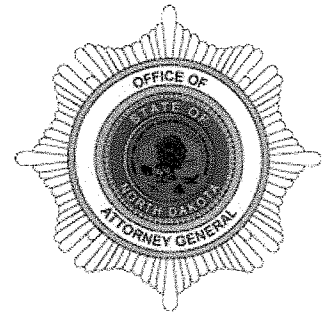




OFFICE OF ATTORNEY GENERAL  
 CONSUMER PROTECTION AND ANTITRUST DIVISION  
 GATEWAY PROFESSIONAL CENTER  
 1050 E INTERSTATE AVENUE, STE 200  
 BISMARCK, NORTH DAKOTA 58503-5574



701-328-5570 (Telephone)  
 701-328-5568 (Facsimile)

STATE OF NORTH DAKOTA  
 OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.  
 WAYNE STENEHJEM,  
 ATTORNEY GENERAL,

Petitioner,

-vs-

JAMES MICHAEL AUSTIN, aka MICHAEL  
 FISHER, RED CROSS OF AMERICAS,  
 INC.,

Respondents.

**CEASE AND DESIST ORDER,  
 NOTICE OF CIVIL PENALTY  
 AND NOTICE OF RIGHT  
 TO REQUEST A HEARING**

CPAT 170247.001

**To the individuals identified below ("Respondents"):**

JAMES MICHAEL AUSTIN  
 RED CROSS OF AMERICAS, INC.  
 2751 19<sup>TH</sup> AVE. NE  
 MARTIN, ND 58758-9200

JAMES MICHAEL AUSTIN  
 RED CROSS OF AMERICAS, INC.  
 2110 FRONT ST.  
 DIMMITT, TX 79027

**BACKGROUND**

1. The Attorney General of North Dakota has a reasonable basis to believe Respondents have engaged in, or are engaging in, acts or practices declared unlawful by N.D.C.C. ch. 50-22, commonly referred to as the "Charitable Organizations Soliciting Contributions Law," and N.D.C.C. ch. 51-15, commonly referred to as the "Consumer

Fraud Law.” It is necessary and appropriate in the public interest and for the protection of consumers to restrain the Respondents’ unlawful acts or practices.

2. Respondents, individually and by and through their agents, are doing business under some or all of the names identified above, and has engaged in violations of North Dakota law by: 1) operating a charitable organization that engages in or purports to engage in solicitation for a charitable purpose without first registering with the North Dakota Secretary of State, in violation of N.D.C.C. ch. 50-22; 2) for financial compensation or profit, performs for a charitable organization a service in connection with which contributions are, or will be solicited, without first registering with the North Dakota Secretary of State, in violation of N.D.C.C. ch. 50-22; and 3) acting, using, or employing deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise, in violation of N.D.C.C. ch. 51-15.

3. Respondent James Michael Austin (DOB: 10/29/1976), also known as Michael Fisher, (“Austin”) has a last known address in North Dakota at 2751 19<sup>th</sup> Ave. NE, Martin, ND 58758-9200. Austin is believed to reside at 2110 Front St., Dimmitt, TX 79027 and has a telephone number of 307-315-0792.

4. Respondent Red Cross of Americas, Inc. (“Red Cross of Americas”) is a nonprofit corporation registered with the North Dakota Secretary of State considered active and in good standing. Red Cross of Americas has a principal office at 2751 19<sup>th</sup> Ave. NE, Martin, ND 58758-9200. Red Cross of Americas’ registered agent is Michael Fisher, an alias of James Michael Austin, with an address of 2751 19<sup>th</sup> Ave. NE, Martin,

ND 58758-9200. Red Cross of Americas was established on December 13, 2017. Red Cross of Americas listed the nature of its business as “help drought victims.”

5. Respondents are in the business of soliciting and selling merchandise, including soliciting contributions. Respondents, or Respondents’ agents on Respondents’ behalf, solicited North Dakota customers.

6. Respondents solicited contributions from persons in North Dakota, or operated as a professional fundraiser in North Dakota, without first registering with the North Dakota Secretary of State’s Office. Under N.D.C.C. § 50-22-05, when a charitable organization or professional fundraiser operates in violation of N.D.C.C. ch. 50-22, the Attorney General has all of the powers provided in N.D.C.C. chs. 50-22 or 51-15, and the Attorney General may seek all remedies in N.D.C.C. chs. 50-22 or 51-15. The remedies, duties, prohibitions, and penalties in N.D.C.C. ch. 50-22 are not exclusive and are in addition to all other causes of action, remedies, and penalties in N.D.C.C. ch. 51-15, or otherwise provided by law.

7. On December 12, 2017, Respondent Austin, using the name Michael Fisher, filed with the Secretary of State SFN 13003, North Dakota Nonprofit Corporation Articles of Incorporation, to form “Red Cross of Americas, Inc.” Austin listed himself as the sole incorporator, providing the mailing address 2751 19<sup>th</sup> Ave. NE, Martin, ND 58758.

8. Red Cross of Americas was granted a certificate of incorporation by the North Dakota Secretary of State on December 13, 2017.

9. The name “Red Cross of Americas” is deceptively similar to, or deceptively implies a connection with, the American Red Cross, the United States

affiliate of the International Federation of Red Cross and Red Crescent Societies, a humanitarian organization.

10. Upon information and belief, Respondent Austin incorporated the name “Red Cross of Americas” to either “pass off” Red Cross of Americas as the American Red Cross or to imply a connection with the American Red Cross.

11. On or about December 11, 2017, Respondents placed donation cups in Cenex gas stations in Fessenden, North Dakota using the name “Red Cross of Americas.” Respondents’ donation cups sought donations for the purported purpose of purchasing hay to assist drought victims.

12. Prior to soliciting charitable contributions on or about December 11, 2017, Respondents were not registered as a charitable organization or professional fundraiser in accordance with N.D.C.C. § 50-22-02 or 50-22-02.1.

13. During a telephone call with the Attorney General on December 14, 2017, Respondent Austin admitted to having received donations of approximately \$200.00. Subsequently, during a telephone call with the Attorney General on January 11, 2018, Respondent Austin admitted that he solicited charitable contributions in North Dakota and admitted that he was not registered as a charitable organization or professional fundraiser. During this second telephone call, Respondent Austin represented that, instead of having received donations of approximately \$200.00, he had only received donations totaling approximately \$40.00.

14. Upon information and belief, Respondent has not used any funds received from North Dakota consumers to aid drought victims.

15. It is believed that, on or about September 2017 through early 2018, Respondent Austin placed advertisements on BisManOnline, located at [www.bismanonline.com](http://www.bismanonline.com), claiming to be a farm company needing drivers. At least one individual responded to Respondent Austin's advertisement and provided Respondent Austin with his personal information. It is believed that Respondent Austin misrepresented the availability of employment for purposes of obtaining employment seekers' personal information. After obtaining the individual's personal information, Respondent Austin ceased communicating with the job seeker.

16. Respondent Austin also maintained a page on GoFundMe where he solicited donations purportedly for the benefit of North Dakota and Montana farmers. It is believed that Respondent Austin failed to receive funds through this effort. It is believed that had Respondent Austin succeeded in obtaining funds through GoFundMe, he would have used those funds for personal expenses and not for the charitable purpose he represented.

17. On January 16, 2018, the Attorney General issued a Civil Investigative Demand to Respondents. Respondents were instructed to comply on or before January 18, 2018. Respondents failed to comply as required.

18. On February 20, 2018, a warrant of arrest was issued by the McKenzie County District Court for Respondent Austin, under the name Michael James Fisher, for the charge of theft by deception of property with value above \$50,000.00. The warrant was issued in connection with Respondent Austin contracting to deliver a trailer and its contents for a North Dakota business. After taking possession of the trailer and its contents, Respondent Austin held it for ransom. Respondent Austin, under the name

Michael Fisher and other aliases, also has an open criminal charge for issuing a check without sufficient funds.

19. It appears to the Attorney General that Respondents, or Respondents' agents on Respondents' behalf, engaged in violations of N.D.C.C. chs. 50-22 and 51-15 by: 1) soliciting contributions in North Dakota without first registering with the North Dakota Secretary of State's Office as a charitable organization or professional fundraiser, and 2) acting, using, or employing deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise.

#### **ORDER**

Based upon the foregoing information, it appears to the Attorney General that Respondents have engaged in violations of N.D.C.C. chs. 50-22 and 51-15, and Respondents have failed or refused to respond to the Attorney General's January 16, 2018 Civil Investigative Demand as required by N.D.C.C. § 51-15-04; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents, or agents on their behalf, immediately **CEASE AND DESIST** from: 1) operating a charitable organization that engages in or purports to engage in the solicitation of contributions for a charitable purpose; 2) for financial compensation or profit, performing for a charitable organization a service in connection with which contributions are, or will be, solicited in North Dakota; 3) for compensation or profit, plan, manage, advise, consult, or prepare material for, or with respect to, the solicitation in North Dakota of contributions for a charitable organization; and 4) acting, using, or employing deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the

intent that others rely thereon in connection with the sale or advertisement of merchandise, including the solicitation of charitable contributions. Respondents also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for any services or merchandise and **CEASE AND DESIST** from taking any payments from North Dakota consumers including, but not limited to, direct debits or withdrawals from North Dakota consumers' bank accounts, cash, checks, or credit card payments for the sale of merchandise as defined in N.D.C.C. § 51-15-01(3).

**YOU ARE NOTIFIED** that pursuant to N.D.C.C. § 12.1-09-03 a person is guilty of a criminal offense if he or she intentionally "alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability" in an official proceeding. As such, intentional destruction of any documents related to this matter may result in criminal prosecution.

#### **NOTICE OF CIVIL PENALTIES**

**YOU ARE FURTHER NOTIFIED** that pursuant to N.D.C.C. § 51-15-07 any violation of this Cease and Desist Order is subject to civil penalties not to exceed \$1,000.00 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-15 may result in additional civil penalties of not more than \$5,000.00 per violation. Such penalties are separate and in addition to any civil penalties, costs, expenses, investigation fees, and attorney fees pursuant to N.D.C.C. ch. 51-15 or any other applicable statute. Nothing in this Order is intended to limit or waive any rights and remedies available to the State of North Dakota or consumers.

**NOTICE OF RIGHT TO REQUEST HEARING**

**YOU ARE NOTIFIED** that pursuant to N.D.C.C. § 51-15-07 you may request a hearing before the Attorney General if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondent has the right to be represented by legal counsel at the hearing at Respondent's expense.



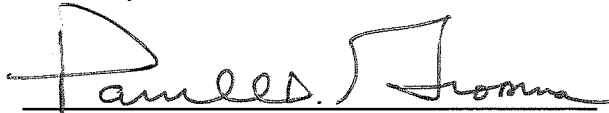
Dated this 21st day of March, 2018.

**STATE OF NORTH DAKOTA**

Wayne Stenehjem

Attorney General

BY:

A handwritten signature in black ink, appearing to read "Parrell D. Grossman". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke at the end.

Parrell D. Grossman, NDBID 04684

Assistant Attorney General

Director

Consumer Protection and

Antitrust Division

Office of Attorney General

Gateway Professional Center

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