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6 UNITED STATES DISTRICT COURT
 7 NORTHERN DISTRICT OF CALIFORNIA

8 CHARLES CARREON)
 9 Plaintiff,)
 10 vs.)
 11 MATTHEW INMAN, INDIEGOGO, INC.,)
 12 NATIONAL WILDLIFE FEDERATION,)
 13 AND AMERICAN CANCER SOCIETY,)
 14 and Does 1 – 100,)
 15 Defendants,)
 16 and)
 17 KAMALA HARRIS, Attorney General of the)
 18 State of California,)
 19 A Person To Be Joined If)
 20 Feasible Under F.R.Civ.P. 19.)

Case No.: CV-12-3112-EMC

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF EX
 PARTE APPLICATION FOR
 TEMPORARY RESTRAINING ORDER
 AND ORDER TO SHOW CAUSE RE
 PRELIMINARY INJUNCTION**

Judge: Hon. Edward M. Chen
 Courtroom: 5, 17th Floor
 Date: To be set
 Time: To be set

**MEMORANDUM OF POINTS AND AUTHORITIES
 ISSUES**

1. Is this Court likely to find that the Charitable Fund is subject to a charitable trust because it was gathered by unregistered charitable fundraisers, representing that the Bear Love campaign was endorsed by the National Wildlife Federation and the American Cancer Society, and that the entire proceeds would be donated exclusively to those two charities?
2. Are the rights of the 14,406 Bear Love campaign donors who intended to benefit the National Wildlife Federation and the American Cancer Society likely to be irreparably harmed if Indiegogo transfers \$211,223.04 of the Charitable Fund to Inman?

- 1 3. Are the rights of the 14,406 donors and the intended beneficiaries of their generosity, the
2 National Wildlife Federation and the American Cancer Society, likely to be harmed if
3 Indiegogo transfer \$211,223.04 of the Charitable Fund to Inman?
- 4 4. If the 14,406 donors do not receive any tax deductions for donations that they intended to
5 make to the National Wildlife Federation and the American Cancer Society, two tax-
6 exempt entities, are their rights likely to be harmed?
- 7 5. If Inman donates some or all of the Charitable Fund to tax-exempt charities, is Inman
8 likely to be unjustly enriched by receiving a tax write-off for \$211,223.04?
- 9 6. Does the balance of the equities tip in favor of issuing a temporary restraining order?
- 10 7. Will it benefit the public interest to issue a temporary restraining order?

11 **I. FACTS**

12 Indiegogo is a “worldwide crowdfunding system” that provided Inman with “global
13 exposure” and “one-click social media integration, direct email and announcement features” that
14 “make it easy to spread the word, raise awareness and increase funding.” (Exhibit A; Carreon
15 Dec. ¶ 4.) On or about June 11, 2012, Inman and Indiegogo each became the agents of the other,
16 on the terms set forth in the Indiegogo Contract attached as Exhibit A. Paragraphs 3 – 5 of the
17 Indiegogo Contract designate Inman as the “Project Entity” to receive all of the “Contributions”
18 elicited through Indiegogo’s “crowdfunding” mechanism, minus “a 9% marketplace processing
19 fee retained by Indiegogo,” of which 5% will be rebated back to Inman when he reaches the
20 funding goal, for a net take of 96%. (Exhibit A.)

21 Although plainly acting as commercial fundraisers for charitable purposes, neither Inman
22 nor Indiegogo complied with any of the requirements of California law applicable to commercial
23 fundraisers for charitable purposes, as detailed *infra*. (Carreon Dec. ¶¶ 11 – 13.) Nevertheless,
24 Inman and Indiegogo launched and marketed a campaign of charitable solicitation dubbed
25 “BearLove Good – Cancer Bad” (the “Bear Love campaign”), in which they represented that the
26 proceeds of the Bear Love campaign, or some portion thereof, would go to the National Wildlife
27 Federation (“NWF”) and the American Cancer Society (“ACS”). (Exhibit B.)
28

1 Plaintiff is a donor with standing to invoke the Court’s injunctive authority to impose a
2 charitable trust upon the proceeds of the “Bear Love” campaign, that concluded on June 26,
3 2012, with 14,406 donors contributing a total of \$220,024. (Carreon Dec. ¶10 and Exhibit
4 C; Carreon Dec. ¶¶ 20 – 22 and Exhibit G.) Inman stands to receive 96% of that amount, a total
5 of \$211,223.04, that he intends to turn into cash and photograph himself with as a publicity stunt.
6 “Once the money is moved, I still plan on withdrawing \$211k in cash and taking a photo to send
7 to Carreon” (Exhibit G; Carreon Dec. ¶ 26.)

8 Because no safeguards exist to prevent Inman from simply diverting this very substantial
9 fund of money to his own use, and because even in the best case scenario, Inman will be unjustly
10 enriched by securing an enormous tax-deduction that should properly be allocated pro-rata
11 amongst all 14,406 donors, this Court should impose a constructive charitable trust upon the
12 money. Accordingly, pending a hearing on Plaintiff’s motion for preliminary injunction, the
13 Court is respectfully requested to enter a Temporary Restraining Order restraining Indiegogo
14 from paying any of the money to Inman.

15 **II. ARGUMENT**

16 **A. A Donor To A Charitable Fund Has Standing To Seek Injunctive Relief To** 17 **Enforce a Constructive Charitable Trust**

18 Plaintiff is a donor to the Bear Love campaign with standing to seek injunctive relief to
19 restrain Indiegogo from transferring the money to Inman. The California Supreme Court
20 pronounced upon this issue in *Holt v. College of Osteopathic Physicans and Surgeons*, 61 Cal.2d
21 750 (1964):

22 ***“There is no rule or policy against supplementing the Attorney***
23 ***General’s power of enforcement by allowing other responsible***
24 ***individuals to sue in behalf of the charity.”***

25 *Holt v. College of Osteopathic Physicans and Surgeons*, 61 Cal.2d
26 at 754 (emphasis added); accord, *L.B. Research & Education v.*
27 *UCLA Foundation*, 130 Cal.App.4th 171, 176 (2005).

28 ***“[T]he right of the Attorney General to sue to enforce a***
charitable trust is not exclusive: other responsible individuals
may be permitted to sue on behalf of the charity.”

San Diego Etc. Boy Scouts of America v. City of Escondido, 14
Cal.App.3d 189, 194 (1971) (emphasis added).

1 **B. A Temporary Restraining Order Will Preserve The Status Quo**

2 Preliminary relief is intended to preserve the status quo and prevent irreparable harm
3 while the underlying action is resolved. *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091,
4 1094 (9th Cir. 2010).

5 A request for a temporary restraining order is addressed to the Court’s equitable
6 authority. “The trial court may grant a temporary restraining order or preliminary injunction in
7 the exercise of its equitable powers.” *Napa Valley Publishing Company, v. City of Calistoga*, 225
8 F.Supp. 1176, 1183 (N.D.Cal. 2002).

9 The Court’s “analysis is substantially identical for a temporary restraining order and a
10 preliminary injunction.” *Stuhlberg International Sales Co. v. John D. Brush & Co.*, 240 F.3d
11 832, 839, n. 7 (9th Cir. 2001). “A preliminary injunction is a provisional remedy, the purpose of
12 which is to preserve status quo and to prevent irreparable loss of rights prior to final disposition
13 of the litigation.” *Napa Valley Publishing, supra*, 225 F.Supp. at 1183.

14 “Generally, to obtain preliminary injunctive relief, a moving party must show a threat of
15 irreparable injury and the inadequacy of legal remedies, the conventional requisites for equitable
16 relief.” *Napa Valley Publishing, supra*, 225 F.Supp. at *id.*, citing *Arcamuzzi v. Continental Air*
17 *Lines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987) and *Easyriders Freedom F.I.G.H.T. v. Hannigan*,
18 92 F.3d 1486, 1495 (9th Cir. 1996)

19 **C. Plaintiff’s Application Establishes the Four Factors That Must Be**
20 **Established to Warrant the Issuance of A Temporary Restraining Order**

21 This Court recently restated the established law on granting injunctive relief, citing the
22 United States Supreme Court’s opinion in *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129
23 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008):

24 “The Supreme Court has held that ‘[a] plaintiff seeking a
25 preliminary injunction must establish that he is *likely to succeed*
26 *on the merits*, that he is *likely to suffer irreparable harm* in the
27 absence of preliminary relief, that *the balance of equities tips in*
28 *his favor*, and that *an injunction is in the public interest.*”

Tamburri v. Suntrust Mortgage, Inc., 2011 U.S. Dist. LEXIS
72202, Case No. C-11-2899 (July 6, 2011).

1 **D. Plaintiff Has Shown A Likelihood of Succeeding on The Merits.**

2 **i. Solicitations for A Charitable Purpose**

3 A “*solicitation for charitable purposes*” within the meaning of Section 17510.2 of the
4 Disclosure Law is “*any request ... to give money ... in the name of any ... charitable*
5 *organization,*” or any “*statement ... that the gift or any part thereof will go to or be used for*
6 *any charitable purpose or organization.*” Thus, the Bear Love campaign, that was made in the
7 name of the NWF and ACS, and represented that the gift or some part thereof would go to these
8 organizations, was clearly a “solicitation for charitable purposes.”

9 **ii. Inman and Indiegogo Are Fiduciaries With Respect to the Charitable Fund and the Donors**

10 A fiduciary relationship exists between any person soliciting on behalf of a charity, and
11 the person from whom a charitable contribution is being solicited. Cal. B. & P. Code § 17510.8.

12 **iii. The Charitable Fund Accumulated By the Bear Love Campaign Is A Charitable Trust**

13
14 “A charitable trust is defined as: ‘... a fiduciary relationship with
15 respect to property arising as a result of a manifestation of an
16 intention to create it, and subjecting the person by whom the
17 property is held to equitable duties to deal with the property for a
18 charitable purpose.’”

19 *L.B. Research & Education v. UCLA Foundation*, 130 Cal.App.4th
20 171, 176 (2005), quoting *Hardman v. Feinstein*, 195 Cal.App.3d
21 157, 161 (1987).

22 The Disclosure Law makes it absolutely clear that soliciting in the name of a charity
23 subjects the proceeds to a charitable trust exclusively dedicated to the purposes for which the
24 donations were solicited. This is a mere codification of “existing trust law principles.”

25 “*The acceptance of charitable contributions by ... any person*
26 *soliciting on behalf of a charity establishes a charitable trust and*
27 *a duty on the part of ... the person soliciting on behalf of the*
28 *charity to use those charitable contributions for the declared*
charitable purposes for which they are sought. This section is
declarative of existing trust law principles.”

 Cal. B. & P. Code § 17510.8. (Emphasis added.)

 Inman’s and Indiegogo’s solicitation on behalf of NWF and ACS established a charitable
trust. They have no right to possession of the money raised from the Bear Love campaign. The
Court must enjoin payment of the money to Inman, and compel its payment to NWF and ACS.

1 **iv. Inman and Indiegogo Are Unregistered Fundraisers Who**
2 **Violated The “Supervision of Trustees and Fundraisers for**
3 **Charitable Purposes Act”**

4 In 1959, the California legislature enacted Calif. Gov. Code § 12580 *et seq.*, the
5 Supervision of Trustees and Fundraisers for Charitable Purposes Act (the “Act”). Inman and
6 Indiegogo are “commercial fundraisers,” as defined by the Act:

7 “Commercial fundraiser for charitable purposes’ means any
8 individual, corporation, unincorporated association, or other legal
9 entity who for compensation does any of the following:

10 (1) Solicits funds, assets, or property in this state for charitable
11 purposes.

12 (2) As a result of a solicitation of funds, assets, or property in this
13 state for charitable purposes, receives or controls the funds, assets,
14 or property solicited for charitable purposes.

15 (3) Employs, procures, or engages any compensated person to
16 solicit, receive, or control funds, assets, or property for charitable
17 purposes.”

18 Cal. Govt. Code § 12599(a).

19 Before starting the Bear Love campaign, Inman and Indiegogo should have registered
20 with the Attorney General to act as commercial fundraisers:

21 “A commercial fundraiser for charitable purposes shall, prior to
22 soliciting any funds ... in California for charitable purposes, or
23 prior to receiving and controlling any funds ... as a result of a
24 solicitation in this state for charitable purposes, register with the
25 Attorney General's Registry of Charitable Trusts on a registration
26 form provided by the Attorney General.”

27 Section 12599(b).

28 As unregistered fundraisers, Inman and Indiegogo acted unlawfully in conducting the
29 Bear Love campaign:

30 “A commercial fundraiser for charitable purposes shall not solicit
31 in the state on behalf of a charitable organization unless that
32 charitable organization is registered or is exempt from registration
33 with the Attorney General's Registry of Charitable Trusts.”

34 Section 12599(m).

35 Their failure to comply registration and reporting requirements may be cured by entry of
36 an injunction against solicitation by Inman and Indiegogo in California:

37 ***“Failure to comply with these registration or annual renewal***
38 ***and financial reporting requirements shall be grounds for***

1 *injunction against solicitation in this state for charitable*
2 *purposes and other civil remedies provided by law.”*

3 Section 12599(f). (Emphasis added.)

4 **E. Inman and Indiegogo Made Actionable Misrepresentations In The Conduct**
5 **and Execution of the Bear Love Campaign**

6 Various misrepresentations in the conduct and execution of charitable solicitations are
7 prohibited by the Act, “regardless of injury,” including, *inter alia*:

- 8 • *Using any unfair or deceptive acts* or practices or engaging in
9 any fraudulent conduct *that creates a likelihood of confusion*
10 *or misunderstanding.*
- 11 • *Using any name ... suggesting, or implying to a reasonable*
12 *person that the contribution is to or for the benefit of a*
13 *particular charitable organization when that is not the fact.*
- 14 • *Misrepresenting* or misleading anyone in any manner to believe
15 *that any other person sponsors, endorses, or approves a*
16 *charitable solicitation ... when that person has not given*
17 *consent in writing* to the use of the person's name for these
18 purposes.
- 19 • *Misrepresenting* or misleading anyone in any manner to believe
20 *that ... a person has endorsement, sponsorship, approval,*
21 *status, or affiliation that the person does not have.*

22 Cal. Gov. Code § 12599.6(f), subsections (2), (3), (5) and (6).
23 (Emphasis added.)

24 As is set forth in detail in Plaintiff’s declaration supporting this application, Inman and
25 Indiegogo committed several actionable misrepresentations in the conduct and execution of the
26 Bear Love campaign. *First*, they misrepresented that NWF and ACS sponsored, endorsed, or
27 approved the Bear Love campaign, when NWF and ACS had not granted their permission at all,
28 much less consent in writing. (Carreon Dec. ¶¶ 12 – 13.) *Second*, by using the names of NWF
and ACS without permission, both of which are tax-exempt organizations, they led donors to
believe that contributions would be tax-exempt, when in fact they would be going to Inman, and
he himself would therefore garner any tax exemption. (Exhibit B.) *Third*, for several days, until
he published his first “Update” to the Bear Love campaign, while well over a hundred thousand
dollars streamed into the Charitable Fund from thousands of donors, he represented that the
money would all go to NWF and ACS; however, he then altered his plan and said he would split
the money four ways, giving some undesigned portion to “two new charities.” (Page 2 of
Exhibit B.) *Fourth*, they did not disclose Indiegogo’s fees at any time, since there is no

1 “clickwrap” agreement to be signed digitally by donors at the time of contribution. (Carreon
2 Dec. ¶ 9.) *Fifth*, they did not make any of the disclosures required by the Disclosure law,
3 including the fact that they were unregistered fundraisers violating California law by even
4 running the fundraiser in the name of NWF and ACS. (Exhibit B.)

5 **F. Inman and Indiegogo Violated The California Solicitation Disclosure Law**

6 When the legislature enacted the Charitable Solicitations Disclosure Law in 1972 (the
7 “Disclosure Law”), it established new remedies to deal with an identified problem:

8 “The Legislature finds that *there exists in the area of solicitations*
9 *and sales solicitations for charitable purposes a condition which*
10 *has worked fraud, deceit and imposition upon the people of the*
11 *state which existing legal remedies are inadequate to correct. ****

12 The Legislature declares that *the purpose of this article is to ...*
13 *encourage fair solicitations and sales solicitations for charitable*
14 *purposes, wherein the person from whom the money is being*
15 *solicited will know what portion of the money will actually be*
16 *utilized for charitable purposes.”*

17 Cal. Business & Professions Code § 17510. (Emphasis added).

18 **G. Inman and Indiegogo Unlawfully Failed To Disclose Their Non-Tax-Exempt**
19 **Status When Soliciting for The Bear Love Campaign**

20 **i. The Requirement To Disclose Non-Tax Exempt Status**

21 The Disclosure Law expressly applies to solicitations over the Internet, and requires the
22 same disclosures made in printed material:

23 “*If the initial solicitation or sales solicitation is made* by radio,
24 television, letter, telephone, or any other means not involving
25 direct personal contact with the person solicited, including *over the*
26 *Internet, this solicitation shall clearly disclose the information*
27 *required by Section 17510.3.”*

28 Cal. B. & P. Code § 17510.4. (Emphasis added.)

Section 17510.3(a) of the Disclosure Law requires that “prior to any solicitation ... for
charitable purposes, the solicitor ... shall exhibit to the prospective donor” documentation that
states, *inter alia*:

“*The non-tax-exempt status of the organization or fund, if the*
organization or fund for which the money or funds are being
solicited does not have a charitable tax exemption under both
federal and state law.”

Cal. B. & P. Code § 17510.3(a). (Emphasis added.)

1 ii. **Inman’s False Claims of Endorsement by the NWF and ACS,
2 His Failure to Disclose The Bear Love Campaign’s Non-Tax-
3 Exempt Status, and Taking Delivery of Cash to Pull A
4 Publicity Stunt, Demonstrate That He Is Not A Proper
5 Fiduciary of A Charitable Trust**

6 The unprofessional manner in which Inman conducted the Bear Love campaign has led to
7 exactly the type of situation that the Act and the Disclosure Law are meant to prevent. A large
8 fund of money has been collected from 14,046 people, each of whom have contributed very
9 modest amounts of money, and only one of whom has been sufficiently motivated to investigate
10 and initiate judicial action to make sure that the money raised is used in a manner consistent with
11 the promises that were made during the course of the Bear Love campaign. Indeed, the
12 objectives of the Bear Love campaign have been a moving target. Inman started out saying he
13 would try to raise \$20,000 for the NWF and ACS, but when the campaign proved surprisingly
14 successful, he announced he would add two new “charities.” (Carreon Dec. ¶ 16.) Then, at the
15 close of the campaign, he reverted to his original plan, announcing that “unfortunately,” in order
16 to avoid litigation, the Charitable Fund would not be split four ways, and all the money would go
17 to NWF and ACS after all. (Carreon Dec. ¶ 22; Exhibit G.) Finally, while maintaining that
18 “100%” of the money will go to charity, he has refused Plaintiff’s request to simply relinquish all
19 his claim, title and interest in the money (Carreon Dec. ¶ 19), and insists upon having it all paid
20 to himself, so he can turn it into U.S. currency and photograph himself with the cash as a
21 publicity stunt. (Carreon Dec. ¶ 26; Exhibit G.)

22 Inman’s mishandling of the Bear Love campaign illustrates the wisdom of the statutory
23 scheme adopted by the legislature a half-century ago. His enthusiasm for the project caused him
24 to claim the endorsement of non-profit entities without their permission, and when the fund grew
25 larger than he expected, he decided to expand the number of beneficiaries, not thinking that this
26 would violate basic principles of charitable giving. Although he induced many donors to donate,
27 his desire to engage in showboating with the proceeds does not demonstrate the sober,
28 responsible attitude appropriate to the trustee of a charitable fund. Finally, Inman fails to see that
 in order to avoid taking improper advantage of his misappropriation of the names of NWF and
 ACS, by means of which he led Bear Love donors to believe they were making tax deductible

1 donations, he cannot lawfully accept payment of the donations to himself, that must be paid
2 directly to NWF and ACS, who alone are capable of issuing the appropriate tax-deductible-
3 donation receipts to the 14,046 donors.

4 **H. The Balance of the Equities Tips Sharply Against The Non-Moving Parties**

5 Balancing the equities requires this Court to “look to the possible harm that could befall
6 the various parties.” *Maxim Integrated Products, Inc. v. Quintana*, 654 F.Supp.2d 1024, 1036
7 (2009), *citing Cytosport, Inc. v. Vital Pharm., Inc.*, 617 F.Supp. 2d 1051, 1081-1082 (E.D.Cal.
8 2009). Denying a preliminary injunction to Plaintiff will result in irreparable harm, because once
9 the money is transferred to Inman, there will no way to be sure it reaches the NWF and the ACS,
10 no way to get it back and return it to the donors, and no way to re-apportion the tax-write-off to
11 the donors. Inman, on the other hand, has disclaimed any interest in the fund, except for wanting
12 to use it in a publicity stunt. The intended beneficiaries of the fund, ACS and NWF, clearly will
13 benefit from receiving the money without using Inman as an unneeded intermediary, avoiding
14 the risk that he may attempt to extract an unlawful *post-hoc* fundraising fee. Thus, the balance of
15 the equities clearly tips in favor of granting the injunctive relief to preserve the status quo
16 pending adjudication of the issues.

17 **I. Public Policy**

18 The last factor a court must consider is whether an injunction will favor the public
19 interest in not being deceived or confused. *Maxim Integrated Products, Inc. v. Quintana*, 654
20 F.Supp.2d at 1036, *citing Moroccanoil, Inc. v. Moroccan Gold, LLC*, 590 F.Supp.2d 1271, 1282
21 (C.D.Cal.2008). Where the injunction will preserve a fund for a charitable purpose, and prevent
22 it from being diverted to private purposes, issuing the injunction clearly favors public policy.

23 **III. CONCLUSION**

24 For all of the above reasons, the Court is respectfully requested to issue a Temporary
25 Restraining Order and Order to Show Cause re Injunction in the form submitted herewith.

26 Dated: June 28, 2012

CHARLES CARREON, ESQ.

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