

1 KAMALA D. HARRIS
Attorney General of California
2 BELINDA J. JOHNS
Senior Assistant Attorney General
3 TANIA M. IBANEZ, Supervising
Deputy Attorney General
4 JOSEPH N. ZIMRING
SONJA K. BERNDT
5 Deputy Attorneys General
State Bar No. 131358
6 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
7 Telephone: (213) 897-2179; Fax: (213) 897-7605
E-mail: sonja.berndt@doj.ca.gov
8 *Attorneys for the People of the State of California*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF RIVERSIDE

11 RIVERSIDE HISTORIC COURTHOUSE

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA,

15 Plaintiff,

16 v.

17 HELP HOSPITALIZED VETERANS, a
18 California Nonprofit Public Benefit
19 Corporation; ROGER CHAPIN; ELIZABETH
20 CHAPIN; MICHAEL LYNCH; ROBERT
21 BECKLEY, JR.; THOMAS ARNOLD;
LEONARD ROGERS; GORHAM BLACK,
22 III; ROBERT FRANK; FRANK &
COMPANY, P.C.; CREATIVE DIRECT
RESPONSE, INC.; and DOES 1-50,

23 Defendants.

Case No.

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

"BY FAX"

1 Plaintiff, the People of the State of California, complains and alleges as follows:

2 **General Allegations**

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

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

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

28

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

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

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

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

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

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

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

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

27 ¹ To avoid confusion, plaintiff references defendants Roger Chapin, Elizabeth Chapin and
28 Leonard Rogers by their first names throughout this Complaint.

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

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

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

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

23 15. The named individual defendants and defendants DOES 1 through 50 have committed
24 and continue to commit the breaches of fiduciary duty, violations of trust, violations of law and
25 other wrongful acts as alleged hereafter in the Complaint. In order to preserve charitable assets
26 and to prevent waste, dissipation and loss of charitable assets in this State to the irreparable
27 damage of plaintiff, it is necessary that the requested injunctive relief and removal of officers and
28 directors be granted.

1 16. Unless otherwise stated in this Complaint, the actions and omissions upon which the
2 causes of action alleged in this Complaint are based occurred on or after August 15, 2002. Unless
3 otherwise stated in this Complaint, plaintiff and the Attorney General did not have knowledge or
4 information of the facts and circumstances underlying these causes of action prior to February 21,
5 2008, when HHV responded to the Attorney General's first document demand in connection with
6 her investigation of HHV. Plaintiff did not discover these facts and circumstances prior to that
7 date, and could not in the exercise of reasonable diligence have discovered them prior to that date.

8 **FIRST CAUSE OF ACTION**

9 **BREACH OF FIDUCIARY DUTY**

10 **(Against Defendants ROGER, LYNCH, BECKLEY, ARNOLD,**

11 **LEONARD, BLACK and DOES 1 through 25)**

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

14 18. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,
15 defendants ROGER, LYNCH, BECKLEY, ARNOLD, LEONARD, BLACK, and DOES 1
16 through 25 (hereinafter also collectively referred to as the "OFFICER/DIRECTOR
17 DEFENDANTS"), were officers and/or directors of HHV and owed fiduciary duties of due care
18 and loyalty to HHV. Plaintiff is further informed and believes and thereon alleges that each of
19 the aforementioned defendants breached their duties of care and loyalty to HHV by engaging in,
20 participating in, aiding and abetting, and facilitating unlawful actions, or omissions, including, but
21 not limited to, the acts or omissions discussed in paragraphs 19 through 42 below in violation of
22 common law trust principles and state statutes (including, but not limited to, Corporations Code
23 section 5231).

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

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

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

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

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

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

27 ///

1 ***Joint Cost Allocation**

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

20 ***"Donated Services"**

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

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

5 **B. Excessive Executive Compensation**

6 24. From August 15, 2002 to the present, defendants approved total compensation²
7 packages for defendants ROGER and LYNCH at levels that were, and are, unreasonable and
8 excessive, in violation of Corporations Code section 5235 and common law. Additionally, they
9 unlawfully approved retroactive salary increases for defendant ROGER, which constituted a gift
10 of charitable funds. This caused an unreasonable “spiking” of defendant ROGER’s salary for
11 purposes of calculating his HHV pension benefits. Defendant ROGER’s lump-sum retirement
12 payment under the Supplemental Executive Retirement Plan (“SERP”) of \$1.96 million was
13 excessive and unreasonable. The SERP that defendants approved provides for excessive and
14 unreasonable retirement benefits for HHV’s officers. Plaintiff is informed and believes that
15 defendant ROGER received more than \$2.3 million in excessive and unreasonable compensation
16 during the period of August 15, 2002, to the present. During the same period of time, defendant
17 LYNCH received more than \$900,000.00 in excessive and unreasonable compensation.

18 **C. Other Unlawful Diversions and Waste of HHV’s Assets**

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

- 21 (i) In 2006, they authorized the purchase of a condominium in Virginia for HHV without
22 adequate inquiry into the prudence of that investment. The purchase of the
23 condominium was an imprudent investment when HHV purchased it. Plaintiff is
24 informed and believes and thereon alleges that HHV suffered a loss of over
25 \$150,000.00 from this investment;

26
27 ² As used in this Complaint “total compensation” includes salary, bonuses and all other
28 employee benefits received from HHV.

- 1 (ii) They caused HHV to incur over \$80,000.00 in wasteful and unreasonable expenses
2 for golf memberships at Cross Creek Golf Club and later at Bear Creek Golf Club
3 that, according to defendant R. CHAPIN, were simply a “perk” for board members;
- 4 (iii) They failed to have an adequate policy on employee reimbursements for travel,
5 entertainment and gifts;
- 6 (iv) They failed to adequately monitor reimbursements to defendants ROGER and
7 ELIZABETH for purported travel, entertainment and gifts;
- 8 (v) Defendant LYNCH authorized expense reimbursement claims of ROGER and
9 ELIZABETH that they submitted without adequate substantiation and LYNCH
10 authorized at least one double-reimbursement to ROGER;
- 11 (vi) Defendant LYNCH approved wasteful expense reimbursements to defendant
12 ELIZABETH for gifts to the employees of HHV’s fundraiser, American Target
13 Advertising (“ATA”), ATA’s president Richard Viguerie, and others; and
- 14 (vii) Defendants authorized an unlawful distribution of \$18,500.00 to ROGER from HHV
15 as a purported reimbursement for a deposit he made on a condominium (which
16 payment was later deemed to be additional, but unauthorized, compensation).

17 **D. Breaches of Fiduciary Duty re: Conquer Cancer and Alzheimer’s Now**

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

1 27. Defendants caused HHV to file false IRS Forms 990 for the fiscal years ended July 31,
2 2002, July 31, 2003, and July 31, 2004, because each of those Forms 990 failed to disclose that
3 HHV gave CCAN grant funds.

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

15 29. Defendant ROGER has admitted in writing that CCAN's activities ceased in early
16 2004, which was long *before* ROGER paid himself large sums from CCAN's financial account.
17 ROGER breached his duty of loyalty to HHV and acted in bad faith when he wrongfully diverted
18 to himself the funds ATA and AMLC deposited into CCAN's account instead of
19 refunding/reimbursing HHV for the improper \$500,000.00 grant it made to CCAN in 2001.
20 Further, by unlawfully diverting CCAN's funds to himself, defendant ROGER personally seized
21 HHV's opportunity for repayment of the improper grant, to the obvious detriment of HHV. As a
22 result of defendant ROGER's bad faith and breach of the duty of loyalty to HHV, HHV has been
23 damaged in the amount of \$500,000.00 plus interest at the legal rate.

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

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

5 **E. Imprudent Loans to, and Self-Dealing Transactions with, Fundraiser ATA**

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

9 32. In or around January 2006, defendants caused HHV to provide a \$250,000.00 loan to
10 ATA. When defendants approved this loan, defendant ROGER had a material financial interest
11 in the transaction because he was receiving substantial funds from ATA through CCAN's bank
12 account. On information and belief, defendants knew about defendant ROGER's material
13 financial interest at the time they approved the January 2006 HHV loan to ATA. Alternatively, if
14 they did not know, defendant ROGER wrongfully concealed that fact from them, acted in bad
15 faith, and breached his duty of loyalty to HHV. Given defendant ROGER's material financial
16 interest, the loan to ATA was a self-dealing transaction as defined by Corporations Code section
17 5233. In violation of section 5233, defendants failed to follow the requirements for entering into
18 this self-dealing transaction and the Attorney General gave no consent for the transaction. HHV
19 was damaged in excess of \$43,000.00 by ATA's failure to make full repayment of this self-
20 dealing loan.

21 33. From January 2006 through March 2007, defendants caused HHV to enter into
22 fundraising contracts and agreements with ATA at a time when defendant ROGER had a material
23 financial interest in the contracts and agreements. Defendants knew or should have known of
24 defendant ROGER's material financial interest in the contracts and agreements because he was
25 receiving substantial funds from ATA through CCAN's bank account. Alternatively, if they did
26 not know, defendant ROGER wrongfully concealed that fact from them, acted in bad faith, and
27 breached his duty of loyalty to HHV. In violation of Corporations Code section 5233, defendants
28

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

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

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

14 35. In July or August 2004, HHV made a \$250,000.00 loan to CSAH. On or about
15 October 15, 2004, the OFFICER/DIRECTOR DEFENDANTS other than ROGER passed a
16 resolution authorizing a \$2.5 million loan to CSAH, inclusive of amounts already granted or
17 loaned, with an option to declare the loan a grant or donation at a later time. In April 2005, all
18 members of the Board, including defendant ROGER, signed "Consent Minutes" changing the
19 \$2.5 million loan to a grant. In November 2005, defendants other than ROGER passed a
20 resolution for a \$750,000.00 grant to CSAH for CSAH's Emergency Relief Program to present
21 small grants to active-duty injured troops for Christmas. When defendants authorized the
22 aforementioned \$250,000.00 and \$2.5 million loans to CSAH, when these defendants changed the
23 \$2.5 million loan to a grant, and when defendants approved the \$750,000.00 grant to CSAH in
24 November 2005, defendant ROGER had a material financial interest in the transactions because
25 he made personal loans to CSAH.

26 36. All of the transactions described in paragraph 35, above, constituted self-dealing
27 transactions and, in violation of Corporations Code section 5233, defendants failed to follow the
28

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

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

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

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

22 **G. "Back-dating" of Corporate Documents**

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

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

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

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

11 **I. Misrepresentations to Donors in HHV’s Direct Mail Solicitations**

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

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

24 44. As a proximate cause of the breaches of fiduciary duty of care and loyalty of
25 defendants ROGER, LYNCH, BECKLEY, LEONARD, ARNOLD, BLACK, and DOES 1
26 through 25, HHV and its charitable beneficiaries incurred damages and civil penalties in an
27 amount presently unknown to the Attorney General and which cannot be ascertained without an
28 accounting by these defendants. Plaintiff is entitled to an accounting from these defendants (from

1 August 15, 2002, to the present) for their expenditures and disposition of all income and assets
2 which they obtained from, or improperly diverted from, HHV to one or more individual
3 defendant or otherwise wasted through their breach of fiduciary duty. The facts necessary to
4 ascertain the exact amount of damages to HHV and its charitable beneficiaries are within the
5 special knowledge of the aforementioned defendants. However, the Attorney General estimates
6 the total damages proximately caused by the actions and omissions of the defendants set forth in
7 this cause of action exceed \$4.3 million.

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

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

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

20 SECOND CAUSE OF ACTION

21 **AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY**

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

23 48. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
24 of the allegations of paragraphs 1 through 47 of this Complaint.

25 49. The OFFICER/DIRECTOR DEFENDANTS breached their fiduciary duty of care to
26 HHV, *inter alia*, by causing HHV to file false and misleading informational returns with the IRS
27 and with the AG's Registry and by disseminating the false information to the donating public. As
28 alleged in paragraphs 19-23, above, the misrepresentations in the informational returns included,

1 but are not limited to, (a) overstating gifts-in-kind revenue by including donated services, (b)
2 overstating revenue and program-services expense related to the EZScore scorecards transaction,
3 and (c) using the joint cost allocation method to artificially inflate program services expense and
4 unfairly minimize fundraising costs. These “gimmicks” caused HHV’s revenue, program
5 services expense, and fundraising expense numbers to be skewed in such a way to mislead
6 potential donors and others into believing HHV had revenue, program services expenditures, and
7 fundraising efficiencies that it did not have.

8 50. As set forth in paragraphs 26 and 27, above, the OFFICER/DIRECTOR
9 DEFENDANTS also breached their fiduciary duty of care to HHV by causing HHV to file, with
10 the IRS and the AG’s Registry, returns for the fiscal years ending in July of 2002, 2003, and
11 2004, that were false and misleading because those 990’s failed to disclose that HHV gave CCAN
12 grant funds during those years. This false information was disseminated to the donating public.

13 51. Defendants FRANK, FRANK & CO. and DOES 1-50 aided and abetted the breach of
14 duty of the OFFICER/DIRECTOR DEFENDANTS as alleged in paragraphs 19-23, 26, 27, 49,
15 and 50, above, by preparing and filing these false and misleading returns with the IRS and the
16 AG’s Registry, and by causing the returns to be disseminated to the donating public. These
17 defendants knew or should have known that the information in these returns was false and that the
18 filing of the returns was unlawful. Defendants knew or should have known that the “gimmicks”
19 HHV used with the help of these defendants, were likely to mislead potential donors and others
20 into believing HHV had revenue, program services expenditures, and fundraising efficiencies that
21 it did not have.

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

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

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

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

23 56. As a proximate result of the aiding and abetting and/or participating in the breach of
24 duty of defendants as alleged in this cause of action, HHV and its charitable beneficiaries have
25 been damaged in an amount presently unknown to plaintiff but believed to be in excess of
26 \$300,000.00.

27 57. In doing the acts alleged in this cause of action, defendants FRANK and FRANK &
28 CO. and DOES 1-50 acted in callous disregard of the rights of HHV, its charity beneficiaries, and

1 its donors knowing that their conduct was substantially certain to injure them. In doing the acts
2 alleged in this cause of action, defendants and each of them engaged in fraudulent, oppressive and
3 malicious conduct and plaintiff is, therefore, entitled to an award of punitive damages in an
4 amount to be decided at the time of trial.

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

6 **THIRD CAUSE OF ACTION**

7 **ENGAGING IN SELF-DEALING TRANSACTIONS**

8 **(Against Defendant ROGER and DOES 1 through 25)**

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

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

17 61. As a proximate result of the loan referenced in paragraph 60, above, HHV and its
18 charitable beneficiaries have been damaged in an amount of at least \$43,000.00, plus interest at
19 the legal rate, which must be paid by defendant ROGER. In addition, pursuant to section 5233,
20 plaintiff is entitled to an accounting from defendant ROGER for any profits or other benefits he
21 made/received from the loan and he must be ordered to pay those profits/benefits over to HHV.

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

24 63. The agreements HHV entered into with ATA during the period of January 2006
25 through March 2007 constituted self-dealing transactions as to defendant ROGER within the
26 meaning of Corporations Code section 5233 and none of the exceptions set forth in that section
27 applies. At the time HHV entered into the agreements, defendant ROGER was a director of HHV
28 and had a material financial interest because he was receiving monies from ATA through

1 CCAN's accounts. The agreements were not approved by the California Attorney General and
2 they were not fair and reasonable to HHV at the time they occurred.

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

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

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

19 67. Pursuant to section 5233, plaintiff is entitled to an accounting from defendant ROGER
20 for any profits or other benefits he made/received from the loans and grant to CSAH referenced in
21 paragraph 66, above, and must be ordered to pay them over to HHV. To the extent HHV suffered
22 any damages as a proximate result of these transactions, defendant ROGER must pay those
23 damages over to HHV.

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

25 ///

1 **FOURTH CAUSE OF ACTION**

2 **EXCESSIVE EXECUTIVE COMPENSATION**

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

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

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

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

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

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

27 74. Plaintiff is also entitled to payment of its attorney fees and costs on this cause of action.
28

1 **FIFTH CAUSE OF ACTION**

2 **WRONGFUL ACQUISITION OF PROPERTY/UNJUST ENRICHMENT**

3 **[CIVIL CODE SECTION 2224]**

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

5 75. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
6 of the allegations of paragraphs 1 through 18, 24, 25, and 43 of this Complaint.

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

13 77. Defendant ROGER acquired the excessive and unreasonable total compensation
14 alleged in paragraphs 24 and 76, above, as a result of a breach of trust of the OFFICER/
15 DIRECTOR DEFENDANTS. The total amount of excessive and unreasonable total
16 compensation paid to defendant ROGER is presently unknown but is believed to be in excess of
17 \$2.3 million. As a result of the breach of trust, ROGER was unjustly enriched and HHV and its
18 charitable beneficiaries were injured. By virtue of the breach of trust, defendant ROGER holds
19 all excessive and unreasonable compensation he received from HHV as a constructive trustee for
20 the benefit of HHV. Defendant ROGER must fully account for all compensation he received as a
21 result of the breach of trust and he must make full restitution by paying all such compensation
22 back to HHV.

23 78. Defendant LYNCH's total compensation (including base salary, bonuses and
24 retirements benefits) for the period of August 15, 2002, to the present was unreasonable and
25 excessive, in violation of Corporations Code section 5235 and common law. Defendant LYNCH
26 also wrongfully received a retroactive bonus. To the extent defendant LYNCH received any
27 retirement benefits under an HHV SERP, such benefits were unreasonable and excessive.
28

1 79. Defendant LYNCH acquired the excessive and unreasonable compensation alleged in
2 paragraphs 24 and 78, above, as a result of a breach of trust of the OFFICER/DIRECTOR
3 DEFENDANTS. The total amount of excessive and unreasonable compensation paid to
4 defendant LYNCH is presently unknown but is believed to be in excess of \$900,000.00. As a
5 result of the breach of trust, LYNCH was unjustly enriched and HHV and its charitable
6 beneficiaries were injured. By virtue of the breach of trust, defendant LYNCH holds all
7 excessive and unreasonable compensation he received from HHV as a constructive trustee for the
8 benefit of HHV. Defendant LYNCH must fully account for all compensation he received as a
9 result of the breach of trust and he must make full restitution by paying all such compensation
10 back to HHV.

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

20 81. After August 15, 2002, as a result of the breach of trust of defendant LYNCH,
21 defendant ELIZABETH was unjustly enriched in the amount of at least \$5,500.00 as a result of
22 (a) expense reimbursements to which she was not entitled, and (b) expense reimbursements she
23 received from HHV without any, or grossly inadequate, substantiation of such expenses. By
24 virtue of the breach of trust, defendant ELIZABETH holds all excessive reimbursements she
25 received from HHV and all reimbursements she received for unsubstantiated expenses as a
26 constructive trustee for the benefit of HHV. Defendant ELIZABETH must fully account for all
27 benefits she received as a result of the breach of trust and she must make full restitution by paying
28 all such benefits back to HHV.

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

2 **SIXTH CAUSE OF ACTION**

3 **MISREPRESENTATIONS IN SOLICITATIONS**

4 **[GOVERNMENT CODE SECTION 12599.6]**

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

7 83. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
8 of the allegations of paragraphs 1 through 16, and 42 of this Complaint.

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

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

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

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

24 ///

1 March 2009 when CSAH, the only "true" recipient of the EZScores donation at issue,
2 produced documents to the Attorney General related to that donation.

3 (ii) After January 1, 2009, defendants filed or caused to be filed with the IRS and with the
4 AG's Registry IRS Forms 990 for HHV for fiscal years ended July 31, 2008, July 31,
5 2009, July 31, 2010, and July 31, 2011, that were false and misleading because those
6 returns substantially and unfairly understated fundraising costs and substantially and
7 unfairly inflated program services expense by using "joint cost allocation."

8 Defendants knew or should have known that, given the facts and circumstances,
9 under applicable legal and accounting principles, HHV was not lawfully entitled to
10 use joint cost allocation to allocate fundraising expenses to program services
11 expenses. Defendants also disseminated the false and misleading information in
12 those returns to the public. The use of joint cost allocation in these returns
13 unlawfully, unfairly; and deceptively (a) inflated HHV's program services expenses,
14 and (2) decreased the percentage of fundraising expenses of HHV's total expenses
15 from 65 percent to less than 30 percent. The inaccurate Forms 990 likely misled
16 potential donors and others into believing that HHV had fundraising efficiencies it did
17 not actually have.

18 (iii) After January 1, 2009, defendants filed or caused to be filed with the IRS and with the
19 AG's Registry IRS Forms 990 for HHV for fiscal years ended July 31, 2008, July 31,
20 2009, July 31, 2010, and July 31, 2011, that were false and misleading because each
21 of those returns (a) wrongfully included donated services as revenue and (b)
22 wrongfully reported program-services expenses from those same donated services.
23 Defendants also falsely and fraudulently claimed in each of these informational
24 returns that HHV did *not* receive "donated services." Defendants disseminated the
25 false and misleading information from those returns to the public. Defendants knew
26 or should have known that the false and misleading revenue figures and program-
27 services expense figures were contrary to applicable federal tax law and were unfair
28 and deceptive. The inclusion of this information unfairly and deceptively "boosted"

1 HHV's revenue and program services expense numbers and was likely to mislead
2 donors and others.

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

- 6 (i) He used CCAN's financial account as a "pass-through account" in order to accept
7 large sums of money from HHV's contractors, ATA and AMLC; and
8 (ii) He destroyed CCAN's records or caused them to be destroyed after he knew of the
9 Attorney General's investigation of HHV.

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

16 91. Defendants ROGER and LYNCH also violated Business and Professions Code section
17 17200 et seq. by backdating corporate documents in an attempt to hide conflicts of interest related
18 to HHV's loans to CSAH as alleged in paragraph 40, above. Defendants fraudulently concealed
19 this falsification of HHV's corporate records and plaintiff could not reasonably have known of
20 the existence of these violations of section 17200 until after July 17, 2009, when plaintiff first
21 received the back-dated documents from CSAH in response to a document demand.

22 92. As a result of the aforementioned acts of unfair competition, plaintiff is entitled to civil
23 penalties under Business and Professions Code section 17206 in an amount which is presently
24 unknown, but believed to be in excess of \$97,500.

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

28 ///

1 WHEREFORE, plaintiff prays for judgment as follows:

2 1. That an order issue directing all named individual defendants, and DOES 1-50 and each
3 of them, to render to the Court and to the Attorney General a full and complete accounting of
4 their dealings with HHV from August 15, 2002, to the present. Upon the rendering of such
5 accounting, that the Court do the following: (a) determine the property, real or personal, or the
6 proceeds thereof, to which HHV and the charitable beneficiaries thereof are lawfully entitled, in
7 whatsoever form and in whosoever hands they may now be, and order and declare that all such
8 property or the proceeds thereof is impressed with a trust for charitable purposes; (b) that
9 defendants are constructive trustees of all such charitable funds and assets in their possession,
10 custody or control; (c) and that the same shall be deposited forthwith in Court by each and every
11 defendant now holding or possessing the same or claiming any rights, title or interest therein. In
12 addition, that all named individual defendants and DOES 1 through 50 be surcharged and held
13 liable and judgment entered against each of them for any and all such assets for which they fail to
14 properly account, together with interest thereon at the legal rate from the date of liability thereon;

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

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

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

26 5. On the Third Cause of Action, for an order compelling defendant ROGER to provide an
27 accounting of any profits or other benefits he made/received from the self-dealing transactions
28 alleged and compelling him to pay them over to HHV along with interest at the legal rate. To the

1 extent HHV suffered any damages as a proximate result of these transactions, for an order
2 compelling defendant ROGER to pay them over to HHV;

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

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

11 8. On the Sixth Cause of Action, that the court assess civil penalties exceeding \$4 million
12 against defendants in that cause of action and provide that all such penalties be paid by
13 defendants other than HHV;

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

18 10. On the Seventh Cause of Action, that the court assess civil penalties exceeding \$97,500
19 against defendants in that cause of action pursuant to Business and Professions Code section
20 17206 and order that all such penalties be paid by defendants in that cause of action other than
21 HHV;

22 11. On the Seventh Cause of Action, pursuant to Business and Professions Code section
23 17203, for a preliminary and permanent injunction enjoining defendants in that cause of action,
24 their successors, agents, representatives, employees and all persons who act in concert with, or on
25 behalf of, defendants from engaging in unfair competition as defined in Business and Professions
26 Code section 17200, including, but not limited to, those acts and omissions alleged in this
27 Complaint;

28

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

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

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

10 15. On all causes of action, for attorney fees as provided in Government Code section
11 12598 and Code of Civil Procedure section 1021.8, and as otherwise permitted by law; and

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

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

16 Dated: August 8, 2012

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
BELINDA J. JOHNS, Senior
Assistant Attorney General
TANIA M. IBANEZ, Supervising
Deputy Attorney General
JOSEPH N. ZIMRING
Deputy Attorney General



SONJA K. BERNDT
Deputy Attorney General
*Attorneys for the People of the
State of California*

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