

Weigler Heather L

From: Grant Elizabeth
Sent: Tuesday, February 10, 2015 3:30 PM
To: Melvin Oden-Orr (melvin@oden-orrllaw.com)
Cc: Weigler Heather L
Subject: Give Us This Day
Attachments: 201502101121.pdf, 201502101120.pdf

Dear Mr. Oden-Orr,

I realize it has been some time since we discussed this matter, but I am forwarding a letter and exhibits that outline some of our concerns about Give Us This Day and its management. A hard copy is in the mail to you. You had been in communication with Michelle Smith concerning this matter. She has recently take a position with a law firm and is no longer with the Department. I have copied Heather Weigler on this message as she will be taking over this matter from Michelle. Once you have had an opportunity to review the attached, I think it would be useful to meet in person to discuss this matter and I hope that you will contact us so that we can arrange a time. Thank you for your assistance.

Elizabeth Grant, Attorney-in-Charge, Charitable Activities Section, Oregon Dept. of Justice, 1515 SW 5th Ave., #410, Portland, OR 97201, (971) 673-1919

ELLEN F. ROSENBLUM
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DEPARTMENT OF JUSTICE
CIVIL ENFORCEMENT DIVISION

February 10, 2015

Mr. Melvin Oden-Orr
Attorney at Law
710 SW Madison St, 4th Floor
Portland OR 97205

Re: Give Us This Day

Dear Mr. Oden-Orr,

This letter sets forth potential claims the Department may have against Give Us This Day ("GUTD") and its directors. The Department's position is based on the information obtained to date. Our continued investigation may result in additional or revised claims as new information becomes available to us. For example, we anticipate that we may discover that even greater amounts of money have been diverted from GUTD's charitable mission than what we have outlined below.

In short, we estimate that as a result of GUTD directors' breaches of fiduciary duty, more than \$1 million in charitable assets have been wasted or used improperly for personal financial gain. Ms. Holden or others have engaged in lavish expenditures from corporate accounts, including frequent cash withdrawals with no documented purpose, travel, restaurant dining, and purchases of clothing and other personal items that appear unrelated to GUTD's foster care mission. Meanwhile, the organization's taxes and other debts have gone unpaid. In light of this financial mismanagement and GUTD's current indebtedness, we are of the position that GUTD should not continue in operation in either its existing form or under the guise of a new for-profit entity.

We remain open to consideration of information that, to date, GUTD and its directors have failed to provide to counter our assessment. We are also willing to discuss potential settlement options. However, we have ample evidence to support a court complaint and we will proceed on that basis unless GUTD and its directors are willing to agree to an acceptable resolution of this matter. Toward that end, we share our perspective and analysis of the information GUTD and its directors have provided to date more fully below.

General Operations and Governing Law

As you know, GUTD operates group foster homes and provides foster parent certification services. It receives its funding from the government and in recent years, GUTD's annual revenue has approached \$1 million. GUTD incorporated as an Oregon nonprofit public-benefit

corporation and obtained tax-exempt status as a 501(c)(3) charitable organization from the IRS.

As a charitable, nonprofit corporation, GUTD is subject to state and federal oversight. GUTD is organized and operated exclusively for religious, educational, or charitable purposes and no part of its earnings can inure to the benefit of private individuals. The directors of charitable organizations have fiduciary duties to the organization they serve, including the duties of care, loyalty, and obedience. The duty of care requires a director to perform her duties in good faith and with the care of ordinarily prudent person in a like position under similar circumstances. This requires the director to actively participate in the management of the organization and to be informed regarding the organization's operations when making decisions. The duty of loyalty requires a director to act solely in the best interests of the organization. Thus, decisions regarding the organization's funds and assets must promote the organization's public purposes rather than private interests, and conflict-of-interest transactions should be scrutinized. The duty of obedience requires a director to follow the organization's governing documents and mission and to comply with all relevant state and federal laws.

To enforce these laws and to protect charitable assets, organizations, and missions, the Department has the ability to pursue actions against individual officers and directors, to dissolve organizations, and to obtain injunctive relief. The Department can seek to remove directors and officers for breaching their fiduciary duties, recover funds from those who personally profited from any breach, and recover funds from directors whose conduct resulted in the loss of charitable assets. *See* ORS Chapter 65. Additionally, the Department may seek its attorney fees and investigative costs against the organization or the responsible fiduciaries personally. ORS 128.735.

Although GUTD has asserted it is no longer a charitable organization subject to the Department's supervision, it is incorporated as a public-benefit corporation and remains subject to all corresponding laws. The fact GUTD lost its 501(c)(3) tax exempt status for failing to file its IRS Form 990 returns for three consecutive years does not alter its status as a charitable, public-benefit corporation under state law; it only highlights the organization's failure to operate in a prudent manner.

The Department issued Civil Investigative Demands (CIDs) to GUTD, Ms. Holden, and two other organizations. GUTD and Ms. Holden failed to appropriately respond. As a result, in September 2014, the Section issued Orders to Appear and Produce Documents to the other GUTD directors: Tony Perry, Antoinette Wallace, Ruth Wallace, and Ora Hart. The Department also issued an Order to Appear and Produce Documents to GUTD's accountant, Saleem Barhoum. The Department held interviews with Mr. Barhoum, Tony Perry, Ruth Wallace, Antoinette Wallace, and Ora Hart in November 2014.

While GUTD's and Ms. Holden's production of documents remains incomplete, it is evident that GUTD and its directors have breached their duties in numerous ways, giving rise to a number of claims, as explained below.

The GUTD Directors Failed to Exercise Appropriate Oversight Over the Organization.

The produced documents and testimony of the interviewed directors indicate that the directors failed to discharge their duties with the care and prudence of an ordinary person in similar circumstances. The directors failed to exercise any meaningful oversight over GUTD's operations or finances and the directors failed to make reasonable inquiries into corporate activities. As a result, the organization has been severely damaged, while Ms. Holden has received significant personal financial benefits.

GUTD minutes reflect a lack of board oversight or involvement. The minutes show few discussions of the organization's finances, including any substantive discussions about resolving the obligations owed to the IRS. In the interviews, the directors generally acknowledged they had not reviewed financial documents such as organization tax returns, tax liens or levies from the IRS, or legal settlements. Most directors did not recall having voted on matters typically voted on by boards, such as the organization's budget. And while the directors testified they were aware GUTD was facing serious financial liabilities, they did not know the amount or nature of those liabilities. Even when some board directors made efforts to obtain financial information, they failed to use reasonable diligence in following up on those requests when no financial information was forthcoming.

The directors also testified that they were largely unfamiliar with the organization's budgets. The directors had little recollection of reviewing budgets and made no meaningful inquiries into the organization's finances before authorizing Ms. Holden to expend funds. Further, GUTD was only able to produce budgets for two years, 2010 and 2014, which had virtually no correlation to GUTD's actual expenditures.

The directors have failed to maintain adequate corporate records, including accounting records, as required by ORS 65.771. GUTD failed to maintain or prepare budgets, financial statements, general ledgers, or even relatively complete bank statements. As an organization with current revenues of approximately \$1 million dollars a year, the failure to ensure the organization maintained even the most basic and standard accounting records represents a lack of due care by the board and a breach of fiduciary duties.

Additionally, the directors permitted the organization to enter into numerous conflict-of-interest transactions without complying with the requirements in ORS 65.361. For instance, the organization entered into a seven-year lease with Ms. Holden to rent a property that is believed to be her personal residence on 6025 Skyline Dr., West Linn, OR 97068, for \$2,850 per month. Although the lease was signed on behalf of GUTD by Antoinette Wallace, no documents have been produced relating to board approval of the transaction. The lease does not appear to be fair to GUTD, prudent, or otherwise in the best interests of the organization.

Similarly, board members permitted Ms. Holden to incur significant travel expenses without any supervision of the amount or purpose of such expenditures. Board members also acknowledged debts purportedly owed by GUTD to Ms. Holden for funds she purportedly loaned the organization without conducting any investigation into whether such loans occurred, how the

loan proceeds were used, or how such purported loans would be repaid. Furthermore, in interviews, directors acknowledged that no one was keeping track of any loan repayments. Even with respect to a \$120,000 loan that was purportedly made by Ms. Holden to address GUTD's IRS liabilities in 2014, neither Ms. Holden nor GUTD produced any documentation that the loan was actually received, nor was any explanation offered for why the IRS debt remained unpaid after the loan purportedly occurred.

For years, the directors have failed to ensure that GUTD was complying with legal requirements. The directors have failed to ensure that GUTD filed required returns with the Internal Revenue Service, that GUTD was making the necessary payroll withholdings, maintaining workers' compensation insurance, paying property taxes, or that Ms. Holden was reporting income received from GUTD.

The Board Directors' Failure to Exercise Appropriate Oversight has Resulted in Significant Financial Losses to GUTD.

The directors have breached their fiduciary duties by failing to adequately oversee the organization's finances and they should be liable for the resulting harm to the organization.

A. Directors' Lack of Financial Oversight Has Resulted in Extensive Use of GUTD's Funds for Personal Expenditures.

Based on our review of the documents and receipts produced by the organization, significant sums have been spent for purposes unrelated to GUTD's programs and charitable mission. First, bank statements show significant cash withdrawals, customer withdrawals, or checks made payable to cash. No documentation has been provided to substantiate that these withdrawals relate to GUTD's programs or business purposes. From the bank statements and other documents provided, the Department estimates that over \$441,000 in cash or other unexplained withdrawals has been taken from GUTD's accounts. See Exhibit A - Cash Expenditures.

Second, the bank statements also show significant charges made for items that appear unrelated to program services. The Department has grouped these charges into several categories and the attached charts identify some of the expenditures the Department contends are unreasonable or unrelated to GUTD's program services. GUTD and Ms. Holden have failed to provide any documentation to demonstrate that these expenditures are reasonably related to GUTD's programs.

Questionable travel expenses are set forth in Exhibit B. A rough calculation of travel expenses drawn from GUTD accounts totals over \$131,000. This amount includes airfare, hotel, rental car, and airport parking. Out-of-state dining charges appear in Exhibit G and totals more than \$7,300. Although the directors interviewed indicated Ms. Holden and/or other GUTD representatives were generally authorized to travel to explore the possibility of opening facilities in other states, this was not a reasonable business decision. The Department estimates that at least \$18,000 in travel expenses were incurred at casinos and resorts such as the Venetian Palazzo, Spirit

Mountain Lodge, Las Vegas Hotel & Casino, Chinook Winds Casino, Horseshoe Casino & Hotel, Casa Delmar, Perdido Beach Resort, and the Westin Maui Resort and that reasonable board directors would have the same questions as the Department about how such expenditures could be justified as anything other than personal compensation.

Even where the travel locations are unknown or less obviously questionable, the expenditures appear excessive, particularly for an organization that was purportedly experiencing difficulties meeting other financial obligations. For example, on April 19, 2012, four debits of \$704.70 each were made from account ending in 0790 for Frontier Airlines. It is unclear why the organization would purchase tickets for four individuals to travel on GUTD business. Similarly, in August 2013 the account ending in 0790 incurred a charge of \$8,140.79 from Hertz Rent-A-Car. It is unlikely such expenses could be deemed prudent or in the organization's best interest when the organization had significant debts and, in fact, incurred numerous overdraft fees in connection with the travel expenses.

Finally, there is no indication that the board requested any information on the results from these purported scouting trips or engaged in any analysis as to whether this was a productive use of the organization's funds. In fact, there is no documentation to corroborate that these expenses were program related at all.

Questionable purchases for clothing and lingerie are set forth in Exhibit C. The Department estimates that over \$35,000 of GUTD funds have been spent on purchases from adult clothing and lingerie retailers such as Coach, Midnight Velvet, Victoria's Secret, Michael Kors, and Louis Vuitton. Purchases from Louis Vuitton alone total \$11,845.90. It is difficult to fathom how such expenses could be related to the organization's charitable mission.

Questionable expenditures for personal health and beauty services are set forth in Exhibit D. More than \$10,400 of GUTD funds have been spent at places such as nail and eyebrow salons. Similarly, Exhibit E reflects over \$20,000 spent on entertainment. The Department calculated at least \$20,408 spent in local restaurants (Exhibit F). There are also several car related charges such as a September 12, 2014 debit of \$1,284.21 from account ending in 4702 for Les Schwab Tires and another debit for \$1,015.62 for Les Schwab Tires on October 3, 2012, from the account ending in 0790. (Exhibit H). It does not appear the organization owns a vehicle.

Even without considering GUTD's lease of Ms. Holden's residence, personal expenditures from GUTD accounts as described above exceed \$650,000. Assuming GUTD has also been making lease payments on Ms. Holden's residence in West Linn as reflected in the rental agreement, that would mean \$200,000+ in additional payments for the personal benefit of Ms. Holden. There are also additional examples of what appear to be personal expenditures from GUTD accounts that we have not attempted to detail here, such as payment of Comcast and utility bills. It also appears that Ms. Holden may have spent GUTD funds on developing other for-profit businesses for her personal benefit.

To the extent that GUTD or Ms. Holden contend that the expenses reflected in the attached exhibits are program related, the Department intends to dispute that unless GUTD produces

documents establishing a legitimate business purpose for these expenses. As fiduciaries, the directors have an obligation to ensure the organization is maintaining required records relating to the nature and purpose of expenditures. Since the Department has requested such documentation and has yet to receive it, we are left with the conclusion that the expenditures shown in the attached exhibits are personal in nature, constitute unlawful distributions under ORS 65.367, and reflect a waste of charitable assets for which the directors may be personally liable.

B. Directors' Lack of Oversight Has Resulted in GUTD Incurring Unnecessary Debts and Loss of Charitable Assets.

GUTD has incurred significant penalties and interest in connection with its failure to pay taxes or otherwise comply with legal requirements. According to the IRS Final Notice of Intent to Levy dated August 28, 2014, the total amount of taxes owed to the IRS through 2011 is \$118,326.55. While the taxes themselves represent legitimate GUTD obligations, GUTD has been assessed additional penalties and interest as the result of the directors' failure to appropriately prioritize payment of this obligation. The amounts of penalties and interest owed on these taxes are \$11,064.72 and \$15,812.11, respectively. The organization was also assessed \$20,138.75 as an "IRC 6721 penalty for intentional disregard, failure to file W2s." Similarly, Oregon Employment Section records indicate the organization has incurred \$13,296.65 in penalties and interest through 2013 for failing to timely pay and report workers compensation.

It appears that IRS penalties and interest are continuing to accrue and that additional penalties may result from GUTD's continuing failure to file tax returns. At a minimum, the organization has failed to complete and file its 2011 corporate tax return. The organization's accountant, Mr. Barhoum, testified he had not received documents from the organization necessary for him to complete the return. In addition, despite Mr. Barhoum's testimony that he believed the organization filed its 2010, 2012, and 2013 returns, the organization has not provided any verification of that fact.

GUTD has also incurred significant debts or liabilities in the form of legal actions, resulting in on-going garnishments and the loss of its property at 3533 NE 11th, Portland, Oregon. This property was given to GUTD, but its use was restricted to GUTD's charitable purposes. However, it appears that the GUTD board nevertheless allowed or acquiesced in the improper transfer of this property. Even assuming the property could have been lawfully transferred, it appears that GUTD failed to receive adequate consideration and incurred unnecessary legal expenses related to this transfer. Similarly, GUTD recently stipulated to a judgment against itself for approximately \$150,000 in connection with claims brought by a former employee and it appears such a liability could have been avoided if the affairs of GUTD had been appropriately managed. GUTD has incurred additional losses as the result of frequent overdraft fees, garnishment fees, or similar charges, which we estimate to amount to more than \$13,000. These types of fees could have been avoided if GUTD had managed its finances more responsibly.

The Department is also aware that the property used by GUTD at 5128 Rodney has significant property tax liabilities, totaling at least \$74,105.98. While GUTD may argue that the property is owned by Alfred Yaun Child Care Centers, GUTD has agreed to manage and care for the

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Rodney Street property, which in this context, includes the responsibility for payment of property taxes. This is especially true because Alfred Yaun is controlled by Ms. Holden and the board directors of GUTD know or should know that Alfred Yaun has no income with which to pay property taxes except to the extent Alfred Yaun receives payments from GUTD. The directors' neglect of this property tax issue appears likely to result in the loss of the Rodney Street property.

We also understand that the IRS is foreclosing on the 1806 N Alberta St. property, which is yet another example of how directors' inaction has resulted in the loss of charitable assets.

GUTD contends its financial difficulties are largely due to delayed payments from the Department of Human Services. However, delayed payments do not explain or excuse the lack of board oversight, the failure to prepare and monitor budgets and other financial reports, lavish personal spending, and consistent failure to document or account for the use of funds.

Conclusion

If this matter proceeds to litigation, the Department will seek to hold Ms. Holden and the other directors jointly and severally liable for the amount of organizational funds used for unrelated purposes, such as the funds taken out through undocumented cash withdrawals or spent on travel, lease payments to Ms. Holden, dining and entertainment, and similar expenses. Additionally, the Department will seek to hold the directors liable for unnecessary losses incurred by the organization such as interest and penalties on taxes, adverse judgments, and loss of real property interests.

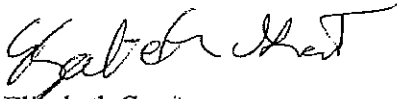
In light of the extensive and long-standing failure on the part of the directors to adequately perform their duties, in addition to monetary relief, it appears the organization should be dissolved. Given the extent of the organization's debts and liabilities, it is not clear the organization can continue functioning. It appears the organization has been using its program funds to pay down debts accrued as a result of mismanagement of the organization. In addition, it would be improper for the directors of GUTD to attempt to transfer operations to a for-profit organization.

The issues noted above are based on the Department's investigation to date and are meant to provide the individual directors with an understanding of the sort of claims the Department is considering. This letter is not intended to address all the concerns the Department has identified with respect to the organization's management. If you or other representatives of GUTD would like to discuss settlement options, please contact me. Certainly, if the organization or individual

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directors have additional documents that relate to the concerns identified in this letter, it would be helpful to review those documents prior to further discussions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elizabeth Grant".

Elizabeth Grant
Sr. Assistant Attorney General
Oregon Department of Justice

Cash Withdrawals (Exhibit A)

Account	Date	Amount	Reference	Notes
3150	4/6/2009	\$2,000.00	GUTD000366	
3150	4/6/2009	\$2,000.00	GUTD000366	
3150	4/6/2009	\$300.00	GUTD000366	
3150	4/6/2009	\$200.00	GUTD000366	
3150	4/9/2009	\$3,500.00	GUTD000367	
3150	4/16/2009	\$400.00	GUTD000367	
3150	4/27/2009	\$650.00	GUTD000367	
3150	8/11/2009	\$600.00	GUTD000832	Check #10538 made out to Cash
3150	8/14/2009	\$600.00	GUTD000834	Check #10541 made out to Cash
3150	9/14/2009	\$2,000.00	GUTD000907	
3150	2/2/2010	\$200.00	GUTD000412	
3150	2/8/2010	\$200.00	GUTD000412	
3150	3/8/2010	\$2,000.00	GUTD000452	
3150	3/8/2010	\$400.00	GUTD000452	
3150	3/9/2010	\$1,000.00	GUTD000453	
3150	3/29/2010	\$200.00	GUTD000453	
3150	6/1/2010	\$25,000.00	GUTD000951	Identified as "Customer Withdrawal Image"
0790	6/18/2010	\$600.00	GUTD000546	Check #10671 made out to Cash
3150	8/20/2010	\$400.00	GUTD000552	
3150	8/30/2010	\$300.00	GUTD000552	
3150	12/2/2010	\$260.00	GUTD001050	
3150	12/3/2010	\$800.00	GUTD001050	
3150	12/17/2010	\$200.00	GUTD001050	
3150	9/7/2010	\$10,000.00	GUTD000980	"Customer Withdrawal Image"
3150	9/16/2010	\$200.00	GUTD000980	
3150	9/20/2010	\$200.00	GUTD000980	
3150	9/20/2010	\$100.00	GUTD000980	
3150	1/6/2011	\$10,000.00	GUTD000576	Counter Debit
0790	8/4/2009	\$204.50	GUTD000377	
0790	8/7/2009	\$4,600.00	GUTD000377	