

DEC 01 2015

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17  
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 COUNTY OF LOS ANGELES  
20

21 **THE PEOPLE OF THE STATE OF**  
22 **CALIFORNIA,**

23 PLAINTIFF,

24 v.

25 **PEOPLE'S CHOICE CHARITIES, a**  
26 **California nonprofit public benefit**  
27 **corporation; GARY STONE, an individual;**  
28 **AND DOES 1-10,**

Case No.

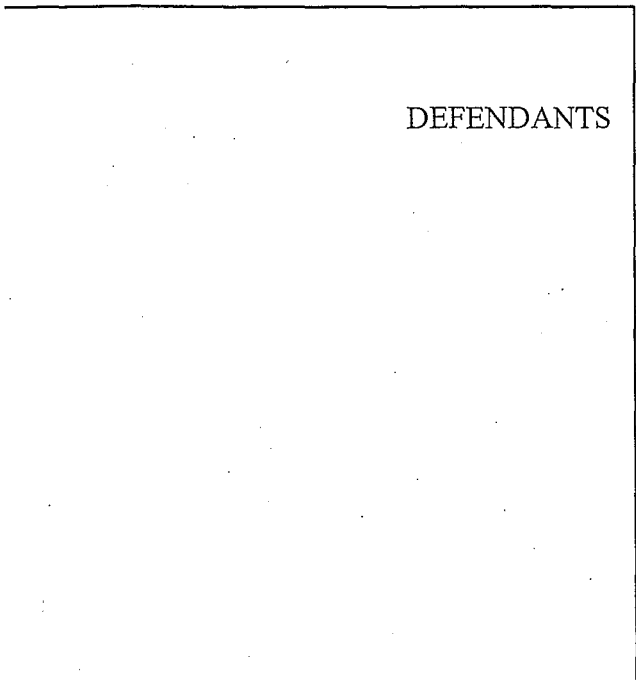
**BC 6 0 2 7 1 6**

**COMPLAINT FOR DAMAGES, CIVIL  
PENALTIES, AN ACCOUNTING, A  
PERMANENT INJUNCTION,  
INVOLUNTARY DISSOLUTION AND  
FOR OTHER RELIEF ARISING FROM:**

**(1) BREACH OF FIDUCIARY DUTY**

**(2) DECEPTIVE AND MISLEADING  
SOLICITATIONS IN VIOLATION OF  
GOVERNMENT CODE SECTION**

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DEFENDANTS

- 12599.6
- (3) BREACH OF FIDUCIARY DUTY RELATED TO SOLICITATIONS IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17510.8**
- (4) UNTRUE OR MISLEADING STATEMENTS IN VIOLATION OF BUSINESS & PROFESSIONS CODE § 17500**
- (5) BREACH OF CHARITABLE TRUST**
- (6) UNFAIR COMPETITION IN VIOLATION OF BUSINESS & PROFESSIONS CODE SECTION 17200**
- (7) NEGLIGENCE**

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, files a complaint against Defendants People's Choice Charities, Gary Stone, and DOES 1 through 10 (collectively Defendants) and alleges as follows:

**PLAINTIFF**

1. THE PEOPLE bring this action by and through Kamala D. Harris, Attorney General of the State of California, and Jackie Lacey, District Attorney of Los Angeles County. Kamala D. Harris is the duly elected Attorney General of the State of California and is charged with the general supervision of all charitable organizations within this State; with the enforcement and supervision over trustees, nonprofits, and fiduciaries who hold or control property in trust for charitable and eleemosynary purposes; and with enforcement supervision pursuant to California's Unfair Competition Law for unlawful, unfair, and fraudulent business practices within this State. The Attorney General is authorized to enforce, in the name of the People, the provisions of the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Gov. Code, § 12580 et seq.), the Nonprofit Corporation Law (Corp. Code, § 5000 et seq.), the Solicitations for Charitable Purposes Law (Bus. & Prof. Code, § 17510 et seq.), and those provisions of the

1 Business and Professions Code which prohibit unlawful, unfair, or fraudulent business acts or  
2 practices within this State (Bus. & Prof. Code, §17200 et seq.)  
3

4 **DEFENDANTS**

5 2. From 2007 to the present, Defendants and each of them have been transacting  
6 business in the County of Los Angeles and elsewhere in California. The violations of law alleged  
7 in this complaint have been carried out in Los Angeles County and elsewhere in California.

8 3. Defendant People's Choice Charities (PCC) has its principal place of business in Los  
9 Angeles County, California. PCC's articles of incorporation represent that it is organized and  
10 will operate as a nonprofit corporation. In 2006, PCC received tax-exempt status from the  
11 Internal Revenue Service (IRS), pursuant to Section 501(c)(3) of the Internal Revenue Code, 26  
12 U.S.C. § 501(c)(3), and from the Franchise Tax Board (FTB), pursuant to section 23701(f) of the  
13 California Revenue and Taxation Code, based on its representations that it would operate as a  
14 charitable organization. Revenue and Taxation Code section 23701(d) requires that PCC's  
15 property be irrevocably dedicated to charitable purposes and no part of its net income or assets  
16 may inure to the benefit of any director, officer, member or private person. Business and  
17 Professions Code section 17510.8 acknowledges the fiduciary relationship that exists between a  
18 charity, or any person soliciting on behalf of a charity, and the person from whom a charitable  
19 contribution is being solicited. It also provides that the acceptance of a charitable contribution by  
20 a charity, or any person soliciting on behalf of a charity, establishes a charitable trust and a duty  
21 to use the charitable contribution for the declared charitable purposes for which it was sought.

22 4. PCC's articles of incorporation state that its charitable purpose is to: (a) provide  
23 support to religious and non-profit organizations in their fundraising efforts, charity event  
24 planning and promoting of their programs to local communities; (b) provide support to local  
25 children's programs aimed at cultural, educational and physical development; (c) dedicate efforts  
26 to provide communities with free consumer services, such as, but not limited to legal, financial  
27 and educational services for low-income individuals, families and small businesses.  
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1 (www.peopleschoicecharities.org) that the donated vehicles would be sold and 100 percent of the  
2 net proceeds would be donated to a charity selected by the donor. PCC represented it would  
3 maximize the vehicle sale proceeds and control costs to obtain the greatest net return to the  
4 donor's selected charity. PCC further represented that towing would be "100% free." These  
5 representations were false and misleading.

6 9. In order to induce vehicle donations, STONE developed a "cash back" program at  
7 PCC whereby persons who "donated" their vehicle could receive money in return. PCC advised  
8 "donors" that they could receive up to 50 percent of the vehicle's value. STONE later expanded  
9 PCC's policy to offer as much money as necessary to convince the "donor" to transfer title to  
10 PCC. This custom and practice, instituted by STONE and ratified by the Board of Directors,  
11 effectively exposes PCC for what it really is, a used car dealership business. Vehicle Code  
12 section 286 provides an exemption to nonprofits from state dealer licensing requirements only if  
13 vehicles are donated. By offering cash for the donated vehicles, PCC was and is running an  
14 unlicensed used car business in violation of California law.

15 10. PCC obtained its tax-exempt nonprofit status by representing that it would institute  
16 programs to benefit the community. PCC has never established the charitable programs  
17 stipulated in its articles of incorporation independent of the alleged charitable fund raising  
18 activities. PCC has also made false misrepresentations to the public when it represented that it  
19 would minimize costs to maximize donations. PCC made and continues to make representations  
20 to induce the donating public to believe that towing was free and that PCC employs experienced  
21 staff to repair and sell the vehicle at minimal cost. In fact, after numerous undisclosed and  
22 misleading expenses are deducted, only a small fraction of the vehicle's sale price is forwarded to  
23 the donor's chosen nonprofit. PCC had no repair staff, and instead paid outside vendors hundreds  
24 of thousands of dollars – money taken from proceeds that would otherwise go to the donors'  
25 charities.

26 11. An organization granted tax-exempt status is required and obligated to accurately  
27 report its revenue, expenses and the amount that is going towards its charitable program on IRS  
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1 Form 990. From 2007 to the present, PCC, through STONE, failed to accurately report the actual  
2 monetary amount donated to other nonprofits. Instead, STONE invented amounts not founded in  
3 anything other than STONE's belief that they sounded like "reasonable" sums based on PCC's  
4 income. From 2007 to 2012, PCC reported that it had donated a total of \$732,125 to other  
5 nonprofits. During this time period, PCC actually donated only \$185,520, or about 3 percent of  
6 the income received from donors. This figure, reported on Form 990, was false and misleading  
7 and in violation of IRS rules.

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**FIRST CAUSE OF ACTION**  
**BREACH OF FIDUCIARY DUTY**  
**(Against All Defendants)**

12. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each of the allegations of Paragraphs 1-11 of this Complaint.

13. Plaintiff is informed and believes and thereon alleges that at all times relevant herein, defendants STONE, and Does 1 through 10, were officers and/or directors of PCC, and owed fiduciary duties of due care and loyalty to PCC under common law trust principles and state statutes including but not limited to Corporations Code section 5231. Plaintiff is further informed and believes, and thereon alleges, that the Defendants breached their duties of care and loyalty to PCC by engaging in, participating in, aiding and abetting, and facilitating unlawful actions, or omissions, including, including but not limited to:

(a) Causing or allowing PCC to engage in misleading and deceptive solicitation practices, including the dissemination of false information to potential donors;

(b) Causing or allowing PCC to make false statements in their annual financial statements;

(c) Causing or allowing PCC to make false statements in documents filed with governmental agencies;

(d) Causing or allowing PCC to conduct solicitation campaigns in violation of Government Code section 12599.6;

1 (e) Causing or allowing PCC to engage in unfair competition in violation of Business and  
2 Professions Code section 17200;

3 (f) Causing or allowing PCC to violate its fiduciary duty to donors to use their charitable  
4 contributions for the declared charitable purposes for which they are sought in violation of  
5 Business and Professions Code section 17510.8; and

6 (e) Failing to observe corporate formalities as required by law and by PCC's bylaws.

7 14. At all times relevant herein, the Officer/Director Defendants failed to act in good  
8 faith, in the best interests of PCC, and with such care as an ordinarily prudent person in a like  
9 position would use under similar circumstances.

10 **SECOND CAUSE OF ACTION**

11 **DECEPTIVE AND MISLEADING SOLICITATIONS IN VIOLATION OF**  
12 **GOVERNMENT CODE SECTION 12599.6**

13 **(Against All Defendants)**

14 15. Plaintiff re-alleges and incorporates by reference each and every allegation contained  
15 in Paragraphs 1 through 14.

16 16. Charitable organizations are prohibited from misrepresenting the purpose or  
17 beneficiary of a charitable solicitation pursuant to Government Code section 12599.6. That  
18 statute further provides that charitable organizations:

- 19
- 20 • are prohibited from using any unfair or deceptive practices or engaging in fraudulent  
21 conduct that creates a likelihood of confusion or misunderstanding;
  - 22 • are prohibited from misrepresenting that the charitable organization will receive an  
23 amount greater than the actual net proceeds reasonably estimated to be retained by  
24 the charity for its charitable purposes;
  - 25 • must establish and exercise control over their fundraising activities; and
  - 26 • must assure that their fundraising activities are conducted without coercion.

27 17. Plaintiff is informed and believes and thereon alleges that Defendants managed,  
28 directed and/or executed PCC's solicitation campaigns in a manner that violated state laws and

1 confused and deceived actual and potential donors. Plaintiff is informed and believes and thereon  
2 alleges that such defendants authorized misleading solicitation materials that concealed material  
3 facts and made false representations as to how PCC would use the donations. Defendants  
4 executed deceptive and fraudulent solicitation campaigns throughout California and obtained  
5 donations from hundreds of California residents and others.

6 18. Plaintiff is informed and believes and thereon alleges that Defendants' unfair or  
7 deceptive acts or practices and fraudulent conduct include, but are not limited to, the following:

8 (a) Defendants represented that PCC would maximize the proceeds from donated  
9 vehicles, control costs, and provide the greatest return for the donor's chosen charity when  
10 in fact only a small portion of the sale proceeds were donated to nonprofits;

11 (b) Defendants represented that 100 percent of the net proceeds would be donated to their  
12 chosen charity, without being advised that all costs associated with operating PCC,  
13 including rent, postage, electricity, STONE's salary, all payments to all contractors, and  
14 other expenses, would be deducted from the sale proceeds from any donation leaving only  
15 nominal amounts for the charity beneficiary.

16 (c) Defendants represented that towing was free when in fact the towing was deducted as  
17 a cost; and

18 (d) Defendants represented that PCC had expert repair personnel on staff and repair costs  
19 would be minimal, when they had no such personnel and spent hundreds of thousands of  
20 dollars on such costs to the detriment of the charity beneficiaries.

21 **THIRD CAUSE OF ACTION**

22 **BREACH OF FIDUCIARY DUTY RELATED TO SOLICITATIONS IN**  
23 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17510.8**

24 **(Against All Defendants)**

25 19. Plaintiff re-alleges and incorporates by reference each and every allegation contained  
26 in Paragraphs 1 through 18.  
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1 (b) representing to donors that towing of the donated vehicle was free, when in fact, the  
2 towing fee was deducted from the sale proceeds;

3 (c) representing to donors and the public that 100 percent of "net" proceeds from the  
4 sale of their vehicle would be donated to the charity of their choice. PCC represented that it  
5 had staff experienced in vehicle repairs and sales, and potential donors were led to believe  
6 that PCC would absorb those costs. PCC failed to disclose that all its operating costs would  
7 be deducted from the sale proceeds before any donation would be sent to the chosen  
8 charity; and

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10 **FIFTH CAUSE OF ACTION**  
11 **BREACH OF CHARITABLE TRUST**  
12 **(Against All Defendants)**

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

15 26. As a nonprofit public benefit corporation, PCC holds all of its assets in trust for  
16 charitable purposes. No part of PCC's net income or assets may inure to the benefit of any  
17 director, officer, member or private person. Pursuant to Corporations Code section 5142, the  
18 Attorney General may bring an action to enjoin, correct, and obtain damages for or to otherwise  
19 remedy a breach of a charitable trust.

20 27. PCC accepted contributions on behalf of charitable beneficiaries. The acceptance of  
21 those donations established a charitable trust and a fiduciary duty on the part of Defendants to  
22 ensure that the donations were used for the purposes stated during the solicitation as required by  
23 Business and Professions Code section 17510.8.

24 28. For the reasons stated in paragraphs 23 and 29, Defendants committed breaches of the  
25 charitable trust by using charitable assets for improper purposes.

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**SIXTH CAUSE OF ACTION**  
**UNFAIR COMPETITION IN VIOLATION OF**  
**BUSINESS AND PROFESSIONS CODE SECTION 17200**

**(Against All Defendants)**

29. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each of the allegations of paragraphs 1 through 28 of this Complaint.

30. Plaintiff is informed and believes and thereon alleges that Defendants violated Business and Professions Code section 17200 by making false, deceptive, and misleading statements to donors to induce them to make charitable contributions to PCC. Defendants also engaged in unfair competition by failing to comply with reporting and recordkeeping requirements. Defendants committed and continue to commit acts of unfair competition including, but not limited to, the following:

- (a) Misrepresenting, explicitly or implicitly, the percentage or amount of charitable contributions that would go to the donor's designated charity;
- (b) Misrepresenting, explicitly or implicitly, the percentage or amount of charitable contributions that would be used for charitable programs;
- (c) Misrepresenting the charitable purposes of PCC;
- (d) Misrepresenting how and where charitable donations would be used;
- (e) Misrepresenting that towing for the vehicle was free;
- (f) Breaching their fiduciary duty to donors, their charitable beneficiaries, and the public by failing to ensure that the donations were used for the purposes for which they were solicited;
- (g) Using donations for purposes other than the purposes for which the donations were donated;
- (h) Failing to maintain complete and accurate corporate records;
- (i) Making false or misleading statements in PCC's financial statements;
- (j) Making false or misleading statements in PCC's informational returns;

1 (k) Making false or misleading statements in documents filed with the Attorney  
2 General's Registry of Charitable Trusts; and

3 (l) Violating Vehicle Code section 286.

4 31. Defendants, in engaging in and participating in the acts of unfair competition as  
5 alleged in paragraphs 23 and 29, violated the following statutes:

6 (a) Government Code section 12586;

7 (b) Government Code section 12591.1;

8 (c) Government Code section 12599.6;

9 (d) Business and Professions Code section 17500;

10 (e) Business and Professions Code section 17510.8;

11 (f) Corporations Code section 5231;

12 (g) Corporations Code section 5237;

13 (h) Corporations Code section 6215;

14 (i) Corporations Code section 6320;

15 (j) Vehicle Code section 286; and

16 (k) Vehicle Code section 11701.

17 **SEVENTH CAUSE OF ACTION**

18 **NEGLIGENCE**

19 **(Against All Defendants)**

20 32. Plaintiff re-alleges and incorporates by reference each and every allegation  
21 contained in Paragraphs 2 through 31.

22 33. At all times relevant, the defendants voluntarily undertook the duties and  
23 responsibilities of director and/or officer of PCC whether or not formally elected as director or  
24 officer and whether or not they have resigned as such. The voluntary undertaking of these duties  
25 and responsibilities created a duty on the part of these defendants to exercise due care in the  
26 performance of those duties and responsibilities.

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1           34.       Defendants breached the duty of care they owed to PCC by committing the actions  
2 and omissions set forth above, and committing other actions and omissions of which Plaintiff is  
3 currently unaware.

4           35.       Plaintiff is informed and believes and thereon alleges that, as a proximate result of  
5 the breach of the duty of care which defendants owed to PCC as alleged in this cause of action  
6 and as a result of the failure of these defendants to operate PCC in the manner required by law;  
7 charitable assets have been improperly diverted from charitable beneficiaries. PCC and the  
8 public beneficiaries of charity have been damaged in an amount presently unknown to the  
9 Attorney General and which cannot be ascertained without an accounting by defendants. The  
10 facts necessary to ascertain the exact amount of damages to PCC and the public beneficiaries of  
11 charity are within the special knowledge of these defendants. The Attorney General is entitled to  
12 an accounting from these defendants for their expenditures and disposition of all income and  
13 assets which they obtained from PCC, or improperly diverted from PCC or otherwise wasted  
14 through their breach of duty of due care, fraud, or other wrongful acts.

15           36.       When defendants solicited and accepted donations for the public beneficiaries of  
16 charity, they owed a duty of care to the donors to ensure that the donations and funds were used  
17 for the specific charitable purposes for which they were solicited.

18           37.       Defendants breached their fiduciary duty to the donors in that the public  
19 beneficiaries of charities did not receive the donations that PCC represented would be made to the  
20 charities. As a result of that breach of duty, PCC and the public beneficiaries of charity have  
21 been injured, in the aggregate, in an amount presently unknown to Plaintiff. The facts necessary  
22 for calculation of the receipts and disbursements, and thus the amount owed to the public  
23 beneficiaries of charity, are within the special knowledge of defendants. The Attorney General is  
24 entitled to an accounting from all defendants named in this cause of action for the receipt and  
25 disposition of all donations they obtained on behalf of PCC. Plaintiff is also entitled to damages,  
26 attorney fees and costs.

27       ///

1 WHEREFORE, Plaintiff prays for judgment as follows:

2 1. For a permanent injunction, enjoining Defendants, their employees, agents, servants,  
3 representatives, successors, and assigns, any and all persons acting in concert or participation  
4 with them, and all other persons, corporations, or other entities acting under, by, through, or on  
5 their behalf, from doing any of the following until they have first provided a full and complete  
6 accounting for all funds received by, and disbursed from, any and all financial accounts of PCC  
7 from its inception to the present: (1) expending, disbursing, transferring, encumbering,  
8 withdrawing or otherwise exercising control over any funds received by or on behalf of PCC or  
9 rightfully due PCC except as authorized by the Court; (2) conducting business of any kind on  
10 behalf of, or relating to PCC other than as necessary to assist with dissolution; and (3) controlling  
11 or directing the operations and affairs of any California nonprofit public benefit corporation;

12 2. That an order issue directing that Defendants and each of them, render to the Court  
13 and to the Attorney General a full and complete accounting of the financial activities and  
14 condition of PCC from their inception to the present, to include the expenditure and disposition of  
15 all revenues and assets received by or on behalf of PCC. Upon the rendering of such accounting,  
16 that the Court determine the property, real or personal, or the proceeds thereof, to which PCC and  
17 the charitable beneficiaries thereof are lawfully entitled, in whatsoever form in whosoever hands  
18 they may now be, and order and declare that all such property or the proceeds thereof is  
19 impressed with a trust for charitable purposes, that defendants are constructive trustees of all such  
20 charitable funds and assets in their possession, custody or control, and that the same shall be  
21 deposited forthwith in Court by each and every defendant now holding or possessing the same or  
22 claiming any rights, title or interest therein. In addition, that these defendants be surcharged and  
23 held liable and judgment entered against each of them for any and all such assets for which they  
24 fail to properly account, together with interest thereon at the legal rate from the date of liability  
25 thereon; and that any and all expenses and fees incurred by Defendants in this action be borne by  
26 the individual defendants and each of them and not by PCC or any other public or charitable  
27 corporation or fund;

1           3. For damages resulting from Defendants' breaches of fiduciary duty in an amount to  
2 be determined following an accounting, but believed to be in excess of \$3 million, plus interest at  
3 the legal rate until the judgment is paid;

4           4. For punitive and exemplary damages against Defendants according to proof;

5           5. That the Court assess civil penalties against all Defendants pursuant to Government  
6 Code section 12591.1 for violations of the Supervision of Trustees and Fundraisers for Charitable  
7 Purposes Act (Gov. Code § 12580 et seq.) as proved at trial;

8           6. Pursuant to Business and Professions Code section 17206, that the Court assess a civil  
9 penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of  
10 Business and Professions Code section 17200, as proved at trial, in an amount not less than  
11 \$100,000;

12           7. Pursuant to Business and Professions Code section 17536, that the Court assess a civil  
13 penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of  
14 Business and Professions Code section 17500, as proved at trial, in an amount not less than  
15 \$100,000;

16           8. Pursuant to Business and Professions Code section 17206.1, Defendants and each of  
17 them be ordered to pay a civil penalty of \$2,500 for each violation of Business and Professions  
18 Code section 17200 that was perpetrated against a senior citizen or disabled person, as proved at  
19 trial;

20           9. Pursuant to Business and Professions Code section 17203, for a permanent injunction  
21 enjoining Defendants, their successors, agents, representatives, employees and all persons who  
22 act in concert with, or on behalf of, defendants from engaging in unfair competition as defined in  
23 Business and Professions Code section 17200, including, but not limited to, those acts and  
24 omissions alleged in this Complaint;

25           10. That the Court order the involuntary dissolution of PCC pursuant to the provisions of  
26 Corporations Code section 6518, and establish a procedure for determining the disposition of  
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1 PCC's assets in a manner consistent with their charitable purposes and consistent with any lawful  
2 restrictions that have been placed upon any of their remaining assets;

3 11. That the Court order the permanent removal of the defendants pursuant to the  
4 provisions of Corporations Code section 5223

5 12. For Plaintiff's costs of suit and other costs pursuant to Government Code section  
6 12598;

7 13. For Plaintiff's attorney fees as provided in Government Code section 12598 and Code  
8 of Civil Procedure section 1021.8; and

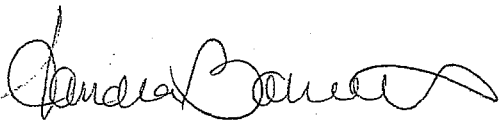
9 14. For such other relief as the Court may order.  
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11 **THIS COMPLAINT IS DEEMED VERIFIED UNDER THE PROVISIONS OF**  
12 **CODE OF CIVIL PROCEDURE SECTION 446.**  
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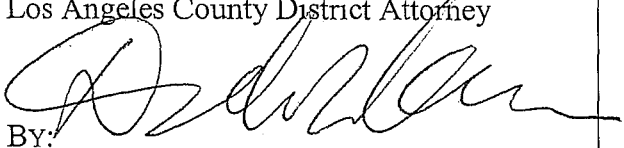
14 Dated: December 1, 2015

Respectfully Submitted,

15 KAMALA D. HARRIS  
16 Attorney General of California

17 BY:   
18 SANDRA I. BARRIENTOS  
19 Deputy Attorney General  
20 Attorneys for the People of the State of  
21 California

22 JACKIE LACEY  
23 Los Angeles County District Attorney

24 BY:   
25 DUKE T. CHAU  
26 Deputy District Attorney  
27 Attorneys for the People of the State of  
28 California