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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ORANGE

12
13 **THE PEOPLE OF THE STATE OF
CALIFORNIA,**

14 **Plaintiff,**

15 **v.**

16
17 **ASSOCIATION FOR FIREFIGHTERS
AND PARAMEDICS, INC., a nonprofit
18 public benefit corporation; MICHAEL F.
GAMBOA, individually and as President of
19 ASSOCIATION FOR FIREFIGHTERS
AND PARAMEDICS; PUBLIC
20 AWARENESS, L.L.C.; COMMUNITY
SUPPORT, INC.; COURTESY CALL,
21 INC.; DOES 1-100, inclusive.**

22 **Defendants.**

COMPLAINT FOR DAMAGES, CIVIL
PENALTIES, A CONSTRUCTIVE TRUST,
PRELIMINARY AND PERMANENT
INJUNCTION, INVOLUNTARY
DISSOLUTION, AND FOR OTHER
RELIEF ARISING FROM

- (1) Deceptive And Misleading Solicitation
(2) Breach Of Fiduciary Duty
(3) Violation Of Government Code
Section 12599
(4) Negligence
(5) Negligence Per Se
(6) Removal Of Officers Under Corp. Code
§ 5223
(7) Involuntary Dissolution Under Corp. Code
§§ 6510 (A)(5), 6511 (A)(1)
(8) Unfair Business Practices
(9) False or Misleading Statements

23 Action Filed:

1 Edmund G. Brown Jr., Attorney General of the State of California (hereinafter “the Attorney
2 General”), files this complaint as Attorney General on behalf of the People and alleges as follows:

3 **GENERAL ALLEGATIONS**

4 1. Plaintiff is the People of the State of California. The Attorney General, who
5 brings this action on Plaintiff’s behalf, is the duly elected Attorney General of the State of
6 California and is charged with the general supervision of all charitable organizations within this
7 State; with the enforcement of the obligations of trustees, nonprofits, and fiduciaries who hold or
8 control property in trust for charitable and eleemosynary purposes; and with enforcement
9 supervision under California’s Unfair Business Practice Act for unlawful, unfair, and fraudulent
10 business practices within this State. The Attorney General is authorized to enforce, in the name
11 of the People, the provisions of the Supervision of Trustees and Fundraisers for Charitable
12 Purposes Act (Gov. Code § 12580 et seq.), the Nonprofit Public Benefit Corporation Law (Corp.
13 Code §5000, et seq.), the Solicitations for Charitable Purposes Law (Bus. & Prof. Code § 17510
14 et seq.), and those provisions of the Business and Professions Code which prohibit unlawful,
15 unfair, or fraudulent business acts or practices within this State (Bus. & Prof. Code §17200 et
16 seq.)

17 2. Defendant Association For Firefighters And Paramedics, Inc. (hereinafter “AFP”)
18 has its principal place of business in Santa Ana, Orange County. AFP is a nonprofit public
19 benefit corporation and is recognized as a tax exempt organization by the Internal Revenue
20 Service. AFP provides financial assistance to burn centers, financial assistance to children and
21 adults injured in fires, financial assistance for relocation and housing after a fire, and information
22 and education about fire prevention and fire safety. From 2005 to 2008, AFP solicited donations
23 for charitable purposes from individuals and businesses in California and nationwide. The
24 solicitation of charitable contributions creates a duty to use those contributions for the declared
25 charitable purpose for which they were solicited, and AFP holds such assets in charitable trust.

26 3. Defendant Michael F. Gamboa (hereinafter “GAMBOA”) is a resident of Orange
27 County. From 2001 to present, GAMBOA held a position of authority and control over the funds
28 and assets of AFP by serving as its President and a member of its Board of Directors. GAMBOA

1 shares the same principal office or place of business as AFP. GAMBOA negotiated solicitation
2 contracts on behalf of AFP, authorized the retention of telemarketers, authorized telemarketing
3 scripts, signed donor acknowledgment letters, and authorized the content of the AFP website.

4 GAMBOA is a fiduciary of property irrevocably dedicated to charitable purposes.

5 4. Defendant Public Awareness, L.L.C. (hereinafter "PUBLIC AWARENESS") is a
6 for-profit corporation with its principal place of business in Riverside. PUBLIC AWARENESS
7 conducts business in California as a commercial fundraiser. PUBLIC AWARENESS entered into
8 contracts with AFP acknowledging that California law applies. From January 2005 through 2008,
9 PUBLIC AWARENESS' actions, as described herein, occurred in the State of California.

10 5. Defendant Community Support, Inc. (hereinafter "COMMUNITY SUPPORT") is
11 a for-profit corporation with its principal place of business in Milwaukee, Wisconsin.
12 COMMUNITY SUPPORT conducts business in California as a commercial fundraiser.
13 COMMUNITY SUPPORT entered into contracts with AFP acknowledging that California law
14 applies. From January 2005 through 2008, COMMUNITY SUPPORT's actions, as described
15 herein, occurred in the State of California.

16 6. Defendant Courtesy Call, Inc. (hereinafter "COURTESY CALL") is a for-profit
17 corporation with its principal place of business in Las Vegas, Nevada. COURTESY CALL
18 conducts business in California as a commercial fundraiser. COURTESY CALL entered into
19 contracts with AFP acknowledging that California law applies. From 2006 through 2008,
20 COURTESY CALL's actions, as described herein, occurred in the State of California.

21 7. At all times material herein, defendants and each of them have been transacting
22 business in part within the State of California. The violations of law described herein have been
23 and are now being carried out in Santa Ana, Orange County, where AFP's headquarters is
24 located, and throughout the State of California for commercial fundraising solicitation. The
25 actions of defendants and each of them, jointly and severally, as set forth below, are in violation
26 of the laws and public policy of the State of California and are inimical to the rights and interests
27 of the public beneficiaries of charitable trusts.

28

1 8. Defendants DOES 1 through 100, inclusive, are the defendants who have acted as
2 directors, officers, trustees, agents, or employees of defendants, or who have participated or acted
3 in concert with one or more of the defendants, or who have acted on behalf of or as agent,
4 servant, employee or co-conspirator of one or more of the defendants herein, but whose true
5 names and capacities, whether individual, corporate or otherwise, are presently unknown to
6 plaintiff. Plaintiff is informed and believes that defendants DOES 1 through 100 have directly or
7 indirectly participated in and are responsible for the acts and omissions that are more specifically
8 described herein. Because Plaintiff is presently uninformed as to the true names and capacities of
9 these defendants, the People sue them herein by their fictitious names but will seek leave to
10 amend the Complaint when their true names are discovered.

11 **FIRST CAUSE OF ACTION**
12 **DECEPTIVE AND MISLEADING SOLICITATION IN VIOLATION OF**
13 **GOVERNMENT CODE SECTION 12599.6**
14 **(AGAINST ALL DEFENDANTS)**

15 9. Plaintiff re-alleges and incorporates herein by reference each and every allegation
16 contained in paragraphs 1 through 8.

17 10. Under Government Code section 12599.6, charitable organizations and the
18 commercial fundraisers who solicit charitable funds on their behalf are prohibited from
19 misrepresenting the purpose of for which funds are solicited. Charitable organizations and
20 commercial fundraisers are prohibited from using any unfair or deceptive practices or engaging in
21 fraudulent conduct that creates a likelihood of confusion or misunderstanding. Charitable
22 organizations and commercial fundraisers are also prohibited from misrepresenting that the
23 charitable organization will receive an amount greater than the actual net proceeds reasonably
24 estimated to be retained by the charity for its use. Charitable organizations must establish and
25 exercise control over their fundraising activities and must assure that fundraising activities
26 conducted on their behalf are conducted without coercion.

27 11. Under the Telemarketing Sales Rules, for-profit telemarketers are prohibited from
28 misrepresenting the nature, purpose or mission of any entity for which the solicitation is being

1 made. (16 C.F.R. § 310.4, subd. (d)(1).) Telemarketers are also prohibited from misrepresenting
2 how a contribution will be used, the percentage or amount the charity will receive. (16 C.F.R. §
3 310.4, subd. (d)(3) and (4).) The Telemarketing Sales Rules also prohibit telemarketers from
4 blocking caller ID. (16 C.F.R. § 310.4, subd. (a)(7).) Telemarketers are also prohibited from
5 sending billing information without the donor's express authorization. (16 C.F.R. § 310.3, subd.
6 (a)(3).) Telemarketers are also prohibited from engaging in abusive telemarketing acts or
7 practices such as calling before 8:00 a.m. or after 9:00 p.m., or letting the phone ring repeatedly
8 or continuously with the intent to annoy, abuse or harass. (16 C.F.R. § 310.4, subd. (b)(1)(i), and
9 § 310.4, subd. (c).)

10 12. AFP, GAMBOA, and DOES 1-100 organized, managed, and directed AFP's
11 solicitation campaign from approximately 2005-2008 in a manner that was misleading. On
12 information and belief, AFP, GAMBOA, and DOES 1-100, authorized misleading telemarketing
13 scripts that concealed material facts and made false representations as to how the donations would
14 be used by AFP and what amounts AFP would receive from the solicitation campaign.
15 GAMBOA approved scripts submitted by the various telemarketing companies retained by AFP.
16 As President of AFP, GAMBOA is responsible for the fundraising activities of AFP. PUBLIC
17 AWARENESS, COMMUNITY SUPPORT, COURTESY CALL and DOES 1-100, solicited
18 California residents and obtained donations and payments from the public on behalf of AFP.

19 13. The following misrepresentations were made by Defendants in the course of their
20 solicitation campaigns:

21 a. Donors were told that between 80%-100% of their donation would go to
22 AFP. Defendants concealed the material fact that out of the donations collected by
23 each telemarketing company, 89-90% of the donations was paid to the
24 telemarketing company. AFP received only 10-11% of the collected donations.

25 b. Donors were misled as to where their donations would be used.

26 Telemarketers informed donors nationwide that the money raised would be used to
27 assist local firefighters, paramedics, and burn victims in their specific area, county,
28 or state. AFP's website also states, "Our board of directors diligently seeks out

1 individual cases within a reasonable radius of your area so that the impact of your
2 donation can be felt close to home.” These representations were false because the
3 only individuals to receive grants from AFP resided in the Southern California
4 region. Any grants made by AFP outside of the Southern California region were
5 given exclusively to burn centers and foundations, not to individual burn victims,
6 local fire departments or paramedics. Although Defendants represented that the
7 donations would benefit local fire fighting agencies, no grants to such agencies
8 were made by AFP.

9 c. Telemarketers misled potential donors by stating that AFP had not received
10 the person’s “usual” or “annual” donation, when in fact the potential donors had
11 never previously donated to AFP. Telemarketers further misled potential donors
12 by mailing pledge statements or invoices to people who had not made a pledge to
13 donate to AFP. These acts were deceptive practices that had the likelihood of
14 confusing donors or causing misunderstanding.

15 d. Solicitors did not identify themselves as paid telemarketers. Donors were
16 misled into believing that the solicitors were volunteers, firefighters, or employees
17 of AFP. Defendants concealed the material fact that the telemarketers were paid
18 professional solicitors, thereby creating a likelihood of confusion or
19 misunderstanding with respect to the percentage of donations that AFP would
20 receive.

21 e. AFP authorized the distribution of decals, stickers and/or emblems that
22 could be used for display on a motor vehicle, which state “ASSOCIATION FOR
23 FIREFIGHTERS AND PARAMEDICS” and which bear the AFP seal insignia.
24 The AFP decal suggests an affiliation with, or endorsement by, public safety
25 personnel, such as firefighters.

26 14. Defendants’ conduct violates Government Code section 12599.6. Plaintiff is
27 entitled to injunctive relief and civil penalties.

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SECOND CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY AND CHARITABLE TRUST
(AGAINST ALL DEFENDANTS)

15. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 14.

16. AFP, GAMBOA, PUBLIC AWARENESS, COMMUNITY SUPPORT, COURTESY CALL, and DOES 1-100, had a fiduciary relationship with the donors and beneficiaries of AFP. The fiduciary relationship was established by statute (Bus. & Prof. Code §17510.8 and Gov. Code §12599), by common law, and by agreement.

17. Defendants accepted charitable contributions on behalf of AFP. The acceptance of those donations established a charitable trust and a fiduciary duty on the part of Defendants to ensure that the donations were used for the purposes stated during the solicitation as required under Business and Professions Code section 17510.8.

18. Defendants breached their fiduciary duty by failing to ensure that donations to AFP were properly used for the purposes for which they were solicited, as required by Business and Professions Code section 17510.8. On a national level, donors were told that their donations would be used to assist the donors' local fire departments, paramedics, and burn victims. The only fire and/or burn victims to receive grants from AFP were located in the Southern California region. All grants made by AFP outside of the Southern California region were given exclusively to burn centers and foundations, not to the donor's local fire departments and/or paramedics. Funds were treated by AFP as being unrestricted and used for purposes unrelated to the purpose for which they were donated.

19. The Attorney General has authority to remedy breach of charitable trust against AFP, GAMBOA, and DOES 1-100, under Corporations Code sections 5142, subdivision (a)(5), 5223, 5250, Government Code sections 12598 and 12599.6, and Business and Professions Code section 17510.8. The Attorney General has authority to remedy breach of charitable trust against PUBLIC AWARENESS, COMMUNITY SUPPORT, COURTESY CALL, and DOES 1-100, under Government Code sections 12598, 12599, subdivision (g), and 12599.6, and Business and

1 Professions Code section 17510.8. Plaintiff is entitled to civil penalties pursuant to Business and
2 Professions Code section 17536.

3 **THIRD CAUSE OF ACTION**

4 **VIOLATION OF GOVERNMENT CODE SECTION 12599**

5 **(AGAINST DEFENDANTS PUBLIC AWARENESS, and DOES 1-100)**

6 20. Plaintiff re-alleges and incorporates herein by reference each and every allegation
7 contained in paragraphs 1 through 19.

8 21. For compensation, Defendants PUBLIC AWARENESS and DOES 1-100,
9 solicited funds in the State of California for charitable purposes on behalf of AFP. PUBLIC
10 AWARENESS and DOES 1-100, received and/or controlled funds donated as a result of their
11 solicitation for AFP.

12 22. Defendants PUBLIC AWARENESS and DOES 1-100, hired and compensated
13 employees to solicit, receive, and/or control funds for AFP.

14 23. By virtue of the actions of PUBLIC AWARENESS and DOES 1-100, described
15 herein, they are commercial fundraisers for charitable purposes within the meaning of
16 Government Code section 12599.

17 24. As commercial fundraisers for charitable purposes, PUBLIC AWARENESS and
18 DOES 1-100, were required to comply with the requirements of Government Code section 12599,
19 subdivision (i). The commercial fundraising contract between AFP and PUBLIC AWARENESS
20 violates Government Code section 12599, subdivision (i), in that the contract does not contain the
21 required provisions set forth in Government Code section 12599, subdivisions (i) (7), (8), (10),
22 (11), and (12), regarding the deposit of fundraising contributions, the content and frequency of
23 each solicitation, AFP's right to cancel, and the cancellation period.

24 25. Pursuant to Government Code section 12599, subdivision (g), at all times relevant
25 herein, PUBLIC AWARENESS and DOES 1-100, were commercial fundraisers for charitable
26 purposes and, as such, are subject to the Attorney General's supervision. Under Government
27 Code section 12599, subdivision (g), PUBLIC AWARENESS and DOES 1-100, are constructive
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1 trustees for charitable purposes with regard to all funds collected from solicitations for AFP and
2 have a duty to account to the Attorney General for all such funds.

3 26. Pursuant to Government Code section 12591.1, Plaintiff is entitled to civil
4 penalties.

5 **FOURTH CAUSE OF ACTION**

6 **NEGLIGENCE**

7 **(AGAINST ALL DEFENDANTS)**

8 27. Plaintiff re-alleges and incorporates herein by reference each and every allegation
9 contained in paragraphs 1 through 26.

10 28. When defendants AFP, GAMBOA, PUBLIC AWARENESS, COMMUNITY
11 SUPPORT, COURTESY CALL, and DOES 1-100, solicited and accepted donations for AFP
12 they owed a duty of care to the donors and beneficiaries of AFP to ensure that the donations and
13 funds were used for the specific purposes for which they were solicited and for charitable
14 purposes. On information and belief, the failure to use donations for the purpose for which they
15 were solicited took place from 2005 through 2008.

16 29. Defendants breached their duty of care by misusing these charitable funds for
17 purposes other than the purpose for which they were solicited. As a result of that breach of duty,
18 the beneficiaries of AFP have been injured, in the aggregate, in an amount presently unknown to
19 plaintiff. The facts necessary for calculation of the receipts and disbursements, and thus the
20 amount owed to the beneficiaries, are within the special knowledge of Defendants.

21 **FIFTH CAUSE OF ACTION**

22 **NEGLIGENCE PER SE**

23 **(AGAINST ALL DEFENDANTS)**

24 30. Plaintiff re-alleges and incorporates herein by reference each and every allegation
25 contained in paragraphs 1 through 29.

26 31. Prior to soliciting charitable funds, and before receiving and controlling those
27 funds, Defendants PUBLIC AWARENESS and DOES 1-100, failed to comply with the written
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1 contract provisions set forth in Government Code section 12599, subdivisions (i) (7), (8), (10),
2 (11), and (12).

3 32. In violation of Business and Professions Code section 17510.8 and in breach of
4 their fiduciary duty under common law, Defendants PUBLIC AWARENESS, COMMUNITY
5 SUPPORT, COURTESY CALL, and DOES 1-100, solicited and accepted donations for AFP and
6 failed to ensure that the donations were used for the purpose for which they were solicited.

7 33. In violation of Government Code section 12599.6, AFP, GAMBOA, PUBLIC
8 AWARENESS, COMMUNITY SUPPORT, COURTESY CALL, and DOES 1-100, engaged in
9 deceptive and misleading solicitation.

10 34. The People are the intended beneficiary of the protection afforded by the above-
11 referenced provisions. The Attorney General represents the interests of the People. The above-
12 referenced statutes were designed to preserve charitable assets, protect the donors and the
13 beneficiaries of charity. As a proximate cause of said breaches of statutory duty, AFP and its
14 beneficiaries have been injured, in the aggregate, in an amount presently unknown to Plaintiff.

15 **SIXTH CAUSE OF ACTION**

16 **REMOVAL OF AFP DIRECTORS AND OFFICERS**

17 **PURSUANT TO CORPORATIONS CODE SECTION 5223**

18 **(AGAINST GAMBOA, and DOES 1-100)**

19 35. Plaintiff re-alleges and incorporates herein by reference each and every allegation
20 contained in paragraphs 1 through 34.

21 36. GAMBOA and DOES 1-100, have engaged in fraudulent and dishonest acts and
22 have also grossly abused their authority. GAMBOA and DOES 1-100, were responsible to
23 ensure that AFP engaged in fair, truthful and lawful solicitation. GAMBOA and DOES 1-100,
24 were prohibited from engaging in deceptive and misleading solicitation practices. GAMBOA and
25 DOES 1-100, violated Government Code section 12599.6, subdivisions (a), (b), (f)(2), (8), (9),
26 and Business and Professions Code section 17510.8.

1 37. Because Defendants engaged in gross abuse of authority or discretion in their
2 management of AFP, and because they breached the charitable trust pursuant to which they held
3 charitable assets, they should be removed from AFP’s board and barred from re-election.
4

5 **SEVENTH CAUSE OF ACTION**
6 **INVOLUNTARY DISSOLUTION OF AFP**
7 **PURSUANT TO CORPORATIONS CODE SECTIONS 6510, 6511**
8 **(AGAINST AFP, and DOES 1-100)**

9 38. Plaintiff re-alleges and incorporates herein by reference each and every allegation
10 contained in paragraphs 1 through 37.

11 39. Defendants AFP and DOES 1-100, by participating in the acts alleged in this
12 Complaint, have engaged in persistent and pervasive abuse of authority and discretion.
13 Defendants AFP and DOES 1-100, and AFP’s directors have engaged in the mismanagement of
14 APF’s charitable assets by violating Business and Professions Code section 17510.8 and
15 Government Code section 12599.6. Further, Defendant AFP, through the actions and omissions
16 alleged in this Complaint, has seriously offended the statutes regulating corporations and
17 charitable organizations.

18 40. Involuntary dissolution of AFP is therefore necessary and appropriate under the
19 provisions of Corporations Code sections 6510, subdivision (a)(5), and 6511, subdivision (a)(1).
20

21 **EIGHTH CAUSE OF ACTION**
22 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 – UNFAIR**
23 **BUSINESS PRACTICES**
24 **(AGAINST ALL DEFENDANTS)**

25 41. Plaintiff re-alleges and incorporates herein by reference each and every allegation
26 contained in paragraphs 1 through 40.

27 42. From 2005 to 2008, Defendants AFP, GAMBOA, PUBLIC AWARENESS,
28 COMMUNITY SUPPORT, COURTESY CALL, and DOES 1-100, engaged in unfair business
practices by making false, deceptive, and misleading statements to donors to induce them to make

1 charitable contributions to AFP. Defendants committed and continue to commit acts of unfair
2 competition as defined in Business and Professions Code section 17200, including, but not
3 limited to, the following:

- 4 a. Defendants concealed their role as commercial fundraisers.
- 5 b. Defendants misrepresented the percentage or amount of charitable contributions
6 that AFP would receive as a result of the solicitation campaign.
- 7 c. Defendants misrepresented how and where the charitable donations would be used.
- 8 d. Defendants breached their fiduciary duty to the donors by failing to use the
9 donations for the purposes for which they were solicited.
- 10 e. Defendants sent billing information to donors who had not made any charitable
11 pledges.
- 12 f. Defendants engaged in intimidation and coercion when calling residents of
13 California. Telemarketers used high-pressure tactics to induce donors to make
14 contributions and refused to take “no” for an answer, even when donors clearly stated that
15 they could not afford to donate at that time. The methods used by Defendants caused
16 residents to feel harassed and intimidated.

17 43. Defendants engaged in and participated in acts of unfair competition, as defined by
18 Business and Professions Code section 17200, by violating the following statutes and regulations:

- 19 a. Government Code section 12599.6, subdivisions (a), (b), and (f).
- 20 b. Government Code section 12599, subdivision (i).
- 21 c. Business and Professions Code section 17510.8.
- 22 d. Business and Professions Code section 17510.85.
- 23 e. Federal regulations established by the Federal Trade Commission (“Telemarketing
24 Sales Rule”), (16 C.F.R. § 310.3 [deceptive telemarketing acts or practices]; § 310.4
25 [abusive telemarketing acts or practices]).

26 44. As a result of the aforementioned acts of unfair competition, Plaintiff is entitled to
27 civil penalties in an amount which is presently unknown, but believed to be in excess of
28 \$100,000. Defendants should also be required to reimburse the Attorney General all reasonable

1 attorney's fees and actual costs incurred in conducting this action, as provided by Government
2 Code section 12598.

3 45. As a result of the aforementioned acts of unfair competition, defendants should be
4 ordered to pay into court an amount equal to the amount of funds solicited from the public on
5 behalf of AFP by any means or practice found to constitute unfair competition under Business
6 and Professions Code section 17200 or by false and misleading statements under Business and
7 Professions Code section 17500, all said monies to be distributed by the court to charitable
8 institutions for use for purposes similar to that of AFP.

9 46. Pursuant to Business and Professions Code section 17203, plaintiff is further entitled
10 herein to injunctive relief against the defendants named in this cause of action and DOES 1
11 through 100, prohibiting them from engaging in further acts of unfair competition.

12
13 **NINTH CAUSE OF ACTION**

14 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17500**

15 **FALSE OR MISLEADING STATEMENTS**

16 **(AGAINST ALL DEFENDANTS)**

17 47. Plaintiff re-alleges and incorporates by reference herein each and every allegation
18 contained in paragraphs 1 through 46.

19 48. Defendants violated Business and Professions Code section 17500 by deliberately
20 disseminating or causing to be disseminated to California residents and to residents of other states
21 untrue and misleading statements in the course of conducting their charitable solicitation
22 campaigns, including but not limited to the misrepresentations set forth in Paragraph 13.

23 Defendants and each of them knew or reasonably should have known that their representations
24 made in the charitable solicitation campaigns were false or misleading at the time the statements
25 were made. As a result of the false and misleading statements Defendants made in the course of
26 conducting their charitable solicitation campaigns, pursuant to Business and Professions Code
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1 section 17500 and 17536, Plaintiff is entitled to civil penalties against each Defendant in an
2 amount which is presently unknown, but believed to be in excess of \$100,000.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, the People pray for judgment as follows:

5 1. For a preliminary and permanent injunction, enjoining defendants GAMBOA, AFP,
6 and DOES 1 through 100, their employees, agents, servants, representatives, successors, and
7 assigns, any and all persons acting in concert or participation with them, and all other persons,
8 corporations, or other entities acting under, by, through, or on their behalf, from doing any of the
9 following until they have first provided a full and complete accounting for all funds received by,
10 and disbursed from, any and all financial accounts of AFP from January 1, 2005, to the present:

11 (1) expending, disbursing, transferring, encumbering, withdrawing or otherwise exercising
12 control over any funds received by or on behalf of AFP or rightfully due AFP except as
13 authorized by the Court; (2) conducting business of any kind on behalf of, or relating to, AFP
14 other than as necessary to assist a Receiver or appointed director(s), to comply with discovery
15 requests and orders, and as permitted by the Court; and (3) controlling or directing the operations
16 and affairs of any California nonprofit public benefit corporation;

17 2. That an order issue directing that defendants GAMBOA, AFP, PUBLIC
18 AWARENESS, COMMUNITY SUPPORT, COURTESY CALL, and DOES 1 through 100 and
19 each of them, render to the Court and to the Attorney General a full and complete accounting of
20 the financial activities and condition of AFP and/or their dealings with AFP from January 1,
21 2005, to the present, to include the expenditure and disposition of all revenues and assets received
22 by or on behalf of AFP. Upon the rendering of such accounting, that the Court determine the
23 property, real or personal, or the proceeds thereof, to which AFP and the charitable beneficiaries
24 thereof are lawfully entitled, in whatsoever form in whatsoever hands they may now be, and order
25 and declare that all such property or the proceeds thereof is impressed with a trust for charitable
26 purposes, that defendants are constructive trustees of all such charitable funds and assets in their
27 possession, custody or control, and that the same shall be deposited forthwith in Court by each
28 and every defendant now holding or possessing the same or claiming any rights, title or interest

1 therein. In addition, that these defendants be surcharged and held liable and judgment entered
2 against each of them for any and all such assets for which they fail to properly account, together
3 with interest thereon at the legal rate from the date of liability thereon; and that any and all
4 expenses and fees incurred by defendants in this action be borne by the individual defendants and
5 each of them and not by AFP or any other public or charitable corporation or fund;

6 3. For damages resulting from the breaches of fiduciary duty of all defendants named in
7 this Complaint and DOES 1 through 100 in an amount to be determined following an accounting
8 from these defendants, plus interest at the legal rate until the judgment is paid;

9 4. That the Court assess civil penalties against all defendants pursuant to Government
10 Code section 12591.1 for violations of the Supervision of Trustees and Fundraisers for Charitable
11 Purposes Act (Gov. Code § 12580 et seq.) as proved at trial;

12 5. Pursuant to Business and Professions Code section 17206, that the Court assess a civil
13 penalty of two thousand five hundred dollars (\$2,500) against all named defendants and DOES 1
14 through 100 for each violation of Business and Professions Code section 17200 per day, as
15 proved at trial, in an amount no less than \$150,000;

16 6. Pursuant to Business and Professions Code section 17203, for a preliminary and
17 permanent injunction enjoining defendants, their successors, agents, representatives, employees
18 and all persons who act in concert with, or on behalf of, defendants from engaging in unfair
19 competition as defined in Business and Professions Code section 17200, including, but not
20 limited to, those acts and omissions alleged in this Complaint;

21 7. Pursuant to Business and Professions Code sections 17500 and 17536, that the Court
22 assess a civil penalty of two thousand five hundred dollars (\$2,500) against all named defendants
23 and DOES 1 through 100 for each violation of Business and Professions Code section 17500 per
24 day, as proved at trial, in an amount no less than \$150,000;

25 8. Pursuant to Business and Professions Code section 17536, that the Court assess a civil
26 penalty of two thousand five hundred dollars (\$2,500) against all Defendants for each violation of
27 Business and Professions Code section 17510.8, as proved at trial in an amount no less than
28 \$150,000;

1 9. Pursuant to Business and Professions Code sections 17203, 17510.8, and 17535,
2 and/or the equitable powers of the court, defendants and each of them be ordered to pay into
3 Court an amount equal to the amount of funds solicited from the public on behalf of AFP by
4 means of any act or practice declared by this court to constitute unfair competition under Business
5 and Professions Code section 17200 or false and misleading statements under Business and
6 Professions Code section 17500, all said monies to be distributed by this court to charitable
7 institution(s) for use for purposes similar to those of AFP.

8 10. For plaintiff's costs of suit and other costs pursuant to Government Code sections
9 12597 and 12598;

10 11. For plaintiff's attorney fees as provided in Government Code section 12598 and Code
11 of Civil Procedure section 1021.8; and

12 12. For such other and further relief as the Court may deem to be just and proper.

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14
15 THIS COMPLAINT IS DEEMED VERIFIED UNDER THE PROVISIONS OF CODE OF
16 CIVIL PROCEDURE SECTION 446

17
18 Dated: May 26, 2009

Respectfully Submitted,

19 EDMUND G. BROWN JR.
20 Attorney General of California
21 BELINDA J. JOHNS
22 Senior Assistant Attorney General
23 KELVIN GONG
24 Supervising Deputy Attorney General

25 _____
26 JAMI L. CANTORE
27 Deputy Attorney General
28 *Attorneys for the People of the State of
California*

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