

August 18, 2022

**Via E-Mail**

Clara T  
President  
UA GSB, Inc.  
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Re: Legal Opinion – Unlawful Acts of Rogue Actors

Dear Clara:

We have acted as counsel to UA GSB, Inc. (the “Corporation”), in connection with delivering this opinion letter. You have requested our opinion as to the legal authority of a group of individuals to make governance decisions or collect/solicit funds on behalf of Underearners Anonymous (“UA”), or even to use the name UA, without the consent of the General Service Board of Trustees (the “GSB”).

In connection with this opinion letter, we have examined UA’s governing documents, including the Bylaws of The Underearners Anonymous General Service Board, as adopted in 2016 (the “Bylaws”), meeting minutes of the World Service Conference (the “WSC”), minutes of other meetings, the UA Twelve Steps, Traditions and Concepts, and relevant New York statutory law. This legal opinion is based upon our analysis of the foregoing, as well as facts adduced from members of the GSB, and other supporting documentation.

As set forth in greater detail below, it is our opinion that the GSB is the exclusive governing body of the Corporation with respect to all legal and financial matters. No committee of the Corporation supersedes the authority of the GSB.

Two rogue committees of the Corporation who have unilaterally and unlawfully solicited funds in the name of UA, and who have retained such funds, are appropriately deemed outside enterprises. Such committees were appropriately disbanded and may be reconstituted with different committee members, at the GSB’s discretion. Moreover, the act of soliciting funds using the UA name is illegal and subjects the wrongful actors to criminal liability. These rogue actors have no authority to use the UA name, which is a registered trademark owned by the

Corporation; and, use of the name to obtain donations without the Corporation's express consent is unlawful and actionable by the New York Attorney General.

Please refer to our specific legal conclusions set forth below under the heading, Part II: Legal Opinion.

### **Part I: Factual Findings**

#### **A. The Corporate Structure of UA GSB, Inc.**

The Corporation is a nonprofit corporation formed under the New York Not-for-Profit Corporation Law (the "N-PCL"). Consistent with the requirements of Section 701 of the N-PCL, the Corporation is managed by its board of trustees, the GSB. In addition, the Corporation is exempt from Federal income tax pursuant to Section 501(c)(3) Internal Revenue Code (the "IRC"). It is classified as a public charity under IRS § 170(b)(1)(A)(vi).

UA is a Twelve Step fellowship of people who come together to help one another recover from underearning and the effects thereof. As such, its governance is analogous to the inverted triangle structure of Alcoholics Anonymous and many other "anon" groups, with the meetings of fellowship comprised of the largest part of the triangle at the top, the board of trustees at the bottom, and several groups and committees in between – each level designed to serve the level above it.

But this inverted model is best understood as a service structure, not a governance structure. Whereas the fellowship plays an integral role in matters of service and spirituality, it has a limited role in matters of legal governance.

With respect to governance, the Bylaws are unambiguous – the governance of the Corporation regarding business and legal matters rests squarely within the authority of the GSB. Section 3.1 of the Bylaws, for example, provides that the business of the Corporation "shall be managed" by the GSB.

The GSB's governance authority is further supported by the spiritual principles. For example, Tradition No. 4 of the Twelve Traditions limits the autonomy of each group when such autonomy is in conflict with "matters affecting other groups or UA as a whole." (Bylaws p. 2.) Tradition No. 1 requires that the "common welfare should come first." (Bylaws p. 2.) Thus, even autonomous committees must yield to the authority of the GSB in matters affecting the organization as a whole.

Similarly, the GSB has ultimate governance authority in matters pertaining to UA's World Service Conferences. Every two years, UA holds a World Service Conference ("WSC"). The first WSC was held in 2012 and beginning in 2014, the WSC

occurred every two years, in 2016, 2018, and 2020. There was no official WSC meeting scheduled for 2021.

The WSC is governed by the principles of the Twelve Concepts for UA World Service, as identified in the Bylaws. These principles make clear that the GSB has primary legal and fiscal responsibility over the WSC, and has authority over planning and administration for each WSC. The GSB delegates some of its planning and administration role to the WSCPC. The following Concepts establish this point:

- Concept No. 2: “The UA groups have delegated complete administrative and operational authority to the General Service Board.” (Bylaws p. 3.)
- Concept No. 6: “The Conference acknowledges the primary administrative responsibility of the Underearners Anonymous General Service Board.” (Bylaws p. 3.)
- Concept No. 7: “The Conference recognizes that the bylaws of the Underearners Anonymous General Service Board serve as governing documents and that the Trustees have legal rights, while the rights of the Conference are spiritual, rooted in the Twelve Traditions.” (Bylaws p. 3.)
- Concept No. 8: “The Underearners Anonymous General Service Board of Trustees assumes primary leadership for larger matters of overall policy, finance, and custodial oversight, and delegates authority for routine management of the General Service Office.” (Bylaws p. 3.)
- Concept No. 9: “Good leaders, together with appropriate methods for choosing them at all levels, are necessary. At the World Service level, the Board of Trustees assumes primary leadership for UA as a whole. (Bylaws p. 4.)
- Concept No. 11: “. . . the Trustees hold final authority for UA World Service administration.” (Bylaws p. 4.)

#### **B. Two Committees of the Corporation are Deemed Outside Enterprises**

On August 22, 2021, the World Service Conference Planning Committee (“WSCPC”) disclosed that they had independently opened a PayPal account that was used to collect funds from the fellowship to hold an unsanctioned 2021 WSC. This action was in direct violation of the UA Bylaws.

Section 7.3 of the Bylaws provides that the Corporation’s funds shall only be deposited in a manner authorized by the GSB. According to the Bylaws, “[t]he General Service Board of Trustees shall determine who shall be authorized to sign checks, drafts, or other orders for the payment of money, acceptances, notes or other evidences of indebtedness, to enter into contracts or to execute and deliver other

documents and instruments.” Indeed, the GSB has a fiduciary responsibility to administer the funds and accounts of the Corporation. It cannot do so properly if rogue actors are siphoning donations from the Corporation.

Significantly, UA’s governing documents require a specific allocation of all funds received by UA. By motion passed at the 2014 WSC, the following allocation applies to every dollar donated to UA: 60% to UA as a whole, 30% for the WSC, and 10% for scholarships granted to WSC attendees.

I am informed that no portion of the funds collected by the rogue group have been delivered to UA. It appears that the rogue actors are diverting critical donation dollars away from UA and into non-UA accounts. Emails suggest that they are doing so in a manner to intentionally evade taxation or reporting to the IRS.

Due to the lack of accountability from those rogue actors, on October 3, 2021, the GSB sent notice to the fellowship that the WSCPC was acting outside of the UA’s legal parameters, and that the proposed 2021 WSCPC was not sanctioned by UA. Moreover, since the WSCPC had opened a separate bank account and was ignoring UA’s legal parameters, it must be treated as an outside enterprise, not a sanctioned committee of UA. This position is supported by the Bylaws and spiritual principles, and was appropriate under the circumstances.

The WSCPC is a committee of UA GSB, Inc., and as such, is subject to oversight by the GSB. Section 5.0 of the Bylaws provides that committees “shall serve at the sole authority of the General Service Board of Trustees.” (Bylaws, § 5.0). To be sure, the GSB is empowered “to change the membership of, or to discharge” any committee. Accordingly, the WSCPC is subordinate and subject to the authority of the GSB.

Further, Tradition No. 6 provides, “A UA group ought never endorse, finance, or lend the UA name to any related facility or outside enterprise, lest problems of money, property, or prestige divert us from our primary purpose.” Thus, once the WSCPC acted to usurp the authority of the GSB in violation of UA’s Bylaws, the GSB was authorized to discharge the WSCPC as a UA committee and deem it an outside enterprise.

But most significantly, UA is a tax-exempt charitable organization. It is the GSB’s job to ensure that no portion of the assets of the Corporation is used for the private benefit or private inurement of any person. The rogue group solicited funds under false pretenses purportedly on behalf of UA by circumventing the authority of the GSB. The GSB acted appropriately in disavowing those rogue acts.

Shortly after the GSB disbanded the former WSCPC as an outside enterprise, another committee of the Corporation, the Group Service Representatives Committee (the “GSRC”) reinstated the WSCPC as a subcommittee, and adopted the unauthorized PayPal account. As a result of this rogue action, the GSRC, too, was deemed an outside enterprise, consistent with Tradition No. 6. In reinstating the

former WSCPC as a subcommittee and assuming control over the unauthorized PayPal account, the GSRC acted outside of the scope of its authority and in violation of UA's governing documents.

### **C. The Unauthorized 2021 WSC**

Although the GSB did not authorize a 2021 WSC meeting, in November 2021, a group of individuals purported to organize a 2021 WSC, sowing confusion among UA's fellowship. In addition, during the unauthorized 2021 WSC, the rogue group presented a purported conference charter for approval, purported to nominate and elect a new slate of trustees, and purported to reconstitute the disbanded WSCPC as a conference approved committee, among other unauthorized acts.

On December 8, 2021, the rogue group sent an email to the GSB stating, "the UA voting body elected and ratified 6 Class A Trustees with overwhelming unanimity." This notice was meaningless, however, not only because the 2021 WSC was not authorized by the GSB, but also because only the GSB has the power to nominate and elect trustees. No member of the rogue group can be a self-appointed member of the GSB.

Pursuant to Section 3.1 of the Bylaws, directors are elected by a vote of the board of trustees and ratified at the WSC. Thus, even if the 2021 WSC was valid (and it was not), the nominees presented for ratification were not duly elected by the GSB.

In sum, none of the actions taken during the 2021 WSC is valid because the meeting was not authorized by the GSB. Under the Bylaws, the GSB has sole legal and financial oversight authority and operational and administrative control over the UA WSC.

### **D. The Continuing Wrongful Acts of the Rogue Group**

The rogue group has created a website under which it is soliciting funds under the guise of UA WSC and UA GSRC, purporting to be affiliated with UA. In addition, the rogue group is soliciting funds on behalf of the disbanded former committees, GSRC and WSCPC. This is unlawful.

As an initial matter, the rogue group is not authorized to use the name Underearners Anonymous or UA without the express consent of the Corporation. We conducted a search of the records of the United States Patent and Trademark Office and determined that Underearners Anonymous is a registered trademark owned by UA GSB, Inc. I understand that GSB did not authorize the rogue group to use the name UA; and in fact, the GSB has concluded that the committees with which the

rogue actors are affiliated must be deemed outside enterprises. This is the opposite of consent to use the UA name.

Not only is the rogue group engaging in trademark infringement, but they are also violating New York solicitation laws. For example, New York Executive Law § 172-D prohibits a person from engaging “in any fraudulent or illegal act, device, scheme, artifice to defraud or for obtaining money or property by means of a false pretense, representation or promise, transaction or enterprise in connection with any solicitation . . . ” N.Y. EXEC. LAW § 172-D. Any person holding themselves out as cloaked with the authority of the GSB on behalf UA who is not a duly elected member of the GSB is in violation of Section 172-D.

Similarly, Section 174-D prohibits the use of the UA name and trademark for the purpose of soliciting contributions without the prior written consent of UA, subject to criminal penalty. N.Y. EXEC. LAW § 174-D(1)&(4). Here, the rogue group has established a website calling for donations under the name UA WSC, without UA’s consent. This is a clear violation of Section 174-D. The New York Attorney General is empowered to prosecute violations of these solicitation laws. *Id.* § 175.

## **Part II: Legal Opinion**

Based on the foregoing, I have reached the following legal conclusions:

1. The GSB is the governing body of UA, with exclusive power and authority over the legal, financial and operational administration of the Corporation and the WSC.
2. The purported 2021 WSC organized by a rogue group of individuals who are, upon information and belief, former members of the WSCPC and GSRC, was not an authorized UA conference.
3. Because the 2021 WSC was not an authorized UA conference, all actions taken at the conference are invalid, null and void, and are not binding upon UA, the GSB, or the fellowship.
4. The purported UA World Service Conference Charter calling for the reorganization of the GSB is invalid and is of no binding legal effect.
5. The rogue group has no power or authority to solicit, collect or receive any funds on behalf of UA, and in doing so, they are in violation of UA’s governing documents and applicable New York State and Federal laws.
6. The rogue group has no power or authority to use the name Underearners Anonymous or UA without the express consent of the Corporation, which has not been given.

7. The only valid 2022 UA WSC is the conference organized by the duly elected GSB, not the unauthorized 2022 conference planned by the rogue group.

The foregoing conclusions are supported by UA's governing documents. As a matter of policy, when resolving internal disputes of nonprofit corporations, New York courts generally defer to the organization's governing documents and will not disturb determinations of the governing body that are consistent with the unambiguous terms of the governing documents and not tainted by misconduct.

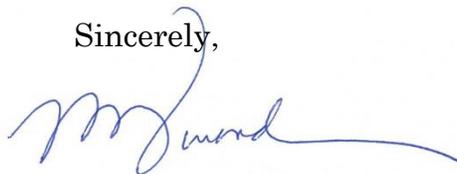
Based on the foregoing, the Corporation has suffered financial harm in the form of significantly diminished contributions, which is severely impacting the Corporation's ability to conduct its programs, services and events, and to pay periodic bills when due. Specifically, since the wrongful conduct, the Corporation has collected only a fraction of its usual donations (down approximately 70% from prior years).

The Corporation may have legal claims against the rogue group for, among other things, tortious interference, conversion, deceit, fraud, breach of fiduciary duty, trademark infringement, conspiracy, and aiding and abetting claims. Such claims may be available to recover damages arising from the rogue group's improper diversion of donations away from UA, the WSC fund, and the WSC scholarship fund.

In addition, the New York Attorney General is empowered to commence an action or proceeding against the rogue group. It makes no difference whether or not individuals within the group reside in New York; the Attorney General may obtain personal jurisdiction over them even as to persons domiciled outside of New York, pursuant to N-PCL § 309. Given the national and international reach of the Corporation, the rogue actors may also be subject to Federal criminal liability.

Finally, I recommend that the GSB immediately send cease and desist letters to the rogue group to prevent them from continuing to wrongfully use UA's name or solicit funds under the guise of UA. If the rogue group disregards the notice, I recommend pursuing an order of protection against the rogue group to prevent them from doing continuing harm to UA, or pursuing criminal charges against them.

Sincerely,



Nancy Durand