

STATE OF MINNESOTA
 COUNTY OF RAMSEY

DISTRICT COURT
 SECOND JUDICIAL DISTRICT

Case Type: Other Civil
 (Charitable/Nonprofit Violations)

Court File No. _____

In the Matter of Welch Charities, Inc. and
 Arturo Eguia, formerly known as Arturo Eguia-
 Welch

**ASSURANCE OF
 DISCONTINUANCE**

WHEREAS, this Assurance of Discontinuance (“Assurance”) is entered into pursuant to Minnesota Statutes sections 8.31, subdivision 2b, and 309.57, subdivision 2, between the State of Minnesota, through its Attorney General, Keith Ellison (the “State” or the “AGO”), Welch Charities, Inc. (the “Charity”), and Arturo Eguia, individually;

WHEREAS, the AGO has authority to enforce Minnesota’s laws relating to charitable organizations, charitable trusts, and nonprofit corporations under state statutes and common law, including as *parens patriae*. See, e.g., Minn. Stat. §§ 8.31, 309.57, 317A.813, 501B.34, and 501B.40;

WHEREAS, the Charity is a Minnesota nonprofit corporation organized under the Minnesota Nonprofit Corporation Act, Minnesota Statutes chapter 317A, a soliciting charitable organization under the Minnesota Charitable Solicitation Act, Minnesota Statutes chapter 309, and a Minnesota charitable trust under the Supervision of Charitable Trust and Trustees Act, Minnesota Statutes section 501B. Its registered office address is 280 Congress St. E., St. Paul, Minnesota 55107;

WHEREAS, Arturo Eguia serves as a director and officer of the Charity, including as the Charity's President, and is listed as the president of the Charity with the Minnesota Secretary of State;

WHEREAS, the AGO sent the Charity a letter on December 11, 2020, requesting the Charity's voluntary compliance to produce information and documents. The AGO launched a formal investigation of the Charity on May 4, 2021, by issuing the Charity a Civil Investigative Demand. This Assurance is based upon the AGO's investigation; and

WHEREAS, the AGO, the Charity, and Eguia desire to fully resolve the AGO's concerns regarding the lawfulness of the Charity's and Eguia's actions and inactions.

NOW THEREFORE, the AGO, the Charity, and Eguia hereby agree to entry of an Assurance of Discontinuance with the following terms and conditions:

ALLEGATIONS

1. The AGO states and alleges as follows:

I. THE CHARITY FAILED TO PROPERLY MANAGE AND OVERSEE ITS OPERATIONS AND ASSETS, RESULTING IN THE MISUSE OF TENS OF THOUSANDS OF DOLLARS IN CHARITABLE ASSETS.

A. The Charity's Charitable Purpose.

2. The Charity is a Minnesota nonprofit corporation recognized by the Internal Revenue Service ("IRS") as exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. According to the Charity's soliciting charitable organization registration statement filed with the AGO, the Charity's mission is "to help identified underprivileged children in the local community, Native American reservations, and abroad by ensuring they start off the school year right." The Charity's most recent IRS Form 990 states that it accomplishes its mission by "[raising] funds for school supplies for distribution to various local

social service organizations through an annual charity motorcycle ride and raffle to support low-income students.”

3. The Charity incorporated as a Minnesota nonprofit corporation on April 17, 2013. On March 13, 2019, the Charity was involuntarily dissolved by the Minnesota Secretary of State (“SOS”) for failing to file its corporate renewal. *See* Minn. Stat. § 317A.823. The Charity filed its annual reinstatement with the SOS on November 8, 2019. On February 11, 2021, the Charity was again involuntarily dissolved by the SOS for failing to file its corporate renewal. *Id.* The Charity filed its annual reinstatement on April 26, 2021.

4. To accomplish its mission, the Charity holds an annual Indian Bike Week event for the purpose of gathering Indian Motorcycle owners and riders for a weeklong festival consisting of celebrity appearances, live music, and food and drink, all centered around a motorcycle ride. The event claims to be “circled around a charity” to “help with children’s school supplies, first responders, and military.” Charity promotional materials have also listed particular charities as the recipients of event proceeds.

B. The Charity’s Directors Failed to Properly Manage and Oversee its Operations.

5. The Charity is essentially headed by a single director, Arturo Eguia, who solely oversees and manages the corporation. Eguia has been a board member of the Charity since its inception and its President since the first documentation of the Charity’s officers in 2014.

6. In its history, the Charity has only had board members who share personal or familial ties. In addition to Eguia, Kathy Welch served as a director and the Charity’s Treasurer until 2017, while Jackie Welch served as a director and the Charity’s Secretary until 2020. No documentation exists of the election of successors for these positions nor the following of any corporate formalities pertaining to these roles.

7. The Charity's board of directors has never met, discussed, voted, or kept minutes on any operational decisions. The Charity further failed to ensure that its officers exercised the duties required by its president and treasurer. In contravention of the Minnesota Nonprofit Corporation Act, the Charity, through its board of directors or other officers, engaged in no oversight of Eguia.

8. Generally, the Charity and its board instead allowed Eguia to run the organization without any input or supervision, and without regard to the Minnesota Nonprofit Corporation Act, or other applicable Minnesota law.

9. These actions and inactions violated, among other statutes, Minnesota Statutes sections 317A.201, 317A.203, 317A.231, subdivision 1, 317A.251, subdivision 1, 317A.301, 317A.305, subdivision 2(5), 317A.361, subdivision 1, and 317A.461.

C. The Charity Failed to Adequately Manage and Oversee Its Charitable Assets, Allowing for the Misappropriation of Charitable Assets.

10. In addition to failing to manage the operations of the corporation, the Charity also failed to properly manage and oversee its charitable assets. The Charity has never had or adhered to any policies or procedures for the proper handling of its charitable assets. Since at least August of 2017, the Charity has failed to track its revenue, expenditures, or deposits, retain receipts of transactions, maintain a ledger, prepare financial statements, or otherwise keep accurate financial records.

11. The Charity's bank and other third-party records reflect that the Charity received approximately \$142,876 in charitable revenue between October 2017 and October 2021. The Charity received most of its funds from registration fees for its annual motorcycle ride, the sale of motorcycle-related merchandise on eBay, cash, and donations.

12. Despite the Charity's mission to raise funds for school supplies, the Charity only distributed approximately \$12,203 of these funds for charitable purposes.

13. The Charity's failure to properly manage and oversee Eguia and the Charity's assets enabled tens of thousands of dollars of the Charity's assets to be misused. Starting from at least October of 2017, and continuing until at least October of 2021, at least \$36,856 of the Charity's assets appears to have been used for private interests, instead of in furtherance of the Charity's charitable mission.

14. Eguia made personal purchases for himself with the Charity's debit card, paid himself from the Charity's bank account, withdrew and spent the Charity's cash from its bank accounts, reimbursed himself for expenses without appropriate documentation, commingled Charity funds with his personal and for-profit business, and transferred money directly from the Charity's financial accounts into his personal and business accounts, all without maintaining appropriate records to substantiate transactions, withdrawals, and transfers from the Charity's financial accounts.

15. From October 2017 to October 2021, Eguia's personal expenditures and unchecked withdrawals from the Charity's financial accounts included but are not limited to approximately \$5,966 in cash withdrawals; \$878 spent at restaurants and bars; \$253 to Bug Busters of Burnsville, Minnesota; \$411 to a Las Vegas-area motorcycle dealership; \$1,483 in transportation expenses, including gas stations, towing companies, car washes, parking expenses, auto parts stores, and ride share companies; \$1,434 spent at hotels; \$1,196 in payments by check; \$715 to a custom motorcycle products company; and \$7,884 in transfers from the Charity's bank or PayPal accounts to those belonging to Eguia personally or his for-profit business. Such payments total \$36,856 and

were made directly from the Charity's bank or PayPal account to such vendors or transferees, and all such payments were authorized by Eguia.

16. Substantial amounts of the Charity's assets appear to have been misused in the form of PayPal and Venmo transfers, cash, and checks, but the Charity's inadequate record-keeping and internal controls make these amounts difficult, if not impossible, to fully quantify.

17. These actions and inactions violated, among other statutes, Minnesota Statutes sections 317A.251, subdivision 1, 317A.255, 317A.305, subdivision 3, 317A.361, subdivision 1, 317A.461, and 501B.41, subdivision 6.

II. THE CHARITY SHOULD BE DISSOLVED.

18. The Charity's actions and inactions described above constitute grounds for dissolution and other equitable relief under Minnesota Statutes section 317A.751, subdivisions 5(2), (4), (5), (6), (12), and (13).

19. The Charity neither admits nor denies the allegations in this Assurance.

INJUNCTIVE RELIEF

20. The Charity shall not hereinafter, whether directly, indirectly, individually, representatively, or in conjunction with or through any other person or entity, solicit or accept any contributions in Minnesota or from a Minnesota resident after September 1, 2022.

21. Within 60 days of the Court approving this Assurance, the Charity shall begin the dissolution process pursuant to Minnesota Statutes section 317A.721, wind up any remaining affairs, and take all necessary and appropriate steps to liquidate its remaining assets in accordance with this Assurance and applicable law, including Minnesota Statutes sections 317A.701 through 317A.813, 501B.31, and chapter 309. All net proceeds from such liquidation shall be deposited into the Charity's bank account and not used or accessed for any purpose except for those described in this Assurance.

22. The Charity's board of directors shall cause the Charity to be dissolved, pursuant to Minnesota Statutes sections 317A.701 through 317A.813, within one hundred eighty (180) days of the Court approving this Assurance, unless the AGO, at its sole discretion, extends this deadline in writing to permit the Charity to fully effectuate the requirements of Paragraph 21.

23. At least sixty (60) days prior to its dissolution, the Charity shall take reasonable steps to ascertain, catalog, and itemize its assets and the dollar value of each asset. The Charity shall submit this schedule, along with the Charity's most recent bank statement, to the AGO as an attachment to the Notice of Intent to Dissolve required by Minnesota Statutes section 317A.811. The schedule shall also identify the intended recipient of each Charity asset upon its dissolution. The recipient charitable organization(s) shall be exempt under section 501(c)(3) of the Internal Revenue Code of 1986 with a similar charitable mission to the Charity. The Charity shall designate the recipient nonprofit organization(s) with similar charitable purposes consistent with applicable law, including Minnesota Statutes 317A.701 through 317A.813 and 501B.31.

24. Within 30 days of completing the formal dissolution process and transferring or conveying the Charity's charitable assets to the nonprofit recipient(s) designated by and listed in the Charity's Notice of Intent to Dissolve pursuant to Paragraph 23 of this Assurance, the Charity shall provide documentation to the State reflecting the transfer or conveyance of assets. Upon the written request of the State, the Charity shall promptly provide additional documentation that the State, in its sole discretion, deems reasonably necessary to verify the transfer or conveyance of assets.

25. Upon the Charity's dissolution, Eguia shall not hereinafter, whether directly, indirectly, individually, representatively, or through or in combination with any other person or entity, engage in any of the following conduct in Minnesota:

- (a) act as a director, officer, employee, agent, or representative of a nonprofit organization, or otherwise receive compensation from or act for, in concert with, or on behalf of a nonprofit organization;
- (b) have access to or exercise any control over, manage, supervise, oversee, or otherwise administer a nonprofit organization's finances, operations, or other affairs;
- (c) solicit contributions from Minnesota donors, accept or receive contributions from Minnesota donors, or otherwise act as a "professional fund-raiser" as the term is defined in Minnesota Statutes section 309.50, subdivision 6; or
- (d) engage in any activity that results in having any control or responsibility for property held for a charitable purpose, or from otherwise acting as a "trustee" as the term is defined in Minnesota Statutes section 501B.35, subdivision 4.

26. For the purposes of this Assurance, the following definitions shall apply:

- (a) "Contribution" shall have the meaning given the term by Minnesota Statutes section 309.50, subdivision 5.
- (b) "Director" shall have the meaning given the term by Minnesota Statutes section 317A.011, subdivision 7.
- (c) "Member" shall have the meaning given the term by Minnesota Statutes section 317A.011, subdivision 12.
- (d) "Nonprofit organization" shall mean the following: (i) any corporation governed by or organized under Minnesota Statutes chapter 317A, section 322C.1101, or equivalent laws in other states, and (ii) any organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).
- (e) "Officer" shall have the meaning given the term by Minnesota Statutes section 317A.011, subdivision 15.
- (f) "Solicit" shall have the meaning given the term by Minnesota Statutes section 309.50, subdivision 10.

27. Eguia and the Charity shall have a duty to fully, completely, truthfully, and promptly cooperate with the State in its compliance monitoring or investigation of any suspected violations of this Assurance, including promptly providing information requested by the State.

28. Eguia and the Charity are hereby enjoined from effecting any change in the Charity's or any other entity's form of doing business, organizational identity, organizational structure, affiliations, or management composition as a method of avoiding the terms of this Assurance. Eguia is further permanently enjoined from effecting any change in his ownership stake in, or management authority over, any entity in which he has such ownership stake or management authority as a method of, or if the effect is, avoiding the terms of this Assurance. Eguia is further permanently enjoined from engaging in any conduct prohibited by this Assurance through or in combination with a family member or any other person.

29. The State shall have all powers and authority specified by Minnesota Statutes sections 8.31, 317A.813, 501B.40, and all other authority otherwise available to it for purposes of investigating any suspected violations of this Assurance and securing compliance with the terms of this Assurance.

STAYED RELIEF

30. Eguia is liable for a civil penalty of \$50,000 if the Court finds, after a motion by the AGO, and pursuant to a hearing as determined by the Court, that Eguia violated any provision of this Assurance. The AGO shall provide notice to Eguia of any alleged violation prior to seeking relief from the Court under this paragraph and offer a reasonable opportunity for Eguia to respond to the AGO's allegations, which Eguia shall do in a timely manner. The release provided for in Paragraph 33 of this Assurance does not prevent, restrict, or otherwise limit in any way the AGO from moving for, using any information and materials in its possession, and, should a violation be found, collecting the stayed civil penalty referenced in this paragraph.

GENERAL TERMS

31. This Assurance does not constitute an admission of a violation for any purpose.

32. Eguia and the Charity understand that, after the date of the approval of this Assurance by the Court, a violation of this Assurance may subject both to sanctions for contempt pursuant to Minnesota Statutes section 8.31, and the AGO may thereafter, in its sole discretion, initiate legal proceedings against Eguia or the Charity for any and all violations of this Assurance.

33. In consideration of the stipulated relief, the sufficiency of which is acknowledged, the AGO, upon approval of this Assurance by the Court, hereby fully and completely releases Eguia and the Charity from any and all claims of the AGO under Minnesota Statutes sections 317A.201, 317A.203, 317A.231, subdivision 1, 317A.251, subdivision 1, 317A.255, 317A.301, 317A.305, subdivisions 2(5) and 3, 317A.361, subdivision 1, and 317A.461, and 501B.41, subdivision 6, arising out of the allegations contained in this Assurance, up to and including the date of this Assurance. The AGO through this Assurance does not settle, release, or resolve any claim against Eguia or the Charity or any other person or entity involving any private causes of action, claims, and remedies, including but not limited to private causes of action, claims, or remedies provided for under Minnesota Statutes section 8.31. This release does not apply in any way to claims of any other State of Minnesota agency, department, official, or division, including but not limited to the Minnesota Department of Revenue. The AGO through this Assurance does not settle, release, or resolve any claim against any individual, entity, or person other than Eguia and the Charity, including against any other current or former board members, officers, employees, or other agents of the Charity.

34. Eguia and the Charity shall not state or imply, directly or indirectly, that the State of Minnesota or the AGO has approved of, condones, or agrees with any conduct, actions, or inactions by Eguia or the Charity.

35. Nothing in this Assurance shall relieve Eguia or the Charity of obligations to comply with all applicable Minnesota and federal laws and regulations, and court or administrative orders and directives.

36. Eguia and the Charity, after having an opportunity to decide whether to and/or consult with counsel, knowingly, intelligently, and voluntarily waive their First Amendment rights to the extent, if at all, such rights are inconsistent with any of the terms of this Assurance.

37. If this Assurance is violated, Eguia and the Charity agree that any statute of limitations, statute of repose, or other time-related defense applicable to the subject matters of the allegations in this Assurance, and any claims arising out of or relating thereto, are retroactively tolled from and after the date of this Assurance.

38. The person signing this Assurance for the Charity warrants that its board of directors has authorized the person to execute this Assurance, that he or she executes this Assurance in an official capacity that binds the Charity and its successors, and that the Charity has been fully advised by its counsel or has voluntarily forgone such advisement before entering into the Assurance.

39. This Assurance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Assurance may be executed by facsimile or electronic copy in any image format.

40. This Assurance constitutes the full and complete terms of the agreement entered into by Eguia, the Charity, and the AGO. Any modification to this Assurance shall be in writing and be filed with the Court.

41. Service of notices or other documents required or permitted by this Assurance shall be served on the following persons, or any person subsequently designated by the parties to receive such notices, by mail and email at the addresses identified below:

As to the AGO:

Mohamed H. Sabur, Assistant Attorney General
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101
mohamed.sabur@ag.state.mn.us

As to Eguia:

Arturo Eguia
280 Congress St. E.
St. Paul, MN 55107
itsgnotq@aol.com

As to the Charity, via its counsel:

Welch Charities, Inc.
c/o Ferdinand F. Peters Law Firm
711 Smith Avenue South
St. Paul, MN 55107
ferdpeters@ferdlaw.com

42. The failure of a party to exercise any rights under this Assurance shall not be deemed to be a waiver of any right or any future rights.

43. This Assurance, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

44. Nothing in this Assurance shall be construed to limit the jurisdiction, power, or authority of the State of Minnesota or the AGO, except as expressly set forth herein in with regard to the Charity and Eguia.

45. The AGO shall have all powers and remedies specified by Minn. Stat. §§ 8.31, 309.553, 309.57, 317A.813, 501B.40, 501B.41, and all other authority otherwise available to it for purposes of investigating and remedying any violations of this Assurance.

46. Each of the parties participated in the drafting of this Assurance and agree that the Assurance's terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.

47. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Assurance, including that the Charity and Eguia shall promptly comply with any reasonable request from the AGO for information regarding verification of the Charity's and Eguia's compliance with this Assurance.

48. The AGO may file this Assurance with the Court without further notice to the Charity and Eguia, and the Court may approve of and enter this Assurance *ex parte* and without further proceedings.

49. The Court shall retain jurisdiction of this matter for purposes of enforcing this Assurance, and all signatories hereto consent to the jurisdiction of the Court for the purposes of enforcing this Assurance.

KEITH ELLISON
Attorney General
State of Minnesota

Dated: 8/23/2022

By: /s/ Mohamed H. Sabur
Mohamed H. Sabur
Assistant Attorney General

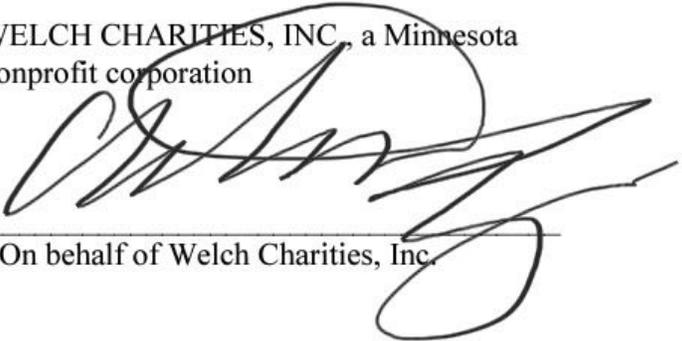
ARTURO EGUIA, individually

Dated: 8/17/2022

By: 

WELCH CHARITIES, INC., a Minnesota
nonprofit corporation

Dated: 8/17/2022

By: 
On behalf of Welch Charities, Inc.

ORDER

Having reviewed the terms of the foregoing Assurance of Discontinuance, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: _____

Judge of District Court

LET JUDGMENT BE ENTERED ACCORDINGLY.