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

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

14 **PLAINTIFF,**

15 v.

16 **COALITION OF POLICE AND SHERIFFS,**
17 **a nonprofit public benefit corporation;**
18 **DISABLED FIREFIGHTERS FUND, a**
19 **nonprofit public benefit corporation;**
20 **AMERICAN VETERANS RELIEF**
21 **FOUNDATION, a nonprofit public benefit**
22 **corporation; CAMPAIGN CENTER, INC., a**
23 **corporation; KWS PRODUCTIONS, INC., a**
24 **corporation; TEL-MAR PRODUCTIONS,**
25 **INC., a corporation; COMMUNITY**
26 **PUBLICATIONS, INC., a corporation;**
27 **ROMAN PROMOTIONS, INC., a**
28 **corporation; MAURICE "BUD" COLLYER,**
individually and as a director; JEFFREY
DUNCAN individually and as a director;
KATHY CLINKENBEARD, individually
and as a director; WILLIAM ROSE,
individually and as a director; WILLIAM
PETERSON, individually and as a director,
STANLEY ORLOWSKI as a director;
ANTONIO PERUCHO; an individual;
LARRY PENA, individually and as a
(continued...)

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

- (1) CONSPIRACY TO DEFRAUD DONORS
- (2) BREACH OF FIDUCIARY DUTY
- (3) DECEPTIVE AND MISLEADING
CHARITABLE SOLICITATIONS
- (4) BREACH OF FIDUCIARY DUTY
(B&P §17510.8)
- (5) FALSE AND DECEPTIVE
STATEMENTS
- (6) BREACH OF CHARITABLE TRUST
- (7) NEGLIGENCE
- (8) UNFAIR BUSINESS PRACTICES
- (9) INVOLUNTARY DISSOLUTION

Action Filed: May 29, 2009

1 (...continued)
2 director; WALTER WHITE, as a director;
3 TIMOTHY BAX, as a director; PATRICIA
4 GUNN, as a director; COLLEEN COOK, as
5 a director; RODGER BAILEY, as a director;
6 JOHN McKAY, as a director; PABLO
7 SANCHEZ; as a director, DAVID CHUBB,
8 as a director; CARL SCHMIDT, as a
9 director; MELISSA ALEXANDER, as a
10 director; STEVEN MILLS, as a director;
11 MARY COLLYER, an individual; DEBBIE
12 MACIEL, an individual; JOSHUA
13 COLLYER, an individual; DOES 1-100,
14 inclusive.

15 **Defendants.**

16 Edmund G. Brown Jr., Attorney General of the State of California (the Attorney General),
17 files this complaint as Attorney General on behalf of the People and alleges as follows:

18 GENERAL ALLEGATIONS

19 1. Plaintiff is the People of the State of California. The Attorney General, who
20 brings this action on plaintiff's behalf, is the duly elected Attorney General of the State of
21 California and is charged with the general supervision of all charitable organizations within this
22 State; with the enforcement and supervision over trustees, nonprofits, and fiduciaries who hold or
23 control property in trust for charitable and eleemosynary purposes; and with enforcement
24 supervision pursuant to California's Unfair Business Practice Act for unlawful, unfair, and
25 fraudulent business practices within this State. The Attorney General is authorized to enforce, in
26 the name of the People, the provisions of the Supervision of Trustees and Fundraisers for
27 Charitable Purposes Act (Gov. Code, § 12580 *et seq.*), the Nonprofit Corporation Law (Corp.
28 Code, § 5000 *et seq.*), the Solicitations for Charitable Purposes Law (Bus. & Prof. Code, § 17510
et seq.), and those provisions of the Business and Professions Code which prohibit unlawful,
unfair, or fraudulent business acts or practices within this State (Bus. & Prof. Code, §17200 *et seq.*).

2. At all material times, Defendants and each of them have been transacting business
in the County of Orange and elsewhere in California. The violations of law alleged in this
complaint have been carried out in Orange County and elsewhere in California.

1 3. Defendant Coalition of Police and Sheriffs (COPS) has its principal place of
2 business in Santa Ana, Orange County, California. COPS is a California nonprofit public benefit
3 corporation, with the stated charitable purpose: (a) to provide financial assistance to families of
4 police officers and sheriffs killed in the line of duty; (b) to provide financial assistance to police
5 officers and sheriffs disabled while performing their duties; and (c) to promote public awareness
6 of the dangers of law enforcement. From at least 2000 through the present, COPS solicited
7 donations for charitable purposes from individuals and businesses in California and throughout
8 the United States. The solicitation of charitable contributions creates a duty to use those
9 contributions for the declared charitable purpose(s) for which they were solicited and COPS holds
10 these assets in charitable trust.

11 4. Defendant Disabled Firefighters Fund (DFF) has its principal place of business in
12 Santa Ana, Orange County, California. Defendant DFF is the successor entity to a charity
13 operated under the name Association of Disabled Firefighters (ADF). Defendant DFF is a
14 California nonprofit public benefit corporation, with the stated charitable purpose: (a) to offer
15 financial assistance and enhance the quality of life to disabled firefighters and families of
16 firefighters who have lost a spouse or parent in the line of duty; (b) to support burn trauma
17 centers in assisting burn victims across the country; (c) to make grants to organizations in
18 furtherance of the organization's charitable purposes; and (d) to do any other act or thing
19 incidental to or connected with the foregoing purposes or in advancement thereof, but not for the
20 pecuniary profit or financial gain of its members, directors or officers. From at least 2002
21 through the present, DFF solicited donations for charitable purposes from individuals and
22 businesses in California and throughout the United States. The solicitation of charitable
23 contributions creates a duty to use those contributions for the declared charitable purpose(s) for
24 which they were solicited and DFF holds these assets in charitable trust.

25 5. Defendant American Veterans Relief Foundation (AVRF) has its principal place of
26 business in Santa Ana, Orange County, California. AVRF is a California nonprofit public benefit
27 corporation, with the stated charitable purpose: (a) to identify those veterans who have fallen
28 through the cracks of the system and provide them with the assistance necessary to re-kindle their

1 dignity and self-respect, by providing the following forms of assistance: financial support to
2 homeless veterans facilities; (b) provide financial assistance to those veterans who have nowhere
3 else to turn; (c) provide "Thinking of You" packages containing personal hygiene and other items
4 to veterans in VA hospitals; (d) pay mortgage, rent payments and medical bills of, and provide
5 financial support to veterans memorials. From at least 2001 through the present, AVRF solicited
6 donations for charitable purposes from individuals and businesses in California and throughout
7 the United States. The solicitation of charitable contributions creates a duty to use those
8 contributions for the declared charitable purpose for which they were solicited and AVRF holds
9 these assets in charitable trust.

10 6. Defendant Jeffrey Dean Duncan (JEFFREY DUNCAN) has been the President of
11 both COPS and DFF since 2005, a director of DFF since 2003, and is a resident of Orange
12 County, California. Defendant JEFFREY DUNCAN has also received payments from COPS and
13 DFF since 2004. Defendant JEFFREY DUNCAN is an "interested" director as defined by
14 Corporations Code section 5227. As an officer and director, Defendant JEFFREY DUNCAN
15 owes fiduciary duties of care and loyalty to COPS, DFF and the public beneficiaries of charity.

16 7. Defendant Debbie Maciel (MACIEL) is the wife of Defendant JEFFREY
17 DUNCAN and the step-daughter of Defendant ORLOWSKI. Defendant MACIEL is a resident of
18 Orange County, California. Defendant MACIEL received payments and health insurance benefits
19 from COPS, DFF and AVRF beginning in 2005.

20 8. Defendant Stanley Orłowski (ORLOWSKI) has been a director of DFF since 2005
21 and is a resident of Orange County, California. Defendant ORLOWSKI is the father-in-law of
22 Defendant JEFFREY DUNCAN. Defendant ORLOWSKI is an "interested" director as defined
23 by Corporations Code section 5227. As a director, Defendant ORLOWSKI owes fiduciary duties
24 of care and loyalty to DFF and the public beneficiaries of charity.

25 9. Defendant Maurice "Bud" Collyer (BUD COLLYER) was the President of the
26 both COPS and DFF until 2005 and is a resident of San Bernardino County, California.
27 Defendant BUD COLLYER was an "interested" director as defined by Corporations Code section
28 5227. Defendant BUD COLLYER received payments from COPS, DFF and AVRF in 2005. As

1 an officer and director, Defendant BUD COLLYER owed fiduciary duties of care and loyalty to
2 COPS, DFF and the public beneficiaries of charity.

3 10. Defendant MARY COLLYER is the wife of Defendant BUD COLLYER and is a
4 resident of San Bernardino County, California. In 2005, Defendant MARY COLLYER owned
5 Suzy's Cruise & Tour, which leased office space to COPS, DFF and AVRF, for which she was
6 compensated.

7 11. Defendant JOSHUA COLLYER is the son of Defendants BUD COLLYER and
8 MARY COLLYER and is a resident of Orange County, California. In 2005 and 2006, Defendant
9 JOSHUA COLLYER was, concurrently, an employee of COPS and DFF and received payments
10 from COPS and DFF.

11 12. Defendant Larry Pena (PENA) was a director of COPS from 2003 through 2004
12 and is a resident of Orange County, California. Defendant PENA received payments from COPS
13 in 2005 and 2006. As a director, Defendant PENA owed fiduciary duties of care and loyalty to
14 COPS and the public beneficiaries of charity.

15 13. Defendant Walter White (WHITE) was a director of COPS between approximately
16 2004 and 2007 and is currently a resident of Colorado. As a director, Defendant WHITE owed
17 fiduciary duties of care and loyalty to COPS and the public beneficiaries of charity.

18 14. Defendant John McKay (McKAY) has been a director of COPS since
19 approximately 2006 and is a resident of Orange County, California. As a director, Defendant
20 McKAY owes fiduciary duties of care and loyalty to COPS and the public beneficiaries of
21 charity.

22 15. Defendant Pablo Sanchez (SANCHEZ) has been a director of COPS since
23 approximately 2007 and is a resident of Orange County, California. As a director, Defendant
24 SANCHEZ owes fiduciary duties of care and loyalty to COPS and the public beneficiaries of
25 charity.

26 16. Defendant David Chubb (CHUBB) was a director and the Secretary of DFF from
27 approximately 2003 through 2005 and is a resident of Nevada. As an officer and director,
28

1 Defendant CHUBB owed fiduciary duties of care and loyalty to DFF and the public beneficiaries
2 of charity.

3 17. Defendant Steven Mills (MILLS) has been a director of DFF since 2006 and is a
4 resident of Orange County, California. As a director, MILLS owes fiduciary duties of care and
5 loyalty to DFF and the public beneficiaries of charity.

6 18. Defendant William Peterson (PETERSON) was the President of AVRF from its
7 inception until 2005 and is a resident of Orange County. Defendant PETERSON was, at various
8 times through 2004, also the President, Vice President and Chief Executive Officer of ADF. As
9 an officer and director, PETERSON owed fiduciary duties of care and loyalty to ADF, AVRF and
10 the public beneficiaries of charity.

11 19. Defendant William Rose (ROSE) has been the President of AVRF since 2005 and
12 is a resident of Orange County, California. Defendant ROSE has received payments from AVRF
13 since 2005. Defendant ROSE is an "interested" director as defined by Corporations Code section
14 5227. As an officer and director, ROSE owes fiduciary duties of care and loyalty to AVRF and
15 the public beneficiaries of charity.

16 20. Defendant Timothy Bax (BAX) was the Secretary, Treasurer and a director of
17 AVRF until approximately 2006 and is a resident of Orange County, California. Defendant BAX
18 was also the Secretary and a director of ADF until 2004. As an officer and director, Defendant
19 Bax owed fiduciary duties of care and loyalty to ADF, AVRF and the public beneficiaries of
20 charity.

21 21. Defendant Rodger Bailey (BAILEY) was a director of AVRF until approximately
22 2006 and is a resident of Riverside County, California. Defendant BAILEY was also a director of
23 ADF until 2004. As a director, Defendant BAILEY owed fiduciary duties of care and loyalty to
24 ADF, AVRF and the public beneficiaries of charity.

25 22. Defendant Carl Schmidt (SCHMIDT) has been a director of AVRF since
26 approximately 2005 and is a resident of Orange County, California. As a director, Defendant
27 SCHMIDT owes fiduciary duties of care and loyalty to AVRF and the public beneficiaries of
28 charity.

1 23. Defendant Melinda Alexander (ALEXANDER) has been the Secretary and a
2 director of AVRF since approximately 2005 and is a resident of Orange County, California. As
3 an officer and director, Defendant ALEXANDER owes fiduciary duties of care and loyalty to
4 AVRF and the public beneficiaries of charity.

5 24. Defendant Colleen Cook (COOK) was a director of COPS from its inception until
6 2002 and is a resident of Riverside County, California. As a director, Defendant COOK owed
7 fiduciary duties of care and loyalty to COPS and the public beneficiaries of charity.

8 25. Defendant Patricia Gunn (GUNN) is a resident of Orange County, California.
9 Defendant GUNN was a director of COPS from its inception through 2002. Defendant GUNN
10 was a director of DFF from its inception until 2002. Defendant GUNN was a director of AVRF
11 from 2003 through 2004. As a director, Defendant GUNN owed fiduciary duties of care and
12 loyalty to COPS, DFF, AVRF and the public beneficiaries of charity.

13 26. Defendant Kathy Clinkenbeard (CLINKENBEARD) is a resident of Orange
14 County, California. Defendant CLINKENBEARD was an employee of SR-1 Financial Services,
15 Inc., through 2005. At all relevant times, Defendant CLINKENBEARD has been a de facto
16 officer and/or director of COPS, ADF, DFF and AVRF. At all relevant times, Defendant
17 CLINKENBEARD has also been an employee or independent contractor of COPS, ADF, DFF
18 and AVRF, with responsibility for fundraising activities.

19 27. Defendant Antonio Perucho (PERUCHO) is a resident of Orange County,
20 California. Defendant PERUCHO was an employee of SR-1 Financial Services, Inc. through
21 2005 and since that time has been an employee of COPS, DFF and AVRF. At all relevant times,
22 Defendant PERUCHO has been an employee or independent contractor of COPS, ADF, DFF and
23 AVRF, with responsibility for processing donations and signing checks.

24 28. Defendant Campaign Center, Inc. (CAMPAIGN CENTER) is an Indiana for-profit
25 corporation with its principal place of business located in Bloomington, Indiana. Defendant
26 CAMPAIGN CENTER conducts business in California as a commercial fundraiser for charitable
27 purposes. Defendant CAMPAIGN CENTER contracted with COPS to solicit donations in
28 California and elsewhere from 2003 through 2009. Defendant CAMPAIGN CENTER is

1 contracted with DFF to solicit donations in California and elsewhere from 2005 through 2011.
2 Defendant CAMPAIGN CENTER has contracted with AVRF to solicit donations in California
3 and elsewhere from 2005 to the present.

4 29. Defendant Tel-Mar Productions, Inc. (TEL-MAR) is a California for-profit
5 corporation with its principal place of business located in San Joaquin County, California.
6 Defendant TEL-MAR conducts business in California as a commercial fundraiser for charitable
7 purposes. Defendant TEL-MAR has contracted with COPS to solicit donations in California and
8 elsewhere from 2001 to the present.

9 30. Defendant Community Publications, Inc. (COMMUNITY PUBLICATIONS) is a
10 California for-profit corporation with its principal place of business located in Ventura County,
11 California. Defendant COMMUNITY PUBLICATIONS conducts business in California as a
12 commercial fundraiser for charitable purposes. Defendant COMMUNITY PUBLICATIONS is
13 contracted with COPS, DFF and AVRF, and each of them, to solicit donations in California from
14 2004 to the present.

15 31. Defendant KWS, Inc. (KWS) is a California for-profit corporation with its
16 principal place of business located in Los Angeles County, California. Defendant KWS conducts
17 business in California as a commercial fundraiser for charitable purposes. Defendant KWS is
18 contracted with COPS and with DFF to solicit donations in California from 2004 to the present.
19 Defendant Roman Promotions, Inc. (ROMAN PROMOTIONS) also known as Roman
20 Promotion, Inc. and Roman Productions, Inc., is a California for-profit corporation with its
21 principal place of business located in Riverside County, California. ROMAN PROMOTIONS
22 conducts business in California as a commercial fundraiser for charitable purposes. ROMAN
23 PROMOTIONS is contracted with DFF to solicit donations in California from 2005 to the
24 present.

25 32. Defendants DOES 1-100, inclusive, are the fictitious names of defendants who
26 have acted as directors, officers, trustees, agents, or employees of defendants, or who have
27 participated or acted in concert with one or more of the defendants, or who have acted on behalf
28 of or as agent, servant, employee or co-conspirator of one or more of the defendants, but whose

1 true names and capacities, whether individual, corporate or otherwise, are presently unknown to
2 Plaintiff. Plaintiff is informed and believes that defendants DOES 1- 100 have directly or
3 indirectly participated in and are responsible for the acts and omissions that are more specifically
4 described in this complaint. Because Plaintiff is presently uninformed as to the true names and
5 capacities of these defendants, the People sue them by their fictitious names but will seek leave to
6 amend the Complaint when their true names are discovered.

7 **GENERAL ALLEGATIONS**

8 33. Whenever reference is made in this Complaint to any act of any corporate or other
9 business defendant, such allegation shall mean that said defendant and its owners, officers,
10 directors, agents, employees, or representatives did or authorized such acts while engaged in the
11 management, direction, or control of the affairs of defendants and while acting within the scope
12 and course of their duties.

13 34. Whenever reference is made in this Complaint to any act of Defendants, such
14 allegation shall mean that each defendant acted individually and jointly with the other defendants
15 named in that cause of action.

16 35. Whenever reference is made in this Complaint to any act of any individual
17 defendant, such allegation shall be deemed to mean that said defendant is and was acting (a) as a
18 principal, (b) under express or implied agency, and/or (c) with actual or ostensible authority to
19 perform the acts so alleged on behalf of every other defendant.

20 36. At all times material, Defendants and each of them have been transacting business
21 in part within the State of California in Orange County. The violations of law alleged in this
22 complaint have been and are now being carried out in Orange County where the office of COPS,
23 DFF and AVRFF is located. The actions of Defendants and each of them, jointly and severally, as
24 set forth below, are in violation of the laws and public policy of the State of California and are
25 inimical to the rights and interests of the public beneficiaries of charitable trusts and the general
26 public.

27 37. Defendants COPS, DFF and AVRFF (Defendant CHARITIES) were created for the
28 primary purpose of benefiting the individuals operating Defendant CHARITIES as well as the

1 commercial fundraisers who solicited donations on their behalf. The majority of the time, energy
2 and resources of Defendant CHARITIES was directed toward fundraising activities, with only a
3 nominal amount of time and money used for any of the charities' ostensible charitable purpose.
4 Defendant CHARITIES contracted with dozens of commercial fundraisers to solicit donations
5 across California and throughout the United States. The contracts with the commercial
6 fundraisers provided that the commercial fundraisers would keep 75 to 90 percent of each
7 donation.

8 38. Defendants BUD COLLYER, JEFFREY DUNCAN, CLINKENBEARD, ROSE,
9 PETERSON, ORLOWSKI, PERUCHO, PENA, WHITE, GUNN, COOK, BAX, BAILEY,
10 McKAY, SANCHEZ, CHUBB, SCHMIDT, ALEXANDER, MILLS and DOES 1-100
11 (collectively Defendant DIRECTORS) were, at relevant times stated above, officers and directors
12 or *de facto* officers and directors of Defendant CHARITIES.

13 39. Plaintiff is informed and believes and thereon alleges that Defendant CHARITIES
14 were created to facilitate collecting charitable donations solicited for a wide variety of causes that
15 were likely to have broad public support: law enforcement officers, firefighters and veterans.
16 Defendant CHARITIES operate out of the same strip mall office, use the same staff and virtually
17 all expenses are divided among the three organizations.

18 40. Plaintiff is informed and believes and thereon alleges that SR-1 Financial Services,
19 Inc. (SR-1) was a corporation created by Joseph Shambaugh (SHAMBAUGH), who also founded
20 Defendant CHARITIES. SR-1 was used as a mechanism to divert charitable assets away from
21 Defendant CHARITIES. Other than providing lucrative contracts to commercial fundraisers,
22 SR-1 performed virtually no management or administrative function for Defendant CHARITIES.
23 After the commercial fundraisers received their percentage of each donation, a substantial amount
24 of what remained was paid to SR-1. Despite the fact that SR-1 was not registered as a
25 commercial fundraiser for charitable purposes nor as a fundraising counsel for charitable
26 purposes, Defendant CHARITIES paid a percentage of all donations to SR-1, in addition to
27 making other payments to SR-1. For example, between 2000 and 2005:

Payments	COPS	ADF	DFE	AVRF	TOTAL	% of Donations
Donations rec'd	\$6,187,032	\$5,608,969	\$1,274,363	\$4,898,668	\$17,969,032	100%
Fundraisers SR-1	\$5,008,930	\$4,688,927	\$1,109,484	\$4,080,038	\$14,887,379	83%
Charitable Programs	\$599,153	\$736,793	\$93,358	\$570,849	\$2,000,153	11%
	\$185,074	\$24,944	\$31,700	\$109,786	\$351,504	2%

41. The named defendants and Defendants DOES 1-100 have committed and continue to commit the breaches of fiduciary duty, violations of trust, violations of law and other wrongful acts as alleged in this Complaint. In order to preserve charitable assets and to prevent waste, dissipation and loss of charitable assets in this State to the irreparable damage of Plaintiff, it is necessary that the requested injunctive relief be granted

FIRST CAUSE OF ACTION

CONSPIRACY TO DEFRAUD DONORS

(Against Defendants CHARITIES, BUD COLLYER, JEFFREY DUNCAN, WHITE, GUNN, COOK , PENA, CLINKENBEARD, PERUCHO, PETERSON, BAX, BAILEY, CHUBB and DOES 1-100)

42. Plaintiff re-alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 41.

43. Plaintiff is informed and believes and thereon alleges that in or around the year 2000, SHAMBAUGH created a scheme to fraudulently solicit donations using sham charities. In or around the year 2000, SHAMBAUGH created the Defendant CHARITIES and SR-1. SR-1 acted as a fundraising counsel for charitable purposes, however, it was not registered with the Attorney General’s Registry of Charitable Trusts as required by California Government Code section 12599.1. In fact, SR-1 was created for the purpose of allowing SHAMBAUGH to divert what little charitable funds were turned over to Defendant CHARITIES by Defendant FUNDRAISERS.

44. Plaintiff is informed and believes and thereon alleges that at or near the time Defendant CHARITIES were incorporated, SR-1 entered into “management contracts” with Defendant CHARITIES. SHAMBAUGH and SR-1 selected the directors for Defendant

1 CHARITIES. SR-1 was responsible for the day-to-day operations of Defendant CHARITIES.
2 SR-1 provided all employees for the Defendant CHARITIES and arranged the initial contracts
3 with all of the commercial fundraisers who solicited on behalf of Defendant Charities, including
4 but not limited to those named in this action. Defendant CHARITIES operated out of the SR-1's
5 office and paid rent to SR-1. Defendants CLINKENBEARD and PERUCHO were employees of
6 SR-1 who performed the day-to-day tasks for the Defendant CHARITIES. Defendant
7 PERUCHO had the primary responsibility for processing donation checks. Defendant
8 CLINKENBEARD had the primary responsibility of working with the commercial fundraisers.
9 Defendant CLINKENBEARD also made arrangements with one or more commercial fundraisers
10 which resulted in her receipt of a percentage of all donations to the Defendant CHARITIES.

11 45. Plaintiff is informed and believes and thereon alleges that SR-1's management
12 contracts provided that SR-1 guaranteed that each of the Defendant CHARITIES would receive
13 5% of the total funds raised. SR-1 received a significant amount of what little charitable funds
14 remained after the commercial fundraisers received their percentage.

15 46. The arrangement between SR-1 and the Defendants CHARITIES ended in 2005,
16 when SHAMBAUGH fled California after he was indicted on federal charges, including fraud, in
17 connection with his fundraising activities for Defendant CHARITIES. When the arrangement
18 with SR-1 ended, SR-1's employees, including Defendants CLINKENBEARD and PERUCHO,
19 became employees of Defendant CHARITIES, continuing to perform the duties with the same
20 responsibilities.

21 47. Plaintiff is informed and believes and thereon alleges that the "management
22 contract" scheme allowed SHAMBAUGH to unlawfully divert donations away from their
23 intended charitable purposes and to evade the statutory requirements with which for-profit
24 charitable fundraisers must comply. SHAMBAUGH, SR-1 and Defendant CLINKENBEARD
25 violated Government Code section 12599.1 by acting as fundraising counsel for charitable
26 purposes without registering with the Attorney General's Registry of Charitable Trusts. Donors
27 were defrauded based on their belief that their donations would be used for the charitable
28

1 purposes claimed in the solicitation pitch, when, in fact, virtually all of the donations were
2 retained by the fundraisers and SR-1.

3 48. The "management contract" scheme was approved by the Defendant CHARITIES
4 and their directors.

5 49. Defendant CHARITIES reported payments to SR-1 as administrative fees in
6 informational returns filed with the Internal Revenue Service. Because SR-1 was not registered
7 with the Attorney General's Registry of Charitable Trusts and did not file required annual
8 financial reports, donors were deprived of critical information needed to make an informed
9 decision about whether to donate to these charities and the Attorney General was prevented from
10 properly overseeing their activities.

11 50. Through the use of the management scheme, the Defendant CHARITIES, their
12 DIRECTORS and DOES 1-100 enabled SR-1 and SHAMBAUGH to divert more than \$2 million
13 in charitable funds from 2000 through 2005.

14 51. Plaintiff is entitled to damages, injunctive relief, civil penalties, attorneys fees and
15 costs.

16 **SECOND CAUSE OF ACTION**

17 **BREACH OF FIDUCIARY DUTY**

18 **(Against Defendants DIRECTORS and DOES 1-100)**

19 52. Plaintiff re-alleges and incorporates by reference each and every allegation
20 contained in Paragraphs 1 through 51.

21 53. Plaintiff is informed and believes and thereon alleges that Defendants BUD
22 COLLYER, JEFFREY DUNCAN, CLINKENBEARD, ROSE, PETERSON, PENA
23 ORLOWSKI, WHITE, BAX, BAILEY, McKAY, SANCHEZ, CHUBB, SCHMIDT,
24 ALEXANDER, MILLS and DOES 1-100 and each of them are or at relevant times were, officers
25 and/or directors or *de facto* officers and/or *de facto* directors of Defendant CHARITIES and owed
26 fiduciary duties of due care and loyalty to Defendant CHARITIES. Plaintiff is further informed
27 and believes and thereon alleges that each of the aforementioned defendants have breached their
28 duties of care and loyalty to Defendant CHARITIES by engaging in, participating in, aiding and

1 abetting, and facilitating unlawful actions, or omissions, including, but not limited to, the
2 following acts/omissions in violation of common law trust principles and state statutes (including,
3 but not limited to, Corporations Code sections 5231, 5233, and 5237):

- 4 a. Engaging in a scheme to improperly and unlawfully divert substantial
5 charitable assets through management contracts with SR-1;
- 6 b. Causing substantial charitable funds to be improperly and unlawfully diverted
7 for the personal benefit of SHAMBAUGH, Defendants BUD COLLYER,
8 JEFFREY DUNCAN, ROSE, PENA, CLINKENBEARD and others;
- 9 c. Failing to ensure that Defendant CHARITIES' activities and operations were
10 conducted in furtherance of their stated charitable purposes;
- 11 d. Causing or allowing Defendant CHARITIES to enter into contracts with
12 commercial fundraisers for charitable purposes that were not in Defendant
13 CHARITIES' best interests;
- 14 e. Engaging in or allowing self-dealing transactions in violation of Corporations
15 Code section 5233;
- 16 f. Causing or allowing Defendant CHARITIES to engage in unlawful activities
17 through the use of unregistered commercial fundraisers for charitable purposes;
- 18 g. Causing or allowing Defendant CHARITIES and their commercial fundraisers
19 to engage in misleading and deceptive solicitation practices, including the
20 dissemination of false information to donors;
- 21 h. Causing or allowing Defendant CHARITIES to make false statements in their
22 annual financial statements;
- 23 i. Causing or allowing Defendant CHARITIES to make false statements in
24 documents filed with governmental agencies;
- 25 j. Causing or allowing Defendant CHARITIES to conduct solicitation campaigns
26 in violation of Government Code section 12599.6 as more specifically
27 described in Paragraphs 59 through 62 below, which are incorporated by
28 reference; and

1 k. Failing to observe corporate formalities as required by law and by Defendant
2 CHARITIES' bylaws.

3 54. At all times relevant, the defendants named in this cause of action and DOES 1-
4 100 failed to act in good faith, in the best interests of Defendant CHARITIES, and with such care
5 as an ordinarily prudent person in a like position would use under similar circumstances.

6 55. As a proximate cause of the breaches of fiduciary duty of care and loyalty of the
7 named defendants in this cause of action and DOES 1-100, Defendant CHARITIES and the
8 public beneficiaries of charity have been damaged in an amount presently unknown to the
9 Attorney General and which cannot be ascertained without an accounting by these defendants.
10 The facts necessary to ascertain the exact amount of damages to Defendant CHARITIES and the
11 public beneficiaries of charity are within the special knowledge of these defendants, but is
12 estimated to exceed \$15,000,000.

13 56. Plaintiff is entitled to damages, an accounting, injunctive relief, civil penalties,
14 attorneys fees and costs.

15 57. The acts alleged in this cause of action were willful, wanton, malicious and
16 oppressive and were undertaken with the intent to defraud Defendant CHARITIES and the public
17 beneficiaries of charity and thus justify the awarding of exemplary and punitive damages against
18 the defendants named in this cause of action and DOES 1-100.

19 **THIRD CAUSE OF ACTION**

20 **DECEPTIVE AND MISLEADING SOLICITATION**

21 **IN VIOLATION OF GOVERNMENT CODE SECTION 12599.6**

22 **(Against Defendants CHARITIES, DIRECTORS, FUNDRAISERS and DOES 1-100)**

23 58. Plaintiff re-alleges and incorporates by reference each and every allegation
24 contained in Paragraphs 1 through 57.

25 59. Pursuant to Government Code section 12599.6, charitable organizations and their
26 commercial fundraisers are prohibited from misrepresenting the purpose or beneficiary of a
27 charitable solicitation. Charitable organizations and commercial fundraisers are prohibited from
28 using any unfair or deceptive practices or engaging in fraudulent conduct that creates a likelihood

1 of confusion or misunderstanding. Charitable organizations and commercial fundraisers are also
2 prohibited from misrepresenting that the charitable organization will receive an amount greater
3 than the actual net proceeds reasonably estimated to be retained by the charity for its charitable
4 purposes. Charitable organizations must establish and exercise control over their fundraising
5 activities and must assure that their fundraising activities are conducted without coercion.

6 60. The defendants named in this cause of action and DOES 1-100 organized,
7 managed, directed and/or executed Defendant CHARITIES' solicitation campaign from the
8 inception of Defendant CHARITIES in a manner that violated state and federal laws and resulted
9 in deception and confusion of donors. As officers/directors or *de facto* officers/directors of
10 Defendant CHARITIES, Defendant DIRECTORS and DOES 1-100 were responsible for the
11 fundraising activities of Defendant CHARITIES. Plaintiff is informed and believes and thereon
12 alleges that Defendants CHARITIES, DIRECTORS and DOES 1-100 authorized misleading
13 solicitation materials that concealed material facts and made false representations as to how the
14 donations would be used by Defendant CHARITIES. Defendants DIRECTORS and DOES 1-
15 100 also failed to exercise control over Defendant CHARITIES' fundraising activities.
16 Defendant FUNDRAISERS and DOES 1-100 executed deceptive and fraudulent solicitation
17 campaigns throughout California and the United States and obtained donations and payments
18 from California residents and other on behalf of Defendant CHARITIES.

19 61. The unfair or deceptive acts or practices and fraudulent conduct of the defendants
20 named in this cause of action and DOES 1-100 that created a likelihood of confusion or
21 misunderstanding on the part of donors include, but are not limited to, the following:

- 22 a. Donors were falsely told that Defendant CHARITIES engaged in significant,
23 nationwide programs to benefit disabled police officers, firefighters and needy
24 veterans, along with their families. Defendant CHARITIES have no such
25 program and perform virtually no charitable activities;
- 26 b. Defendants distributed stickers to be used for display on a motor vehicle,
27 suggesting that Defendant CHARITIES have affiliation with, or endorsement
28 by, public safety personnel, when they do not;

- 1 c. On some occasions, Defendants failed to disclose to potential donors prior to
2 the charitable solicitation that the solicitation was being made by a commercial
3 fundraiser (i.e., paid telemarketer);
- 4 d. Defendants use return addresses in the area they are soliciting to create the
5 false impression that Defendant CHARITIES have offices throughout the
6 country and/or that donations will be used locally in the donor's community,
7 even though Defendant CHARITIES only office is in Santa Ana, California.
- 8 e. On some occasions, donors were falsely told that the solicitation was being
9 made by a volunteer, a police officer or firefighter;
- 10 f. On some occasions, donors were falsely told that their donation would be used
11 to help the beneficiaries locally;
- 12 g. In some case, Defendant FUNDRAISERS mailed statements or invoices to
13 potential donors stating they had previously donated or agreed to donate, when
14 they had not;
- 15 h. COPS creates the false impression that it operates a substantial, nationwide
16 "program" that provides significant benefits to large numbers of law
17 enforcement personnel injured in the line of duty or the families of those killed
18 in the line of duty, when in fact COPS has no such "program." COPS has
19 never spent more than seven percent of its donation on this program. In most
20 years, COPS spent less than five percent of the donations it received on all of
21 its charitable programs combined. At most, COPS has helped only a few
22 dozen individuals;
- 23 i. Since its inception, COPS has claimed that it specifically provides assistance
24 during the interval between an injury or death and the onset of official
25 government assistance. COPS has no such program;
- 26 j. COPS creates the false impression that it is affiliated with, consists of, or is
27 endorsed by official law enforcement agencies and personnel, when it is not;
- 28

- 1 k. COPS falsely claims that it is comprised of retired law enforcement personnel,
2 when it is not;
- 3 l. DFF creates the false impression that it operates a substantial, nationwide
4 “program” that provides significant benefits to large numbers of firefighter
5 personnel who were injured in the line of duty or the families of those killed in
6 the line of duty, when in fact DFF has no such “program.” DFF has never
7 spent more than seven percent of its donations on this program. In most years,
8 DFF spent less than five percent of the donations it received on all its
9 charitable programs combined and has never spent more than seven percent on
10 charitable activities. At most, DFF has helped only a few dozen individuals;
- 11 m. DFF has helped only a small number of people and exists primarily to support
12 its commercial fundraisers, officers and staff. DFF falsely claims that it
13 specifically provides assistance during the interval between an injury or death
14 and the onset of official government assistance, when it does not;
- 15 n. DFF creates the false impression that it is affiliated with, consists of, or is
16 endorsed by official firefighting agencies and personnel, when it is not;
- 17 o. DFF falsely claims that “[o]ur goal is to protect our members’ health and
18 safety so that we may do our very best to protect yours,” when it has no
19 members. This further creates the false impression that DFF is affiliated with,
20 consists of, or is endorsed by official firefighting agencies and personnel, when
21 it is not;
- 22 p. AVRF creates the false impression that it operates a substantial, nationwide
23 “program” that provides significant benefits to large numbers of veterans,
24 when AVRF has no such “program.” AVRF has never spent more than eight
25 percent of its donations on this program. AVRF has provided only a small
26 amount of support to veterans and in most years spends less than five percent
27 of the donations it received on its charitable programs and exists primarily to
28 support its commercial fundraisers, officers and staff;

- 1 q. AVRF falsely claims it operates “Operation Home Front... Providing
2 assistance to reserve troops called to active duty,” when it has no such
3 program;
- 4 r. AVRF claims that it provides “‘Thinking Of You Packages,’ consisting of
5 books, pens, stationary and personal hygiene items to veterans in VA
6 Hospitals,” implying a substantial ongoing program, when AVRF only sends
7 care packages to a small number of VA hospitals at Christmas;
- 8 s. AVRF falsely claims to offer assistance to the families of active duty service
9 personnel, when it does not;
- 10 t. AVRF falsely claims to provide financial assistance to veterans’ memorials,
11 when it does not;
- 12 u. AVRF creates the false impression that it is affiliated with, consists of, or is
13 endorsed by official veterans agencies, when it is not;
- 14 v. AVRF falsely claims it provides “critical support in the communities where it
15 is needed most,” when it does not; and
- 16 w. AVRF falsely claims that its “direct assistance approach circumvents
17 government delays thereby allowing more money to reach much needed
18 programs,” which is patently untrue. Virtually all of the donations it receives
19 are used for purposes other than the “much needed programs.”

20 62. The defendants’ conduct alleged in this cause of action violates Government Code
21 section 12599.6. Plaintiff is entitled to damages, injunctive relief, civil penalties, attorneys fees
22 and costs.

23 **FOURTH CAUSE OF ACTION**

24 **BREACH OF FIDUCIARY DUTY RELATED TO SOLICITATION OF FUNDS**
25 **IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17510.8**

26 **(Against Defendants CHARITIES, DIRECTORS, FUNDRAISERS and DOES 1-100)**

27 63. Plaintiff re-alleges and incorporates by reference each and every allegation
28 contained in Paragraphs 1 through 62.

1 64. Defendants CHARITIES, DIRECTORS, FUNDRAISERS and DOES 1-100, have
2 a fiduciary relationship with the donors they solicit. This fiduciary relationship is established by
3 statute (Bus. & Prof. Code, §17510.8 and Gov. Code, §12599), by common law and by
4 agreement.

5 65. Defendants CHARITIES, DIRECTORS, FUNDRAISERS and DOES 1-100
6 accepted charitable contributions on behalf of Defendant CHARITIES. The acceptance of those
7 donations established a charitable trust and a fiduciary duty on the part of defendants named in
8 this cause of action and DOES 1-100 to ensure that the donations were used for the purposes
9 stated during the solicitation as required by Business and Professions Code section 17510.8.

10 66. Defendants CHARITIES, DIRECTORS, FUNDRAISERS and DOES 1-100
11 breached their fiduciary duty by failing to ensure that donations to Defendant CHARITIES were
12 properly used for the purposes for which they were solicited. Donors were told orally and in the
13 pledge confirmation card that their donations would be used to assist law enforcement officers
14 and firefighters who were killed or injured in the line of duty, and their families, as well as needy
15 veterans and for other charitable purposes. Plaintiff is informed and believes and thereon alleges
16 that only a nominal amount of the donated funds were used for those charitable purposes.
17 Instead, nearly all of the funds solicited were used to pay for the commercial fundraisers or
18 otherwise used for the personal benefit of Defendants and others.

19 67. Defendants' breach of fiduciary duty proximately caused Defendant CHARITIES
20 and the public beneficiaries of charity to be damaged in that their donations were used for
21 purposes other than the purposes for which they were made. Defendant CHARITIES and the
22 public beneficiaries of charity have been damaged in an amount presently unknown to the
23 Attorney General and which cannot be ascertained without an accounting by defendants. The
24 facts necessary to ascertain the exact amount of damages are within the special knowledge of the
25 defendants named in this cause of action and DOES 1-100.

26 68. The Attorney General has authority to remedy the breach of fiduciary duty of the
27 Defendants CHARITIES, DIRECTORS and DOES 1-100 pursuant to Corporations Code sections
28 5142, subdivision (a)(5) and 5250, Government Code section 12598, Business and Professions

1 Code section 17510.8, and common law. The Attorney General has authority to remedy the
2 breach of fiduciary duty of Defendants FUNDRAISERS and DOES 1-100, pursuant to
3 Government Code sections 12598 and 12599, subdivision (g), Business and Professions Code
4 section 17510.8, and common law. Plaintiff is entitled to an accounting, damages, injunctive
5 relief, civil penalties, attorneys fees and costs.

6 **FIFTH CAUSE OF ACTION**

7 **FOR MISLEADING OR DECEPTIVE STATEMENTS IN VIOLATION OF**
8 **BUSINESS & PROFESSIONS CODE § 17500, ET SEQ.**

9 **(Against Defendants CHARITIES, DIRECTORS, FUNDRAISERS and DOES 1-100)**

10 69. Plaintiff re-alleges and incorporates by reference each and every allegation
11 contained in Paragraphs 1 through 68.

12 70. Defendants CHARITIES, DIRECTORS, FUNDRAISERS and DOES 1-100
13 violated Business and Professions Code section 17500 et seq. by disseminating or causing to be
14 disseminated to the public in this state or from this state to the public of other states untrue and
15 misleading statements, including the statements set forth in Paragraphs 61 and 86, regarding
16 services offered by Defendant CHARITIES and statements connected with the proposed
17 performance of those services, statements which Defendants and each of them knew or
18 reasonably should have known were untrue or misleading at the time the statements were made,
19 and by engaging in a plan or scheme with the intent not to supply such services.

20 71. As a result of Defendants, misleading or deceptive statements, Plaintiff is entitled
21 to civil penalties against each Defendant in an amount which is presently unknown, but believed
22 to be in excess of \$100,000.

23 **SIXTH CAUSE OF ACTION**

24 **BREACH OF CHARITABLE TRUST**

25 **(Against all Defendants)**

26 72. Plaintiff re-alleges and incorporates by reference each and every allegation
27 contained in Paragraphs 1 through 71.

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1 73. As nonprofit public benefit corporations, Defendant CHARITIES hold all of their
2 funds and other assets in trust for charitable purposes. The property of Defendant CHARITIES is
3 irrevocably dedicated to charitable purposes and no part of the net income or assets may inure to
4 the benefit of any director, officer, member or private person. Pursuant to Corporations Code
5 section 5142, the Attorney General may bring an action to enjoin, correct, obtain damages for or
6 to otherwise remedy a breach of a charitable trust.

7 74. Defendants CHARITIES, DIRECTORS, FUNDRAISERS and DOES 1-100
8 accepted charitable contributions on behalf of the charitable beneficiaries of Defendant
9 CHARITIES. The acceptance of those donations established a charitable trust and a fiduciary
10 duty on the part of defendants to ensure that the donations were used for the purposes stated
11 during the solicitation as required by Business and Professions Code section 17510.8.

12 75. For the reasons stated in Paragraphs 39 through 70, the Defendants committed
13 breaches of the charitable trust by using charitable assets for other purposes. Defendants further
14 committed breaches of the charitable trust by improper use of charitable assets, including
15 improper self-dealing transactions and the following:

- 16 a. Entering into contracts with commercial fundraisers which allowed the
17 fundraisers to retain excessive amounts of donations;
- 18 b. Payments to unregistered commercial fundraisers or fundraising counsel;
- 19 c. Payment of charitable funds to SR-1 and Shambaugh for their personal benefit;
- 20 d. Payment of percentages of donations raised by certain fundraisers to Defendant
21 CLINKENBEARD;
- 22 e. Payment of \$16,600 by COPS to Defendant PENA in 2005, for consulting
23 services he did not perform;
- 24 f. Payment of \$16,300 by DFF to Defendant BUD COLLYER in 2005, for
25 consulting services he did not perform;
- 26 g. Payment of rent to Suzy's Cruise & Tour in 2005, a business owned by
27 Defendant MARY COLLYER, the wife of Defendant BUD COLLYER;

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- h. Payments to Defendant JOSHUA COLLYER in 2005 and 2006, the son of Defendants BUD COLLYER and MARY COLLYER;
- i. Payments by COPS and DFF to Defendant JEFFREY DUNCAN since 2004;
- j. Payments to Defendant MACIEL since 2005, the wife of Defendant JEFFREY DUNCAN and daughter of Defendant ORLOWSKI;
- k. Payments for health insurance by COPS and DFF for Defendants JEFFREY DUNCAN and MACIEL;
- l. Payments by AVRIF to Defendant ROSE since 2005;
- m. Other expenditures by Defendant CHARITIES for the personal benefit of the officers, directors, employees and others, including expenditures for travel, meals, entertainment and parties;

76. Defendants FUNDRAISERS, BUD COLLYER, MARY COLLYER, JOSHUA COLLYER, PENA, JEFFREY DUNCAN, MACIEL, CLINKENBEARD, PERUCHO and DOES 1-100, are also liable as recipients of funds subject to a charitable trust.

77. As a proximate result of the breaches of trust by Defendants and DOES 1-100, Defendant CHARITIES and the public beneficiaries of charity have been damaged in an amount presently unknown to the Attorney General and which cannot be ascertained without an accounting by all Defendants. The facts necessary to ascertain the exact amount of damages owing to the Defendant CHARITIES and the public beneficiaries of charity are within the special knowledge of the Defendants. However, the Attorney General estimates the total damages proximately caused by Defendants' actions and omissions exceed \$15,000,000.

78. The actions of Defendants and DOES 1-100, as alleged above, were willful, wanton, malicious, and oppressive and were undertaken with the intent to defraud Defendant CHARITIES, their donors and the public beneficiaries of charity and thus justify the awarding of exemplary and punitive damages.

1 SEVENTH CAUSE OF ACTION

2 **NEGLIGENCE**

3 **(Against Defendants CHARITIES, DIRECTORS, FUNDRAISERS AND DOES 1-100)**

4 79. Plaintiff re-alleges and incorporates by reference each and every allegation
5 contained in Paragraphs 1 through 78.

6 80. At all times relevant, Defendants DIRECTORS and DOES 1-100, voluntarily
7 undertook the duties and responsibilities of director and/or officer of Defendant CHARITIES
8 whether or not formally elected as director or officer and whether or not they have resigned as
9 such. The voluntary undertaking of these duties and responsibilities created a duty on the part of
10 these defendants to exercise due care in the performance of those duties and responsibilities.

11 81. Defendants DIRECTORS and DOES 1-100 breached the duty of care they owed to
12 Defendant CHARITIES by committing the actions and omissions set forth in Paragraph 53 above,
13 and committing other actions and omissions of which Plaintiff is currently unaware.

14 82. Plaintiff is informed and believes and thereon alleges that, as a proximate result of
15 the breach of the duty of care which Defendants DIRECTORS and DOES 1-100 owed to
16 Defendant CHARITIES as alleged in this cause of action and as a result of the failure of these
17 defendants to operate Defendant CHARITIES in the manner required by law, charitable assets
18 have been improperly diverted from Defendant CHARITIES. Defendant CHARITIES and the
19 public beneficiaries of charity have been damaged in an amount presently unknown to the
20 Attorney General and which cannot be ascertained without an accounting by defendants. The
21 facts necessary to ascertain the exact amount of damages to Defendant CHARITIES and the
22 public beneficiaries of charity are within the special knowledge of these defendants. The
23 Attorney General is entitled to an accounting from these defendants for their expenditures and
24 disposition of all income and assets which they obtained from Defendant CHARITIES, or
25 improperly diverted from Defendant CHARITIES to one or more of the other defendants or
26 otherwise wasted through their breach of duty of due care, fraud, or other wrongful acts. Plaintiff
27 estimates the total damages proximately caused by defendants' actions and omissions set forth in
28 this cause of action exceed \$15,000,000. Plaintiff is also entitled to its attorney fees and costs.

1 Defendants committed and continue to commit acts of unfair competition including, but not
2 limited to, the following:

- 3 a. Misrepresenting, explicitly or implicitly, the percentage or amount of
4 charitable contributions that would go to Defendant CHARITIES;
- 5 b. Misrepresenting, explicitly or implicitly, the percentage or amount of
6 charitable contributions that would be used for charitable programs;
- 7 c. Misrepresenting the charitable purposes of Defendant CHARITIES;
- 8 d. Misrepresenting how and where charitable donations would be used;
- 9 e. Breaching their fiduciary duty to donors and the public beneficiaries of charity
10 by failing to ensure that the donations were used for the purposes for which
11 they were solicited;
- 12 f. Misrepresenting that COPS consisted of or was affiliated with official law
13 enforcement agencies or personnel;
- 14 g. Misrepresenting that ADF and DFF consisted of or was affiliated with official
15 firefighting agencies or personnel;
- 16 h. Misrepresenting that AVRF consisted of or was affiliated with veterans or
17 official veterans agencies;
- 18 i. Using donations for purposes other than the purposes for which the donations
19 were donated;
- 20 j. Failing to comply with the Federal Telemarketing Sales Rules;
- 21 k. Failing to disclose prior to the charitable solicitation that a commercial
22 fundraiser (telemarketer) was making the solicitation;
- 23 l. Some potential donors were falsely told that the solicitation was being made by
24 a volunteer, police officer or firefighter;
- 25 m. Failing to honor a person's "do not call" request;
- 26 n. Sending pledge confirmation cards to donors who had not made any charitable
27 donation pledge;

- 1 o. Use of unregistered commercial fundraisers or fundraising counsel for
- 2 charitable purposes;
- 3 p. Engaging in or allowing improper self-dealing transactions by Defendant
- 4 CHARITIES;
- 5 q. Failure by Defendant CHARITIES to have a Secretary and a Chief Financial
- 6 Officer;
- 7 r. Failing to maintain complete and accurate corporate records of Defendant
- 8 CHARITIES;
- 9 s. Making false or misleading statements in Defendant CHARITIES' financial
- 10 statements;
- 11 t. Making false or misleading statements in Defendant CHARITIES'
- 12 informational returns;
- 13 u. Making false or misleading statements in documents filed with the Attorney
- 14 General by Defendant CHARITIES and FUNDRAISERS;
- 15 v. Failure by the DIRECTORS to properly manage the affairs of Defendant
- 16 CHARITIES and to properly oversee the exercise of corporate powers;
- 17 w. Failure of COPS and DFF to have audit committees after accruing gross
- 18 revenue of more than \$2 million in 2005 and 2006, respectively;
- 19 x. Failure of the DIRECTORS to review and approve the compensation of
- 20 Defendants JEFFREY DUNCAN and ROSE;
- 21 y. Allowing more than 49% of the directors of DFF to be "interested persons,"
- 22 since 2005;
- 23 z. Failure by the FUNDRAISERS to comply with the registration and reporting
- 24 requirements; and
- 25 aa. Failure by the FUNDRAISERS to maintain accurate and complete records;

26 87. Defendants CHARITIES, DIRECTORS, FUNDRAISERS and DOES 1-100, in
27 engaging in and participating in the acts of unfair competition as alleged in Paragraph 86, violated
28 the following statutes and regulations:

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- a. Government Code section 12586;
- b. Government Code section 12591.1;
- c. Government Code section 12599;
- d. Government Code section 12599.5;
- e. Government Code section 12599.6;
- f. Government Code section 12599.7;
- g. Business and Professions Code section 17510.8;
- h. Business and Professions Code section 17510.85;
- i. Corporations Code section 5227;
- j. Corporations Code section 5231;
- k. Corporations Code section 5233;
- l. Corporations Code section 5237;
- m. Corporations Code section 6215;
- n. Corporations Code section 6320;
- o. California Code of Regulations, title 11, section 308; and
- p. Federal regulations established by the Federal Trade Commission (“Telemarketing Sales Rule”), (16 C.F.R., § 310.3 [deceptive telemarketing acts or practices]; § 310.4 [abusive telemarketing acts or practices]).

88. As a result of the aforementioned acts of unfair competition, Plaintiff is entitled to civil penalties in an amount which is presently unknown, but believed to be in excess of \$100,000 per Defendant. Plaintiff is further entitled to injunctive relief, attorneys fees and costs.

NINTH CAUSE OF ACTION
FOR INVOLUNTARY DISSOLUTION
(Against Defendant CHARITIES)

89. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained in Paragraphs 1 through 88.

90. Defendants CHARITIES, DIRECTORS and DOES 1-100, by participating in the acts alleged in this Complaint, have seriously offended against numerous provisions of statutes

1 regulating nonprofit corporations. Further, those in control of Defendant CHARITIES have been
2 guilty of or knowingly countenanced persistent and pervasive fraud, mismanagement and abuse
3 of authority and Defendant CHARITIES' property is being misapplied and wasted by its
4 directors/officers and/or de facto directors/officers.

5 91. Involuntary dissolution of Defendant CHARITIES is therefore necessary and
6 appropriate pursuant to the provisions of Corporations Code sections 6510, subdivision (a)(5) and
7 6511, subdivision (a)(1).

8 PRAYER FOR RELIEF

9 WHEREFORE, the People pray for judgment as follows:

10 1. For a preliminary and permanent injunction, enjoining defendants, their employees,
11 agents, servants, representatives, successors, and assigns, any and all persons acting in concert or
12 participation with them, and all other persons, corporations, or other entities acting under, by,
13 through, or on their behalf, from doing any of the following until they have first provided a full
14 and complete accounting for all funds received by, and disbursed from, any and all financial
15 accounts of COPS, ADF, DFF and AVRFF from their inception to the present: (1) expending,
16 disbursing, transferring, encumbering, withdrawing or otherwise exercising control over any
17 funds received by or on behalf of COPS, ADF, DFF or AVRFF or rightfully due COPS, ADF,
18 DFF or AVRFF except as authorized by the Court; (2) conducting business of any kind on behalf
19 of, or relating to, COPS, ADF, DFF and AVRFF other than as necessary to assist a Receiver or
20 appointed director(s), to comply with discovery requests and orders, and as permitted by the
21 Court; and (3) controlling or directing the operations and affairs of any California nonprofit
22 public benefit corporation;

23 2. That an order issue directing that defendants and each of them, render to the Court
24 and to the Attorney General a full and complete accounting of the financial activities and
25 condition of COPS, ADF, DFF and AVRFF and their dealings with COPS, ADF, DFF and AVRFF
26 from their inception to the present, to include the expenditure and disposition of all revenues and
27 assets received by or on behalf of COPS, ADF, DFF or AVRFF. Upon the rendering of such
28 accounting, that the Court determine the property, real or personal, or the proceeds thereof, to

1 which COPS, ADF, DFF and AVRF and the charitable beneficiaries thereof are lawfully entitled,
2 in whatsoever form in whosoever hands they may now be, and order and declare that all such
3 property or the proceeds thereof is impressed with a trust for charitable purposes, that defendants
4 are constructive trustees of all such charitable funds and assets in their possession, custody or
5 control, and that the same shall be deposited forthwith in Court by each and every defendant now
6 holding or possessing the same or claiming any rights, title or interest therein. In addition, that
7 these defendants be surcharged and held liable and judgment entered against each of them for any
8 and all such assets for which they fail to properly account, together with interest thereon at the
9 legal rate from the date of liability thereon; and that any and all expenses and fees incurred by
10 defendants in this action be borne by the individual defendants and each of them and not by
11 COPS, DFF, AVRF or any other public or charitable corporation or fund;.

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

15 4. For punitive and exemplary damages against Defendants and DOES 1-100 according
16 to proof;

17 5. That the Court assess civil penalties against all Defendants pursuant to Government
18 Code section 12591.1 for violations of the Supervision of Trustees and Fundraisers for Charitable
19 Purposes Act (Gov. Code § 12580 et seq.) as proved at trial;

20 6. Pursuant to Business and Professions Code section 17206, that the Court assess a civil
21 penalty of two thousand five hundred dollars (\$2,500) against all named defendants and DOES 1-
22 100 for each violation of Business and Professions Code section 17200 per day, as proved at trial,
23 in an amount not less than \$100,000;

24 7. Pursuant to Business and Professions Code section 17536, that the Court assess a civil
25 penalty of two thousand five hundred dollars (\$2,500) against all named defendants and DOES 1-
26 100 for each violation of Business and Professions Code section 17500 per day, as proved at trial,
27 in an amount not less than \$100,000;

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1 8. Pursuant to Business and Professions Code section 17206.1, defendants and each of
2 them be ordered to pay additional civil penalties over and above that required by Business and
3 Professions Code section 17206, for each violation of Business and Professions Code section
4 17200 which was perpetrated against a senior citizen or disabled person;

5 9. Pursuant to Business and Professions Code section 17203 and 17535 and/or the
6 equitable powers of the court, defendants and each of them be ordered to pay into Court an
7 amount equal to the amount of funds solicited from the public on behalf of COPS, DFF or AVRF
8 by means of any act or practice declared by this court to constitute unfair competition under
9 Business and Professions code section 17200 or false and misleading statements under Business
10 and Professions Code section 17500, all said monies to be distributed by this court to charitable
11 institutions(s) for having purposes similar to those of COPS, DFF or AVRF, respectively;

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

17 11. That the Court order the involuntary dissolution of COPS, DFF and AVRF pursuant
18 to the provisions of Corporations Code section 6518, provide for satisfaction of all of its lawful
19 debts, and establish a procedure for determining the disposition of all remaining assets of COPS,
20 DFF and AVRF in a manner consistent with their charitable purposes and consistent with any
21 lawful restrictions that have been placed upon any of their remaining assets;

22 12. For Plaintiff's costs of suit and other costs pursuant to Government Code section
23 12598;

24 13. For Plaintiff's attorney fees as provided in Government Code section 12598 and Code
25 of Civil Procedure section 1021.8; and

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

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

Dated: May 29, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
BELINDA J. JOHNS
Senior Assistant Attorney General

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