

SEP 21 2010

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CIVIL COMPLEX CENTER

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

14 Plaintiff,

15 v.

17 **ASSOCIATION FOR FIREFIGHTERS AND PARAMEDICS, INC., MICHAEL GAMBOA; PUBLIC AWARENESS, L.L.C.; COMMUNITY SUPPORT, INC.;**
18 **COURTESY CALL, INC., ET AL.**

20 Defendants

Case No. 30-2009 00272106

SETTLEMENT AGREEMENT AND [PROPOSED] ORDER RE: ASSOCIATION FOR FIREFIGHTERS AND PARAMEDICS, INC.

Dept: CX105
Judge: The Honorable Nancy Wieben Stock

Action Filed: May 29, 2009

22 1. This Settlement Agreement and Order are entered into by, between, and among the
23 settling parties, Plaintiff, the People of the State of California ("the People"), by Edmund G.
24 Brown Jr., Attorney General of the State of California ("Attorney General"), Defendants
25 Association for Firefighters and Paramedics, Inc., a nonprofit public benefit corporation
26 (hereinafter "AFP") and Michael F. Gamboa, individually and as President of AFP (hereinafter
27 "Gamboa"), Dr. Robert A. St. Thomas, Vice President of AFP, and David M. Boucher,
28 Secretary/Treasurer of AFP (hereinafter collectively referred to as "the Settling Parties"). At all

1 times relevant herein, AFP was and is a nonprofit public benefit corporation within the meaning
2 of Government Code section 12582.1. At all times relevant herein, Gamboa was and is President
3 of AFP. At all times relevant herein, Dr. Robert A. St. Thomas was and is the Vice President of
4 AFP, and David M. Boucher was and is the Secretary/Treasurer of AFP.

5 2. The Attorney General, on behalf of the People, sued AFP and Gamboa in the
6 underlying action for deceptive and misleading charitable solicitations, breach of fiduciary duty,
7 negligence, negligence per se, removal, involuntary dissolution, unfair competition, and
8 disseminating false or misleading statements. In lieu of Plaintiff amending the instant complaint
9 to name Dr. Robert A. St. Thomas as Vice President of AFP (hereinafter "Thomas") and David
10 M. Boucher as Secretary/Treasurer of AFP (hereinafter "Boucher") as "Doe" defendants to this
11 action, Thomas and Boucher agree to be bound by the terms of this Settlement Agreement and
12 Order. AFP, Gamboa, Thomas, and Boucher (hereinafter "the AFP defendants") deny any
13 wrongdoing. The Settling Parties, each of whom, desiring to avoid the expense, uncertainty, and
14 inconvenience of further litigation in the above-captioned matter, state all claims alleged against
15 the AFP defendants arising out of the above-captioned action have been settled, and that the
16 Court may enter the proposed Order attached hereto, on the following facts, terms, and
17 conditions:

18 3. The Court has personal jurisdiction over the Settling Parties and subject matter
19 jurisdiction of the above-captioned action. The Court retains jurisdiction of the above-referenced
20 action and over the Settling Parties until final performance of the Settlement Agreement stated
21 herein. Any applicable statute, rule or court order affecting timely prosecution of this action,
22 including the 5-year dismissal statute and the 10-year statute of limitations under Government
23 Code section 12596, are hereby tolled. The Court shall retain jurisdiction as the ends of justice
24 may require for the purpose of enabling any party to this Settlement Agreement to apply to the
25 Court at any time for such further orders and directions as may be necessary or appropriate
26 including, but not limited to, the following: (a) the construction or carrying out of this
27 Settlement Agreement, (b) the enforcement of any provisions of the Settlement Agreement, and
28

1 (c) the punishment of any violations of the Settlement Agreement. This Settlement Agreement
2 constitutes a stipulation for settlement and shall be enforceable under Code of Civil Procedure
3 section 664.6.

4 4. The AFP defendants agree to pay to the Attorney General's Office a total of \$100,000
5 (hereinafter also referred to as the "Settlement Amount"). \$67,000 of the Settlement Amount
6 constitutes reimbursement of attorney's fees and costs incurred by the Charitable Trusts Section,
7 pursuant to Government Code sections 12586.2 and 12598. These funds shall be used
8 exclusively by the Charitable Trusts Section for administration of the Attorney General's
9 charitable trust enforcement responsibilities. \$33,000 of the Settlement Amount constitutes funds
10 intended for use for the assistance of individual burn victims in California and which shall be
11 distributed for that purpose at the sole discretion of the Attorney General's Office. The above
12 \$33,000 distribution shall not be considered a program expense by AFP, nor shall the AFP
13 defendants declare that amount as a charitable donation. The \$100,000 Settlement Amount shall
14 be payable in one lump sum, and shall be made on or before August 1, 2010, or within 45 days
15 after notice to AFP President Michael F. Gamboa that the court has signed the Order on the
16 Settlement Agreement, whichever occurs later. The settlement payment pursuant to this
17 paragraph of the Settlement Agreement shall be made payable to "the California Attorney
18 General" and shall be delivered to the Attorney General's Office at 300 S. Spring Street, Los
19 Angeles, California 90013, to the attention of Deputy Attorney General Jami L. Cantore.

20 5. During years 2010, 2011, 2012, and 2013, the AFP defendants shall not enter into any
21 contracts or agreements with commercial fundraisers to solicit in California without first
22 providing the California Attorney General's Office, addressed to the attention of Deputy Attorney
23 General Jami L. Cantore, with a copy of the contract or agreement for review ten business days
24 before commencement of work on the contract or agreement. During years 2010, 2011, 2012,
25 and 2013 and thereafter, every contract or agreement entered into by the AFP defendants with
26 commercial fundraisers to solicit charitable contributions in California must comply with all of
27 the requirements set forth in Government Code section 12599.3. If the AFP defendants decide to
28 enter into a contract or agreement with a commercial fundraiser to solicit in California, the AFP

1 defendants and the commercial fundraiser must comply with all requirements under Government
2 Code sections 12599 and 12599.6.

3 6. The AFP defendants shall not engage in misrepresentation and shall not violate
4 Government Code section 12599.6, subdivisions (a) and (f). To insure compliance with these
5 provisions, the AFP defendants shall supply copies of all solicitation scripts, including fulfillment
6 material, used and/or to be used in California during years 2010, 2011, 2012, and 2013 to the
7 Attorney General's Office, to the attention of Deputy Attorney General Jami L. Cantore, on or
8 before December 31 of each of those years. The AFP defendants shall not engage in deception,
9 shall not conceal material facts, and shall not make misrepresentations. Without limiting the
10 foregoing, the prohibition in this paragraph includes misrepresentations of the following made in
11 the course of any solicitation campaign:

12 a) The nature or purpose of the charitable program activities that will be supported
13 by donations received;

14 b) The portion of the donation that will be retained by AFP;

15 c) The portion of the donation that will be directly used for AFP's charitable
16 purposes;

17 d) Either specifically or generally, that AFP has any connection to or is affiliated
18 with any public safety organization;

19 e) That donations will be used for a specific purpose or program of AFP;

20 f) That donations will benefit persons or organizations in the donor's state or local
21 community unless a substantial portion of the AFP's program services are provided in that
22 state or local community;

23 g) That a resident of a household has previously donated to AFP or made a donation
24 of a specific amount without documentation of that prior donation; and

25 h) That a person has already made a pledge to donate to AFP without documentation
26 of that pledge.

27 An isolated misrepresentation or violation of Government Code section 12599.6,
28 subdivisions (a) and (f), by an agent, independent contractor, or employee of AFP shall not be

1 deemed a violation of this Settlement Agreement by AFP if AFP clearly and convincingly
2 demonstrates that, as part of its routine business practices, it has done all of the following:

3 (i) Established and implemented written procedures to comply with the terms of this
4 Settlement Agreement, communicated those terms to all relevant agents, independent
5 contractors, and employees, and obtained from each of them a signed statement that they
6 have read, understood, and agreed to comply with the procedures;

7 (ii) Trained all agents, independent contractors, and employees regarding compliance
8 with the procedures established pursuant to this Settlement Agreement;

9 (iii) Maintained thorough records of such procedures, their implementation, and the
10 program of training agents, independent contractors, and employees in those procedures;

11 and

12 (iv) Monitored and enforced compliance with the procedures established pursuant to
13 this section (including through the use of disciplinary measures and terminations) and kept
14 and made available to the Office of the California Attorney General, upon request,
15 complete records of all such monitoring and enforcement.

16 7. The AFP defendants shall not violate Business and Professions Code section 17510.8.
17 To ensure compliance with section 17510.8, for years 2010, 2011, 2012, and 2013, AFP shall
18 provide written statements listing all program expenditures and, in addition, evidence supporting
19 all such program expenditures, e.g., cancelled checks for grants (front and back), statements of
20 receipt from grant recipients, and similar evidence, as follows: On or before December 31 of
21 years 2010, 2011, 2012, and 2013, the AFP defendants shall provide such statements and
22 supporting evidence to the Attorney General's Office, to the attention of Jami L. Cantore, along
23 with a report to the Attorney General's Office certifying under penalty of perjury that it has
24 complied with the requirements stated in this paragraph.

25 8. The AFP defendants shall not distribute, or cause to be distributed, decals, stickers,
26 and/or other emblems that can be used for display on a motor vehicle which bear a symbol that
27 suggests an affiliation with, or endorsement by, public safety personnel.
28

1 9. Within ninety (90) days of filing this stipulated judgment, AFP shall retain a
2 consultant to implement policies and procedures to ensure that solicitation conducted on behalf of
3 AFP is conducted without deception and coercion. On or before December 31 of years 2010,
4 2011, 2012, and 2013, the AFP defendants shall provide all written policies and procedures
5 established by the consultant and any amendments thereto to the Attorney General's Office, to the
6 attention of Jami L. Cantore.

7 10. The AFP defendants shall immediately remove all language from the AFP website,
8 and any successor website, that tends to indicate or represent to donors that contributions will
9 benefit victims in the donor's local area, community, county, or state.

10 11. The AFP defendants shall immediately implement a written "do not call policy" and
11 shall maintain a list of donors, including potential donors, who have indicated that they do not
12 wish to be solicited. The list shall be submitted on or before December 31 of years 2010, 2011,
13 2012, and 2013, to the Attorney General's Office, to the attention of Jami L. Cantore.

14 12. Within sixty (60) days of filing this stipulated judgment, the AFP defendants shall
15 contract for Board training for each current Board member, to be conducted by a nonprofit
16 support organization on or before October 30, 2010. AFP agrees that all future Board members
17 shall attend Board training to be conducted by a nonprofit support organization within six months
18 of his or her appointment. Certification that such training has occurred shall be provided to the
19 Attorney General's Office, to the attention of Jami L. Cantore.

20 13. The AFP defendants shall provide a copy of all Board minutes and Board resolutions
21 for calendar years 2010, 2011, 2012, and 2013, on or before December 31 of each year to the
22 Attorney General's Office, to the attention of Jami L. Cantore.

23 14. The AFP defendants shall not use charitable contributions and/or charitable assets of
24 any type to fund, either by direct payment or reimbursement, travel-related expenses for Board
25 members and/or Board members' families for out-of-town Board meetings.

26 15. The Settlement Agreement shall not constitute an admission or finding of any
27 wrongdoing, fault, violation of law, or liability by the AFP defendants.

1 16. The Settlement Agreement contains the entire agreement and understanding between
2 the Settling Parties concerning the subject matter of this action and supersedes all other
3 agreements of any kind concerning the subject matter of the Settlement Agreement. Each of the
4 undersigned warrants that no promise or inducement has been offered to them except as set forth
5 herein and that the Settlement Agreement is executed without reliance upon any statement or
6 representation by any persons or parties, or their representatives, concerning the nature and extent
7 of injuries and/or damages and/or legal liability herein.

8 17. Each of the Settling Parties acknowledges that he, she, or it has read the entire
9 Settlement Agreement and understands it and, in addition, has had an opportunity to discuss the
10 content with an attorney and make whatever investigation or inquiry that party may deem
11 necessary or desirable in connection with the subject matter of the Settlement.

12 18. Each of the parties warrants that he, she or it is legally competent to execute the
13 Settlement Agreement. The undersigned representative for AFP certifies that he or she is fully
14 authorized by AFP to enter into the terms and conditions of the Settlement Agreement and to
15 fully and legally bind AFP to the Settlement Agreement.

16 19. The Settlement Agreement shall be governed by the laws of the State of California.

17 20. The Settlement Agreement shall be binding upon the heirs, devisees, executors,
18 affiliates, administrators, successors, assigns, officers, directors, trustees, executors, agents and
19 employees of AFP.

20 21. Each party shall bear its own attorney fees and costs unless otherwise stated herein.

21 22. The Settlement Agreement may be executed in separate counterparts, each of which
22 shall be deemed an original, and said counterparts shall together constitute one Settlement
23 Agreement, binding all parties hereto notwithstanding that all of the parties are not signatory to
24 the original or same counterpart, and shall be delivered to Jami L. Cantore, Office of the Attorney
25 General, 300 S. Spring Street, Los Angeles, CA 90013.

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IT IS SO AGREED.

DATED: EDMUND G. BROWN JR, Attorney General

9/2/10

By
JAMIL L. CANTORE, Deputy Attorney General
Attorneys for the People of the State of California

DATED: 8/5/10 ASSOCIATION FOR FIREFIGHTERS AND
PARAMEDICS, INC., a Nonprofit Public Benefit
Corporation

By
MICHAEL F. GAMBOA
Association for Firefighters and Paramedics, Inc. President

DATED: 8/5/10 MICHAEL F. GAMBOA, Individually and as President of
Association for Firefighters and Paramedics

By
MICHAEL F. GAMBOA

DATED: 8/8/10 DR. ROBERT A. ST. THOMAS, as Vice President of
Association for Firefighters and Paramedics, Inc.

By
Dr. Robert A. St. Thomas

DATED: 8/5/10 DAVID M. BOUCHER, as Secretary/Treasurer of
Association for Firefighters and Paramedics, Inc.

By
David M. Boucher

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DATED: 8/20/10

PROCTER, SLAUGHTER & REAGAN, LLP

BY
BARRY J. REAGAN, ESQ.
Counsel for Association for Firefighters and Paramedics,
Inc.

ORDER

IT IS SO ORDERED.

Plaintiffs to give notice

9/2/10
DATED

NANCY WIEBEN STOCK
JUDGE OF THE SUPERIOR COURT

ok LB