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County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk
By: M. Soto, Deputy
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA

14 Plaintiff,

15 v.

16 THE NATIONAL CANCER COALITION,
17 INC., a Delaware Nonprofit Nonstock
18 Corporation, and DOES 1-100,

19 Defendants.
20
21

Case No.

BC 696766

COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES, AND
OTHER RELIEF ARISING FROM:

(1) UNFAIR COMPETITION (Bus. & Prof.
Code, § 17200 et seq.)

(2) MISREPRESENTATIONS IN
CHARITABLE SOLICITATIONS (Gov.
Code, 12599.6, subd. (f))

22 Plaintiff, the People of the State of California, files this Complaint and alleges as follows:
23

24 I.

SUMMARY OF THE CASE

25 1. This case involves the false public reporting of donations of pharmaceuticals and the
26 resulting large-scale deception of unsuspecting donors. Potential donors view costs spent on a
27 charity's programs, i.e., "program expenses" in furtherance of its mission, favorably, and those
28

1 spent on fundraising and administration (“overhead”) unfavorably. As a result, charities try to
2 keep their publicly reported program expenses high and their fundraising and administrative
3 expenses low.

4 2. Over the past several years, media sources have reported that some charities report
5 exceedingly high, unsubstantiated valuations for pharmaceutical donations in their public
6 financial reporting in order to attract donors and get favorable ratings from charity rating
7 organizations. These charities report inflated values as revenue and program expense to make
8 them appear larger and more efficient than they really are, and/or to hide high fundraising and
9 administrative costs from potential donors. Charities accomplish this, in part, by using United
10 States market prices to value pharmaceuticals intended for distribution outside the United States,
11 even if the pharmaceutical company donors prohibit distribution and use in the United States.
12 These same pharmaceuticals are shipped to developing countries where their applicable fair
13 market values are a small fraction of the values in the high-priced United States markets.

14 3. This accounting/reporting scheme violates accounting principles charities are required to
15 use in reporting noncash gifts, also referred to as “gifts in kind,” including pharmaceuticals. It is
16 misleading, and it causes widespread deception. Potential donors, charity rating organizations,
17 charity accrediting agencies, charity regulators and others are deceived by the charities’ false
18 public reports as well as by misrepresentations in their solicitations. This scheme defeats the very
19 purpose of public financial reporting in the charity industry – to provide transparency, which
20 assists donors in making their donation decisions.

21 4. Defendant THE NATIONAL CANCER COALITION, INC. (“National Cancer
22 Coalition”) reported extremely high United States values for pharmaceutical donations that could
23 not be distributed or used in the United States. It reported the inflated revenue and program
24 expense in National Cancer Coalition’s financial reports, which were publicly available on its
25 website, on the Attorney General’s Registry of Charitable Trusts (“AG’s Registry”) website, and
26 on the websites of charity rating and accrediting organizations, and other sources.

27 5. Defendant’s filing of grossly inaccurate public financial reports and the dissemination of
28 those reports constitute an unfair business practice under Business & Professions Code, section

1 17200 et seq. Further, Defendant's misrepresentations in National Cancer Coalition's
2 solicitations related to overvaluation of pharmaceuticals violated Business & Professions Code,
3 section 17200 et seq., and Government Code section 12599.6. Likewise, Defendant's
4 representations to potential donors that National Cancer Coalition's Breast Cancer Relief
5 Foundation "special project" had programs funding research and providing diagnostic tests for
6 poor women (when it had no such programs) violated these same statutes.

7 6. Plaintiff seeks an injunction prohibiting National Cancer Coalition from engaging in
8 further unfair business practices, an order requiring it to amend all false financial filings, and the
9 assessment of penalties against National Cancer Coalition for its violations of law.

10 II.

11 GENERAL ALLEGATIONS

12 7. The Attorney General, Xavier Becerra ("the Attorney General"), who brings this action
13 on Plaintiff's behalf, is the duly elected Attorney General of the State of California and is charged
14 with the general supervision of all charitable organizations who operate within this State,
15 including those who solicit charitable donations. The Attorney General is authorized to enforce,
16 in the name of the People, the provisions of the Supervision of Trustees and Fundraisers for
17 Charitable Purposes Act (Gov. Code, § 12580 et seq.), the Nonprofit Corporation Law (Corp.
18 Code, § 5000 et seq.), and those provisions of the Business and Professions Code that prohibit
19 unlawful, unfair, and fraudulent business practices (Bus. & Prof. Code, § 17200 et seq.).

20 8. Defendant National Cancer Coalition was incorporated in the State of Delaware in 1993
21 as a nonprofit nonstock corporation, and is exempt from taxation under section 501(c)(3) of the
22 Internal Revenue Code. On information and belief, its principal place of business is New
23 Orleans, Louisiana. Pursuant to its amended Articles of Incorporation, its charitable purposes
24 include increasing public awareness in the detection and prevention of cancer and funding cancer
25 treatment and research. Its status is delinquent with the AG's Registry for failing to file timely
26 annual reports.

27 9. Plaintiff is informed and believes that Hall Overall is a resident of the State of Florida
28 and is the President and Chief Executive Officer of National Cancer Coalition.

1 informational website hosted by GuideStar, and through links on the websites of organizations
2 that rate and/or accredit charities, like Charity Navigator. Charity regulators advise potential
3 donors to do their due diligence and research charities before making donations. Donors are told
4 to review a charity's IRS Form 990 to see how much is spent on charitable programs versus
5 fundraising and overhead.

6 14. Donors view expenses spent directly on a charity's programs, i.e., "program expenses,"
7 favorably. Fundraising and overhead expenses are viewed unfavorably. Donors are motivated to
8 give when they believe that all or most of their donations will be used directly for the charity's
9 programs.

10 15. When, as in this case, a charity unlawfully and unfairly includes inflated values for
11 gifts in kind in its public reporting, it appears larger and more efficient than it really is, and thus
12 more attractive to donors. Reporting inflated values for program expense can also unfairly
13 diminish the percentage of the charity's reported fundraising and administrative costs of the
14 charity's total costs.

15 B. National Cancer Coalition's Pharmaceutical Donations Overseas

16 16. Many charities throughout the United States have charitable programs that facilitate
17 shipments of donated goods, such as pharmaceuticals, food, and clothing to developing countries.
18 From at least 2012 through 2014, National Cancer Coalition received pharmaceutical donations
19 from U.S. pharmaceutical companies and then partnered with other U.S. charities to deliver them
20 overseas. Typically, the transactions occurred as follows:

- 21 • U.S. pharmaceutical company offered National Cancer Coalition donations of large
22 quantities of pharmaceuticals, many of which were close to expiration;
- 23 • National Cancer Coalition advised its U.S. partner charity of the available pharmaceuticals,
24 quantities, and expiration dates;
- 25 • The U.S. partner charity advised one of its foreign-organization "beneficiaries" of the
26 available pharmaceuticals and the organization accepted or rejected the offer;
- 27 • The U.S. partner charity notified National Cancer Coalition of the foreign organization's
28 acceptance;

- 1 • The U.S. partner charity shipped the drugs from National Cancer Coalition’s warehouse to
2 the selected foreign-end recipient.

3 17. Of critical significance, the U.S. pharmaceutical company donors prohibited the
4 pharmaceuticals from being distributed and used in the United States. Even though the
5 pharmaceuticals were prohibited from being distributed in the U.S., Defendants used U.S. market
6 prices to value the donations instead of the applicable minimal international market prices.

7 C. Misrepresentations in National Cancer Coalition’s Publicly Available IRS Forms 990 Due
8 to Its Vastly Overvalued Pharmaceutical Donations

9 18. California law requires charities that solicit donations in this State to follow Generally
10 Accepted Accounting Principles (“GAAP”) in their financial reporting. (Bus. & Prof. Code,
11 §17510.5, subd. (a).) Thus, all charities soliciting in this State are required to “play by the same
12 rules” in their financial reporting. Under GAAP, charities can only claim the “fair market value”
13 of gifts in kind, which is defined as “the price that would be received to sell an asset or paid to
14 transfer a liability in an orderly transaction between market participants at the measurement date.”
15 (FASB ASC 820-10-35-2.) GAAP also requires charities to use the “principal market” in valuing
16 assets or, in the absence of a principal market, the “most advantageous market” for the asset.
17 (FASB ASC 820-10-35-5.) Importantly, charities must have *access* to the principal or most
18 advantageous market in valuing the asset. (FASB ASC 820-10-35-6A.) For example, if a charity
19 receives a donation of pharmaceuticals from a U.S. pharmaceutical company that prohibits
20 distribution in the U.S., then the U.S. is neither the principal nor the most advantageous market.
21 The U.S. is *the prohibited market*. Finally, “in the absence of evidence to the contrary, the
22 market in which the reporting entity normally would enter into a transaction to sell the asset or to
23 transfer the liability is presumed to be the principal market or, in the absence of a principal
24 market, the most advantageous market.”

25 19. The applicable international prices for most of the pharmaceuticals at issue were a
26 small fraction of the values National Cancer Coalition reported. Had the charity used appropriate
27 international prices, its reported revenue and program expense figures would have been markedly
28 decreased.

1 20. The impact overvalued pharmaceuticals had on National Cancer Coalition's reported
2 revenue and program expense was huge given that pharmaceutical donations constituted almost
3 all, or the vast majority, of its revenue and program expense. This is illustrated as follows: for
4 fiscal years ending September 30, 2012, through September 30, 2014, National Cancer Coalition
5 reported annual revenue of \$12 to \$140 million. Pharmaceuticals comprised 80-97% of revenue.
6 For those same years, National Cancer Coalition reported annual program expense of \$16 to \$137
7 million, of which 97-99% was pharmaceuticals distributed overseas.

8 21. The difference in U.S. versus the applicable international market prices for National
9 Cancer Coalition's donated pharmaceuticals was immense. This is shown by the following
10 samples of National Cancer Coalition pharmaceutical transactions:

11 a. 2013 shipment to Nicaragua: National Cancer Coalition valued the pharmaceuticals
12 Simvastatin and Hydrochlorothiazide at \$115,625 (total) using U.S. prices. This was over six
13 times the true fair market value of less than \$18,500 using the applicable international prices.

14 b. 2013 shipment to Guatemala: National Cancer Coalition valued the pharmaceuticals
15 Alendronate Sodium, Gabapentin, and Hydrochlorothiazide at \$152,289 using U.S. prices. This
16 was over three times the true fair market value of less than \$46,000 using the applicable
17 international prices.

18 c. 2013 shipment to Nicaragua: National Cancer Coalition valued the pharmaceuticals
19 Lisinopril and Simvastatin at \$142,449 (total) using U.S. prices. This was over five times the true
20 fair market value of less than \$28,100 using the applicable international prices.

21 D. In Addition to National Cancer Coalition's False IRS Forms 990, Defendants Made Other
22 Misrepresentations to Potential Donors Related to National Cancer Coalition's Vastly
23 Overvalued Pharmaceutical Shipments

24 22. National Cancer Coalition used vastly inflated pharmaceutical gift-in-kind values to
25 make misleading and deceptive statements on its 2014 website, including the following:

26 a. "Each year, more than \$130 million worth of medicine is donated to National Cancer
27 Coalition through our partnerships with pharmaceutical companies and leading NGOs."
28

1 b. “We are conservative in our approach [to valuing pharmaceuticals]” using Wholesale
2 Acquisition Cost [WAC] rather than “the much higher retail values.” This was deceptive because
3 both “retail” and WAC were U.S. pricing rates and *neither* should have been used to calculate the
4 value of National Cancer Coalition’s pharmaceuticals.

5 c. “In certain instances, National Cancer Coalition obtains highly valuable specialty
6 medicines that would command a very high retail value, yet in all cases National Cancer
7 Coalition uses a lower wholesale value.” Again, National Cancer Coalition should not have used
8 either retail or wholesale U.S. values.

9 d. Citing its 2012 IRS Form 990, National Cancer Coalition stated it “shows that we
10 devoted 97.7% of our resources to programming, 0.54% to administrative expense and 1.76% to
11 fundraising.” That claim was false. Using international prices for National Cancer Coalition’s
12 pharmaceutical shipments, its actual program expense percentage had dropped to less than 60%
13 when it made the representation.

14 IV.

15 THE WIDESPREAD, ADVERSE IMPACT OF NATIONAL CANCER COALITION’S 16 HIGHLY INFLATED VALUATIONS FOR PHARMACEUTICAL DONATIONS

17 23. National Cancer Coalition’s accounting/reporting scheme created the illusion that it
18 received, annually, tens of millions of dollars in revenue and spent tens of millions of dollars on
19 charitable programs with low administrative and fundraising costs. National Cancer Coalition
20 claimed these illusory numbers on its website and in its Forms 990. California, like many other
21 states, made the Forms 990 of National Cancer Coalition publicly available to allow prospective
22 donors to research them before making donations. Prospective donors rely on this information in
23 evaluating and comparing charity performance and effectiveness.

24 24. Further, organizations like GuideStar and Charity Navigator provided a link on their
25 websites to National Cancer Coalition’s false Forms 990. Significantly, GuideStar recently
26 announced a new feature to “increase your nonprofit intelligence and better inform your
27 charitable giving” – the ability to obtain “manicured lists” of key targets by *size*, geography,
28 cause area, etc. .

1 diagnostic tests, or direct assistance to cancer victims to help them continue their course of
2 treatment. The solicitations for BCRF were patently false.

3 VI.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **UNFAIR COMPETITION IN VIOLATION OF BUSINESS**

7 **AND PROFESSIONS CODE SECTION 17200 ET SEQ.**

8 **(Against NATIONAL CANCER COALITION and DOES 1-100)**

9 31. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
10 of the allegations of paragraphs 1 through 30 of this Complaint.

11 32. National Cancer Coalition and DOES 1-100 violated Business and Professions Code
12 section 17200 et seq. by violating Government Code section 12599.6, subdivision (f)(2), in
13 conducting and executing charitable solicitations. Defendants' misrepresentations in National
14 Cancer Coalition's solicitations including those set forth in paragraphs 22, 28-30 above, violated
15 Government Code section 12599.6, subdivision (f)(2), because they were false and misleading
16 and created a likelihood of confusion or misunderstanding on the part of potential donors.

17 33. National Cancer Coalition and DOES 1-100 violated Business and Professions Code
18 section 17200 et seq. by filing false IRS Forms 990 with the IRS in violation of 26 U.S.C.
19 sections 6603 and 6652.

20 34. During the years 2012 through 2015, National Cancer Coalition and DOES 1-100
21 violated Business and Professions Code section 17200 et seq. by making false and misleading
22 representations regarding its revenue and program expense in its audited financial statements, on
23 its website, and through links to its website in its listings/profiles in the Combined Federal
24 Campaign and California's "Our Promise" Campaign. These representations, which Defendants
25 disseminated to the public, were false due to the overvaluation of National Cancer Coalition's
26 pharmaceutical donations.

27 35. National Cancer Coalition and DOES 1 through 100 violated Business and Professions
28 Code section 17200 et seq. by engaging in unlawful, unfair or fraudulent business acts or

1 practices by filing false IRS Forms 990 with the IRS and AG's Registry. Defendants filed false
2 and misleading IRS Forms 990/amended Forms 990 for National Cancer Coalition for fiscal years
3 ended September 30, 2012, through September 30, 2015, and disseminated the false information
4 in these returns to the public. The figures for revenue and program expense were unlawfully and
5 deceptively inflated by vastly overvalued pharmaceutical donations.

6 **SECOND CAUSE OF ACTION**

7 **MISREPRESENTATIONS IN SOLICITATIONS**

8 **IN VIOLATION OF GOVERNMENT CODE,**

9 **SECTION 12599.6, SUBDIVISION (f)(2)**

10 **(Against NATIONAL CANCER COALITION and DOES 1-100)**

11 36. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
12 of the allegations of paragraphs 1 through 30 of this Complaint.

13 37. Defendants National Cancer Coalition and DOES 1 through 100 violated Government
14 Code section 12599.6, subdivision (f)(2), in conducting and executing charitable solicitations.
15 Defendants' misrepresentations in National Cancer Coalition's solicitations including those set
16 forth in paragraphs 22, 28-30, above, violated Government Code section 12599.6, subdivision
17 (f)(2), because they were false and misleading and created a likelihood of confusion or
18 misunderstanding on the part of potential donors.

19 WHEREFORE, plaintiff prays for judgment as follows:

20 A. On the First and Second Causes of Action, for a judgment that Defendants' use of U.S.
21 prices to calculate and publicly report National Cancer Coalition's valuations of donated
22 pharmaceuticals that were prohibited from being distributed and used in the United States
23 constituted an unfair business practice and violated California law and GAAP;

24 B. On the First and Second Causes of Action, for a judgment that Defendants' use of
25 United States prices to calculate and publicly report National Cancer Coalition's valuations of
26 donated pharmaceuticals that were intended to be distributed and used solely outside the United
27 States constituted an unfair business practice and violated California law and GAAP;

28

1 C. On the First and Second Causes of Action, for a judgment that Defendants'
2 misrepresentations in National Cancer Coalition's Forms 990, on its website, in its solicitations
3 and through other documents disseminated to the public constituted an unfair business practice
4 and violated California law and GAAP;

5 D. On the First Cause of Action, that the Court assess a civil penalty against Defendant
6 National Cancer Coalition for each violation of Business and Professions Code section 17200 in
7 an amount according to proof, under the authority of Business and Professions Code section
8 17206;

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

14 F. On the First Cause of Action, that the Court make such orders or judgments as may be
15 necessary to prevent the use or employment by any defendant of any practice that constitutes
16 unfair competition or as may be necessary to restore to any person in interest any money or
17 property that may have been acquired by means of such unfair competition, under the authority of
18 Business and Professions Code section 17203;

19 G. On the Second Cause of Action, for a preliminary and permanent injunction enjoining
20 Defendants, their successors, agents, representatives, employees and all persons who act in
21 concert with them, or on their behalf, from making misrepresentations in violation of Government
22 Code section 12599.6;

23 H. On all causes of action, for plaintiff's costs of suit and other costs and fees pursuant to
24 Government Code sections 12586.2 and 12598, and as otherwise permitted by law; and

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

Dated: March 7, 2018

Respectfully Submitted,
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