

JAN 19 2010

ALAN CARLSON, Clerk of the Court

BY L BROWN

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER
Jan 14 2010

ALAN CARLSON, Clerk of the Court

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

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

Plaintiff,

v.

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

Defendants.

Case No. 30-2009 00272106

SETTLEMENT AGREEMENT AND [PROPOSED] ORDER RE: PUBLIC AWARENESS, L.L.C.

Dept: CX105
Judge: The Honorable Nancy Wieben Stock

Action Filed: May 29, 2009

1. This Settlement Agreement and Order are entered into by, between, and among the settling parties, Plaintiff, the People of the State of California ("the People"), by Edmund G. Brown Jr., Attorney General of the State of California ("Attorney General") and Defendant Public Awareness, LLC, a California Limited Liability Company (hereinafter "Public Awareness") (hereinafter, collectively, also referred to as "the Settling Parties"). At all times relevant herein, Public Awareness was and is a commercial fundraiser for charitable purposes within the meaning

1 of Government Code section 12599. The Attorney General, on behalf of the People, sued Public
2 Awareness in the underlying action for deceptive and misleading charitable solicitations,
3 violating California's commercial fundraiser contract statute, unfair competition, and
4 disseminating false or misleading statements. Public Awareness denies any wrongdoing. The
5 Settling Parties, each of whom, desiring to avoid the expense, uncertainty, and inconvenience of
6 further litigation in the above-captioned matter, state all claims alleged against Public Awareness
7 arising out of the above-captioned action have been settled, and that the Court may enter the
8 proposed Order attached hereto, on the following facts, terms, and conditions:

9 2. The Court has personal jurisdiction of the Settling Parties and subject matter
10 jurisdiction of the above-captioned action. The Court retains jurisdiction of the above-referenced
11 action and over the Settling Parties until final performance of the Settlement Agreement stated
12 herein. Any applicable statute, rule or court order affecting timely prosecution of this action,
13 including the 5-year dismissal statute and the 10-year statute of limitations under Government
14 Code section 12596 are hereby tolled. The Court shall retain jurisdiction as the ends of justice
15 may require for the purpose of enabling any party to this Settlement Agreement to apply to the
16 Court at any time for such further orders and directions as may be necessary or appropriate
17 including, but not limited to, the following: (a) the construction or carrying out of this
18 Settlement Agreement, (b) the enforcement of any provisions of the Settlement Agreement, and
19 (c) the punishment of any violations of the Settlement Agreement. This Settlement Agreement
20 constitutes a stipulation for settlement and shall be enforceable under Code of Civil Procedure
21 section 664.6.

22 3. Public Awareness agrees to pay to the Attorney General's Office, within 20 days of
23 notice to Errol Copilevitz, Esq. of the execution of the court order on this Settlement Agreement,
24 a total of \$15,000 for attorney's fees and costs incurred by the Charitable Trusts Section, pursuant
25 to Government Code sections 12586.2 and 12598. These funds shall be used by the Charitable
26 Trusts Section solely for the administration of the Attorney General's charitable trust enforcement
27 responsibilities. In the alternative, if Public Awareness does not pay the full \$15,000.00
28 referenced above in this paragraph within the aforementioned 20-day period, Public Awareness

1 shall pay to the Attorney General's Office \$20,000.00 at the rate of \$1,000.00 per month for a
2 period of 20 consecutive months, the first payment to be made within 20 days after notice to Errol
3 Copilevitz, Esq. of the Court's execution of the Order on this Settlement Agreement. These funds
4 shall be used by the Charitable Trusts Section solely for the administration of the Attorney
5 General's charitable trust enforcement responsibilities. All subsequent payments shall be made
6 by the 15th day of each succeeding month until the \$20,000 settlement amount is paid in full. All
7 payments pursuant to this paragraph of the Settlement Agreement shall be made payable to "the
8 Attorney General's Litigation Deposit Fund" and shall be delivered to the Attorney General's
9 Office at 300 S. Spring Street, Los Angeles, California 90013, to the attention of Deputy Attorney
10 General Jami L. Cantore. If Public Awareness fails to make any of the aforementioned
11 installment payments, the Attorney General shall notify Public Awareness in writing to be sent to
12 the law office of Copilevitz & Canter, LLC, to the attention of Errol Copilevitz, Esq. Public
13 Awareness shall have 10 days from receipt of said notice by Copilevitz & Canter to cure the
14 default. If the default is not cured within the aforementioned 10-day period, the balance of the
15 \$20,000 settlement amount shall be immediately due and payable in full.

16 4. Public Awareness shall fully comply with all registration requirements as set forth in
17 Government Code section 12599 and 12599.5.

18 5. During years 2010, 2011 and 2012, Public Awareness will not enter into any contracts or
19 agreements to solicit in California and/or on behalf of a California charity, without first providing
20 the California Attorney General's Office, addressed to the attention of Deputy Attorney General
21 Jami L. Cantore, with a copy of the contract or agreement for review ten business days before
22 commencement of work on the contract or agreement. During years 2010, 2011 and 2012 and
23 thereafter, every contract or agreement to solicit charitable contributions in California and/or on
24 behalf of a California charity that Public Awareness enters into must comply with all of the
25 requirements set forth in Government Code section 12599.3. If Public Awareness decides to
26 enter into a contract or agreement to solicit in California and/or to solicit on behalf of a
27 California-based charity, it must comply with all requirements under Government Code sections
28 12599 and 12599.6.

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

10 a) the nature or purpose of the charitable program activities that will be supported by
11 donations received;

12 b) the portion of the donation that will be retained by the charity;

13 c) the portion of the donation that will be directly used for the charitable purposes of
14 the charity on whose behalf the solicitation is made;

15 d) either specifically or generally, that the charity has any connection to or is
16 affiliated with any public safety organization when that is not the case;

17 e) that donations will be used for a specific purpose or program of a charity;

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

21 g) that a resident of a household has previously donated to the charity or made a
22 donation of a specific amount without documentation of that prior donation; and

23 h) that a person has already made a pledge to donate to the charity without
24 documentation of that pledge.

25 An isolated misrepresentation or violation of Government Code section 12599.6,
26 subdivisions (a) and (f), by an agent, independent contractor, or employee of Public Awareness
27 shall not be deemed a violation of this Settlement Agreement by Public Awareness if Public
28

1 Awareness clearly and convincingly demonstrates that, as part of its routine business practices, it
2 has done all of the following:

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

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

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

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

16 7. Public Awareness shall not violate Business and Professions Code section 17510.8. To
17 ensure compliance with section 17510.8, for years 2010, 2011, and 2012, Public Awareness will,
18 on a semiannual basis, obtain from all charities for whom it solicits donors located in California
19 written statements listing all program expenditures and, in addition, evidence supporting all such
20 program expenditures, e.g., cancelled checks for grants (front and back), declarations under
21 penalty of perjury from grant recipients, and similar evidence. On or before December 31 of
22 years 2010, 2011, and 2012, Public Awareness will provide such statements and supporting
23 evidence submitted by each charity to the Attorney General's Office to the attention of Jami L.
24 Cantore, along with a report to the Attorney General's Office certifying under penalty of perjury
25 that it has complied with the requirements stated in this paragraph. In the event that Public
26 Awareness makes a diligent effort to obtain the statement and evidence referenced in this
27 paragraph from a charity for whom it solicits California donors, but the charity refuses to provide
28 them, Public Awareness shall immediately suspend soliciting for that charity until it receives the

1 statement and evidence. In this circumstance and provided such solicitation is immediately
2 suspended, the Attorney General will not initiate further action against Public Awareness based
3 on the terms set forth in this paragraph.

4 8. Public Awareness will conspicuously and accurately identify the location of the
5 headquarters of the charity for whom it is soliciting in all written materials sent to donors and
6 potential donors.

7 9. Public Awareness will comply with the disclosure requirements set forth in Business and
8 Professions Code § 17510.85.

9 10. Public Awareness will not engage in, or participate in, the distribution of decals,
10 stickers, and/or other emblems that can be used for display on a motor vehicle which bear a
11 symbol that suggests an affiliation with, or endorsement by, public safety personnel.

12 11. Public Awareness will not engage in any conduct during the course of a charitable
13 solicitation via telephone that harasses, intimidates or frightens the recipient of the call.
14 Harassment shall include, but not be limited to, causing a telephone to ring repeatedly or
15 continuously with intent to annoy, abuse, or harass any person at the called number, shouting,
16 abusive language, and threats of any kind.

17 12. Public Awareness will comply with all applicable Federal regulations established by
18 the Federal Trade Commission ("Telemarketing Sales Rule") at 16 C.F.R. § 310 et seq.,
19 specifically §§ 310.33 and 310.4, regarding deceptive telemarketing practices and abusive
20 telemarketing practices.

21 13. Public Awareness will fully comply with all reporting requirements as set forth in
22 Government Code section 12599 and all recordkeeping requirements set forth in Government
23 Code section 12599.7.

24 14. The Settlement Agreement shall not constitute an admission or finding of any
25 wrongdoing, fault, violation of law, or liability by Public Awareness.

26 15. The Settlement Agreement contains the entire agreement and understanding between
27 the Settling Parties concerning the subject matter of this action and supersedes all other
28 agreements of any kind concerning the subject matter of the Settlement Agreement. Each of the

1 undersigned warrants that no promise or inducement has been offered to them except as set forth
2 herein and that the Settlement Agreement is executed without reliance upon any statement or
3 representation by any persons or parties, or their representatives, concerning the nature and extent
4 of injuries and/or damages and/or legal liability herein.

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

9 17. Each of the parties warrants that he, she or it is legally competent to execute the
10 Settlement Agreement. The undersigned representative for Public Awareness certifies that he or
11 she is fully authorized by Public Awareness to enter into the terms and conditions of the
12 Settlement Agreement and to fully and legally bind Public Awareness to the Settlement
13 Agreement.

14 18. The Settlement Agreement shall be governed by the laws of the State of California.

15 19. The Settlement Agreement shall be binding upon the heirs, devisees, executors,
16 affiliates, administrators, successors, assigns, officers, directors, trustees, executors, agents and
17 employees of Public Awareness.

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

19 21. The Settlement Agreement may be executed in separate counterparts, each of which
20 shall be deemed an original, and said counterparts shall together constitute one Settlement
21 Agreement, binding all parties hereto notwithstanding that all of the parties are not signatory to

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1 the original or same counterpart, and shall be delivered to Jami L. Cantore, Office of the Attorney
2 General, 300 S. Spring Street, Los Angeles, CA 90013.

3 IT IS SO AGREED.

4
5 DATED: 1/13/10 EDMUND G. BROWN JR, Attorney General

6
7 By Jami L. Cantore
8 JAMI L. CANTORE, Deputy Attorney General
9 Attorneys for the People of the State of California

10 DATED: 12/30/09 PUBLIC AWARENESS, LLC,
11 a California Limited Liability Company

12 By Douglas A. Harkey
13 DOUGLAS A. HARKEY/President

14 DATED: 12/30/09 COPILEVITZ & CANTER, LLC
15 Attorneys at Law

16 By Errol Copilevitz
17 ERROL COPILEVITZ, ESQ.
18 Counsel for Public Awareness, LLC

19 DATED: 12/30/09 MURPHY ROSEN & MEYLAN LLP

20 By Troy H. Slome
21 TROY H. SLOME, ESQ.
22 Counsel for Public Awareness, LLC

23 ORDER
24 IT IS SO ORDERED. Plaintiff to give notice.

25 1/15/10
26 DATED Nancy Wieben Stock
27 NANCY WIEBEN STOCK
28 Judge of the Superior Court *ok CB*

DECLARATION OF SERVICE BY REGULAR U.S. MAIL

Case Name: **People v. Association for Firefighters and Paramedics, Inc., etc., et al.**
OCSC Case No: 30-2009 00272 106

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 S. Spring Street, Los Angeles, CA 90013. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited that same day in the ordinary course of business.

On January 14, 2010, I served the **SETTLEMENT AGREEMENT AND [PROPOSED] ORDER RE: PUBLIC AWARENESS, L.L.C.** by placing a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for delivery as follows:

Copilevitz & Canter, LLC
Errol Copilevitz
Attorneys at Law
310 W. 20th Street, Suite 300
Kansas City, MO 64108

Troy H. Slome, Esq.
Murphy Rosen & Meylan LLP
100 Wilshire Blvd., Suite 1300
Santa Monica, CA 90401-1142

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 14, 2010, at Los Angeles, California.

Maria-Elena Hernandez
Declarant


Signature