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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

JAMES L. MARTIN, *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 AMY N. FREDERICK, *et al.*, )  
 )  
 Defendants. )

Case No. CL16001383

**SECOND DECLARATION OF JAMES L. MARTIN**

I, James L. Martin, pursuant to Va. Code § 8.01-4.3, hereby declare as follows:

1. I am a resident of the Commonwealth of Virginia. I am over 18 years of age. I have personal knowledge of the contents of this Declaration and if called as a witness I could and would testify competently as to their truth.
2. I am the Chairman and a member of the Board of Directors of The 60 Plus Association, Inc. ("60 Plus"), an I.R.C. § 501(c)(4) corporation incorporated in the Commonwealth of Virginia pursuant to the Virginia Nonstock Corporation Act with its principal place of business at 515 King Street, Suite 315, Alexandria, VA 22314.
3. I am the Founder of 60 Plus, and have been its Chairman and a Director for 24 years.

**The Contract**

4. I am acquainted with Jeffrey Frederick. He is the husband of 60 Plus' President, Amy Noone Frederick, a Defendant in the above-captioned case. I am aware generally that Mr. Frederick works in the field of information technology.

5. I signed the April 11, 2001 contract ("Web Design Contract" or "Contract") attached as Exhibit 2 to Ms. Frederick's Declaration in support of her Opposition to the Plaintiffs' Motion for a Temporary Injunction.

6. The Contract terms are consistent with my recollection that I hired Mr. Frederick approximately fifteen years ago to redesign 60 Plus' website for about \$8000, with minor ongoing service charges of no more than a few hundred dollars a month after the initial charge.

7. The Contract calls for a "redesign of [60 Plus'] website" for a "flat-rate" license costing \$4,999.95 and additional add-on services budgeted at \$3,000, which is the basis for \$8000 start-up charge. Monthly service charges are for things such as web hosting (\$49.95 per month); listserv hosting (\$10 per 5,000 addresses); and "Email-to-a-Friend" service (\$29.95 per month). The latter are what I considered to be out year expenses.

8. My interaction with Mr. Frederick over the past fifteen years has been very limited, consisting of requesting him to "e-blast" periodic newsletters to our 40,000 email list. I rarely saw him at our office and cannot recall ever speaking with him telephonically after signing the Contract.

9. If my name is on more than a handful of emails to Mr. Frederick (over a 15-year time period) it is because Mary Mahoney, 60 Plus Vice President, had permission to send emails on my behalf for certain limited business communications.

**The Vendor Balance Sheets**

10. After Ms. Frederick assumed the role of 60 Plus President in 2010, Ms. Frederick regularly presented me with "Vendor Balance Summary" documents, which purported to show the balances due each 60 Plus' vendor, including Comcast, FedEx, health insurers, attorneys, accountants, office supply companies, and other service providers.

11. A true and correct copy of an example of these Vendor Balance Summaries is attached at Exhibit 1. There are more examples but they are at the 60 Plus office and I do not have access to it.

12. Ms. Frederick and I would thoroughly discuss these documents, prioritizing which vendors would be paid based on 60 Plus' liquidity. The extent of our discussions is evidenced by the large number of notes visible on Exhibit 1.

13. Like most non-profit organizations, 60 Plus experiences periods of variable cash flow. In the course of discussing the Vendor Balance Sheets, Ms. Frederick and I would often have to make difficult decisions as to which payments to prioritize based on 60 Plus' liquidity.

14. I believed that Ms. Frederick had prepared and discussed these documents with me in good faith. Accordingly, I did not think it necessary for me to review copies of 60 Plus' cancelled checks to verify that actual cash outflow was consistent with the summaries provided by Ms. Frederick.

15. I recall seeing only one invoice from Gen-X in a minor amount, which is consistent with the terms of the contract. That was many years ago. I cannot recall any other invoices from Gen-X Strategies, Inc., or ChargedContribution.com appearing on the Vendor Balance Summaries or arising during my discussions with Ms. Frederick about accounts payable.

16. Attached at Exhibit 2 are true and correct copies of invoices for over \$100,000 (provided by Ms. Frederick via counsel in the weeks before this lawsuit was filed), stating only "Consulting Services." I never saw these invoices before they were produced to my counsel in this lawsuit.

17. After undertaking a thorough analysis of the cancelled checks in preparation for this litigation in the Fall of 2015, I discovered that Ms. Frederick (unknown to me at the time)

appears to have deliberately timed large payments to Gen-X just prior to preparing the Vendor Balance Summaries. This strategy would have ensured that when we reviewed outstanding balances due other vendors, Gen-X would have no "balance" and would not appear as an account payable.

18. Ms. Frederick gave me no information—either documentary or orally—which would have given me notice 60 Plus paid her husband's companies almost \$800,000 over five years.

#### **Chain Bridge Bank**

19. Sometime in 2013, Ms. Frederick requested Board permission to change banks, and it was granted. When she opened the new 60 Plus account at Chain Bridge Bank, unknown to me and without my permission, Ms. Frederick made herself the sole signatory. I had been a signatory on 60 Plus's previous account with PNC.

20. Subsequent to my discovery of the nearly \$800,000 in payments to Ms. Frederick's husband's companies (Gen-X and ChargedContribution), I met with senior officers of Chain Bridge bank. The officers refused to discuss the account with me because I was "not a signatory." The officers stated they consider the matter to be a legal dispute.

21. Ms. Frederick refused to sign documents necessary to authorize me or 60 Plus' Treasurer, Prather McKinnon, to be signatories on the Chain Bridge account (or accounts), even though the four Plaintiffs passed a Resolution for her to do so.

22. I want to provide additional information regarding the cancelled checks and my discovery of Ms. Frederick's scheme. Sometime in February 2015, I became concerned that Ms. Frederick's attitude toward me had grown increasingly hostile. I became more and more puzzled as to why she seemed bent on trying to force me out before a successor was named. I

went to the old bank, PNC, and asked for the cancelled checks. Because the accounts had been closed, it took awhile (I cannot recall how long) to obtain the checks. I did not focus on the checks at that time because I was busy planning a fund raiser with Pat Boone.

23. In early August 2015, a person who had no connection to 60 Plus told me that she heard Amy's husband had made about a half million dollars off 60 Plus. I then focused on the canceled checks. I added the PNC checks to Gen-X and ChargedContribution and the total was \$589,770.22.

24. I then went to Chain Bridge Bank and asked for 60 Plus' cancelled checks. The person at the bank knew I was Chairman and provided them to me. The payments to Gen-X totaled \$205,731.85.

25. During these few weeks in late summer 2015 was the first I knew that Ms. Frederick had paid her husband company almost \$800,000.

26. Ms. Frederick must have been informed of my getting the checks and ordered the bank not to do business with me because when I returned to discuss the issue with Chain Bridge Bank, the management refused to talk with me, saying I was not a signatory.

#### 990s

27. Ms. Frederick never said anything to me that caused me to believe the negative responses she gave to Question 28(c)<sup>1</sup> on 60 Plus' Forms 990 for fiscal years 2009-2013 were false, misleading, incomplete, or otherwise meritorious of further inquiry.

28. Ms. Frederick never presented any information at a 60 Plus Board meeting that would have caused a Board member to believe the negative responses she gave to Question 28(c)

<sup>1</sup> "Was the organization a party to a business transaction with one of the following parties: [A]n entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner?"

on 60 Plus' Forms 990 for fiscal years 2009-2013 were false, misleading, incomplete, or otherwise meritorious of further inquiry.

29. At the time the 990s were filed, I believed in good faith that Ms. Frederick was reliable and competent as to the information and statements contained in them.

30. If I had been aware of 60 Plus' large transactions with Gen-X and ChargedContribution, I would not have permitted the 990s to be filed in that form without further inquiry, which would include, at a minimum, an explanation of the purpose of the checks, an assessment of the value received by 60 Plus in return for them, and advice from competent attorneys and/or accountants.

31. Ms. Frederick's Declaration states that she has filed amended 990s on behalf of 60 Plus for only fiscal years 2011 and 2012. She has provided no backup documentation (including the Schedule L that would need to be filed along with the amended 990s detailing the transactions), nor has she provided an explanation for why amended forms were not filed for fiscal 2009 (\$44,600.99 paid to Gen-X), 2010 (\$295,896.87), and 2014 (\$139,180.16). Nor has she provided documentation for her assertions that "we did not need not need to [sic] submit and amended IRS Form 990 for 2013" and "the association is in good standing with respect to its prior tax filings." (¶¶ 36-37).

32. Pursuant to 60 Plus' Conflict of Interest Policy,<sup>2</sup> adopted in December 2014, the President is required to "disclose to the... Board of Directors" "material facts" about any relationship where she has "any direct or indirect financial benefit..." A majority vote of the disinterested Directors must approve such transactions. (Exh. 3 pp. 10-11).

33. Ms. Frederick never disclosed or sought the approval of the Board of Directors for the transactions with Gen-X and ChargedContribution.com.

<sup>2</sup> A true and correct copy of the minutes adopting the Conflict of Interest Policy is attached at Exhibit 3.

**Ms. Frederick's Declaration Contains Inaccuracies**

34. Ms. Frederick's Declaration contains numerous inaccuracies.

35. For example, Ms. Frederick states, "Gen-X frequently assists 60 Plus put together [sic] press releases and other media announcements." This statement is untrue. I have never sought Mr. Frederick's input in drafting any press release or media announcement. I have an extensive background in journalism, including a degree from the University of Florida. Moreover, 60 Plus employs a full-time media communications professional. Together we drafted and edited press releases to the media.

36. Ms. Frederick also states that "it is a common practice within [60 Plus] for staff, employees, and directors to regularly engage with Gen X representatives regarding various communication, technology, and Internet related initiatives. . . ." ¶ 12. This statement is also untrue. As a threshold matter, I am unaware that Gen-X has any "representatives" other than Mr. Frederick. Furthermore, my communications with Mr. Frederick have been limited to directing that 60 Plus' newsletters be sent to the 60 Plus list of approximately 40,000 email addresses.


37. Ms. Frederick also states that "By [February 11, 2016], I had already provided copies of Gen X invoices for services rendered to 60 Plus and the alleged credit card statements to all Directors to try and work amicably with the other Directors to address their stated concerns." ¶ 18. This statement is misleading. Ms. Frederick provided a handful of Gen-X invoices, covering only a fraction of the total amount paid to Gen-X in the relevant time period. Furthermore, many of them are one-line invoices for "Consulting Services." Ms. Frederick did provide the credit card statements to the Directors, which is how they became aware of the expenses that appear personal such as wine and health club membership dues. She has refused,

however, to provided an explanation of how these payments could be legitimate 60 Plus expenditures, and, if they were personal, whether she reimbursed 60 Plus.

FURTHER DECLARANT SAITH NOT.

Pursuant to Va. Code Ann. § 8.01-4.3, I declare under penalty of perjury that the foregoing is true and correct.

DATED: April 25, 2016

By   
James L. Martin

09/04/14

THE DU PUIS ASSOCIATION, INC.  
Vendor Balance Summary

All Transactions  
Sep 3, 14

Advantage, Inc.	\$ 11,125.70
Anthem	\$ 122.30
AT&T	\$ 446.83
Badger Sunrall and Company	\$ 10,520.00
CareFirst	\$ 3,367.75
Comcast	\$ 413.79
DG London	\$ 2,250.00
DentiaQuest	\$ 103.40
Direct Response Group	\$ 42,500.00
FedEx	\$ 232.75
Holtzman Vogel Josephak PLLC	\$ 4,834.18
Jamestown Associates	\$ 470.00
L&Z Transportation	\$ 471.43
PNC Bank	\$ 939.27
Purchase Power	\$ 500.00
Quill	\$ 157.54
Safeguard	\$ 351.93
Washington Times	\$ 18,400.00
Webster, Chamberlain and Bean	\$ 1,694.45
<b>TOTAL</b>	<b>\$ 98,901.32</b>

Dec 15  
Budget  
Donor  
PMT's  
-1500-00

Foster  
307  
-137-5184

Reimb - 15K  
Mey Mach. - 10K  
Mkin Gump - 14-500-15K

Sean - 50K - 20K?  
Alu Power 60K  
Stash - Treas 2.5K

Bill Hecht  
10,500

P-A-J  
G

Advantage, Inc.  
Anthem  
AT&T  
Badger Sunrall and Company  
CareFirst  
Comcast  
DG London  
DentiaQuest  
Direct Response Group  
FedEx  
Holtzman Vogel Josephak PLLC  
Jamestown Associates  
L&Z Transportation  
PNC Bank  
Purchase Power  
Quill  
Safeguard  
Washington Times  
Webster, Chamberlain and Bean

**Outstanding**  
National Mining Association \$ 15,000.00  
Akin Gump \$ 15,000.00  
Sean Noble \$ 150,000.00  
Taxes need to pay 59.100

ChargedContribution.Com  
P.O. Box 58  
Woodbridge, VA 22184

Bill To: 60 Plus  
Amy N. Frederick  
515 King Street, Suite 316  
Alexandria, VA 22314

Invoice

Date: 10/30/2012  
Invoice #: 0024-0338

Wire ADA #259071901; Acct# 141-630121-8

Date	Project	Item	Rate	Description	Qty	Amount
10/24/2012		Consulting Services	10,000.00	Online/Social Media Campaign - Scope		10,000.00
10/30/2012		Consulting Services	100,000.00	Online/Social Media Campaign - PM		100,000.00

Current Charges Total: \$110,000.00

ChargedContribution.Com  
P.O. Box 58  
Woodbridge, VA 22194

BILL TO: 60 Plus  
Amy N. Frederick  
515 King Street, Suite 315  
Alexandria, VA 22314

**Invoice**

Date: 7/6/2012  
Invoice #: 0624-0325

Date	Project	Item	Rate	Description	Qty	Amount
6/9/2012		Consulting Services	125,019.00	Florida/Ohio Online Campaign ("Stop Wasteful Spending")		125,019.00
		Reimb Group		Total Reimbursable Expenses		1,200.31
7/13/2012		Reimb Group	1,268.40	J. Gilberts		1,268.40
7/13/2012			502.90	Apertans		502.90
7/13/2012			2,050.29	Alexandria Old Town		2,050.29
				Total Reimbursable Expenses		3,821.59

Current Charges Total: \$130,100.00

Martin 2d Decl., Exh. 2

ChargedContribution.Com  
P.O. Box 58  
Woodbridge, VA 22194

BILL TO: 60 Plus  
Amy N. Frederick  
515 King Street, Suite 315  
Alexandria, VA 22314

**Invoice**

Date: 6/12/2012  
Invoice #: 0624-0333

Date	Project	Item	Rate	Description	Qty	Amount
6/14/2012		Consulting Services	150,000.00	FLORIDA/OHIO Online Campaign ("Stop Wasteful Spending", "IPAB")		150,000.00

Current Charges Total: \$150,000.00

Martin 2d Decl., Exh. 2

THE 60 PLUS ASSOCIATION, INC.

Minutes of the a Meeting  
of the Board of Directors

A Special Meeting of the Board of Directors of The 60 Plus Association, Inc. (the Corporation), a corporation organized and existing under and by virtue of the Virginia Nonstock Corporation Act, was held at the national headquarters of the Corporation, located at 515 King Street, Suite 315, Alexandria, Virginia 22314, on the <sup>2<sup>nd</sup></sup> day of December, 2014, at 9:00 o'clock in the forenoon, pursuant to notice.

There were present:

Bill Card

Amy Frederick

Gary Hoitsma

James L. Martin

L. Prather McKinnon

Randy Randol

being six of the seven members of the Board of Directors of the Corporation, and a quorum. Also present, at the invitation of the Board, was Christopher T. Craig, Esq., of Cook, Craig & Francuzenko, PLLC, Counsel to the Corporation, and Mary Mahoney of the 60 Plus Association, Inc. staff.

Ms. Frederick, President, of the Corporation,

or suspected violation of the Corporation's Code of Conduct must act in good faith and have reasonable grounds for believing the truth and accuracy of the information disclosed. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

**Confidentiality**

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. The identity of those who report violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

**Handling of Reported Violations**

The Corporation's General Counsel will notify the sender and acknowledge receipt of the reported violation or suspected violation within five business days. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

**Contacting the Corporations' General Counsel**

The Corporation's General Counsel is Cook, Craig & Francuzenko, PLLC, 3050 Chain Bridge Road, Suite 200, Fairfax, Virginia 22030. Telephone: (703) 865-7480, facsimile: (703) 434-3510, email: ctcraig@cookcraig.com

**Conflict of Interest and Compensation Committee**

BE IT RESOLVED, that:

WHEREAS, the Board of Directors of this Corporation places great importance on ensuring the confidence and trust of its financial supporters, its other constituencies, and the

public at large; and

WHEREAS, to sustain and enhance such confidence and trust, the Board of Directors of this Corporation believes that all actions taken by Board members, this Corporation's officers, agents and management should be free from even the appearance of impropriety and free from any conflict of interest; and

WHEREAS, the Board of Directors of this Corporation considers and deems it to be in the interest of this Corporation to adopt a policy relating to the authorization, approval or ratification of contracts and transactions in which a member of the Board of Directors, or an officer, agent or a member of management of this Corporation has a financial or conflicting interest,

NOW, THEREFORE, BE IT RESOLVED, that the standing policy of this Corporation be, and it hereby is, as follows:

No member of the Board of Directors of this Corporation and no officer and no member of management of this Corporation shall vote for, authorize, approve, execute or ratify on behalf of this Corporation: (1) any contract or transaction (including but not limited to compensation of any kind) between this Corporation and such Director or officer, or member of management, or (2) any contract or transaction between this Corporation and any other person, corporation, partnership, association or other organization in which such Director or officer or member of management, is an officer, director, partner, member or trustee, or has a financial interest or has a material conflicting interest.

Each member of the Board of Directors and each officer and member of management of this Corporation shall disclose to the President and Board of Directors of this Corporation the material facts as to any relationship or interest he or she may have in, and any direct or indirect financial benefit he or she might derive from, any contemplated contract or transaction with

this Corporation.

If any such contemplated contract or transaction does not involve the President of this Corporation and is reasonably expected not to involve the expenditure by this Corporation of more than Ten Thousand Dollars (\$10,000.00) in the aggregate over the next succeeding twelve (12) calendar months, or if any such contemplated contract or transaction combined with any previous contracts or transactions involving the same Director or officer or employee shall not involve the expenditure by this Corporation of more than Ten Thousand Dollars (\$10,000.00) in the aggregate over any twelve consecutive calendar months, then the President of this Corporation may approve of such transaction and/or execute such contract on behalf of this Corporation if the President of this Corporation determines in good faith to his or her satisfaction that the contract or transaction would be in the best interest of this Corporation and would otherwise have been authorized or entered into in the ordinary course of this Corporation's business. At each meeting of the Board of Directors, the President of this Corporation shall advise the Board about each such contract or transaction, if any, which was approved and/or executed by him or her since the previous meeting of the Board of Directors.

If any such contemplated contract or transaction involves the President of this Corporation, or is one which the President of this Corporation cannot approve under the preceding paragraph, then all such material facts shall be disclosed to the Board of Directors and the Director or officer or employee having the relationship or interest in (or as to) any such contemplated contract or transaction shall not be present at, or participate in, the deliberations of or the vote by the Board of Directors of this Corporation relating to such contract or transaction. Such contract or transaction may be authorized, approved or ratified by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum, if such disinterested Directors determine in good



faith to their satisfaction that the contract or transaction would be in the best interest of this Corporation and would otherwise have been authorized or entered into in the ordinary course of this Corporation's business.

In the event that the Corporation considers compensating an Officer or Director as an employee, consultant or a contractor, or engaging an entity affiliated with an Officer or Director to provide the Corporation services, the Board of Directors shall create a Compensation Committee made up of disinterested Directors to review the proposed services to be provided by such Director or Officer, or his or her affiliated entity. Pursuant to this Conflict of Interest Policy, the Committee shall review the proposed services and compensation, and determine whether the Corporation requires such services, whether the proposed compensation is reasonable and whether the proposed agreement violates the Corporation's Conflict of Interest Policy.

If the Compensation Committee is satisfied with the proposed services, and that retaining or engaging the Officer or Director (or affiliated entity) does not violate the Corporation's Conflict of Interest Policy, the Committee shall recommend that the Board enter into an engagement, setting the compensation at a level that meets generally accepted standards and that such compensation falls at or below the compensation earned by similarly situated persons or entities with the same or substantially similar responsibilities in the Washington, D.C. region.

Ms. Frederick, Ms. McKinnon and Mr. Randol then led a discussion concerning the activity of the Audit Committee. Specifically, Ms. Frederick outlined very positive news concerning funding commitments to the Corporation from certain donors through 2015. Next, Ms. McKinnon and Mr. Randol noted a projected shortfall in the Corporation's "core budget", and deficit issues which need to be addressed in the short term. Mr. Randol and Ms.