (3) is implemented?

Suggested Response: Yes.

III. FACTS

The Second Mile is a non-profit organization that was founded by Jerry Sandusky in 1977, with the purported purpose of serving youth in Pennsylvania who need additional support and who would benefit from positive human contact. See the website of The Second Mile, located at <http://www.thesecondmile.org/aboutUs.php>, and attached as Exhibit 4 to Plaintiff's Complaint. Plaintiff was introduced to Jerry Sandusky through The Second Mile in 1996 or 1997 when he was 12 or 13 years of age. See Plaintiff's Complaint in Support of Injunctive Relief, para. 10, Exhibit 1, hereto; *See also* Findings of Fact of Statewide Investigating Grand Jury, pp. 14-16, attached as Exhibit 1 to Complaint. Shortly thereafter, Sandusky engaged in the systematic rape and sexual assault of Plaintiff, which tragically continued for several years. See Plaintiff's Complaint in Support of Injunctive Relief, para. 11, Exhibit 1, hereto; *See also* Findings of Fact of Statewide Investigating Grand Jury, pp. 14-16, attached as Exhibit 1 to Complaint. During this course of time, Sandusky took Plaintiff to various Second Mile events, and the two frequented the property owned by The Second Mile. *Id.*

In 1998, approximately one year after Plaintiff met Sandusky through The Second Mile, complaints were made to Wendell Courtney, who served as general counsel to The Second Mile, that Sandusky engaged in inappropriate sexual activity with minors in the showers of the locker room at Penn State. See Report of Statewide Investigating Grand Jury, p. 9, attached as Exhibit 1 to Plaintiff's Complaint. Later, in 2002, a Penn State graduate assistant observed Sandusky

subjecting a ten year old boy to anal intercourse while both were naked in the showers located in the locker room at the Lasch Football Building on the University Park Campus. *Id.* at p. 6-7. The graduate assistant reported his observation to Penn State's head football coach, who, in turn reported this to the Athletic Director. Approximately one and a half weeks later, the incident was reported to The Second Mile. *Id.* at p. 7-8. Then Penn State Athletic Director, Tim Curley, testified that he "informed Dr. Jack Raykovitz, Executive Director of The Second Mile of [Sandusky's] conduct reported to him." *Id.* at p. 8. Curley also "met with Sandusky to advise Sandusky that he was prohibited from bringing youth onto the Penn State campus from that point forward. Curley testified that he met again with the graduate assistant and advised him that Sandusky had been directed not to use Penn State's Athletic facilities with young people and 'the information' had been given to [the] director of The Second Mile." *Id.*

In November 2008, Sandusky informed The Second Mile that he had learned that he was being investigated as a result of allegations made against him by an adolescent male in Clinton County, PA. The Pennsylvania Attorney General thereafter began a multi-year investigation into allegations that Sandusky was sexually assaulting children. On November 5, 2011, the Thirty-Third Statewide Investigating Grand Jury findings were published, and Sandusky was arrested immediately thereafter. The findings detail eight victims who were sexually assaulted by Sandusky over the course of several years and some on multiple occasions.

On November 13, 2011, The Second Mile 's CEO, Jack Raykovitz, resigned after 28 years which was believed to be "in the best interests of the organization", according to a statement from The Second Mile website. See the website of The Second Mile, located at <http://www.thesecondmile.org/welcome.php>, and attached as Exhibit 3 to Plaintiff's Complaint. On November 18, 2011, the New York Times and other news organizations reported that The

Second Mile charity planned to "fold." See "Charity Founded by Accused Ex-Coach May Fold", New York Times, November 18, 2011, attached as Exhibit 6 to Plaintiff's Complaint; See also articles from Centre Daily Times, 11/19/11, NBC Philadelphia, 11/18/11, CBS News, 11/18/11, attached collectively as Exhibit 7 to Plaintiff's Complaint. The New York Times specifically reported that The Second Mile's interim CEO David Woodle "said in an interview Friday [November 18, 2011] that the foundation was seeking to transfer its programs to other nonprofit organizations. The Second Mile's leaders are looking at organizations that could, and would, carry forward the foundation's work with disadvantaged youths. He would not say which organizations would be candidates." "Charity Founded by Accused Ex-Coach May Fold", New York Times, November 18, 2011, attached as Exhibit 6 to Plaintiff's Complaint.

On November 21, 2011, The Second Mile reported on its website that "Because the focus of our organization is on the children, The Second Mile is currently exploring three options: (1) restructuring the organization and keeping its programs going, even if it means doing so at a reduced level of service and funding, (2) maintaining the programs by transferring them to other organizations or (3) not continuing." See Statement of The Second Mile, November 21, 2011, attached as Exhibit 3 to Plaintiff's Complaint.

IV. ARGUMENT

A. LEGAL STANDARD FOR INJUNCTIVE RELIEF

Pursuant to Pa.R.C.P. 1531, "[a] court shall issue a preliminary or special injunction only after written notice and hearing unless it appears . . . that immediate and irreparable injury will be sustained before notice can be given or hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without special notice."

Furthermore, a court may appoint a receiver upon request for special relief. Pa.R.Civ.P. 1533. In exigent situations, a court may appoint a receiver without notice to the opposing party. *Id.* "A hearing on the continuation or revocation of the appointment shall be held promptly." *Id.*

B. **PLAINTIFF'S REQUEST FOR A PRELIMINARY INJUNCTION SHOULD BE GRANTED BECAUSE: (A) IT IS NECESSARY TO PREVENT IMMEDIATE AND IRREPARABLE HARM; (B) THE HARM SUFFERED BY PLAINTIFF OUTWEIGHS THE HARM SUFFERED BY DEFENDANT; (C) THE RELIEF WILL RESTORE THE PARTIES TO THEIR STATUS QUO; (D) THE PLAINTIFF HAS DEMONSTRATED THAT SUBSTANTIAL LEGAL QUESTIONS MUST BE RESOLVED; (E) THE RELIEF REQUESTED DOES NOT ADVERSELY AFFECT THE PUBLIC INTEREST**

Under Pennsylvania law, for a party to obtain a preliminary injunction, the following prerequisites must be met:

- (a) "the party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages";
- (b) "the party must show that greater injury would result from refusing an injunction than by granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings";
- (c) "the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct";

- (d) “the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits”;
- (e) “the party must show that a preliminary injunction will not adversely affect the public interest.”

W. Pittsburgh P'ship v. McNeily, 840 A.2d 498, 505 (Pa. Commw. Ct. 2004)(quoting *Summit Towne Centre, Inc., v. Shoe Show*, 828 A.2d 995, 1001 (Pa. 2003)).

In the case at bar, the Plaintiff is able to meet all of these requirements. First, the Plaintiff is able to demonstrate that the injunction is needed to prevent immediate and irreparable harm. If this Honorable Court fails to enter the relief requested, it is quite likely that Plaintiff and other victims similarly situated will not be able to recover damages in a civil claim. The Second Mile itself has published information indicating that two of its three options for moving forward involve transferring programs to other organizations or not continuing operations. See Statement of The Second Mile, November 21, 2011, attached as Exhibit 3 to Plaintiff's Complaint. If either of these options are implemented, The Second Mile would likely transfer significant financial resources out of the organization. Other outside reports suggest that The Second Mile may fold or seek to transfer programs, both of which could drain the organization of its financial resources. See “Charity Founded by Accused Ex-Coach May Fold”, New York Times, November 18, 2011, attached as Exhibit 6 to Plaintiff's Complaint; See also articles from Centre Daily Times, 11/19/11, NBC Philadelphia, 11/18/11, CBS News, 11/18/11, attached collectively as Exhibit 7 to Plaintiff's Complaint.

While the Plaintiff and similarly situated victims will clearly benefit from the preservation of The Second Mile assets, there is no substantial harm that would result to The Second Mile if the relief requested was granted. In fact, The Second Mile would still be afforded

the opportunity to continue conducting business as usual. The Plaintiff merely seeks that The Second Mile be limited from liquidating or transferring significant assets without prior Court approval.

The Plaintiff and other victims are likely to prevail on the merits of the case as further outlined in Plaintiff's Complaint, which specifically identifies Defendant's notice of inappropriate contact between Sandusky and children. However, the party seeking the injunction does not need to prove that it will prevail on its theory of liability, but only that there are substantial legal questions that the court must resolve to determine the rights of the parties. *Walter v. Stacy*, 837 A.2d 1205, 1209 (Pa.Super. 2003). A Court may order relief in the form of issuance of a preliminary injunction barring the dissipation of assets simply in *anticipation* of civil liability, and is not required to determine the certainty of liability or enter a judgment. *Id.*; *see also Ambrogi v. Reber*, 932 A.2d 969 (Pa.Super. 2007), *appeal denied*, 597 Pa. 725, 952 A.2d 673, 2008 Pa. LEXIS 926 (2008); Standard Pennsylvania Practice, § 83:57 Dissipation of Assets (“A trial court may grant a preliminary injunction to prevent dissipation of assets in *anticipation* of a lawsuit.”) (emphasis added).

Finally, the relief requested will not adversely affect the public interest, and, to the contrary, will promote the greater interest of the public by not interrupting the Defendant's current operations, assuming proper institutional policies and procedures have been implemented to ensure the safety and well being of the children involved in Defendant's continuing pursuits.

The Pennsylvania Superior Court considered an analogous case in *Walter v. Stacy*, 837 A.2d 1205, 1207 (Pa. Super. Ct. 2003). In *Walter*, the plaintiff, Mrs. Walter, brought suit against defendants, Mr. and Mrs. Stacy, for wrongful death and survival arising from Mr. Stacy's killing of Mr. Walter. On the day of Stacy's killing of Mr. Walter, Mr. Walter was scheduled to appear

as a witness at Mr. Stacy's criminal trial for charges of sexual assault. While Mrs. Walter's civil suit was pending, the defendants placed their real property up for sale. *Id.* In response, the court granted an injunction requiring that the defendants place the proceeds from the sale into an escrow account from which they could not make a withdrawal without a court order. *Id.* The order provided that the defendants could not use the proceeds without court order so as to prevent the "unfair, wholesale dissolution of their assets in anticipation of civil liability." *Id.*

The Superior Court held that, in deciding whether to issue a preliminary injunction, the trial court need not hold an evidentiary hearing regarding the civil liability of the defendants prior to issuance of an injunction to enjoin the dissipation of assets. The Superior Court stated: "[w]hether Mrs. Walter surely will prevail on this theory of liability is not the question. The party seeking an injunction need not prove the merits of the underlying claim, but need only show that substantial legal questions must be resolved to determine the rights of the respective parties." *Id.* 837 A.2d at 1209-1210, citing, *Fischer v. Department of Public Welfare*, 497 Pa. 267, 271, 439 A.2d 1172, 1174 (1982); *Chmura v. Deegan*, 398 Pa.Super. 532, 581 A.2d 592, 593 (1990).

In another case, *Ambrogi v. Reber*, 932 A.2d 969 (Pa.Super. 2007), *appeal denied*, 597 Pa. 725, 952 A.2d 673, 2008 Pa. LEXIS 926 (2008), the Superior Court approved of the trial court's grant of temporary and permanent injunctions, which enjoined defendants from dissipating assets under similar circumstances. The plaintiffs filed an action against defendant apartment owners stemming from the deaths of two people in a fire and injuries to a third fire victim. The plaintiffs asserted claims of negligence for the owners' failure to comply with applicable fire codes and other grounds for negligence. The trial court found that a preliminary injunction should properly issue when there was a likelihood of a verdict well in excess of

insurance coverage and when the defendant had extensive assets in the form of real estate holdings, some of which had been sold since the fire. The *Ambrogi* court held that: “The law does not preclude a trial court from granting a preliminary injunction to prevent dissipation of assets.” *Id.* at 975. The court found that reasonable grounds supported issuance of a preliminary injunction that prevented owners of an apartment building from dissipating their assets in attempt to become judgment-proof. The trial court issued an injunction, upheld by the Superior Court on appeal, which required defendants to place net proceeds of any sale of property held by them into a court-supervised interest bearing escrow account. *Id.* at 973, 980. The *Ambrogi* court, like in *Walter*, first held that the issuance of an injunction would preserve the status quo and prevent the imminent and irreparable harm that might occur before the merits of the case could be determined.

Further, the court held, relying upon the Superior Court’s decision in *Walter*, that the party seeking a preliminary injunction is not required to prove that he will prevail on his theory of liability, but only that there are “substantial legal questions that the trial court must resolve to determine the rights of the parties.” *Id.* at 976, 980. The court further found that the injunction entered would not enjoin the defendant’s business from operating, but rather would eliminate the risk of dissipation of assets.

In the present case there exists an even more immediate need for entry of an injunction. The Second Mile’s interim CEO, as well as statements contained on The Second Mile’s own website, indicate that it is seeking to proceed in one of three ways, two of which are likely to result in the dissipation of its assets, in whole or in part. One “option” being considered by The Second Mile is to “transfer” its programs to other charities, which presumably would include the transfer of assets which are used to fund its programs. Unlike the defendant in *Ambrogi*, who

would receive proceeds from the sale of property, should the Second Mile proceed to transfer its programs, the Second Mile would receive no proceeds in return. Another “option” being considered by The Second Mile is “not continuing.” In the event that The Second Mile proceeds with this option, there currently exists no prohibition in place to prevent The Second Mile from giving its assets away. For these reasons, there clearly exists an immediate need for an injunction to preserve the status quo pending the ultimate determination of The Second Mile’s liability to John Doe #4 or other victims of child sexual abuse.

V. **RELIEF REQUESTED**

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that this Honorable Court enter an Order enjoining and restraining Defendant from transferring, selling, encumbering, dissipating or adversely affecting its assets until further Order of this Court. Plaintiff further requests that a receiver be appointed to approve day to day expenditures of The Second Mile limited to rent, utilities, supplies, and other ordinary and necessary business costs and expenses. The payment of any other expenditures, whether at the request of the receiver or the Defendant shall occur only at the request to and approval by the Court with appropriate notice to Plaintiff through his counsel. Finally, Plaintiff requests that defendant supply an accounting of its present assets and liabilities to the receiver.

Respectfully submitted,

BY: *Benjamin D. Andreozzi /s/*

Benjamin D. Andreozzi, Esquire

BY: *Jeffrey P. Fritz /s/*

Jeffrey P. Fritz

Co-Counsel for Plaintiff
John Doe #4

Dated: November 23, 2011