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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN MATEO
12 SOUTHERN BRANCH

13
14 **THE PEOPLE OF THE STATE OF CALIFORNIA,**
15 **Plaintiff,**
16 **v.**
17 **HOMELESS AND DISABLED**
18 **VETERANS CORPORATION, a California**
19 **nonprofit public benefit corporation;**
20 **ALLEN WILSON; BILLY RICHARDSON;**
21 **GEORGE DUMAS; ATMOST, INC., a**
22 **California corporation; ARNALDO**
23 **TOLENTINO; and DOES 1-100, inclusive,**
24 **Defendants.**

CASE NO.

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

- (1) Breach of Fiduciary Duty
- (2) Deceptive and Misleading Charitable Solicitation
- (3) Breach of Fiduciary Duty Related to Solicitation of Funds
- (4) Negligence
- (5) Violation of Registration & Reporting Statutes
- (6) Unfair Competition
- (7) False or Misleading Statements

25 Edmund G. Brown Jr., Attorney General of the State of California (hereinafter "Attorney
26 General"), files this complaint on behalf of the People of the State of California, and alleges as
27 follows:
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1 **GENERAL ALLEGATIONS**

2 1. Plaintiff is the People of the State of California. The Attorney General who brings
3 this action on plaintiff's behalf is the duly elected Attorney General of the State of California, and
4 is charged with the general supervision of all charitable organizations within this State, and all
5 commercial fundraisers for charitable purposes doing business in this State. The Attorney
6 General also enforces and supervises the obligations of trustees, nonprofits, and fiduciaries that
7 hold or control property in trust for charitable and eleemosynary purposes. The Attorney General
8 is authorized to enforce, in the name of the People, the provisions of the Supervision of Trustees
9 and Fundraisers for Charitable Purposes Act (Gov. Code, § 12580 et seq.), the Nonprofit
10 Corporation Law (Corp. Code, § 5000 et seq.), the Unfair Competition Law (Bus. & Prof. Code, §
11 17200 et seq.), and the False Advertising Law (Bus. & Prof. Code, § 17500 et seq.).

12 2. On or about February 1991, defendant Homeless and Disabled Veterans
13 Corporation (hereinafter "HDV") formally incorporated as a California nonprofit public benefit
14 corporation. On or about the year 2000, HDV moved its principal place of business from
15 California to Washington, D.C., and now maintains an agent for service, A-United Attorney
16 Service, Inc., in Monterey Park, California. HDV is recognized as a tax exempt organization by
17 the Internal Revenue Service, and at all times relevant to this Complaint, held and continues to
18 hold all of its assets in trust for charitable purposes. Pursuant to its Amended Articles of
19 Incorporation and its Bylaws, HDV is organized for charitable purposes to assist disabled and
20 homeless veterans. From 2007 to 2008, and continuing to the present, HDV solicited and
21 continues to solicit charitable donations from individuals and businesses in San Mateo County
22 and elsewhere in California, and nationwide.

23 3. Defendant Allen Wilson (hereinafter "WILSON") is a resident of Washington,
24 D.C. At all times mentioned in this Complaint, and since the incorporation of HDV, WILSON
25 has held a position of authority and/or control over the management of HDV and its funds and
26 assets by serving as an officer, a board member, and/or the Chairman of the Board of HDV, and
27 has owed, and continues to owe fiduciary duties of care and loyalty to HDV and to its charitable
28 beneficiaries. WILSON prepared and/or signed HDV's annual registration reports to the

1 Attorney General’s Registry of Charitable Trusts. WILSON drafted, approved, and/or negotiated
2 solicitation contracts on behalf of HDV, and authorized the retention of commercial fundraisers in
3 California to solicit charitable contributions from California donors, including San Mateo County
4 residents and businesses. WILSON also authorized telemarketing scripts and other solicitation
5 materials to be used for solicitations in California, authorized the contents of the HDV website
6 that are made available for viewing by California residents, and authorized, decided, and/or
7 approved how the contributions from California donors would be spent.

8 4. Defendant Billy Richardson (hereinafter “RICHARDSON”) is a resident of
9 Medford, Oregon. At all times mentioned in this Complaint, RICHARDSON has held a position
10 of authority and/or control over the management of HDV and its funds and assets by serving as an
11 officer, a board member, and/or the President HDV, and has owed, and continues to owe
12 fiduciary duties of care and loyalty to HDV and to its charitable beneficiaries. RICHARDSON
13 drafted, approved, and/or negotiated solicitation contracts on behalf of HDV, and authorized,
14 expressly or otherwise, the retention of commercial fundraisers in California to solicit charitable
15 contributions from California residents and businesses, including San Mateo County residents and
16 businesses. RICHARDSON also authorized telemarketing scripts and other solicitation materials
17 to be used for solicitations in California, authorized the contents of the HDV website that are
18 made available for viewing by California residents, and authorized, decided, and/or approved how
19 contributions from California donors would be spent.

20 5. Defendant George Dumas (hereinafter “DUMAS”) is a resident of Fairfax,
21 Virginia. At all times mentioned in this Complaint, DUMAS held a position of authority and
22 control over the management of HDV and its funds and assets by serving as an officer and/or a
23 member of the board of HDV, and has owed, and continues to owe fiduciary duties of care and
24 loyalty to HDV and to its charitable beneficiaries. DUMAS drafted, approved, and/or negotiated
25 solicitation contracts on behalf of HDV, and authorized, expressly or otherwise, the retention of
26 commercial fundraisers in California to solicit charitable contributions from California residents
27 and businesses, including San Mateo County residents and businesses. DUMAS also authorized
28 telemarketing scripts and other solicitation materials to be used for solicitations in California,

1 authorized the contents of the HDV website that are made available for viewing by California
2 residents, and authorized, decided, and/or approved how contributions from California donors
3 would be spent.

4 6. Defendant Atmos, Inc., (hereinafter "ATMOST") is a California corporation with
5 its principal place of business in Daly City, San Mateo County, California. At all times
6 mentioned in this Complaint, including in years 2007 and 2008, and continuing to 2009,
7 ATMOST conducted, and continues to conduct, business in California. ATMOST hired
8 compensated employees and/or retained volunteers to solicit funds for charitable purposes on
9 behalf of HDV. By virtue of the actions of ATMOST described throughout this Complaint,
10 ATMOST is a "commercial fundraiser for charitable purposes" within the meaning of
11 Government Code section 12599. As a commercial fundraiser, ATMOST is subject to the
12 Attorney General's supervision and enforcement over charitable funds and assets and has a duty
13 to account to the Attorney General for these funds and assets.

14 7. Defendant Arnaldo Tolentino (hereinafter "TOLENTINO") is a resident of Daly
15 City, County of San Mateo, California. At all times mentioned and relevant to this Complaint,
16 TOLENTINO held a position of authority and control over the charitable contributions solicited
17 from California residents and businesses by ATMOST by serving as ATMOST's chief executive
18 officer, president, and/or a board member. TOLENTINO participated, approved, negotiated,
19 and/or entered into a commercial fundraiser contract with HDV. Also, on behalf of ATMOST
20 and/or HDV, or both, TOLENTINO drafted and authorized telemarketing scripts and other
21 solicitation materials to be used by ATMOST, and its employees and/or volunteers in their
22 solicitation of California residents and businesses. As an officer and/or a board member of a
23 commercial fundraiser, TOLENTINO is subject to the Attorney General's supervision and
24 enforcement over charitable funds and assets and has a duty to account to the Attorney General
25 for these funds and assets.

26 8. At all times mentioned and relevant to this Complaint, defendants, and each of
27 them, have transacted businesses in the County of San Mateo, and elsewhere in California, and
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1 continue to do so. The violations of law described herein have been and are now being carried
2 out in part within San Mateo County, and throughout the State of California.

3 9. Defendants DOES 1 through 100, inclusive, named as fictitious defendants, have
4 participated with, or acted in concert with, one or more of the named defendants, and/or have
5 acted on behalf of or as agents, servants, volunteers, or employees of one or more of the named
6 defendants, but whose true names and capacities, whether individual, corporate, or otherwise, are
7 presently unknown to plaintiff. Plaintiff is informed and believes and thereon alleges that
8 defendants DOES 1 through 100 have directly or indirectly participated in and are responsible for
9 the acts and omissions that are more specifically described below, and plaintiff's damages alleged
10 herein are proximately caused by such defendants. Because plaintiff is presently uninformed as
11 to the true names and capacities of these defendants, plaintiff sues them by their fictitious names
12 but will seek leave to amend the Complaint when their true names and capacities are discovered.

13 10. The named defendants, and defendants DOES 1-100, have committed and
14 continue to commit the breaches of fiduciary duty, violations of trust, violations of law, and other
15 wrongful acts as alleged in this Complaint. To preserve charitable assets, and to prevent
16 dissipation and loss of charitable assets to the irreparable damage of plaintiff, plaintiff prays for
17 injunctive relief.

18 **FIRST CAUSE OF ACTION**

19 **Breach of Fiduciary Duty**

20 **(Against Defendants WILSON, RICHARDSON, DUMAS and DOES 1-50)**

21 11. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
22 each and every allegation contained in paragraphs 1 through 10 above.

23 12. Plaintiff is informed and believes, and on that basis alleges, that defendants
24 WILSON, RICHARDSON, DUMAS, and DOES 1-50, and each of them, at all times relevant to
25 this Complaint, were officers, directors, and/or board members or de facto officers, directors,
26 and/or board members of HDV, and have owed fiduciary duties of care and loyalty to the charity.
27 Plaintiff is further informed and believes, and on that basis alleges, that each of the
28 aforementioned defendants has breached his duty of care and loyalty to HDV by engaging in,

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

- 4 a. Failing to ensure that HDV's activities and operations were conducted in
5 furtherance of its charitable purposes of providing food, shelter, and self-help programs
6 for homeless and disabled veterans;
- 7 b. Causing HDV to unlawfully engage in activities and operations while its Federal
8 Employer Identification Number had been revoked and/or suspended by the Internal
9 Revenue Service, including, but not limited to, soliciting donations for HDV through its
10 commercial fundraiser and its website;
- 11 c. Causing HDV to unlawfully engage in charitable solicitations in California
12 through its commercial fundraiser while HDV was delinquent in filing its annual reports
13 with the Attorney General's Registry of Charitable Trusts;
- 14 d. Causing HDV to unlawfully engage in charitable solicitations in California
15 through its commercial fundraiser when its commercial fundraiser had not registered with
16 the Registry of Charitable Trusts and had not posted the requisite bond with the Registry
17 of Charitable Trusts;
- 18 e. Causing HDV to unlawfully engage in charitable solicitations in California
19 through its commercial fundraiser without a valid contract with the commercial
20 fundraiser;
- 21 f. Causing HDV to improperly and unlawfully divert charitable contributions from
22 California residents and businesses for use outside of California without disclosing such
23 use to California residents and businesses before and during solicitation;
- 24 g. Causing HDV to engage in misleading and deceptive solicitation practices with its
25 commercial fundraiser ATMOST and ATMOST's principal TOLENTINO, including the
26 dissemination of false information to donors;
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- 1 h. Causing HDV to conduct solicitation campaigns in violation of Government Code
- 2 section 12599.6, as more specifically described in paragraphs 17 through 21 below, which
- 3 paragraphs are incorporated by reference as though fully set forth herein;
- 4 i. Causing HDV to operate without a chief financial officer and/or a secretary as
- 5 required by law;
- 6 j. Improperly and illegally served dual roles as both the Chairman of the Board
- 7 and/or the President and a de facto Chief Financial Officer and/or the Treasurer of HDV;
- 8 k. Improperly and illegally served dual roles as both the Chairman of the Board
- 9 and/or the President and a de facto Secretary of HDV; and
- 10 l. Failing to observe corporate formalities as required by law and by HDV's bylaws.

11 13. At all times relevant to this Complaint, the defendants named in this cause of
12 action, and DOES 1-50, have failed to act in good faith, in the best interests of HDV, and with
13 such care that an ordinarily prudent person in a like position would use under similar
14 circumstances.

15 14. As a proximate cause of the breaches of fiduciary duty of care and loyalty by the
16 named defendants, including DOES 1-50, HDV and its charitable beneficiaries have been
17 damaged in an amount presently unknown to the Attorney General and which cannot be
18 ascertained without an accounting by these defendants. The facts necessary to ascertain the exact
19 amount of damages to HDV and its charitable beneficiaries are within the special knowledge of
20 these defendants. However, the Attorney General estimates the total damage to exceed \$100,000.

21 15. Plaintiff is also entitled to injunctive relief, pursuant to Code of Civil Procedure
22 section 526 and/or the equitable powers of the court, to remedy defendants' breaches of fiduciary
23 duty and to recovery of plaintiff's attorney fees and costs.

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1 **SECOND CAUSE OF ACTION**

2 **Deceptive and Misleading Solicitation in Violation**
3 **of Government Code Section 12599.6**

4 **(Against All Defendants, and DOES 1-100)**

5 16. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
6 each and every allegation contained in paragraphs 1 through 15 above.

7 17. Under Government Code section 12599.6, charitable organizations and their
8 commercial fundraisers are prohibited from misrepresenting the purpose for which the funds are
9 solicited. Charitable organizations and commercial fundraisers are prohibited from using any
10 unfair or deceptive practices or engaging in fraudulent conduct that creates a likelihood of
11 confusion or misunderstanding. Charitable organizations must establish and exercise control over
12 their fundraising activities and must assure that fundraising activities conducted on their behalf
13 are conducted without coercion.

14 18. The defendants named in this cause of action, and DOES 1-100, organized, managed,
15 directed and/or executed HDV's solicitation campaigns from approximately 2007 through 2008,
16 and continuing to 2009, in a manner that violated, and continues to violate, state and federal laws
17 and resulted in deception and confusion of donors. On information and belief plaintiff alleges
18 that defendants authorized misleading telemarketing scripts and solicitation materials that
19 concealed material facts and made false representations as to how the donations would be used by
20 HDV, what charitable services HDV currently provided to homeless and disabled veterans, and
21 what services HDV had provided to these veterans in the past. They also failed to exercise
22 control over HDV's fundraising activities. As officers, directors, board members or *de facto*
23 officers, directors, or board members of HDV, WILSON, RICHARDSON, DUMAS, and DOES
24 1 through 50, were responsible for the fundraising activities of HDV and its fundraiser,
25 ATMOST. Commercial fundraisers ATMOST, TOLENTINO, and DOES 50-100, executed
26 deceptive and fraudulent solicitation campaigns throughout California and obtained donations and
27 payments from California residents and businesses on behalf of HDV.
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1 19. The unfair and/or deceptive acts or practices, and fraudulent conduct of the
2 defendants named in this cause of action that created a likelihood of confusion or
3 misunderstanding on the part of donors include, but are not limited to:

4 a. Defendants' failure to disclose to potential donors prior to the solicitation pitch that
5 the solicitation was being made by a commercial fundraiser (i.e., a paid telemarketer);

6 b. Defendants' failure to disclose to the donors that their contributions would not be
7 used to help homeless and disabled veterans in California;

8 c. Defendants' failure to disclose that during at least some part of their solicitation
9 campaign in California, HDV's tax exemption status had been revoked and/or suspended by the
10 Internal Revenue Service;

11 d. Defendants' misrepresentations that the charitable donations would be used to help
12 homeless and disabled veterans with food, shelter, and self-help programs;

13 e. Defendants' misrepresentation that the charitable donations made in the month of
14 November would help provide Thanksgiving meals to the homeless and disabled veterans;

15 f. Defendants' misrepresentation that the charitable donations would provide Easter
16 baskets and/or food baskets for the homeless and disabled veterans;

17 g. Defendants' misrepresentation that a donation of certain amount of money would
18 provide a certain number of meals to homeless and disabled veterans and their families;

19 h. Defendants' misrepresentations that HDV was a local nonprofit charity located in
20 Berkeley, California;

21 i. Defendants' misrepresentations that HDV works closely with other veteran
22 organizations, and city and county agencies;

23 j. Defendants' misrepresentations that many of the operational aspects of HDV,
24 including fundraising, food solicitation, and food distribution, are handled by disabled veterans;

25 k. Defendants' misrepresentations that several hundred Thanksgiving meals were served
26 to homeless veterans through HDV's joint program with Swords to Plowshares, a nonprofit
27 charity located in San Francisco, California;

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1 l. Defendants' misrepresentations that several hundred Thanksgiving meals were served
2 to homeless veterans through HDV's joint program with Vietnam Veterans of America, a
3 nonprofit charity located in Santa Rosa, California;

4 m. Defendants' misrepresentations that HDV provided hotel vouchers to homeless
5 veterans to stay at Lake Merritt Lodge, located in Oakland, California;

6 n. Defendants' misrepresentations that that Wade Francois, who is deceased, is HDV's
7 Chairman of the Board;

8 o. Defendants' misrepresentations that HDV has a valid city permit to solicit; and

9 p. Defendants' misrepresentations that a national veterans telethon would be broadcast
10 on November 11, 2008.

11 20. Defendants' conduct, as alleged in this cause of action, violates Government Code
12 section 12599.6. Plaintiff is entitled to civil penalties, injunctive relief, including injunctive relief
13 under Code of Civil Procedure section 526, and attorney fees and costs.

14 21. Defendants' conduct and the acts alleged in this cause of action were willful,
15 wanton, malicious, and oppressive, and were undertaken with the intent to defraud the public and
16 the donors, and thus, justify the awarding of exemplary and punitive damages against the
17 defendants named in this cause of action, and DOES 1-100.

18 **THIRD CAUSE OF ACTION**

19 **Breach of Fiduciary Duty Related to Solicitation of Funds in**
20 **Violation of Business and Professions Code Section 17510.8**

21 **(Against All Defendants, and DOES 1 through 100)**

22 22. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
23 and every allegation of paragraphs 1 through 21 above.

24 23. Defendants HDV, WILSON, RICHARDSON, DUMAS, ATMOST, TOLENTINO,
25 and DOES 1-100, have a fiduciary relationship with the donors they solicited for HDV,
26 established by statute (Bus. & Prof. Code, §17510.8 and Gov. Code, §12599), common law, and
27 by HDV's agreement with ATMOST.

1 24. Defendants accepted charitable contributions on behalf of HDV. The acceptance of
2 those donations established a charitable trust and a fiduciary duty on the part of each and every
3 defendant, including DOES 1 through 100, to ensure that the donations were used for the
4 purposes stated during the solicitation as required by Business and Professions Code section
5 17510.8.

6 25. Defendants breached their fiduciary duty by failing to ensure that the donations to
7 HDV were properly used for the purposes for which they were solicited. Donors were told orally
8 and in writing that their donations would be used to assist homeless and disabled veterans with
9 food, shelter, and self-help programs. Plaintiff is informed and believes, and on that basis alleges,
10 that no funds were used for these charitable purposes, and no funds for used were used in
11 California to help veterans. Instead, plaintiff is informed and believes, and on that basis alleges,
12 that a great majority of the funds solicited were used to pay ATMOST, HDV's commercial
13 fundraiser (approximately 70 percent of the total funds donated) and for other uses.

14 26. Defendants' breach of fiduciary duties proximately caused the donors to be damaged
15 in that their donations were used for purposes other than the purposes for which the donations
16 were made. The donors have been damaged in an amount presently unknown to the Attorney
17 General and which cannot be ascertained without an accounting by defendants. The facts
18 necessary to ascertain the exact amount of damages are within the special knowledge of the
19 defendants named in this cause of action and DOES 1 through 100. Plaintiff is also entitled to
20 injunctive relief, including under Code of Civil Procedure section 526, as a remedy for
21 defendants' breach of their fiduciary duties and for payment of its attorney fees and costs.

22 27. The Attorney General has authority to remedy the breach of fiduciary duty of the
23 named defendants in this cause of action, and DOES 1-100, pursuant to Corporations Code
24 section 5142, subdivision (a)(5), and section 5250, Government Code section 12598, Business
25 and Professions Code section 17510.8, and common law. The Attorney General has authority to
26 remedy the breach of fiduciary duty of defendants ATMOST, TOLENTINO, and DOES 50-100,
27 pursuant to Government Code sections 12598 and 12599, subdivision (g), Business and
28 Professions Code section 17510.8, and common law.

1 **FOURTH CAUSE OF ACTION**

2 **Negligence**

3 **(Against All Defendants and DOES 1-100)**

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5 28. Plaintiff re-alleges and incorporates by reference as though fully set forth herein
6 each and every allegation contained in paragraphs 1 through 27 above.

7 29. At all times relevant herein, defendants WILSON, RICHARDSON, DUMAS, and
8 DOES 1-50, voluntarily undertook the duties and responsibilities of directors, officers and/or
9 board members of HDV, whether or not formally elected as directors, officers, and/or board
10 members. The voluntary undertaking of these duties and responsibilities created a duty on the
11 part of these defendants to exercise due care in the performance of those duties and
12 responsibilities.

13 30. Defendants WILSON, RICHARDSON, DUMAS, and DOES 1-50 breached the duty
14 of care they owed to HDV by soliciting for charitable donations without a valid contract between
15 HDV and ATMOST, by soliciting for donations without fulfilling HDV's registration
16 requirements with the Attorney General's Registry of Charitable Trusts, by committing the acts
17 and omissions set forth in paragraphs 12 and 20 above, and committing other actions and
18 omissions of which plaintiff is currently unaware.

19 31. Plaintiff is informed and believes, and on that basis alleges, that as a proximate result
20 of the breach of the duty of care of defendants WILSON, RICHARDSON, DUMAS, and DOES 1
21 through 50, owed to HDV as alleged in this cause of action and as a result of the failure of these
22 defendants to operate HDV in the manner required by law, charitable assets have been improperly
23 diverted from HDV. HDV and its charitable beneficiaries have been damaged in an amount
24 presently unknown to the Attorney General and which cannot be ascertained without an
25 accounting by defendants. The facts necessary to ascertain the exact amount of damages to HDV
26 and its charitable beneficiaries are within the special knowledge of these defendants. The
27 Attorney General is entitled to an accounting from these defendants for their expenditures and
28 disposition of all income and assets which they obtained from HDV, or improperly diverted from

1 HDV or otherwise wasted through their breach of duty of due care, fraud, or other wrongful acts.
2 Plaintiff estimates the total damages proximately caused by defendants' actions and omissions set
3 forth in this cause of action exceed \$100,000. Plaintiff is also entitled to its attorney fees and
4 costs.

5 32. When defendants HDV, WILSON, RICHARDSON, DUMAS, ATMOST,
6 TOLENTINO, and DOES 1 through 100, solicited and accepted donations for HDV and its
7 charitable beneficiaries, they owed a duty of care to the donors to ensure that the donations and
8 funds were used for the specific charitable purposes for which they were solicited. On
9 information and belief plaintiff alleges that from 2007 to 2009, these defendants failed to use the
10 donations for the purpose for which they were solicited.

11 33. All defendants named in this cause of action, and DOES 1 through 100, breached
12 their fiduciary duty to the donors by their cooperative efforts which proximately caused the
13 charitable funds donated to HDV to be improperly diverted for purposes other than the purposes
14 for which the donations were solicited and made. As a result of that breach of duty, the donors to
15 HDV have been injured, in the aggregate, in an amount presently unknown to plaintiff. The facts
16 necessary for calculation of the receipts and disbursements, and thus, the amount owed to the
17 donors and beneficiaries, are within the special knowledge of defendants. The Attorney General
18 is entitled to an accounting from all defendants named in this cause of action and DOES 1
19 through 100 for the receipt and disposition of all donations they obtained on behalf of HDV.
20 Plaintiff is also entitled to its attorney fees and costs.

21 **FIFTH CAUSE OF ACTION**

22 **Solicitation by a Commercial Fundraiser in Violation of**
23 **Registration and Reporting Statutes**

24 **(Against Defendants ATMOST, TOLENTINO, and DOES 50 through 100)**

25 34. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
26 of the allegations of paragraphs 1 through 33 of above.

1 35. Government Code section 12599 requires all commercial fundraisers to be registered
2 with the Attorney General's Registry of Charitable Trusts prior to soliciting any funds in this
3 State for charitable purposes. Such registrations along with a fee are required to be submitted
4 annually by January 15 of each calendar year in which the commercial fundraiser does business in
5 this State. Commercial fundraisers are also required to file with the Registry of Charitable Trusts
6 an annual financial report accounting for all funds collected pursuant to each solicitation
7 campaign for charitable purposes during the preceding year. The financial report must be filed no
8 later than 30 days after the close of the preceding calendar year.

9 36. Government Code section 12599.6 prohibits any solicitation in this State by a
10 commercial fundraiser whose registration with the Registry of Charitable Trusts has expired and
11 prohibits solicitation by a commercial fundraiser who has failed to file timely and accurate
12 financial reports with the Registry of Charitable Trusts.

13 37. Plaintiff is informed and believes and thereon alleges that defendants named in this
14 cause of action, and DOES 50-100, failed to register with the Registry of Charitable Trusts before
15 soliciting for donations, and solicited California residents and businesses as a commercial
16 fundraiser for HDV during 2007 and until September 17, 2008, without registering with the
17 Registry of Charitable Trusts. Plaintiff is further informed and believes that the defendants failed
18 to file with the Registry of Charitable Trusts annual financial reports for 2007 and 2008 for
19 fundraising for HDV and yet continued to solicit in California as a commercial fundraiser during
20 those years and into 2009.

21 38. Government Code section 12599.5 requires all applicants for registration and renewal
22 of registration as a commercial fundraiser in this State to submit a cash deposit of \$25,000 or
23 bond in that amount by an admitted surety in favor of the State of California for the benefit of all
24 persons damaged by a commercial fundraiser's solicitation activities in this State. Plaintiff is
25 informed and believes, and on that basis alleges, that defendants named in this cause of action,
26 and DOES 50-100, solicited charitable donations for HDV during the year 2007 and most of 2008
27 without first posting cash or a \$25,000 bond.
28

1 39. Government Code section 12599, subdivision (h), requires that, at least 10 days prior
2 to the commencement of a solicitation campaign, a commercial fundraiser must file with the
3 Registry of Charitable Trusts a notice (“Notice of Intent to Solicit for Charitable Purposes”)
4 (hereinafter “Notice of Intent to Solicit”) that contains the following: the name, address and
5 telephone number of the commercial fundraiser; the name address and telephone number of the
6 charitable organization with whom the commercial fundraiser has contracted; the method of
7 fundraising; the projected dates the campaign will begin and end; and the name address and
8 telephone number of the person responsible for directing and supervising the work of the
9 commercial fundraiser under the contract.

10 40. Plaintiff is informed and believes, and on that basis alleges, that the defendants
11 named in this cause of action, and DOES 50-100, failed to file any Notice of Intent to Solicit prior
12 to the fundraising it conducted for HDV during the year 2007 and most of 2008.

13 41. Defendants’ conduct as alleged in this cause of action violated Government Code
14 sections 12599, 12599.5 and 12599.6. Plaintiff is entitled to civil penalties, injunctive relief,
15 including injunctive relief under Code of Civil Procedure section 526, and attorney fees and costs
16 as a result.

17 **SIXTH CAUSE OF ACTION**

18 **Engaging in Unfair Competition in Violation of Business**
19 **And Professions Code Section 17200 et seq.**

20 **(Against all Defendants, and DOES 1-100)**

21 42. Plaintiff re-alleges and incorporates herein by reference each and every allegation
22 contained in paragraphs 1 through 41 above.

23 43. From 2007 to 2008, and continuing to 2009, defendants HDV, WILSON,
24 RICHARDSON, DUMAS, ATMOST, TOLENTINO, and DOES 1-100, engaged in unfair
25 competition within the meaning of Business and Professions Code section 17200 by making false,
26 deceptive, and misleading statements to donors to induce them to make charitable contributions to
27 HDV. Defendants also engaged in unfair competition by failing to comply with the registration
28

1 and reporting requirements. Defendants committed and continue to commit acts of unfair
2 competition through, the following non-exhaustive acts and omissions, as set forth in paragraphs
3 12, 19, 37, 38, 39 and 40. Plaintiff incorporates by reference as though fully set forth herein
4 paragraphs 12, 19, 37, 38, 39, and 40 of the Complaint.

5 44. Defendants, including DOES 1-100, engaged in and participated in acts of unfair
6 competition, as alleged in paragraph 43 above, and have violated the following statutes and
7 regulations:

- 8 a. Government Code section 12591.1;
- 9 b. Government Code section 12599;
- 10 c. Government Code section 12599.6;
- 11 d. Business and Professions Code section 17510.8.
- 12 e. Business and Professions Code section 17510.85.
- 13 f. Federal regulations established by the Federal Trade Commission (“Telemarketing
14 Sales Rule”), (16 C.F.R. § 310.3 [deceptive telemarketing acts or practices]).

15 45. As a result of the aforementioned acts of unfair competition, Plaintiff is entitled to
16 civil penalties in an amount which is presently unknown, but believed to be in excess of
17 \$100,000. Defendants should also be required to reimburse the Attorney General all reasonable
18 attorney’s fees and costs incurred in conducting this action, as provided by Government Code
19 section 12598.

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

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1 **SEVENTH CAUSE OF ACTION**

2 **False or Misleading Statements in Violation of Business**
3 **and Professions Code Section 17500 et seq.**

4 **(Against All Defendants, and Does 1-100)**

5 47. Plaintiff alleges and incorporates by reference herein each and every allegation
6 contained in paragraphs 1 through 46 of this Complaint.

7 48. Defendants violated Business and Professions Code section 17500 by deliberately
8 disseminating or causing to be disseminated to California residents and businesses untrue and
9 misleading statements in the course of conducting their charitable solicitation campaigns,
10 including but not limited to the misrepresentations set forth in paragraphs 12 and 19 above.
11 Defendants and each of them knew or reasonably should have known that their representations
12 made in the charitable solicitation campaigns were false or misleading at the time the statements
13 were made.

14 49. As a result of the false and misleading statements defendants made in the course of
15 conducting their charitable solicitation campaigns, pursuant to Business and Professions Code
16 sections 17500 and 17536, plaintiff is entitled to civil penalties against each defendant in an
17 amount which is presently unknown, but believed to be in excess of \$150,000.

18 **EIGHTH CAUSE OF ACTION**

19 **For Involuntary Dissolution**

20 **(Against Defendant HDV and DOES 1 through 50)**

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22 50. Plaintiff re-alleges and incorporates by reference herein each and every allegation
23 contained in paragraphs 1 through 49 of this Complaint.

24 51. Defendant HDV and DOES 1 through 50, by participating in the acts alleged in this
25 Complaint, have violated numerous provisions of statutes regulating nonprofit corporations.
26 Further, those in control of HDV have been guilty of or knowingly countenanced persistent and
27 pervasive fraud, mismanagement and misuse of authority. Moreover, HDV's property is being
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1 misapplied and wasted by its directors, officers, board members and/or *de facto* directors,
2 officers, or board members.

3 52. Involuntary dissolution of HDV is therefore necessary and appropriate under the
4 provisions of Corporations Code sections 6510, subdivision (a)(5), and 6511, subdivision (a)(1).

5 **PRAYER FOR RELIEF**

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

7 1. For a preliminary and permanent injunction, enjoining defendants WILSON,
8 RICHARDSON, DUMAS, and DOES 1 through 50, their employees, agents, servants,
9 representatives, successors, and assigns, and all other persons, corporations, or other entities
10 acting under, by, through, or on their behalf, from doing any of the following until they have first
11 provided a full and complete accounting for all funds received by, and disbursed from, any and all
12 financial accounts of HDV from January 1, 2007, to the present: (1) expending, disbursing,
13 transferring, encumbering, withdrawing or otherwise exercising control over any funds received
14 by or on behalf of HDV or rightfully due HDV except as authorized by the Court; (2) conducting
15 business of any kind on behalf of, or relating to, HDV other than as necessary to assist a Receiver
16 or appointed director(s), to comply with discovery requests and orders, and as permitted by the
17 Court; and (3) controlling or directing the operations and affairs of any California nonprofit
18 public benefit corporation;

19 2. For an order directing defendants WILSON, RICHARDSON, DUMAS and DOES
20 1 through 50, to provide to the Court and to the Attorney General a full and complete accounting
21 of the financial activities and condition of HDV and their dealings with HDV from January 1,
22 2007, to the present. Upon the rendering of such accounting, that the Court determine the
23 property, real or personal, or the proceeds thereof, to which HDV and the charitable beneficiaries
24 thereof are lawfully entitled, in whatsoever form in whosoever hands they may now be, and order
25 and declare that all such property or the proceeds thereof be impressed with a trust for charitable
26 purposes, that defendants deposit charitable funds and assets in their possession, custody or
27 control with the Court. In addition, that the Court hold the defendants liable and enter judgment
28 in favor of plaintiff and against each of them for any and all such assets for which they fail to

1 properly account, together with interest thereon at the legal rate from the date of liability thereon;
2 and that any and all expenses and fees incurred by defendants in this action be borne by the
3 individual defendants and each of them and not by HDV or any other public or charitable
4 corporation or fund;

5 3. For an order directing defendants TOLENTINO, and DOES 51 through 100, to
6 provide to the Court and to the Attorney General a full and complete accounting of the financial
7 activities of ATMOST and their dealings with HDV from January 1, 2007, to the present. Upon
8 the rendering of such accounting, that the Court determine the property, real or personal, or the
9 proceeds thereof, to which HDV and the charitable beneficiaries thereof are lawfully entitled, in
10 whatsoever form in whosoever hands they may now be, and order and declare that all such
11 property or the proceeds thereof be impressed with a trust for charitable purposes, that defendants
12 deposit charitable funds and assets in their possession, custody or control with the Court. In
13 addition, that the Court hold the defendants liable and enter judgment in favor of plaintiff and
14 against each of them for any and all such assets for which they fail to properly account, together
15 with interest thereon at the legal rate from the date of liability thereon; and that any and all
16 expenses and fees incurred by defendants in this action be borne by the individual defendants and
17 each of them and not by HDV or any other public or charitable corporation or fund;

18 4. Pursuant to Business and Professions Code section 17203, 17510.8, and 17535
19 and/or the equitable powers of the court, defendants and each of them be ordered to pay into
20 Court an amount equal to the amount of funds solicited from the public on behalf of HDV by any
21 means of any act or practice declared by this court to constitute unfair competition under Business
22 and Professions Code section 17200 or false and misleading statements under Business and
23 Professions Code section 17500, all said monies to be distributed by this court to charitable
24 institution(s) having purposes similar to those of HDV.;

25 5. For damages due HDV and its charitable beneficiaries from the breaches of
26 fiduciary duty of all defendants named in this Complaint, and Does 1-100, in an amount to be
27 determined following an accounting from these defendants, plus interest at the legal rate until the
28 judgment is paid;

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

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

9 8. For punitive and exemplary damages against defendants WILSON,
10 RICHARDSON, DUMAS, ATMOST, TOLENTINO, and DOES 1 through 100 according to
11 proof;

12 9. For an assessment of civil penalties against all defendants pursuant to Government
13 Code section 12591.1, for violations of the Supervision of Trustees and Fundraisers for Charitable
14 Purposes Act (Gov. Code § 12580 et seq.) as proved at trial;

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

20 11. For a preliminary and permanent injunction, pursuant to Code of Civil Procedure
21 section 526, Corporations Code section 5142, and/or the equitable powers of the court, enjoining
22 defendants, and Does 1-100, from acting as directors or officers of, or in any fiduciary capacity
23 for charitable purposes in California, and prohibiting defendants from forming, organizing and/or
24 managing any charitable entity in the State of California.

25 12. For an involuntary dissolution of HDV pursuant to the provisions of Corporations
26 Code section 6518, and for an order providing for satisfaction of all of its lawful debts, and
27 establishing a procedure for determining the disposition of all remaining assets of HDV in a
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1 manner consistent with its charitable purpose and consistent with any restrictions that have been
2 placed upon any of HDV' remaining assets;

3 13. For plaintiff's costs of suit and other costs pursuant to Government Code section
4 12598;

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

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

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

10 Dated: May 29, 2009

Respectfully Submitted,

11 EDMUND G. BROWN JR.
12 Attorney General of California
13 BELINDA J. JOHNS
14 Senior Assistant Attorney General
15 KELVIN C. GONG
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