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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

RIVERSIDE HISTORIC COURTHOUSE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. HELP HOSPITALIZED VETERANS, a California Nonprofit Public Benefit Corporation; ROGER CHAPIN; ELIZABETH CHAPIN; MICHAEL LYNCH; ROBERT BECKLEY, JR.; THOMAS ARNOLD; LEONARD ROGERS; GORHAM BLACK, III; ROBERT FRANK; FRANK & COMPANY, P.C.; CREATIVE DIRECT RESPONSE, INC.; and DOES 1-50, Defendants.	Case No. RIC 1212288 FIRST AMENDED COMPLAINT FOR DAMAGES, FOR CIVIL PENALTIES, FOR AN ACCOUNTING, FOR A CONSTRUCTIVE TRUST, FOR RESTITUTION, FOR REMOVAL OF DIRECTORS AND OFFICERS AND FOR OTHER RELIEF ARISING FROM: (1) BREACH OF FIDUCIARY DUTY (2) AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY (3) ENGAGING IN SELF-DEALING TRANSACTIONS (4) EXCESSIVE EXECUTIVE COMPENSATION (5) WRONGFUL ACQUISITION OF PROPERTY/UNJUST ENRICHMENT (6) MISREPRESENTATIONS IN SOLICITATIONS (7) ENGAGING IN UNFAIR COMPETITION

Plaintiff, the People of the State of California, files this First Amended Complaint and complains and alleges as follows:

General Allegations

1. Plaintiff, the People of the State of California ("plaintiff"), includes members of the class of charitable beneficiaries of Help Hospitalized Veterans ("HHV"), a California nonprofit public benefit corporation. The Attorney General, Kamala D. Harris ("the Attorney General"), who brings this action on plaintiff's behalf, is the duly elected Attorney General of the State of California and is charged with the general supervision of all charitable organizations within this State and with the enforcement and supervision over trustees and fiduciaries who hold or control property in trust for charitable and eleemosynary purposes. The Attorney General is authorized to enforce, in the name of the People, the provisions of the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Gov. Code, § 12580 et seq.), the Nonprofit Corporation Law (Corp. Code, § 5000 et seq.), and those provisions of the Business and Professions Code that prohibit unlawful, unfair, and fraudulent business practices (Bus. & Prof. Code § 17200 et seq).

2. At all times relevant herein, defendants and each of them have been transacting business in the County of Riverside and elsewhere. The violations of law hereinafter described have been and are now being carried out, in part, within said county and elsewhere.

3. In 1971, defendant HHV was formally incorporated as a California nonprofit public benefit corporation. HHV's principal place of business is in the County of Riverside. HHV holds, and at all times relevant herein held, all of its assets in trust for charitable purposes. HHV applied for, and received, an exemption from taxation under section 23701f of the California Revenue and Taxation Code, and section 501(c)(3) of the Internal Revenue Code of the United States. Pursuant to its amended Articles of Incorporation, HHV's charitable purposes include the following: (1) distributing arts and crafts materials in kit form to recreational therapy, occupational therapy, and voluntary departments and wards of the United States Department of Veterans Affairs Medical Centers and the United States Armed Services military hospitals; (2) seeking individuals to provide voluntary services within the Department of Veterans Affairs hospital community; and (3) helping to lift the spirits of America's disabled veterans.

4. Defendant ROGER CHAPIN ("ROGER") is a resident of San Diego County. From incorporation to approximately July 31, 2009, defendant ROGER was an officer and director of HHV and owed fiduciary duties of care and loyalty to HHV and its charitable beneficiaries.[1]

5. Defendant ELIZABETH CHAPIN ("ELIZABETH") is a resident of San Diego County. From incorporation to approximately February 28, 2007, defendant ELIZABETH was an employee of HHV. Defendant ELIZABETH is the wife of defendant ROGER.

6. Defendant MICHAEL LYNCH ("LYNCH") is a resident of Riverside County. At all times relevant herein, defendant LYNCH was, and is, an officer and/or director of HHV and owed fiduciary duties of care and loyalty to HHV and its charitable beneficiaries.

7. Defendant ROBERT BECKLEY, JR. ("BECKLEY") is a resident of the State of Arizona. At all times relevant herein, defendant BECKLEY was, and is, an officer and/or director of HHV and owed fiduciary duties of care and loyalty to HHV and its charitable beneficiaries.

8. Plaintiff is informed and believes and thereon alleges that defendant THOMAS ARNOLD ("ARNOLD") is a resident of the State of Florida. At all times relevant herein, defendant ARNOLD was, and is, an officer and/or director of HHV and owed fiduciary duties of care and loyalty to HHV and its charitable beneficiaries.

9. Defendant LEONARD ROGERS ("LEONARD") is a resident of San Diego County. At all times relevant herein, defendant LEONARD was, and is, an officer and/or director of HHV and owed fiduciary duties of care and loyalty to HHV and its charitable beneficiaries.

10. Plaintiff is informed and believes and thereon alleges that defendant GORHAM BLACK, III ("BLACK") is a resident of the State of Florida. At all times relevant herein, defendant BLACK was, and is, an officer and/or director of HHV and owed fiduciary duties of care and loyalty to HHV and its charitable beneficiaries.

11. Plaintiff is informed and believes and thereon alleges that defendant ROBERT FRANK ("FRANK") is a resident of the State of Virginia. Plaintiff is further informed and believes and

[1] To avoid confusion, plaintiff references defendants Roger Chapin, Elizabeth Chapin and Leonard Rogers by their first names throughout this First Amended Complaint.

thereon alleges that, at all times relevant herein, defendant FRANK has performed accounting and other services for HHV.

12. Plaintiff is informed and believes and thereon alleges that defendant FRANK & COMPANY, P.C. (hereinafter "FRANK & CO.") is a limited liability company or corporation organized in the State of Virginia that, at all times relevant herein, has performed accounting and other services for HHV.

13. Plaintiff is informed and believes and thereon alleges that defendant CREATIVE DIRECT RESPONSE, INC. ("CDR") is a for-profit company incorporated in the State of Maryland with its principal office in the State of Maryland. At all times relevant herein, defendant CDR conducted, and/or consulted on, HHV's direct mail solicitation (fundraising) campaigns in several states, including California.

14. Defendants DOES 1 through 50 are named as fictitious defendants who have participated with or acted in concert with one or more of the defendants, or who have acted on behalf of or as agents, servants or employees of one or more of the defendants named herein, but whose true names and capacities, whether individual, corporate, or otherwise, are presently unknown to plaintiff. Plaintiff is informed and believes and thereon alleges that defendants DOES 1 through 50 have directly or indirectly participated in and are responsible for the acts and omissions that are more specifically described herein and plaintiff's damages as alleged herein were proximately caused by such defendants. Because plaintiff is presently uninformed as to the true names and capacities of defendants DOES 1 through 50, plaintiff sues them herein by fictitious names, but will seek leave to amend this First Amended Complaint when their true names and capacities are discovered.

15. The named individual defendants and defendants DOES 1 through 50 have committed and continue to commit the breaches of fiduciary duty, violations of trust, violations of law and other wrongful acts as alleged hereafter in the First Amended Complaint ("FAC"). 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 and removal of officers and directors be granted.

16. Unless otherwise stated in this FAC, the actions and omissions upon which the causes of action alleged in this FAC are based occurred on or after August 15, 2002. Unless otherwise stated in this FAC, plaintiff and the Attorney General did not have knowledge or information of the facts and circumstances underlying these causes of action prior to February 21, 2008, when HHV responded to the Attorney General's first document demand in connection with her investigation of HHV. Plaintiff did not discover these facts and circumstances prior to that date, and could not in the exercise of reasonable diligence have discovered them prior to that date.

FIRST CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

(Against Defendants ROGER, LYNCH, BECKLEY, ARNOLD, LEONARD, BLACK and DOES 1 through 25)

17. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each of the allegations of paragraphs 1 through 16 of this FAC.

18. Plaintiff is informed and believes and thereon alleges that at all times relevant herein, defendants ROGER, LYNCH, BECKLEY, ARNOLD, LEONARD, BLACK, and DOES 1 through 25 (hereinafter also collectively referred to as the "OFFICER/DIRECTOR DEFENDANTS"), were officers and/or directors of HHV and owed fiduciary duties of due care and loyalty to HHV. Plaintiff is further informed and believes and thereon alleges that each of the aforementioned defendants breached their duties of care and loyalty to HHV by engaging in, participating in, aiding and abetting, and facilitating unlawful actions, or omissions, including, but not limited to, the acts or omissions discussed in paragraphs 19 through 43 below in violation of common law trust principles and state statutes (including, but not limited to, Corporations Code section 5231).

A. False Reporting to the IRS and Others and Disseminating False Information to Potential Donors

***EZ Scores Gift-In-Kind Transaction**

19. In 2005, a Maryland company called EZScores, LLC ("EZScores") agreed to donate sports scorecards to another charity founded by defendant ROGER called the Coalition to Salute

America's Heroes ("CSAH"). CSAH was to distribute the scorecards to active-duty military (stateside and overseas). The scorecards were described as "calling cards" that allowed callers to obtain professional sports scores, times for games, and player statistics.

20. In or around 2006, defendants in this cause of action (hereafter "defendants") inserted HHV into the EZScores transaction "on paper," between the donor and CSAH, to enable both HHV and CSAH to claim the $18.75 million donation of scorecards as revenue and as program services expense. Under this scheme, defendants claimed that EZScores donated the scorecards to HHV who then donated them to CSAH.

21. Defendants caused HHV to file, with the Internal Revenue Service ("IRS") and the Attorney General's Registry of Charitable Trusts ("AG's Registry"), a false and misleading informational return (Form 990) for fiscal year 2005-2006 by erroneously including the $18.75 million EZScores gift-in-kind (scorecards) as revenue and including that same revenue as program services expense (subsequent "donation" to CSAH). Defendants also disseminated this information to the donating public. Defendants knew or should have known that HHV played no direct role in procuring the scorecards from EZScores, HHV did not distribute them, and HHV had no discretion over who would receive the scorecards. Further they knew or should have known that, at most, HHV acted as an agent or "pass-through entity" between the donor and CSAH. Given these facts, defendants knew or should have known that, under applicable accounting and other principles, HHV could not lawfully include the EZScores scorecards as revenue and as program services expense in their Form 990 that year. Plaintiff is informed and believes that defendants (a) included the EZScores scorecards as HHV revenue and (b) included HHV's purported subsequent "donation" to CSAH as program services expense in order to "boost" HHV's revenue and program services expense figures and to minimize its reported cost of fundraising. HHV's inclusion of the EZScores scorecards as revenue and as program services expense was improper, unfair, and unlawful, and was likely to mislead the IRS, potential donors, and others.

***Joint Cost Allocation**

22. Defendants caused HHV to file, with the IRS and the AG's Registry, Forms 990 for fiscal years ended July 31, 2003, through July 31, 2011, that were false and misleading because those returns substantially and unfairly understated HHV's fundraising costs and substantially and unfairly inflated HHV's program services expense by using "joint cost allocation." Joint cost allocation is a method of allocating the costs of a charity's "fundraising" activities to "program services" and/or "management" when the fundraising activities are conducted together with its program services and/or management activities. This reduces a charity's reported cost of fundraising, which is viewed very favorably by the donating public. Defendants knew or should have known, however, that given the facts and circumstances, including the fact that HHV selects recipients of its direct mail solicitations based on their ability or likelihood to contribute, under applicable legal and accounting principles, HHV was not lawfully entitled to allocate fundraising expenses to program services. Defendants also disseminated the false and misleading information in those returns to the public. The use of joint cost allocation in these returns unlawfully, unfairly, and deceptively inflated HHV's reported program services expense. Additionally, it unlawfully, unfairly, and deceptively decreased HHV's reported fundraising expenses from 65 percent of total expenses to less than 30 percent. The inaccurate Forms 990 likely misled potential donors and others into believing that HHV had fundraising efficiencies it did *not* actually have and that it had much larger program services expense than it actually had.

***"Donated Services"**

23. Defendants caused HHV to file, with the IRS and the AG's Registry, IRS Forms 990 for the fiscal years ended July 31, 2002, through July 31, 2011, that were false and misleading as related to the issue of "donated services." In violation of applicable federal tax law that the OFFICER/DIRECTOR DEFENDANTS knew or should have known, these HHV informational returns wrongfully claimed a total of over $40 million in "donated services" (public service announcements and shipping discounts) as revenue for that period and also claimed over $40 million in program services expense from that same wrongfully reported revenue. Inexplicably, however, these same informational returns falsely claimed that HHV did *not* receive "donated

services" during this time period. This false information was also disseminated to the donating public. This inaccurate and false information substantially and artificially inflated HHV's reported amounts for revenue and for program services expenses, which was improper, unfair, and unlawful, and was likely to mislead potential donors and others.

B. Excessive Executive Compensation

24. From August 15, 2002 to the present, defendants approved total compensation[2] packages for defendants ROGER and LYNCH at levels that were, and are, unreasonable and excessive, in violation of Corporations Code section 5235 and common law. Additionally, they unlawfully approved retroactive salary increases for defendant ROGER, which constituted a gift of charitable funds. This caused an unreasonable "spiking" of defendant ROGER's salary for purposes of calculating his HHV pension benefits. Defendant ROGER's lump-sum retirement payment under the Supplemental Executive Retirement Plan ("SERP") of $1.96 million was excessive and unreasonable. The SERP that defendants approved provides for excessive and unreasonable retirement benefits for HHV's officers. Plaintiff is informed and believes that defendant ROGER received more than $2.3 million in excessive and unreasonable compensation during the period of August 15, 2002, to the present. During the same period of time, defendant LYNCH received more than $900,000.00 in excessive and unreasonable compensation.

C. Other Unlawful Diversions and Waste of HHV's Assets

25. Defendants caused additional unlawful diversions and waste of HHV's assets including, but not limited to, the following:

(i) In 2006, they authorized the purchase of a condominium in Virginia for HHV without adequate inquiry into the prudence of that investment. The purchase of the condominium was an imprudent investment when HHV purchased it. Plaintiff is informed and believes and thereon alleges that HHV suffered a loss of over $150,000.00 from this investment;

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[2] As used in this FAC, "total compensation" includes salary, bonuses and all other employee benefits received from HHV.

(ii) They caused HHV to incur over $80,000.00 in wasteful and unreasonable expenses for golf memberships at Cross Creek Golf Club and later at Bear Creek Golf Club that, according to defendant R. CHAPIN, were simply a "perk" for board members;

(iii) They failed to have an adequate policy on employee reimbursements for travel, entertainment and gifts;

(iv) They failed to adequately monitor reimbursements to defendants ROGER and ELIZABETH for purported travel, entertainment and gifts;

(v) Defendant LYNCH authorized expense reimbursement claims of ROGER and ELIZABETH that they submitted without adequate substantiation and LYNCH authorized at least one double-reimbursement to ROGER;

(vi) Defendant LYNCH approved wasteful expense reimbursements to defendant ELIZABETH for gifts to the employees of HHV's fundraiser, American Target Advertising ("ATA"), ATA's president Richard Viguerie, and others; and

(vii) Defendants authorized an unlawful distribution of $18,500.00 to ROGER from HHV as a purported reimbursement for a deposit he made on a condominium (which payment was later deemed to be additional, but unauthorized, compensation).

D. <u>Breaches of Fiduciary Duty re: Conquer Cancer and Alzheimer's Now</u>

26. In or around September 2001, the OFFICER/DIRECTOR DEFENDANTS approved a grant of $500,000.00 to a "start-up" nonprofit corporation founded by defendant ROGER called Conquer Cancer and Alzheimer's Now ("CCAN"). ROGER was President of CCAN at that time. Defendants knew or should have known that the grant was an unlawful diversion of HHV's assets because it was not in furtherance of HHV's charitable purpose. Further, the OFFICER/ DIRECTOR DEFENDANTS failed to conduct sufficient inquiry into the purpose and use of the grant funds and failed to require any accounting of how CCAN spent the funds. HHV has been damaged in the sum of $500,000.00 plus interest at the legal rate as a result of this breach of fiduciary duty.

27. Defendants caused HHV to file false IRS Forms 990 for the fiscal years ended July 31, 2002, July 31, 2003, and July 31, 2004, because each of those Forms 990 failed to disclose that HHV gave CCAN grant funds.

28. One of HHV's direct mail fundraisers, ATA, is owned, at least in part, by Richard Viguerie ("VIGUERIE"), a long-time friend of defendant ROGER. On information and belief, in or around 2005, ROGER and VIGUERIE (the latter on ATA's behalf) agreed that ATA would reimburse CCAN $500,000.00 of the purported operational costs CCAN incurred during an earlier direct mail campaign ATA conducted for CCAN. On information and belief, pursuant to that agreement, during the period of January 2, 2006, through March 24, 2007, ATA deposited over $447,000.00 into CCAN's financial account. During that same period, another corporation called American Mailing Lists Corporation (AMLC) (also owned at least in part by VIGUERIE) deposited over $50,000.00 into CCAN's financial account. During that same period, defendant ROGER paid himself more than $493,000.00 from CCAN's financial account, despite the fact that, according to available bank records, he did not deposit any funds into CCAN's account.

29. Defendant ROGER has admitted in writing that CCAN's activities ceased in early 2004, which was long *before* ROGER paid himself large sums from CCAN's financial account. ROGER breached his duty of loyalty to HHV and acted in bad faith when he wrongfully diverted to himself the funds ATA and AMLC deposited into CCAN's account instead of refunding/reimbursing HHV for the improper $500,000.00 grant it made to CCAN in 2001. Further, by unlawfully diverting CCAN's funds to himself, defendant ROGER personally seized HHV's opportunity for repayment of the improper grant, to the obvious detriment of HHV. As a result of defendant ROGER's bad faith and breach of the duty of loyalty to HHV, HHV has been damaged in the amount of $500,000.00 plus interest at the legal rate.

30. Plaintiff is informed and believes and thereon alleges that defendant ROGER destroyed CCAN's records that were in his possession, custody and control, or caused them to be destroyed. Plaintiff is informed and believes that such destruction occurred after or around the time the United States Congressional Committee on Oversight and Government Reform conducted hearings on veterans charities, including HHV, and subpoenaed defendant ROGER to testify.

Further, such destruction occurred after defendant ROGER was aware of the California Attorney General's investigation of HHV. The destruction of CCAN's records by defendant ROGER and/or at his direction was in bad faith and a breach of defendant ROGER's duties of care and loyalty to HHV.

E. <u>Imprudent Loans to, and Self-Dealing Transactions with, Fundraiser ATA</u>

31. From 2003 through 2006, defendants caused HHV to provide at least four loans to its for-profit fundraiser, ATA, in an approximate total amount of $800,000.00. The loans were unsecured and imprudent and ATA failed to repay the loans in full.

32. In or around January 2006, defendants caused HHV to provide a $250,000.00 loan to ATA. When defendants approved this loan, defendant ROGER had a material financial interest in the transaction because he was receiving substantial funds from ATA through CCAN's bank account. On information and belief, defendants knew about defendant ROGER's material financial interest at the time they approved the January 2006 HHV loan to ATA. Alternatively, if they did not know, defendant ROGER wrongfully concealed that fact from them, acted in bad faith, and breached his duty of loyalty to HHV. Given defendant ROGER's material financial interest, the loan to ATA was a self-dealing transaction as defined by Corporations Code section 5233. In violation of section 5233, defendants failed to follow the requirements for entering into this self-dealing transaction and the Attorney General gave no consent for the transaction. HHV was damaged in excess of $43,000.00 by ATA's failure to make full repayment of this self-dealing loan.

33. From January 2006 through March 2007, defendants caused HHV to enter into fundraising contracts and agreements with ATA at a time when defendant ROGER had a material financial interest in the contracts and agreements. Defendants knew or should have known of defendant ROGER's material financial interest in the contracts and agreements because he was receiving substantial funds from ATA through CCAN's bank account. Alternatively, if they did not know, defendant ROGER wrongfully concealed that fact from them, acted in bad faith, and breached his duty of loyalty to HHV. In violation of Corporations Code section 5233, defendants

failed to follow the requirements for entering into these self-dealing transactions and the Attorney General gave no consent for the transactions.

F. Self-Dealing Transactions and Other Breaches of Duty Related to CSAH

34. CSAH is an Internal Revenue Code section 501(c)(3) nonprofit corporation incorporated in the District of Columbia by defendant ROGER in or around 1984 under another name. In 2004, defendant ROGER and others changed the name of the corporation from Allstar Kids to Salute America's Heroes, and then from Salute America's Heroes to CSAH. Its current principal address is in the State of Connecticut. According to its March 2005 amended articles of incorporation, the charitable purposes of CSAH include "[t]o recognize the service of America's active duty military personnel and veterans" and "[t]o advocate government policies providing fair health and disability assistance to disabled veterans." At all times relevant herein, defendant ROGER was an officer and director of CSAH at the same time he was an officer and director of HHV.

35. In July or August 2004, HHV made a $250,000.00 loan to CSAH. On or about October 15, 2004, the OFFICER/DIRECTOR DEFENDANTS other than ROGER passed a resolution authorizing a $2.5 million loan to CSAH, inclusive of amounts already granted or loaned, with an option to declare the loan a grant or donation at a later time. In April 2005, all members of the Board, including defendant ROGER, signed "Consent Minutes" changing the $2.5 million loan to a grant. In November 2005, defendants other than ROGER passed a resolution for a $750,000.00 grant to CSAH for CSAH's Emergency Relief Program to present small grants to active-duty injured troops for Christmas. When defendants authorized the aforementioned $250,000.00 and $2.5 million loans to CSAH, when these defendants changed the $2.5 million loan to a grant, and when defendants approved the $750,000.00 grant to CSAH in November 2005, defendant ROGER had a material financial interest in the transactions because he made personal loans to CSAH.

36. All of the transactions described in paragraph 35, above, constituted self-dealing transactions and, in violation of Corporations Code section 5233, defendants failed to follow the

requirements for such transactions. The Attorney General did not consent to any of these transactions.

37. Defendants knew or should have known that all of the transactions involving CSAH described in paragraph 35, above, were self-dealing transactions. In the alternative, if the defendants other than ROGER did not know of the self-dealing nature of these loan transactions, it was because defendant ROGER wrongfully concealed his personal loans to CSAH from the other defendants in bad faith and in breach of his duties of care and loyalty to HHV.

38. In addition, the November 2005 $750,000.00 grant from HHV to CSAH was "restricted" and was required to be used to provide $500.00 individual grants to 1,500 active-duty injured troops for Christmas. Defendants breached their duty of care to HHV because they failed to ensure that the grant funds were used for that purpose. Plaintiff is informed and believes that at least $200,000.00 from this grant was not used to provide individual grants to active-duty troops for Christmas and was used for some other purpose.

39. In March 2009, defendants approved a $750,000.00 line of credit from HHV to CSAH by Consent Minutes. Defendant ROGER breached his fiduciary duty of loyalty and care to HHV by encouraging and facilitating the loan to CSAH when, as President of CSAH, he knew or should have known of the dire financial condition of CSAH at the time. Defendants breached their fiduciary duty to HHV by failing to make a reasonable inquiry into the prudence of the loan or the terms under which the loan would be made. The loan was imprudent given the dire financial condition of CSAH at the time, and for this reason, the terms of the loan were not fair and reasonable to HHV.

G. <u>"Back-dating" of Corporate Documents</u>

40. In or around December 2004, defendants ROGER and LYNCH caused defendants LEONARD and BECKLEY to sign false, "back-dated" resignations from the board of directors of CSAH. Defendants ROGER and LYNCH also caused the board of directors of CSAH to sign other "back-dated" documents related to loans CSAH received from HHV. The referenced documents were all "back-dated," at least in part, in an attempt to hide the conflicts of interest of LEONARD and BECKLEY related to HHV's loans to CSAH (since LEONARD and BECKLEY

were directors of both HHV and CSAH when the earlier loans were made). Defendants ROGER and LYNCH breached their duties of care and loyalty to HHV by "back-dating" the referenced documents, which were later produced to the California Attorney General's Office in connection with its investigation of HHV.

H. Loan to Defendant LYNCH that Violated Corporations Code Section 5236

41. Defendants caused a loan to be made to defendant LYNCH that violated Corporations Code section 5236 because there was inadequate security for the loan, it was not approved in advance by the Attorney General, and the exception set forth in section 5236, subdivision (c) did not apply because the board failed to make any findings as required by that subdivision. Given the inadequate security, the Attorney General would not have approved the loan.

I. Misrepresentations to Donors in HHV's Direct Mail Solicitations

42. In or around October 2007, defendants caused misrepresentations to be made to HHV's donors and potential donors in its direct mail solicitations. These misrepresentations include, but are not limited to, misrepresentations that "[t]his mailing was produced by Help Hospitalized Veterans, which retains 100% of the contributions made." This statement, made in one of the direct mail solicitation campaigns defendant CDR conducted for HHV, was false, misleading, and deceptive and would likely lead a reasonable donor to believe that there were minimal or no fundraising expenses associated with the solicitation campaign. In actuality, HHV incurred substantial fundraising costs that were paid from the contributions received from that solicitation campaign.

J. Failures to Honor "Do Not Mail" Requests

43. From at least January 2009, defendants failed to honor the "Do Not Mail" requests of many individuals who received direct-mail solicitation materials from HHV. Defendants' failure to stop mailing HHV solicitation materials to these individuals, despite HHV's receipt of their prior requests that the mailings stop, constituted an unfair practice prohibited by Government Code section 12599.6.

44. At all times relevant herein, the individual defendants named in this cause of action failed to act in good faith, in the best interests of HHV, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

45. As a proximate cause of the breaches of fiduciary duty of care and loyalty of defendants ROGER, LYNCH, BECKLEY, LEONARD, ARNOLD, BLACK, and DOES 1 through 25, HHV and its charitable beneficiaries incurred damages and civil penalties in an amount presently unknown to the Attorney General and which cannot be ascertained without an accounting by these defendants. Plaintiff is entitled to an accounting from these defendants (from August 15, 2002, to the present) for their expenditures and disposition of all income and assets which they obtained from, or improperly diverted from, HHV to one or more individual defendant or otherwise wasted through their breach of fiduciary duty. The facts necessary to ascertain the exact amount of damages to HHV and its charitable beneficiaries are within the special knowledge of the aforementioned defendants. However, the Attorney General estimates the total damages proximately caused by the actions and omissions of the defendants set forth in this cause of action exceed $4.4 million.

46. The acts as alleged in this cause of action were willful, wanton, malicious and oppressive and were undertaken with the intent to defraud HHV, its charitable beneficiaries, and its potential donors and thus justify the awarding of exemplary and punitive damages against the defendants.

47. By reason of the acts alleged in this cause of action, the OFFICER/DIRECTOR DEFENDANTS failed to comply with the trust which they assumed and departed from the public and charitable purposes they were bound to serve. In order to preserve and conserve the assets of HHV and in order to prevent waste, dissipation and loss of charitable assets and to prevent further misrepresentations to the donating public in this and other states, it is necessary that the injunctive relief prayed for, including, but not limited to, the removal of the OFFICER/DIRECTOR DEFENDANTS as officers and directors of HHV, be granted.

48. Plaintiff is also entitled to payment of its attorney fees and costs on this cause of action.

SECOND CAUSE OF ACTION

AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY

(Against Defendants ROBERT FRANK, FRANK & CO. and DOES 1 through 50)

49. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each of the allegations of paragraphs 1 through 48 of this FAC.

50. The OFFICER/DIRECTOR DEFENDANTS breached their fiduciary duty of care to HHV, *inter alia,* by causing HHV to file false and misleading informational returns with the IRS and with the AG's Registry and by disseminating the false information to the donating public. As alleged in paragraphs 19-23, above, the misrepresentations in the informational returns included, but are not limited to, (a) overstating gifts-in-kind revenue by including donated services, (b) overstating revenue and program-services expense related to the EZScore scorecards transaction, and (c) using the joint cost allocation method to artificially inflate program services expense and unfairly minimize fundraising costs. These "gimmicks" caused HHV's revenue, program services expense, and fundraising expense numbers to be skewed in such a way to mislead potential donors and others into believing HHV had revenue, program services expenditures, and fundraising efficiencies that it did not have.

51. As set forth in paragraphs 26 and 27, above, the OFFICER/DIRECTOR DEFENDANTS also breached their fiduciary duty of care to HHV by causing HHV to file, with the IRS and the AG's Registry, returns for the fiscal years ending in July of 2002, 2003, and 2004, that were false and misleading because those 990's failed to disclose that HHV gave CCAN grant funds during those years. This false information was disseminated to the donating public.

52. Defendants FRANK, FRANK & CO. and DOES 1-50 aided and abetted the breach of duty of the OFFICER/DIRECTOR DEFENDANTS as alleged in paragraphs 19-23, 26, 27, 50, and 51, above, by preparing and filing these false and misleading returns with the IRS and the AG's Registry, and by causing the returns to be disseminated to the donating public. These defendants knew or should have known that the information in these returns was false and that the filing of the returns was unlawful. Defendants knew or should have known that the "gimmicks" HHV used with the help of these defendants, were likely to mislead potential donors and others

into believing HHV had revenue, program services expenditures, and fundraising efficiencies that it did not have.

53. Defendants FRANK and FRANK & CO. also aided and abetted the breach of duty of the OFFICER/DIRECTOR DEFENDANTS by preparing and giving them a document entitled "Accounting for Gifts-In-Kind," which FRANK and FRANK & CO. knew or should have known contained false information related to the EZScores donation of scorecards. Defendant LYNCH caused that document to be delivered to the BBB Wise Giving Alliance in 2008 and to the California Attorney General as justification for HHV's claim of $18.5 million gift-in-kind revenue and program services expense related to the EZScores donation of scorecards.

54. In January 2012, defendants FRANK and FRANK & CO. also aided and abetted the breach of fiduciary duty of the OFFICER/DIRECTOR DEFENDANTS related to HHV's use of joint cost allocation by preparing and delivering to HHV's employee in charge of its direct mail fundraising program with ATA, Luann Peterson, a memorandum entitled "Help Hospitalized Veterans Direct Mail Program Audience Selection Summary." Defendants FRANK and FRANK & CO. prepared and sent the memorandum to prepare Ms. Peterson for her interview by the Attorney General's staff the following day. Defendant FRANK stated it consisted of "talking points," several hypothetical questions that the California Attorney General's staff might ask her, and responses to each question. FRANK and FRANK & CO. knew or should have known that the memorandum contained false information concerning how donors are selected to receive HHV's direct mail solicitations. Defendants intended the false information to mislead the Attorney General's staff.

55. In or around October 2009, defendants FRANK and FRANK & CO. prepared and delivered to HHV's Board a memorandum dated October 2, 2009, stating an opinion and conclusions related to the salary, cash compensation and total compensation to be paid to "the senior management individual" (President) of HHV. Plaintiff is informed and believes and thereon alleges that the Board relied on this memorandum in setting the excessive and unreasonable salary, total cash compensation, and/or total compensation of defendant LYNCH.

56. Plaintiff is informed and believes and thereon alleges that defendants FRANK, FRANK & Co. and DOES 1-50 aided and abetted and/or participated in the breach of duty of the OFFICER/DIRECTOR DEFENDANTS for the purpose of advancing their own interests or financial advantage.

57. As a proximate result of the aiding and abetting and/or participating in the breach of duty of defendants as alleged in this cause of action, HHV and its charitable beneficiaries have been damaged in an amount presently unknown to plaintiff but believed to be in excess of $300,000.00.

58. In doing the acts alleged in this cause of action, defendants FRANK and FRANK & CO. and DOES 1-50 acted in callous disregard of the rights of HHV, its charity beneficiaries, and its donors knowing that their conduct was substantially certain to injure them. In doing the acts alleged in this cause of action, defendants and each of them engaged in fraudulent, oppressive and malicious conduct and plaintiff is, therefore, entitled to an award of punitive damages in an amount to be decided at the time of trial.

59. Plaintiff is also entitled to its attorney fees and costs on this cause of action.

<u>THIRD CAUSE OF ACTION</u>

ENGAGING IN SELF-DEALING TRANSACTIONS

(Against Defendant ROGER and DOES 1 through 25)

60. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each of the allegations of paragraphs 1 through 16, 18, and 26 through 37 of this FAC.

61. The January 2006 $250,000.00 loan HHV made to ATA constituted a self-dealing transaction as to defendant ROGER within the meaning of Corporations Code section 5233 and none of the exceptions set forth in that section applies. At the time of the loan to ATA, defendant ROGER was a director of HHV and had a material financial interest because he was receiving funds from ATA through CCAN's financial account. The transaction was not approved by the California Attorney General and it was not fair and reasonable to HHV at the time it occurred.

62. As a proximate result of the loan referenced in paragraph 61, above, HHV and its charitable beneficiaries have been damaged in an amount of at least $43,000.00, plus interest at

the legal rate, which must be paid by defendant ROGER. In addition, pursuant to section 5233, plaintiff is entitled to an accounting from defendant ROGER for any profits or other benefits he made/received from the loan and he must be ordered to pay those profits/benefits over to HHV.

63. Defendant ROGER's actions related to HHV's 2006 loan to ATA were fraudulent and thus justify an award of punitive damages according to proof.

64. The agreements HHV entered into with ATA during the period of January 2006 through March 2007 constituted self-dealing transactions as to defendant ROGER within the meaning of Corporations Code section 5233 and none of the exceptions set forth in that section applies. At the time HHV entered into the agreements, defendant ROGER was a director of HHV and had a material financial interest because he was receiving monies from ATA through CCAN's accounts. The agreements were not approved by the California Attorney General and they were not fair and reasonable to HHV at the time they occurred.

65. Pursuant to section 5233, plaintiff is entitled to an accounting from defendant ROGER for any profits or other benefits he made/received from the agreements and he must be ordered to pay them over to HHV. To the extent HHV suffered any damages as a proximate result of the agreements, defendant ROGER must pay those damages to HHV.

66. Defendant ROGER's actions related to HHV's agreements with ATA during the period of January 2006 through March 2007 were fraudulent and thus justify an award of punitive damages according to proof.

67. The $250,000 loan HHV made to CSAH (2004), the $750,000 grant HHV made to CSAH (2005), the $2.5 million loan HHV made to CSAH (2004), and subsequent conversion of the $2.5 million loan to a grant (2005) all constituted self-dealing transactions as to defendant ROGER within the meaning of Corporations Code section 5233 and none of the exceptions set forth in that section applies. When HHV made these loans and grant, defendant ROGER was a director of HHV and had a material financial interest in the transactions because he made personal loans to CSAH. The transactions were not approved by the California Attorney General and plaintiff is informed and believes that they were not fair and reasonable to HHV at the time they occurred.

68. Pursuant to section 5233, plaintiff is entitled to an accounting from defendant ROGER for any profits or other benefits he made/received from the loans and grant to CSAH referenced in paragraph 67, above, and must be ordered to pay them over to HHV. To the extent HHV suffered any damages as a proximate result of these transactions, defendant ROGER must pay those damages over to HHV.

69. Plaintiff is also entitled to payment of its attorney fees and costs on this cause of action.

FOURTH CAUSE OF ACTION

EXCESSIVE EXECUTIVE COMPENSATION

(Against Defendants ROGER, LYNCH and DOES 1 through 25)

70. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each of the allegations of paragraphs 1 through 18 and 24 of this FAC.

71. Defendant ROGER's total compensation (including salary, bonuses, and retirement benefits) for the period of August 15, 2002, through July 31, 2009, was unreasonable and excessive, in violation of Corporations Code section 5235. Further, ROGER received retroactive salary raises that were unlawful, unwarranted and improperly authorized in order to "spike" his pension benefits. Defendant ROGER's Supplemental Executive Retirement Plan ("SERP") benefit of $1.96 million was, likewise, unreasonable and excessive.

72. The total amount of excessive and unreasonable total compensation HHV paid defendant ROGER is presently unknown but is believed to be in excess of $2.3 million. Pursuant to Corporations Code section 5235, Government Code section 12586, subdivision (g), and common law, defendant ROGER must pay over to HHV all compensation he received that was not just and reasonable.

73. Defendant LYNCH's total compensation (including base salary, bonuses and retirements benefits) for the period of August 15, 2002, to the present was unreasonable and excessive, in violation of Corporations Code section 5235. Defendant LYNCH also wrongfully received a retroactive bonus. To the extent defendant LYNCH received any retirement benefits under an HHV SERP, such benefits were unreasonable and excessive.

74. The total amount of excessive and unreasonable compensation HHV paid defendant LYNCH is presently unknown but is believed to be in excess of $900,000.00. Pursuant to Corporations Code section 5235, Government Code section 12586, subdivision (g), and common law, defendant LYNCH must pay over to HHV all compensation he received that was not just and reasonable.

75. Plaintiff is also entitled to payment of its attorney fees and costs on this cause of action.

FIFTH CAUSE OF ACTION

WRONGFUL ACQUISITION OF PROPERTY/UNJUST ENRICHMENT

[CIVIL CODE SECTION 2224]

(Against Defendants ROGER, ELIZABETH, LYNCH and DOES 1 through 50)

76. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each of the allegations of paragraphs 1 through 18, 24, 25, and 44 of this FAC.

77. Defendant ROGER's total compensation (including salary, bonuses, and retirement benefits) for the period of August 15, 2002, through July 31, 2009, was unreasonable and excessive, in violation of Corporations Code section 5235 and common law. Further, ROGER received retroactive salary raises that were unlawful, unwarranted and improperly authorized in order to "spike" his pension benefits. Defendant ROGER's Supplemental Executive Retirement Plan ("SERP") benefit of $1.96 million was, likewise, unreasonable and excessive.

78. Defendant ROGER acquired the excessive and unreasonable total compensation alleged in paragraphs 24 and 77, above, as a result of a breach of trust of the OFFICER/ DIRECTOR DEFENDANTS. The total amount of excessive and unreasonable total compensation paid to defendant ROGER is presently unknown but is believed to be in excess of $2.3 million. As a result of the breach of trust, ROGER was unjustly enriched and HHV and its charitable beneficiaries were injured. By virtue of the breach of trust, defendant ROGER holds all excessive and unreasonable compensation he received from HHV as a constructive trustee for the benefit of HHV. Defendant ROGER must fully account for all compensation he received as a result of the breach of trust and he must make full restitution by paying all such compensation back to HHV.

79. Defendant LYNCH's total compensation (including base salary, bonuses and retirements benefits) for the period of August 15, 2002, to the present was unreasonable and excessive, in violation of Corporations Code section 5235 and common law. Defendant LYNCH also wrongfully received a retroactive bonus. To the extent defendant LYNCH received any retirement benefits under an HHV SERP, such benefits were unreasonable and excessive.

80. Defendant LYNCH acquired the excessive and unreasonable compensation alleged in paragraphs 24 and 79, above, as a result of a breach of trust of the OFFICER/DIRECTOR DEFENDANTS. The total amount of excessive and unreasonable compensation paid to defendant LYNCH is presently unknown but is believed to be in excess of $900,000.00. As a result of the breach of trust, LYNCH was unjustly enriched and HHV and its charitable beneficiaries were injured. By virtue of the breach of trust, defendant LYNCH holds all excessive and unreasonable compensation he received from HHV as a constructive trustee for the benefit of HHV. Defendant LYNCH must fully account for all compensation he received as a result of the breach of trust and he must make full restitution by paying all such compensation back to HHV.

81. After August 15, 2002, as a result of the breach of trust of the OFFICER/DIRECTOR DEFENDANTS, defendant ROGER was also unjustly enriched in excess of $24,500.00 as a result of (a) expense reimbursements he received from HHV without any, or grossly inadequate, substantiation of such expenses, and (b) expense reimbursements he received from HHV to which he was not entitled. By virtue of the breach of trust, defendant ROGER holds all excessive reimbursements he received from HHV and all reimbursements he received for unsubstantiated expenses as a constructive trustee for the benefit of HHV. He must fully account for all benefits he received as a result of the breach of trust and must make full restitution by paying all such reimbursements back to HHV.

82. After August 15, 2002, as a result of the breach of trust of defendant LYNCH, defendant ELIZABETH was unjustly enriched in the amount of at least $5,500.00 as a result of (a) expense reimbursements to which she was not entitled, and (b) expense reimbursements she received from HHV without any, or grossly inadequate, substantiation of such expenses. By

virtue of the breach of trust, defendant ELIZABETH holds all excessive reimbursements she received from HHV and all reimbursements she received for unsubstantiated expenses as a constructive trustee for the benefit of HHV. Defendant ELIZABETH must fully account for all benefits she received as a result of the breach of trust and she must make full restitution by paying all such benefits back to HHV.

83. Plaintiff is also entitled to payment of its attorney fees and costs on this cause of action.

SIXTH CAUSE OF ACTION

MISREPRESENTATIONS AND OTHER PROHIBITED ACTS RELATED TO HHV'S SOLICITATIONS

[GOVERNMENT CODE SECTION 12599.6]

(Against Defendants HHV, ROGER, LYNCH, BECKLEY, ARNOLD, LEONARD, BLACK, CDR and DOES 1 through 50)

84. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each of the allegations of paragraphs 1 through 16, 42, and 43 of this FAC.

85. In connection with the solicitation campaign CDR conducted for, and/or consulted with, HHV in or around October 2007, defendants in this cause of action (defendants) told potential donors in direct mail solicitations "This mailing was produced by Help Hospitalized Veterans, which retains 100% of the contributions made." This statement was false, misleading, and deceptive and would likely lead a reasonable donor to believe that there were minimal or no fundraising costs associated with the campaign. In actuality, substantial fundraising costs were paid from the contributions made in that solicitation campaign.

86. As a result of the aforementioned misrepresentation to over 40,000 potential donors, pursuant to Government Code section 12591.1, plaintiff is entitled to civil penalties in an amount which is presently unknown, but believed to be in excess of $4 million.

87. Because this misrepresentation was proximately caused by CDR and by the breach of trust of the OFFICER/DIRECTOR DEFENDANTS and DOES 1 through 50, all penalties and attorney fees and costs should be assessed against CDR, the OFFICER/DIRECTOR DEFENDANTS, and DOES 1 through 50, and not HHV.

88. From at least January 2009, HHV, the OFFICER/DIRECTOR DEFENDANTS, and DOES 1 through 50 failed to honor the "Do Not Mail" requests of many individuals who received direct-mail solicitation materials from HHV. Defendants' failure to stop mailing HHV solicitation materials to these individuals, despite HHV's receipt of their prior requests that the mailings stop, constituted an unfair practice prohibited by Government Code section 12599.6. Pursuant to Government Code section 12591.1, plaintiff is entitled to civil penalties in an amount which is presently unknown, but believed to be in excess of $100,000. Because the penalties proximately result from the actions/inactions of the OFFICER/DIRECTOR DEFENDANTS, such penalties, attorney fees, and costs should be assessed against those defendants.

89. Plaintiff is entitled to attorney fees and costs on this cause of action.

SEVENTH CAUSE OF ACTION

ENGAGING IN UNFAIR COMPETITION IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 ET SEQ.

(Against Defendants HHV, ROGER, LYNCH, BECKLEY, ARNOLD, LEONARD, BLACK, FRANK, FRANK & CO. and DOES 1 through 50)

90. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each of the allegations of paragraphs 1 through 21, 26, 28, 29, 30, 40, and 43 of this FAC.

91. Defendants HHV, ROGER, LYNCH, BECKLEY, ARNOLD, LEONARD, BLACK, FRANK, FRANK & CO., and DOES 1 through 50 violated Business and Professions Code section 17200 et seq. by engaging in unlawful, unfair or fraudulent business acts or practices that include, but are not limited to, the following:

(i) In or around January 2007, defendants filed or caused to be filed with the IRS and with the AG's Registry a false and misleading IRS Form 990 for HHV for fiscal year 2005-2006. Defendants also disseminated the false information from that return to the public. Hidden within the reported total-revenue figure in that return was an $18.75 million gift-in-kind donation of scorecards from EZScores. Additionally, hidden within the total program services expense figure was a purported gift-in-kind of the same scorecards to CSAH. Defendants knew or should have known that under applicable law and accounting principles, HHV was not entitled to claim/report the EZ Scorecards as gift-in-kind revenue and was not entitled to report the EZ Scorecards as program-services expense. This unlawful, unfair, and deceptive "boosting" of HHV's revenue and program services expense figures was likely to mislead charity regulators, potential donors, and others. Defendants fraudulently concealed the true nature of the EZScores donation, i.e. that HHV acted as merely a "pass through" or agent of CSAH and was wrongfully added as a donee "on paper," to inflate HHV's revenue and program services expense figures. Plaintiff could not reasonably have known of the existence of this violation of section 17200 until after March 2009 when CSAH, the only "true" recipient of the EZScores donation at issue, produced documents to the Attorney General related to that donation.

(ii) After January 1, 2009, defendants filed or caused to be filed with the IRS and with the AG's Registry IRS Forms 990 for HHV for fiscal years ended July 31, 2008, July 31, 2009, July 31, 2010, and July 31, 2011, that were false and misleading because those returns substantially and unfairly understated fundraising costs and substantially and unfairly inflated program services expense by using "joint cost allocation." Defendants knew or should have known that, given the facts and circumstances, under applicable legal and accounting principles, HHV was not lawfully entitled to use joint cost allocation to allocate fundraising expenses to program services expenses. Defendants also disseminated the false and misleading information in those returns to the public. The use of joint cost allocation in these returns unlawfully, unfairly, and deceptively (a) inflated HHV's program services expenses, and (2) decreased the percentage of fundraising expenses of HHV's total expenses from 65 percent to less than 30 percent. The inaccurate Forms 990 likely misled potential donors and others into believing that HHV had fundraising efficiencies it did not actually have.

(iii) After January 1, 2009, defendants filed or caused to be filed with the IRS and with the AG's Registry IRS Forms 990 for HHV for fiscal years ended July 31, 2008, July 31, 2009, July 31, 2010, and July 31, 2011, that were false and misleading because each of those returns (a) wrongfully included donated services as revenue and (b) wrongfully reported program-services expenses from those same donated services. Defendants also falsely and fraudulently claimed in each of these informational returns that HHV did *not* receive "donated services." Defendants disseminated the false and misleading information from those returns to the public. Defendants knew or should have known that the false and misleading revenue figures and program-services expense figures were contrary to applicable federal tax law and were unfair and deceptive. The inclusion of this information unfairly and deceptively "boosted" HHV's revenue and program services expense numbers and was likely to mislead donors and others.

92. Defendant ROGER also violated Business and Professions Code section 17200 et seq. by engaging in unlawful, unfair or fraudulent business acts or practices that include, but are not limited to, the following:

(i) He used CCAN's financial account as a "pass-through account" in order to accept large sums of money from HHV's contractors, ATA and AMLC; and

(ii) He destroyed CCAN's records or caused them to be destroyed after he knew of the Attorney General's investigation of HHV.

Defendant ROGER fraudulently concealed the payments he received from ATA through CCAN's account and hid the fact that he destroyed CCAN's documents or caused them to be destroyed. Plaintiff could not reasonably have known of the existence of these violations of section 17200 until after May 23, 2010, when defendant ROGER first advised the Attorney General in writing that his records with respect to CCAN "ha[d] been discarded," causing the Attorney General to issue a subpoena for bank records to CCAN's financial institution.

93. Defendants ROGER and LYNCH also violated Business and Professions Code section 17200 et seq. by backdating corporate documents in an attempt to hide conflicts of interest related to HHV's loans to CSAH as alleged in paragraph 40, above. Defendants fraudulently concealed this falsification of HHV's corporate records and plaintiff could not reasonably have known of

the existence of these violations of section 17200 until after July 17, 2009, when plaintiff first received the back-dated documents from CSAH in response to a document demand.

94. From at least January 2009, HHV and the OFFICER/DIRECTOR DEFENDANTS failed to honor the "Do Not Mail" requests of many individuals who received direct-mail solicitation materials from HHV. Defendants' failure to stop mailing HHV solicitation materials to these individuals, despite HHV's receipt of their prior requests that the mailings stop, constituted an unfair business practice prohibited by Business and Professions Code section 17200. Pursuant to section 17206, plaintiff is entitled to civil penalties in an amount which is presently unknown, but believed to be in excess of $100,000. Because the penalties proximately result from the actions/inactions of defendants other than HHV, such penalties, attorney fees and costs should be assessed against all defendants other than HHV.

95. As a result of the aforementioned acts of unfair competition, plaintiff is entitled to civil penalties under Business and Professions Code section 17206 in an amount which is presently unknown, but believed to be in excess of $197,500.

96. Pursuant to Business and Professions Code section 17203, plaintiff is further entitled to injunctive relief against the defendants named in this cause of action and DOES 1 through 50, prohibiting them from engaging in further acts of unfair competition.

WHEREFORE, plaintiff prays for judgment as follows:

1. That an order issue directing all named individual defendants, and DOES 1-50 and each of them, to render to the Court and to the Attorney General a full and complete accounting of their dealings with HHV from August 15, 2002, to the present. Upon the rendering of such accounting, that the Court do the following: (a) determine the property, real or personal, or the proceeds thereof, to which HHV and the charitable beneficiaries thereof are lawfully entitled, in whatsoever form and in whosoever hands they may now be, and order and declare that all such property or the proceeds thereof is impressed with a trust for charitable purposes; (b) that defendants are constructive trustees of all such charitable funds and assets in their possession, custody or control; (c) and that the same shall be deposited forthwith in Court by each and every defendant now holding or possessing the same or claiming any rights, title or interest therein. In

addition, that all named individual defendants and DOES 1 through 50 be surcharged and held liable and judgment entered against each of them for any and all such assets for which they fail to properly account, together with interest thereon at the legal rate from the date of liability thereon;

2. On the First Cause of Action, for damages due HHV and its charitable beneficiaries resulting from the breaches of fiduciary duty of defendants in that cause of action in an amount to be determined following an accounting from defendants, plus interest at the legal rate until the judgment is paid;

3. On the First Cause of Action, for a declaration that HHV's Supplemental Employee Retirement Plan is unlawful because it provides for excessive and unreasonable total compensation for HHV's executives;

4. On the Second Cause of Action, for damages due HHV and its charitable beneficiaries from defendants in that cause of action resulting from their aiding and abetting in, or participation in, the breaches of duty of care of the OFFICER/DIRECTOR DEFENDANTS, plus interest at the legal rate until the judgment is paid;

5. On the Third Cause of Action, for an order compelling defendant ROGER to provide an accounting of any profits or other benefits he made/received from the self-dealing transactions alleged and compelling him to pay them over to HHV along with interest at the legal rate. To the extent HHV suffered any damages as a proximate result of these transactions, for an order compelling defendant ROGER to pay them over to HHV;

6. On the Fourth Cause of Action, for an order compelling defendants ROGER and LYNCH to pay over to HHV all compensation they received in excess of just and reasonable compensation along with interest at the legal rate;

7. On the Fifth Cause of Action, for an order requiring defendants in that cause of action to account for all excessive total compensation and expense reimbursements to which they were not entitled that they received as a result of the breaches of trust; for an order that defendants hold all such benefits in trust for the benefit of HHV and its charitable beneficiaries; and, for an order compelling defendants to pay all such undue benefits to HHV;

8. On the Sixth Cause of Action, that the court assess civil penalties exceeding $4.1 million against defendants in that cause of action and provide that all such penalties be paid by defendants other than HHV;

9. On the Sixth Cause of Action, for a preliminary and permanent injunction enjoining defendants in that cause of action, their successors, agents, representatives, employees and all persons who act in concert with, or on behalf of, from making misrepresentations in violation of Government Code section 12599.6 and engaging in any other violation of that statute;

10. On the Seventh Cause of Action, that the court assess civil penalties exceeding $197,500 against defendants in that cause of action pursuant to Business and Professions Code section 17206 and order that all such penalties be paid by defendants in that cause of action other than HHV;

11. On the Seventh Cause of Action, pursuant to Business and Professions Code section 17203, for a preliminary and permanent injunction enjoining defendants in that cause of action, their successors, agents, representatives, employees and all persons who act in concert with, or on behalf of, defendants from engaging in unfair competition as defined in Business and Professions Code section 17200, including, but not limited to, those acts and omissions alleged in this First Amended Complaint;

12. On all causes of action, for the removal of defendants ROGER, LYNCH, BECKLEY, ARNOLD, LEONARD, BLACK and DOES 1 through 25 as officers and/or directors of HHV as provided by Corporations Code section 5223 and as otherwise authorized by law and for an order prohibiting each of them from exercising any control or influence in the operations and affairs of HHV during the existence of the corporation;

13. On the First, Second, and Third Causes of Action, for punitive and exemplary damages according to proof;

14. On all causes of action, for plaintiff's costs of suit and other costs pursuant to Government Code sections 12597 and 12598, and as otherwise permitted by law;

15. On all causes of action, for attorney fees as provided in Government Code section 12598 and Code of Civil Procedure section 1021.8, and as otherwise permitted by law; and

16. On all causes of action, for such other and further relief as the Court may deem just and proper.

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

Dated: August 31, 2012

Respectfully Submitted,

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