

1 EDMUND G. BROWN JR.
Attorney General of California
2 BELINDA J. JOHNS
Senior Assistant Attorney General
3 SONJA K. BERNDT
Deputy Attorney General
4 State Bar No. 131358
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2179
6 Fax: (213) 897-7605
E-mail: sonja.berndt@doj.ca.gov
7 Attorneys for People of the State of California

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAY 21 2010

LAN CARLSON, Clerk of the Court

BY G. HERNANDEZ

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

11
12 **PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff,

v.

13
14
15
16 **ASSOCIATION FOR POLICE AND
SHERIFFS, INC., FREDERICK E.
17 CHENEY, JR., ET AL.**

Defendants.

Case No. 30-2009 00123781

**SETTLEMENT AGREEMENT AND
~~PROPOSED~~ ORDER**

Dept: C-12
Judge: The Honorable Jamoa A.
Moberly

Action Filed: May 29, 2009

18
19
20
21 1. This Settlement Agreement and Order are entered into by, between, and among the
22 settling parties, Plaintiff, the People of the State of California ("the People"), by Edmund G.
23 Brown Jr., Attorney General of the State of California ("Attorney General"), and Defendant
24 Frederick E. Cheney, Jr. (hereinafter "Defendant Cheney") (hereinafter, collectively, also referred
25 to as "the Settling Parties"). At all times relevant herein, Defendant Cheney was and is a
26 commercial fundraiser for charitable purposes within the meaning of Government Code section
27 12599. The Attorney General, on behalf of the People, sued Defendant Cheney in the underlying
28 action for violating California's reporting statutes applicable to commercial fundraisers for

1 charitable purposes. Defendant Cheney denies any wrongdoing. The Settling Parties, each of
2 whom, desiring to avoid the expense, uncertainty, and inconvenience of further litigation in the
3 above-captioned matter, state all claims alleged against Defendant Cheney arising out of the
4 above-captioned action have been settled, and that the Court may enter the proposed Order
5 attached hereto, on the following facts, terms, and conditions:

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

19 3. Defendant Cheney agrees to pay to the Attorney General's Office a total of
20 ~~\$15,000.00~~ ("Settlement Amount"). Of that amount, \$2,000 shall be deemed penalties recovered
21 pursuant to Government Code section 12591.1 and \$13,000 shall be deemed to be recovery of the
22 Attorney General's attorney's fees and costs pursuant to Government Code sections 12586.2 and
23 12598. These funds shall be used by the Charitable Trusts Section solely for the administration of
24 the Attorney General's charitable trust enforcement responsibilities. The \$15,000 Settlement
25 Amount shall be payable at the rate of \$1,250.00 per month for a period of 12 consecutive
26 months. The first payment is to be made within 10 days after notice to Keith White, Esq., *Due 6-*
27 attorney for Defendant Cheney, that the Court has signed the Order on the Settlement Agreement.
28 All subsequent payments shall be made by the 15th day of each succeeding month until the

1 Settlement Amount is paid in full. All payments pursuant to this paragraph of the Settlement
2 Agreement shall be made payable to the Attorney General's Litigation Deposit fund and shall be
3 delivered to the Attorney General's Office at 300 S. Spring Street, Los Angeles, California
4 90013, to the attention of Deputy Attorney General Sonja K. Berndt. If Defendant Cheney fails
5 to make any of the aforementioned payments, the Attorney General shall notify Defendant
6 Cheney through his attorney Keith White in writing. Defendant Cheney shall have 10 days from
7 said notice to cure the default. If the default is not cured within the aforementioned 10-day
8 period, the balance of the \$15,000 Settlement Amount shall be immediately due and payable in
9 full.

10 4. Defendant Cheney shall fully comply with all registration requirements as set forth in
11 Government Code section 12599 and 12599.5.

12 5. During year 2010 (beginning with the date Defendant Cheney executes this Settlement
13 Agreement), and during years 2011 and 2012, Defendant Cheney will not enter into any contracts
14 or agreements to solicit in California and/or on behalf of a California charity, without first
15 providing the California Attorney General's Office, addressed to the attention of Deputy Attorney
16 General Sonja K. Berndt, with a copy of the contract or agreement for review ten business days
17 before commencement of work on the contract or agreement. From the date Defendant Cheney
18 executes this Settlement Agreement, every contract or agreement to solicit charitable
19 contributions in California and/or on behalf of a California charity that Defendant Cheney enters
20 into must comply with all of the requirements set forth in Government Code section 12599.3. If
21 Defendant Cheney decides to enter into a contract or agreement to solicit in California and/or to
22 solicit on behalf of a California-based charity, it must comply with all requirements under
23 Government Code sections 12599 and 12599.6.

24 6. Defendant Cheney shall not engage in misrepresentation and shall not violate
25 Government Code section 12599.6, subdivisions (a) and (f). To insure compliance with these
26 provisions, Defendant Cheney will supply copies of all solicitation scripts used and/or to be used
27 in California during year 2010 (from the date Defendant Cheney executes this Settlement
28 Agreement) and during years 2011, and 2012 to the Attorney General's Office to the attention of

1 Deputy Attorney General Sonja K. Berndt on or before December 31 of each of those years.
2 Defendant Cheney shall not engage in deception, shall not conceal material facts, and shall not
3 make misrepresentations. Without limiting the foregoing, the prohibition in this paragraph
4 includes misrepresentations of the following made in the course of soliciting on behalf of a
5 charity:

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

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

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

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

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

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

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

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

21 An isolated misrepresentation or violation of Government Code section 12599.6,
22 subdivisions (a) and (f), by an agent, independent contractor, or employee of Defendant Cheney
23 shall not be deemed a violation of this Settlement Agreement by Defendant Cheney if he clearly
24 and convincingly demonstrates that, as part of his routine business practices, he has done all of
25 the following:

26 (i) established and implemented written procedures to comply with the terms of this
27 Settlement Agreement, communicated those terms to all relevant agents, independent
28

1 contractors, and employees, and obtained from each of them a signed statement that they
2 have read, understood, and agreed to comply with the procedures;

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

5 (iii) maintained thorough records of such procedures, their implementation, and the
6 program of training agents, independent contractors, and employees in those procedures;
7 and

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

12 7. Defendant Cheney shall not violate Business and Professions Code section 17510.8. To
13 ensure compliance with section 17510.8, for years 2010, 2011, and 2012, Defendant Cheney will,
14 on a semiannual basis, obtain from all charities for whom he solicits California donors written
15 statements listing all program expenditures and, in addition, evidence supporting all such program
16 expenditures, e.g., cancelled checks for grants (front and back), declarations under penalty of
17 perjury from grant recipients, and similar evidence. On or before December 31 of years 2010,
18 2011, and 2012, Defendant Cheney will provide such statements and supporting evidence
19 submitted by each charity to the Attorney General's Office to the attention of Sonja K. Berndt,
20 along with a report to the Attorney General's Office certifying under penalty of perjury that he
21 has complied with the requirements stated in this paragraph. In the event that Defendant Cheney
22 makes a diligent effort to obtain the statement and evidence referenced in this paragraph from a
23 charity for whom he solicits California donors, but the charity refuses to provide them, Defendant
24 Cheney shall immediately suspend soliciting for that charity until he receives the statement and
25 evidence. In this circumstance and provided such solicitation is immediately suspended, the
26 Attorney General will not initiate further action against Defendant Cheney based on the terms set
27 forth in this paragraph.
28

1 8. Defendant Cheney will conspicuously and accurately identify the location of the
2 headquarters of the charity for whom he is soliciting in all written materials sent to donors and
3 potential donors.

4 9. Defendant Cheney will comply with the disclosure requirements set forth in Business
5 and Professions Code § 17510.85.

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

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

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

18 13. Defendant Cheney will fully comply with all reporting requirements as set forth in
19 Government Code section 12599 and all recordkeeping requirements set forth in Government
20 Code section 12599.7.

21 14. The Settlement Agreement shall not constitute an admission or finding of any
22 wrongdoing, fault, violation of law, or liability by Defendant Cheney.

23 15. The Settlement Agreement contains the entire agreement and understanding between
24 the Settling Parties concerning the subject matter of this action and supersedes all other
25 agreements of any kind concerning the subject matter of the Settlement Agreement. Each of the
26 undersigned warrants that no promise or inducement has been offered to them except as set forth
27 herein and that the Settlement Agreement is executed without reliance upon any statement or
28

1 representation by any persons or parties, or their representatives, concerning the nature and extent
2 of injuries and/or damages and/or legal liability herein.

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

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

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

13 19. The Settlement Agreement shall be binding upon the heirs, devisees, executors,
14 affiliates, administrators, successors, assigns, officers, directors, trustees, executors, agents and
15 employees of Defendant Cheney.

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

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

20 ///

21 ///

22

23

24

25

26

27

28

1 the original or same counterpart, and shall be delivered to Sonja K. Berndt, Office of the Attorney
2 General, 390 S. Spring Street, Los Angeles, CA 90013.

3 IT IS SO AGREED.
4 DATE: 5/6/2010

EDMUND G. BROWN JR, Attorney General

5 By 
6 SONJA K. BERNDT, Deputy Attorney General
7 Attorneys for the People of the State of California

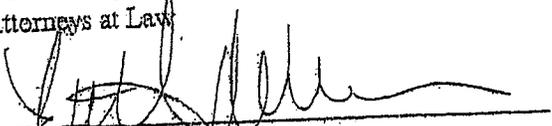
8 DATE: 5/3/2010

9 By 
10 FREDERICK E. CHENEY, JR.

11 Approved as to form:

DOWLING, AARON & KEELER
Attorneys at Law

14 DATE: 5/5/2010

12 By 
13 Keith M. White, Esq.
14 Counsel for Frederick E. Cheney, Jr.

17 ORDER

18 IT IS SO ORDERED.

19 DATE: 5-21-10

20 JAMOA A. MOSERLY
21 JAMOA A. MOSERLY
22 Judge of the Superior Court

23 LA2009603055