



September 3, 2020

Stanley L. Garnett, Esq.
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202

Re: The Messner Foundation

Dear Mr. Garnett:

Alvarez & Marsal Disputes and Investigations, LLC (“A&M”) was retained by Brownstein Hyatt Farber Schreck, LLP on behalf of Messner Reeves, LLP, The Messner Foundation (the “Foundation”), Jim Smith, and Corky Messner, President The Messner Foundation to review the Colorado Charitable Solicitations Act and Raffle License Complaint Against The Messner Foundation, dated August 10, 2020 (the “Complaint”). Specifically, A&M was asked to review the financial records of the Foundation and reach conclusions on how the proceeds raised by the Foundation via raffle ticket sales were used by the Foundation.

A&M’s review of the Foundation’s financial records included reviewing its Form 990-PF tax filings, income statements, balance sheets, bank statements, LE-21 quarterly reports filed with the Colorado Secretary of State’s Bingo and Raffles Program, and other financial records. A&M’s conclusions are summarized below.

- 1) The Foundation’s Form 990-PF tax filings accurately report the financial operations of the Foundation, as reflected in the Foundation’s bank statements and the other financial records described above.
- 2) Based on our analysis of the timing of the Foundation’s revenues and expenses, the \$50,000 grant to Colorado Academy came from Messner Reeves and *not* from any of the raffle proceeds.
 - a. The check to Colorado Academy was issued in March 2014 which is more than half a year *before* the first raffle tickets were sold in November 2014, and more than a year before the first raffle was held.
 - b. The Foundation’s only source of funds as of March 2014 was the \$100,000 contribution from Messner Reeves in late 2009.

The implication from the statements in the Complaint¹ that the Messner Foundation issued the \$50,000 grant to Colorado Academy “instead” of making scholarship contributions is a false implication.

¹ See the first full paragraph on page 2 of the Complaint.

- 3) The Foundation's raffle proceeds were, in fact, used to pay raffle-related expenses and beginning in 2016 (and in every year since) used to provide scholarship grants. The Foundation has not used the raffle proceeds for anything other than raffle expenses and scholarship grants.
 - a. Each of the three raffles (2015, 2016 and 2019) were profitable to the Foundation.
 - b. In total, the three raffles generated \$429,435 in raffle revenues. After subtracting \$280,293 for raffle expenses, including raffle prizes, these three raffles generated profits of \$149,142 for the Messner Foundation.
 - c. Through July 2020, the Messner Foundation has paid \$83,380 for scholarship grants which is 56% of the profit earned from the three raffles. The remaining 44%, or \$65,762, of the raffle profits have not been spent and are available for additional scholarship grants.
 - d. The Foundation has the remaining raffle profits in cash in its bank account.

Respectfully yours,



David A. Hall, CMA, CVA, CFE, MBA
Managing Director

Attachment 1 – Summary of Revenue and Expenses
Attachment 2 – Summary of Raffle-Related Revenues and Expenses

The Messner Foundation
Summary of Revenues and Expenses

Attachment 1

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	June 2020 <u>YTD</u>	<u>Total</u>
<u>Revenue</u>													
Contributions	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,000	\$ 107,000
Raffle ticket sales	-	-	-	-	-	-	209,854	141,426	-	-	78,155	-	429,435
Interest	12	243	104	21	6	3	-	1	-	-	-	0	390
Other	-	-	-	-	-	-	-	-	-	-	-	-	-
	<u>\$ 100,012</u>	<u>\$ 243</u>	<u>\$ 104</u>	<u>\$ 21</u>	<u>\$ 6</u>	<u>\$ 3</u>	<u>\$ 209,854</u>	<u>\$ 141,427</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 78,155</u>	<u>\$ 7,000</u>	<u>\$ 536,825</u>
<u>Expenses</u>													
Grants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,000	\$ -	\$ 5,478	\$ 17,445	\$ 24,967	\$ 19,209	\$ 16,281	\$ 133,380
<u>Raffle expenses:</u>													
Automobile Prize	-	-	-	-	-	-	84,200	63,149	-	-	58,802	-	206,151
Taxes Paid for Automobile Prize	-	-	-	-	-	-	-	21,294	-	-	-	-	21,294
Add Design	-	-	-	-	-	-	4,860	-	-	-	-	-	4,860
Authnet Gateway	-	-	-	-	-	-	-	-	300	300	397	240	1,237
Credit Card / Merchant Fees / Bank Fees	-	-	-	-	-	-	2,238	1,532	100	100	530	-	4,500
Marketing Consultant	-	-	-	-	-	-	12,376	-	-	-	-	-	12,376
Website Design	-	-	-	-	-	-	6,620	-	-	-	-	-	6,620
Events and Promos	-	-	-	-	-	-	-	-	-	-	15,404	-	15,404
Office Expenses	-	-	-	-	-	463	-	-	-	-	-	-	463
All other	-	-	-	-	-	-	2,939	4,421	439	52	-	-	7,851
Raffle Expenses Total						\$ 463	\$ 113,233	\$ 90,396	\$ 839	\$ 452	\$ 75,133	\$ 240	\$ 280,756
Expenses, Total	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 50,463</u>	<u>\$ 113,233</u>	<u>\$ 95,874</u>	<u>\$ 18,284</u>	<u>\$ 25,419</u>	<u>\$ 94,342</u>	<u>\$ 16,521</u>	<u>\$ 414,136</u>
Excess of Revenue over Expenses and Disbursements	<u>\$ 100,012</u>	<u>\$ 243</u>	<u>\$ 104</u>	<u>\$ 21</u>	<u>\$ 6</u>	<u>\$ (50,460)</u>	<u>\$ 96,621</u>	<u>\$ 45,553</u>	<u>\$ (18,284)</u>	<u>\$ (25,419)</u>	<u>\$ (16,187)</u>	<u>\$ (9,520)</u>	<u>\$ 122,690</u>

Sources: 2009-2019: Messner Foundation's Form 990-PF tax filings
2020: Foundation's June 2020 YTD Profit & Loss Statement

The Messner Foundation
Summary of Raffle-Related Revenues and Expenses
2014-2020

Attachment 2

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>June 2020 YTD</u>	<u>Total</u>
<u>Revenue</u>								
A Raffle ticket sales	\$ -	\$ 209,854	\$ 141,426	\$ -	\$ -	\$ 78,155	\$ -	\$ 429,435
<u>Raffle expenses:</u>								
Automobile Prize	\$ -	\$ 84,200	\$ 63,149	\$ -	\$ -	\$ 58,802	\$ -	\$ 206,151
Taxes Paid for Automobile Prize	-	-	21,294	-	-	-	-	21,294
Add Design	-	4,860	-	-	-	-	-	4,860
Authnet Gateway	-	-	-	300	300	397	240	1,237
Credit Card / Merchant Fees / Bank Fees	-	2,238	1,532	100	100	530	-	4,500
Marketing Consultant	-	12,376	-	-	-	-	-	12,376
Website Design	-	6,620	-	-	-	-	-	6,620
Events and Promos	-	-	-	-	-	15,404	-	15,404
Office Expenses	-	-	-	-	-	-	-	-
All other	-	2,939	4,421	439	52	-	-	7,851
B Raffle Expenses Total	\$ -	\$ 113,233	\$ 90,396	\$ 839	\$ 452	\$ 75,133	\$ 240	\$ 280,293
C=A - B Net Raffle Income	\$ -	\$ 96,621	\$ 51,030	\$ (839)	\$ (452)	\$ 3,022	\$ (240)	\$ 149,142
D Less: Scholarship Grants Distributed	-	-	5,478	17,445	24,967	19,209	16,281	83,380
E = C - D Remaining Raffle Income Available for Scholarship Grants	\$ -	\$ 96,621	\$ 45,552	\$ (18,284)	\$ (25,419)	\$ (16,187)	\$ (16,521)	\$ 65,762

Sources: 2014-2019: Messner Foundation's Form 990-PF tax filings
2020: Foundation's June 2020 YTD Profit & Loss Statement