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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 THE PEOPLE OF THE STATE OF CALIFORNIA
ex rel. BILL LOCKYER, Attorney General,

12 Plaintiff,

13 v.

14 AARON TONKEN; AARON TONKEN &
15 ASSOCIATES, a limited liability company;
16 ROBERT FREEDMAN; KEVIN MATTES
17 CLARKE; RONIN LAW GROUP, a professional
law corporation; CYNTHIA GERSHMAN;
18 CYNTHIA GERSHMAN, as trustee of the Cynthia
Gershman Foundation; and DOES 1 through 100,

19 Defendants.

Case No.:

COMPLAINT FOR DAMAGES, CIVIL
PENALTIES, DECLARATION OF A
CONSTRUCTIVE TRUST, AN
ACCOUNTING, AN INJUNCTION
AND FOR OTHER EQUITABLE
RELIEF ARISING FROM:

- (1) VIOLATION OF GOVERNMENT
CODE SECTION 12599;
- (2) BREACH OF FIDUCIARY
DUTY
- (3) AIDING AND ABETTING A
BREACH OF FIDUCIARY DUTY
- (4) FRAUD AND DECEIT
- (5) NEGLIGENT
MISREPRESENTATION
- (6) CONSTRUCTIVE FRAUD
- (7) CONVERSION
- (8) UNFAIR BUSINESS PRACTICES
- (9) NEGLIGENCE
- (10) VIOLATION OF GOVERNMENT
CODE SECTION 12580
- (11) BREACH OF PLEDGE
AGREEMENT

25 Plaintiff, the People of the State of California ex rel. Bill Lockyer, Attorney
26 General of the State of California, complains and alleges as follows:

27 **General Allegations**

28 1.

COMPLAINT FOR DAMAGES, CIVIL PENALTIES, DECLARATION OF A CONSTRUCTIVE TRUST, AN
ACCOUNTING, AN INJUNCTION AND FOR OTHER EQUITABLE RELIEF

1 1. Plaintiff BILL LOCKYER is the duly elected Attorney General of the State of
2 California and is charged with the general supervision of all charitable organizations within this
3 State; with the enforcement and supervision over trustees, commercial fundraisers, and
4 fiduciaries who hold or control property in trust for charitable and eleemosynary purposes; and
5 with enforcement and supervision under California's Unfair Business Practice Act for unlawful,
6 unfair, or fraudulent business acts or practices. The Attorney General is authorized to enforce, in
7 the name of the People, the provisions of the Supervision of Trustees and Fundraisers for
8 Charitable Purposes Act (Gov. Code, § 12580 et seq.), the Nonprofit Corporation Law (Corp.
9 Code, § 5000 et seq.), and those provisions of the Business and Professions Code that prohibit
10 unlawful, unfair, and fraudulent business practices (Bus. & Prof. Code, § 17200 et seq.).

11 2. At all times material herein, defendants and each of them have been
12 transacting business in the County of Los Angeles. The violations of law hereinafter described
13 have been and are now being carried out in part within said county and elsewhere. Unless
14 enjoined and restrained by an order of this Court, the defendants may continue to engage in the
15 unlawful actions, practices and courses of conduct set forth below.

16 3. Defendant Aaron Tonken (Tonken) is a resident of Los Angeles County, State
17 of California. Tonken is a promoter and producer of fundraising events for nonprofit and other
18 organizations. At all times relevant herein, Tonken also acted as a commercial fundraiser for
19 charitable purposes and as a fiduciary and, in that capacity, had a fiduciary relationship with the
20 donors and the beneficiaries of any charitable solicitation he made or caused to be made.

21 4. Plaintiff is informed and believes and thereon alleges that defendant Aaron
22 Tonken & Associates (AT Associates) was, and is, a limited liability company with its principal
23 place of business located in Los Angeles County. On information and belief, Tonken is President
24 and Chief Executive Officer of AT Associates.

25 5. Defendant Robert Freedman (Freedman) is a resident of Los Angeles County,
26 State of California.

27 6. Defendant Kevin Mattes Clarke (Clarke), an attorney, is a resident of Los
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1 Angeles County, State of California. On information and belief, Clarke is a shareholder of Ronin
2 Law Group.

3 7. Plaintiff is informed and believes and thereon alleges that defendant Ronin
4 Law Group (Ronin) is a professional law corporation incorporated in the State of California. On
5 information and belief Ronin has its principal place of business in the County of Los Angeles.

6 8. Defendant Cynthia Gershman (Gershman), is a resident of Los Angeles
7 County, State of California. Gershman is the trustee of the Cynthia Gershman Foundation
8 (Gershman Foundation), a charitable trust registered with the Attorney General's Registry of
9 Charitable Trusts. Defendant Gershman is sued both individually and in her capacity as trustee
10 of the Gershman Foundation.

11 9. Defendants Does 1 through 100 are named as fictitious defendants who have
12 participated or acted in concert with one or more of the defendants, or who have acted on behalf
13 of or as agents, servants or employees of one or more of the defendants herein, but whose true
14 names and capacities, whether individual, corporate or otherwise, are presently unknown to
15 plaintiff. Plaintiff is informed and believes and thereon alleges that defendants Does 1 through
16 100 have directly or indirectly participated in and are responsible for the acts and omissions that
17 are more specifically described herein. Because plaintiff is presently uninformed as to the true
18 names and capacities of defendants Does 1 through 100, plaintiff sues them herein by fictitious
19 names, but will seek leave to amend this Complaint when their true names are discovered.

20 10. Defendants have committed and continue to commit the breaches of fiduciary
21 duty, violations of trust, violations of law, negligent and fraudulent acts, acts of conversion and
22 the other wrongful acts as alleged hereafter in this complaint.

23 11. In order to preserve and conserve the charitable assets and in order to prevent
24 waste, dissipation and loss of charitable donations and assets of other charities in this State to the
25 irreparable damage of the general public including the People of the State of California, it is
26 necessary that the injunctive relief herein prayed for be granted.

27 **A FAMILY CELEBRATION 2001**

1 12. Defendants Tonken and AT Associates decided to promote and produce a
2 charity fundraising event to be called A Family Celebration 2001 (Family Celebration). In the
3 Spring of 2000, Tonken approached cast members of the television series “Ally McBeal” through
4 their agent/representative. Tonken promised that all net proceeds from Family Celebration
5 would benefit the various charities selected by those Ally McBeal cast members (hereinafter
6 referred to as the McBeal charities). In exchange, the cast members agreed to attend the charity
7 event and give the event publicity.

8 13. Tonken informed the McBeal agent/representative that the event would cost
9 approximately \$250,000 and that, since the entire cost of the event would be underwritten by the
10 Gershman Foundation, the event would raise significant amounts of donations for the McBeal
11 charities. From the Spring of 2000 to December 2000, Tonken repeatedly promised all of the net
12 proceeds of Family Celebration to the McBeal charities and promised the event was to be fully
13 underwritten by the Gershman Foundation. On or about January 16, 2001, Tonken entered into a
14 written agreement with the McBeal cast members’ agent/representative whereby Tonken agreed
15 that 100 percent of the first \$650,000 received for sponsor tables, ticket sales and net auction
16 proceeds, and certain specified amounts from ad placement in the “tribute book” would be
17 distributed to the McBeal charities.

18 14. Notwithstanding Tonken’s representations, the underwriting funds from the
19 Gershman Foundation were never transferred over to Family Celebration. Further,
20 notwithstanding the January 16, 2001 agreement, Tonken improperly caused funds received from
21 sponsor tables to be spent on underwriting rather than earmarking and preserving those funds for
22 the McBeal charities.

23 15. On or about February 8, 2001, defendants Tonken and AT Associates
24 authorized their agent to enter into an agreement on their behalf with an agent acting on behalf of
25 the popular music group known as *Nsync whereby *Nsync would perform at Family
26 Celebration. In exchange for *Nsync’s participation, the parties agreed that the charity
27 designated by *Nsync to be a beneficiary of the event, Challenge for the Children, Inc., would
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1 receive 50 percent of the net revenues. Defendants Tonken and AT Associates entered into this
2 agreement despite the fact they had already promised that 100 percent of the first \$650,000
3 received for sponsor tables, ticket sales and net auction proceeds would be distributed to the
4 McBeal charities.

5 16. On information and belief, defendants Tonken and AT Associates diverted
6 funds from Family Celebration by soliciting and collecting funds from California donors for
7 Family Celebration and advising the donors to make their donation checks payable to the
8 American Spirit Foundation, which was not a beneficiary of the event. Defendant Tonken has
9 never been an officer or director of the American Spirit Foundation, a foundation that has been
10 defunct since at least March 2000. Tonken caused those checks to be deposited into bank
11 accounts controlled by himself and AT Associates. For example, between 2000 and 2001,
12 Tonken solicited and collected a donation of \$150,000 from the Isabelle and Leonard Goldenson
13 Association, Inc. (I&L Association), a donation of \$40,000 from the Gershman Foundation, and
14 a donation of \$150,000 from the Robert H. Lorsch Foundation Trust (“Lorsch Foundation”) for
15 the Family Celebration event. On information and belief, Tonken and AT Associates diverted
16 these funds for purposes unrelated to the event.

17 17. On information and belief, defendant Tonken, AT Associates and Does 1-10,
18 in breach of their fiduciary duty to the donors and beneficiaries of Family Celebration,
19 improperly commingled Family Celebration funds with other funds, improperly diverted
20 charitable donations intended by the donors for Family Celebration and used those funds for
21 purposes unrelated to the event. Defendants have failed to account for these funds despite a
22 demand from the donors, the beneficiaries, and the Attorney General of California.

23 18. On or about February 8, 2001, Tonken and AT Associates entered into a
24 letter agreement with a charitable corporation named the Giving Back Fund, Inc. (the GBF). The
25 GBF is incorporated in Massachusetts and is doing business in Massachusetts and in California.
26 Pursuant to the February 8, 2001 agreement, the GBF agreed to act as fiscal agent for Family
27 Celebration. As fiscal agent, the GBF agreed to collect all contributions for the event and to pay
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1 all expenses incurred for the event from an account that would be monitored by the event's
2 accountant, Tanner, Mainstain, Hoffer & Peyrot (Tanner Mainstain). The GBF would also
3 provide donor acknowledgment letters. Under the agreement, the GBF was to receive a
4 charitable contribution in the amount of \$100,000 to \$200,000, depending upon the amount of
5 revenues collected for the event. Plaintiff is informed and believes and thereon alleges that the
6 GBF did not receive any funds for its services.

7 19. Family Celebration took place on April 1, 2001. The honorary chairpersons
8 of the event were former President Bill Clinton and Hillary Clinton. The dinner chairpersons
9 were television producer David E. Kelley and his wife, actress Michelle Pfeiffer. Plaintiff is
10 informed and believes and thereon alleges that over 900 persons attended the event and the
11 event generated at least \$1.5 million in total proceeds. Notwithstanding Tonken's representation
12 that the cost of the event would be approximately \$250,000, the alleged cost of the event
13 exceeded \$800,000.

14 20. When the GBF discovered that donations made specifically for Family
15 Celebration were deposited into Tonken-controlled accounts that were not monitored by the
16 GBF or by Tanner Mainstain, the GBF demanded an accounting of these funds from Tonken and
17 AT Associates. An accounting was also demanded by Tanner Mainstain and by some donors to
18 the event.

19 21. In breach of their fiduciary duty to the charitable beneficiaries and donors of
20 Family Celebration, Tonken and AT Associates refused to provide a complete and accurate
21 accounting of all of the funds collected specifically for the event and deposited into accounts not
22 monitored by the GBF and Tanner Mainstain. On information and belief, in breach of their
23 fiduciary duty to the donors and beneficiaries of the event, Tonken and AT Associates failed and
24 continue to fail to turn over funds designated for Family Celebration from bank accounts under
25 the control of Tonken and AT Associates.

26 22. The California Attorney General has demanded that Tonken and AT
27 Associates provide an accounting of all of the revenues and expenses for Family Celebration.
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1 Defendants have refused to provide any accounting.

2 **CELEBRATING DIANA**

3 23. In September 2000, Tonken and AT Associates entered into an agreement
4 with the Joan English Fund for Women's Cancer Research (the English Fund). The English Fund
5 is a small nonprofit public benefit corporation incorporated in California. Under the agreement,
6 the English Fund was to pay Tonken and AT Associates \$75,000 for Tonken's services and for
7 underwriting a charitable fundraising event to take place by March or April 2001. At or around
8 the time the agreement was executed, Tonken represented to Thomas English (English),
9 President of the English Fund, that the event would be called Celebrating Diana and would honor
10 entertainer Diana Ross. The agreement provided that the English Fund was to receive 100
11 percent of the net proceeds from the event. On information and belief, Tonken advised English
12 that he expected the fundraiser would net approximately \$250,000 to \$500,000 in proceeds.

13 24. On or about September 11, 2000, the English Fund gave Tonken two checks,
14 each drawn in the amount of \$37,500. Pursuant to an oral agreement between Tonken and
15 English, one check would be cashed immediately and the other would be cashed no earlier than
16 September 25, 2000, the date written on the second check. Shortly thereafter, Tonken told
17 English that he needed the second \$37,500 installment before September 25, 2000. Tonken
18 asked English for another check that could be cashed immediately. On information and belief,
19 Tonken advised English that he would send the check dated September 25, 2000 back to the
20 English Fund, uncashed. Based upon Tonken's representation, English obtained a cashier's
21 check for \$34,500 and another check for \$3,000 and sent them to Tonken.

22 25. Approximately two days later, English discovered that Tonken had cashed all
23 four of the checks. When English later attempted to recover the overpayment of \$37,500,
24 Tonken told English that he had no funds with which to reimburse the English Fund. Plaintiff is
25 informed and believes and thereon alleges that, in breach of his fiduciary duty to the English
26 Fund, Tonken diverted \$112,000 for purposes unrelated to Celebrating Diana.

27 26. On or about October 27, 2000, Tonken solicited a donation from the Lorsch
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1 Foundation. In exchange, the Lorsch Foundation was to be a beneficiary of Celebrating Diana,
2 splitting the net proceeds with the English Fund. The Lorsch Foundation made a \$75,000
3 donation for the event as a result of Tonken's solicitation and Tonken received and/or controlled
4 those funds. At no time did Tonken inform the Lorsch Foundation that he had already promised
5 the English Fund 100 percent of the net proceeds. Likewise, Tonken never told the English Fund
6 that their portion of the net proceeds would be reduced because the Lorsch Foundation was
7 added as a beneficiary.

8 27. On or about January 9, 2001, Tonken and AT Associates solicited and
9 received a \$150,000 loan from Loreen Arbus for Celebrating Diana. Defendant Tonken told Ms.
10 Arbus that he needed a loan to secure the presence of South Africa's former President, Nelson
11 Mandela, at the event. On information and belief, defendant Tonken falsely stated to Ms. Arbus
12 that he had received an exclusive agreement for presenting President Mandela in the United
13 States for one year. As a result of the solicitation from defendant Tonken, Ms. Arbus personally
14 loaned him \$150,000 for the event.

15 28. In April 2001, the I&L Association made a donation of \$400,000 for
16 Celebrating Diana as a result of another Tonken solicitation. Tonken received and/or controlled
17 those funds. The donation was facilitated by Ms. Arbus based upon the representation of Tonken
18 that a substantial portion of the net proceeds of the event would be distributed to charities to be
19 named by Ms. Arbus. Tonken failed to inform Ms. Arbus that he had already promised the
20 English Fund 100 percent of the net proceeds and the Lorsch Foundation 50 percent of the net
21 proceeds.

22 29. On or about April 4, 2001, Tonken and AT Associates entered into a written
23 agreement with the Giving Back Fund. The GBF agreed to provide services as a fiscal agent for
24 the collection and distribution of all contributions associated with Celebrating Diana, to take
25 place in February 2002, in Los Angeles, California. Tonken and AT Associates agreed, *inter*
26 *alia*, to arrange for a charitable contribution to be paid to the GBF from the proceeds of the
27 event. At the time Tonken and AT Associates entered into the GBF agreement, they had already
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1 entered into agreements with the English Fund providing that the English Fund would receive
2 100 percent of the net proceeds of the event, the Lorsch Foundation would receive 50 percent of
3 the net proceeds and Loreen Arbus' charities would receive a substantial portion of the proceeds.

4 30. On or about April 17, 2001, the GBF opened two bank accounts for
5 Celebrating Diana—one for deposit of donations specifically received for underwriting expenses
6 and one for deposit of donations specifically received for direct payment to the charitable
7 beneficiaries of the event. The \$400,000 donation from the I&L Association was wired into the
8 Celebrating Diana underwriting account. The donation was to be used solely to pay expenses
9 incurred in connection with Celebrating Diana.

10 31. Pursuant to an oral agreement between Marc Pollick, President and Chief
11 Executive Officer of the GBF, and Tonken and AT Associates, Pollick was an authorized
12 signatory on the Celebrating Diana bank accounts. On information and belief, at Tonken's
13 request, Tonken's personal attorney, defendant Clarke, was also designated as an authorized
14 signatory on the accounts, but Clarke was required to obtain authorization from Pollick before
15 making any disbursements from the accounts. Further, invoices were required to substantiate all
16 withdrawals.

17 32. Notwithstanding the agreement referenced in paragraph 31, in approximately
18 eight days during April 2001, defendants Tonken, AT Associates and Clarke raided the
19 Celebrating Diana underwriting account. More specifically, on information and belief, at
20 Tonken's direction, Clarke instructed the bank to make payments from the account to various
21 organizations and individuals, including to Clarke's own law firm and to himself individually,
22 depleting the account of approximately \$399,000. Of this amount, \$199,000 was not authorized
23 by Pollick and no supporting documentation substantiating any disbursements from the
24 underwriting account has been submitted to Pollick or anyone else from the GBF. On
25 information and belief, a substantial portion of these funds were misused and misappropriated by
26 Tonken, AT Associates and Clarke for purposes unrelated to Celebrating Diana. As an example,
27 Tonken and AT Associates improperly diverted funds from this account to make a donation to
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1 the Westside Waldorf School on behalf of defendant Gershman.

2 33. With respect to the disbursement of \$200,000 from the Celebrating Diana
3 underwriting account, this disbursement *was* approved by Pollick because Tonken falsely advised
4 him that these funds were needed to secure the presence of President Nelson Mandela at
5 Celebrating Diana.

6 34. On information and belief, the \$200,000 in charitable funds referenced above
7 were not used to secure the presence of President Mandela or for any other purpose related to
8 Celebrating Diana. Rather, Tonken and AT Associates misappropriated these funds by directing
9 \$200,000 to defendant Freedman. On information and belief, Freedman performed no services
10 to the event that justified the payment.

11 35. In and around July 2002, Tonken advised Ms. Arbus that Celebrating Diana
12 would not go forward. He proposed to Ms. Arbus that 100 percent of the proceeds of the
13 Celebrating Diana *replacement* event would be distributed to charities designated by Ms. Arbus.
14 To this date, neither Celebrating Diana nor any replacement event has occurred.

15 36. The English Fund has made several demands upon Tonken and AT Associates
16 to repay the \$75,000 payment the English Fund made to Tonken and AT Associates for
17 Celebrating Diana. In breach of their fiduciary duty to the English Fund, Tonken and AT
18 Associates have refused to repay that money. To this date, no replacement event has occurred
19 and the English Fund has not been reimbursed for its payment to Tonken.

20 37. The GBF, Ms. Arbus and the California Attorney General have demanded
21 that defendants Tonken and AT Associates provide a complete and accurate accounting of the
22 funds donated to Celebrating Diana. In breach of their fiduciary duty to the donors and
23 beneficiaries of Celebrating Diana, Tonken and AT Associates have refused to do so.

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25 **THE HOLLYWOOD GALA SALUTE TO MILTON BERLE**

26 38. In the Summer of 2000, defendants Tonken and AT Associates approached
27 the Westside Waldorf School (WWS), a nonprofit school in California. Tonken offered to
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1 organize and promote charitable events to raise money for WWS. Tonken asked that WWS
2 honor defendant Gershman at a luncheon and promised that, in exchange, Gershman would make
3 substantial donations to the school. WWS honored Gershman publicly at a luncheon that took
4 place in the Summer of 2000.

5 39. In January of 2001, Gershman, as trustee of the Gershman Foundation,
6 irrevocably pledged to donate \$650,000 to WWS to enable the school to move to a new location.
7 Gershman signed the pledge agreement thereby binding the Gershman Foundation. The pledge
8 agreement was accepted by WWS. In reliance on Gershman's pledge of \$650,000, WWS
9 commenced negotiations concerning a school site, which would allow the school to expand.
10 WWS made public announcements about Gershman's generous donation. Persons associated
11 with the school spent numerous hours negotiating the purchase of their new location, which
12 resulted in a letter agreement to purchase a 45,000 square-foot building.

13 40. In the pledge agreement, Gershman also irrevocably agreed, on behalf of the
14 Gershman Foundation, to underwrite four charitable fundraising events to benefit WWS during
15 the years 2001 through 2004. In exchange, WWS agreed to use Tonken's services as a producer
16 for the four charitable events and paid Tonken \$25,000 to commence work on the first event.

17 41. On information and belief, in April 2001, Gershman, for no valid reason,
18 reneged on the irrevocable pledge agreement. Gershman instructed Tonken to donate to WWS
19 \$30,000 raised from his other events and to return his \$25,000 fee. On information and belief,
20 Tonken first gave WWS a check that bounced. Tonken then caused a bank check in the amount
21 of \$55,000 made payable to WWS to be drawn on the Celebrating Diana underwriting account,
22 even though Marc Pollick had not authorized the payment from that account.

23 42. On information and belief, WWS found itself in dire financial straits due to
24 Gershman's pledge withdrawal. In an effort to appease the WWS board, Tonken told Steven
25 Stockman, a board member of WWS, that Tonken could produce a charitable event that would
26 make up for the lost pledge. Tonken suggested that WWS participate in the Hollywood Gala
27 Salute to Milton Berle (the Berle Event) that would take place on July 22, 2001. On June 11,
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1 2001, Tonken entered into a written agreement with WWS. Tonken agreed to produce and
2 obtain financing for the event. Tonken told the WWS board that he had already secured
3 \$150,000 in underwriting and that the expenses of the event were estimated to be approximately
4 \$175,000.

5 43. Under the July 11, 2001 agreement, the event's costs were not to exceed
6 \$200,000 without approval from WWS. Tonken's fee for producing the event would be 20
7 percent of the net revenues. Actress Whoopie Goldberg's charities would receive \$45,000 for
8 her appearance at the event, and out of the remaining income or adjusted net income, 45 percent
9 was to be distributed to WWS, 40 percent to Women of Washington (a charitable organization),
10 and 15 percent to any remaining charities designated by Tonken.

11 44. WWS agreed to act as fiscal agent for the event and opened a bank account
12 for the deposit of all donations for the event. From this account, WWS was to pay for the
13 event's costs upon submission of invoices from Tonken.

14 45. On information and belief, WWS failed to receive any net revenue from the
15 event because charity funds were improperly diverted by Tonken, AT Associates, Clarke, Ronin,
16 and Does 1-100. On information and belief, Tonken diverted underwriting funds. As an
17 example, in June 2001, Tonken solicited and received and/or controlled \$175,000 in donations
18 made by Loreen Arbus to underwrite the event. Arbus made out two checks for the event, one
19 for \$75,000 and one for \$100,000. Instead of depositing both checks with WWS as required by
20 the agreement, Tonken had the \$100,000 check deposited into the Ronin Law Group trust
21 account. On information and belief, Tonken, Ronin and Clarke did not turn over the \$100,000
22 donation to WWS.

23 46. After the event, WWS learned that Tonken had deposited event donations
24 into bank accounts controlled by Tonken and/or his agents. WWS demanded that Tonken supply
25 check registers and bank account records for all deposits and disbursements made by Tonken
26 related to the Berle Event. On information and belief, Tonken refused to make a full accounting
27 of all donations for the event deposited into bank accounts controlled by Tonken and/or his
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1 agents.

2 47. Tonken also diverted funds raised through credit card receipts. WWS
3 demanded that Tonken supply an accounting of all credit card receipts for the event, but Tonken
4 refused to do so. On information and belief, defendants Tonken, Clarke and Does 1-100
5 improperly diverted the credit card receipts for the event.

6 48. WWS also failed to receive any net revenue from the event because Tonken
7 recklessly gave away more tickets than were actually sold. Although Tonken estimated that the
8 cost of the event would be \$175,000, the actual cost of the event was twice that amount. On
9 information and belief, Tonken never received authority from WWS to exceed the \$200,000 limit
10 on expenses.

11 49. Tonken also deliberately misled Loreen Arbus in soliciting funds for the Berle
12 Event. Tonken failed to disclose to Arbus that Whoopie Goldberg's charities would receive
13 \$45,000 and that WWS was also a beneficiary. In soliciting the underwriting from the I&L
14 Association, Tonken told Arbus that her charity, the Women of Washington, would be the
15 primary beneficiary of the event and that, at a minimum, that charity would receive a \$48,000
16 donation. Although Arbus donated \$175,000 to underwrite the event, Women of Washington did
17 not receive the proceeds promised by Tonken.

18 50. The California Attorney General has demanded that Tonken and AT
19 Associates provide an accounting of all of the revenues and expenses for the Berle Event.
20 Defendants have refused to provide any accounting.

21 **THE KIDS CAMPAIGN EVENT**

22 51. The Kids Campaign is a small California nonprofit public benefit corporation.
23 In or around September 2001, Tonken and AT Associates approached Chris Woodrum,
24 Executive Director of the Kids Campaign, about producing a charity fundraising event for the
25 benefit of the Kids Campaign and other charities. On information and belief, in or around
26 September 2001, the Kids Campaign and Tonken and AT Associates orally agreed that Tonken
27 and AT Associates would produce the event (the Kids Campaign Event). On further information
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1 and belief, it was agreed that the Kids Campaign Event would occur in the first quarter of 2002.

2 52. Tonken and AT Associates directed Woodrum to open two bank accounts in
3 the name of the Kids Campaign—one to be used for underwriting expenses of the event and one
4 for direct contributions to the beneficiaries of the event.

5 53. On information and belief, in or around September 2001, Tonken and AT
6 Associates and Woodrum orally agreed that Tonken and AT Associates would receive 10 percent
7 of the net proceeds from the Kids Campaign Event as compensation for work performed for the
8 event. The parties further agreed that the remainder of the net proceeds would be split among
9 the following three charities: (1) the Kids Campaign; (2) the Mark Wahlberg Youth Foundation;
10 and (3) the Children’s Craniofacial Association.

11 54. In or around October 2001, the Joseph K. & Inez Eichenbaum Foundation
12 (the Eichenbaum Foundation) made a \$75,000 donation to underwrite the event as a result of a
13 solicitation made by Tonken and AT Associates. Tonken and AT Associates received and/or
14 controlled those funds. The Eichenbaum Foundation is a California nonprofit public benefit
15 corporation.

16 55. On information and belief, in or around November 2001, the Children’s
17 Craniofacial Association (the CCA) made a \$25,000 donation to underwrite the event as a result
18 of a solicitation made by Tonken and AT Associates. Tonken and AT Associates received and/or
19 controlled those funds. The CCA is a nonprofit corporation with its principal place of business in
20 Dallas, Texas.

21 56. On information and belief, in or around October 2001, Tonken asked
22 Woodrum to accompany him to the City National Bank for the purpose of depositing the \$75,000
23 contribution from the Eichenbaum Foundation and the \$25,000 contribution from the CCA into a
24 Kids Campaign Event account. Immediately thereafter, while still at the bank, Tonken requested
25 Woodrum to prepare and sign a check drawn on one of the event accounts in the amount of
26 \$60,000, made payable to Freedman. On information and belief, Tonken falsely represented to
27 Woodrum that the check was to pay for expenses for the event.

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1 57. In breach of their fiduciary duty to the charitable beneficiaries and donors of
2 the event, Tonken and AT Associates caused funds from the Kids Campaign Event account to be
3 improperly diverted for purposes unrelated to the event. Although Tonken solicited and received
4 \$100,000 for the purpose of underwriting the Kids Campaign Event, to this date, the event has
5 not taken place.

6 58. The California Attorney General has demanded that Tonken and AT
7 Associates provide an accounting of all of the revenues and expenses for the Kids Campaign
8 Event. The Kids Campaign has also demanded an accounting. Defendants have refused to
9 provide any accounting.

10 **MICHAEL J. FOX FOUNDATION EVENT**

11 59. In or around October of 2002, Aaron Tonken solicited funds from Martin
12 Gubb (Gubb) in connection with a charity fundraising event. Gubb wanted to raise money to
13 find a cure for Parkinson's disease. For \$50,000, Tonken agreed to organize a charity event.
14 Gubb agreed to donate the use of his residence and to advance the costs of the event. After the
15 event, Gubb was to be reimbursed for all event expenses and the remaining proceeds would go to
16 charity. Tonken promised to secure the presence of celebrities so that the event could raise
17 significant charity funds. Tonken told Gubb that Celine Dion would appear and entertain at the
18 event if Gubb donated \$50,000 to either the Betty Ford Center or the Muscular Dystrophy
19 Association. Tonken also told Gubb that the Michael J. Fox Foundation (Fox Foundation) agreed
20 to be the fiscal agent for the event. Tonken directed Gubb to make a \$15,000 donation to the
21 Fox Foundation as a show of good faith.

22 60. Gubb gave Tonken a check for \$50,000 to be forwarded to the Betty Ford
23 Center and Gubb gave Tonken \$15,000 to be forwarded to the Fox Foundation. Instead,
24 Tonken, AT Associates and Does 1-100 diverted the money into bank accounts controlled by
25 Tonken, his agents, and Does 1-100.

26 61. The event, initially scheduled to take place on November 14, 2002, was
27 postponed by Tonken multiple times, based on purported problems with Ms. Dion and/or the Fox
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1 Foundation. On information and belief, Ms. Dion never agreed to attend a charity event at
2 Gubb's house in exchange for a \$50,000 donation to the Betty Ford Center, and the Fox
3 Foundation never agreed to act as the fiscal agent for the event. The event has not taken place.
4 Tonken never forwarded the Gubb donations to the Betty Ford Center and the Fox Foundation.
5 Moreover, Tonken has refused to return any money advanced by Gubb.

6 **UNIFIED IN GREAT CAUSE FOR AN EVENING TO REMEMBER**

7 62. Defendants Tonken, AT Associates and Does 1-100 agreed to produce a
8 charity fundraising event to benefit the City of Hope, the Inner-City Games Foundation and
9 Knowledge is Power. The event was called Unified in Great Cause for an Evening to Remember
10 (the Great Cause Event). The event honored actors Kelsey Grammar and Arnold
11 Schwarzenegger, and was hosted by singer Rod Stewart.

12 63. On information and belief the expenses of the event were fully underwritten.
13 On information and belief, the auction sales grossed in excess of \$100,000, and the ticket sales
14 raised over \$160,000. On information and belief, thousands of dollars were raised in
15 advertisements in the event tribute book. Although the event took place on September 19, 2002,
16 and was considered a success, no donations have been made to the City of Hope or the Inner-
17 City Games Foundation from the event. It is unknown how much, if anything, was donated to
18 Knowledge is Power. On information and belief, no donations have been made from the event
19 because Tonken and Does 1-100 have diverted the money into bank accounts controlled by
20 Tonken and Does 1-100.

21 64. Rod Stewart, through his attorney, made a demand on Tonken for an
22 accounting of the disposition of the proceeds from the event, but Tonken refused to account.

23 65. The California Attorney General has demanded that Tonken and AT
24 Associates provide an accounting of all of the revenues and expenses for the Great Cause Event.
25 Defendants have failed to provide one.

26 **THE CYNTHIA PALMER GERSHMAN FOUNDATION**

27 66. The Cynthia Palmer Gershman Foundation (the Gershman Foundation) is a
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1 California charitable trust and is recognized as a nonprofit foundation exempt from taxation
2 under section 501(c)(3) of the Internal Revenue Code. According to its trust documents, the
3 Gershman Foundation is required to distribute its income and principal exclusively for exempt
4 purposes.

5 67. As trustee, defendant Gershman is prohibited from engaging in any self-
6 dealing activities. On information and belief, Gershman engaged in self-dealing transactions. On
7 information and belief, Gershman funneled Gershman Foundation donations through Tonken,
8 who in turn used them to pay Gershman's public relations expenses. On information and belief,
9 Gershman funneled donations through Tonken, who in turn used them to pay back personal loans
10 that Tonken owed to Gershman.

11 68. As a trustee, Gershman had a fiduciary duty to exercise due care to ensure
12 that donations she authorized from the Gershman Foundation went to charity instead of Tonken-
13 controlled bank accounts. In the year 2000, Gershman personally gave Tonken checks issued to
14 the American Spirit Foundation (ASF), even though the ASF was no longer operating and was
15 defunct. According to the Gershman Foundation's 2000 tax returns, over \$690,000 was given to
16 the ASF. On information and belief, those funds, or a portion of those funds, were diverted by
17 Tonken and AT Associates to non-charitable purposes.

18 69. On December 7, 2000, Tonken opened a bank account in his own name doing
19 business as the Performing Arts Foundation, a sole proprietorship (the Performing Arts dba
20 account). On information and belief, Tonken controls this account and is the sole signatory on
21 the account.

22 70. On December 7, 2002, the Gershman Foundation made a charitable donation
23 of \$175,000, which Tonken caused to be deposited into his Performing Arts dba account. On
24 information and belief, Tonken and AT Associates improperly and unlawfully diverted portions
25 of these charitable funds for non-charitable purposes including making car payments, car
26 insurance payments, paying the public relations expenses of defendant Gershman, and paying a
27 life insurance premium on a policy taken out on the life of Gershman. On information and belief,
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1 Tonken is a beneficiary under the aforementioned life insurance policy.

2 71. On information and belief, Gershman conducted no research to verify how
3 the charity funds deposited into Tonken-controlled bank accounts.

4 72. The Attorney General has demanded that Tonken and AT Associates provide
5 an accounting of all of the funds deposited into the Performing Arts dba account. Defendants
6 have refused to do so. The Attorney General has demanded that Gershman produce records
7 regarding the Gershman Foundation's donations and she has refused to do so.

8 73. The Gershman Foundation is required to file annual written reports with the
9 Attorney General under oath regarding its transactions. The Gershman Foundation is delinquent
10 in filing its 2001 reports in violation of Government Code section 12586 and California Code of
11 Regulations, title 11, section 301 et seq. As trustee of the Gershman Foundation, Gershman is
12 responsible for filing those reports.

13 **FIRST CAUSE OF ACTION**

14 **(For Violation of Government Code Section 12599)**

15 **(Against Defendants Tonken, AT Associates and Does 1-100)**

16 74. Plaintiff re-alleges and incorporates by reference herein each and every
17 allegation contained in paragraphs 1 through 73, above.

18 75. On information and belief, for compensation, Tonken, AT Associates and
19 Does 1-100 solicited funds in this state for charitable purposes for Family Celebration,
20 Celebrating Diana, the Berle Event, the Kids Campaign Event, the Fox Foundation Event and the
21 Great Cause Event. On information and belief, for compensation, defendants Tonken, AT
22 Associates and Does 1-100 received and/or controlled funds donated as a result of their
23 solicitation for these events.

24 76. On information and belief, for compensation, Tonken, AT Associates and
25 Does 1-100 procured and/or engaged a compensated person(s) to solicit, receive, and/or control
26 funds for the purpose of underwriting Family Celebration, Celebrating Diana, the Berle Event,
27 the Kids Campaign Event, the Fox Foundation Event and the Great Cause Event and for the

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1 purpose of providing direct contributions to the charitable beneficiaries of those events.

2 77. By virtue of the actions of Tonken, AT Associates and Does 1-100 described
3 herein, they are commercial fundraisers for charitable purposes within the meaning of
4 Government Code section 12599.

5 78. At all times relevant herein to present, Tonken and AT Associates and Does
6 1-100 have failed to register as commercial fundraisers with the Attorney General's Registry of
7 Charitable Trusts in violation of Government Code section 12599, subdivision (b) and have failed
8 to pay the applicable registration fees required by statute. The Registry of Charitable Trusts has
9 not granted any extensions to Tonken, AT & Assocs. and Does 1-100 to register as commercial
10 fundraisers for charitable purposes or to pay the required registration fees.

11 79. As commercial fundraisers for charitable purposes, Tonken, AT Associates
12 and Does 1-100 were required to file financial reports for the years 2000, 2001 and 2002 with the
13 Registry of Charitable Trusts pursuant to Government Code section 12599, subdivision (c).
14 Tonken, AT Associates and Does 1-100 failed to file those reports. No extensions to file the
15 reports have been granted.

16 80. Pursuant to Government Code section 12599, subdivision (g), at all times
17 relevant herein, Tonken, AT Associates and Does 1-100 were commercial fundraisers for
18 charitable purposes and as such are subject to the Attorney General's supervision. Under
19 Government Code section 12599, subdivision (g), Tonken, AT Associates and Does 1-100 are
20 constructive trustees for charitable purposes with regard to all funds collected from solicitations
21 for Family Celebration, Celebrating Diana, the Berle Event, the Kids Campaign Event, the Fox
22 Foundation Event and the Great Cause Event as described herein and have a duty to account to
23 the Attorney General for all such funds.

24 81. The Attorney General has demanded an accounting from Tonken and AT
25 Associates of all of the funds received from solicitations they made in connection with the Kids
26 Campaign Event, Celebrating Diana, Family Celebration, the Berle Event the Fox Foundation
27 Event and the Great Cause Event and all disbursements of those funds. As to each of these
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1 events other than the Fox Foundation Event, Tonken and AT Associates have violated
2 Government Code section 12599, subdivision (g), by failing to provide an accounting to the
3 Attorney General.

4 82. Pursuant to Government Code section 12599, subdivision (f), plaintiff is
5 entitled to an injunction against Tonken, AT & Assocs. and Does 1-100 prohibiting them from
6 soliciting for charitable purposes in this State until they have complied with the registration and
7 reporting provisions of Government Code section 12599.

8 **SECOND CAUSE OF ACTION**

9 **(For Breach of Fiduciary Duty)**

10 **(Against Defendants Tonken, AT Associates, Clarke, Gershman**

11 **(as Trustee of the Gershman Foundation), and Does 1-100)**

12 83. Plaintiff re-alleges and incorporates by reference herein each and every
13 allegation contained in paragraphs 1 through 82, above.

14 84. A fiduciary relationship existed between Tonken, AT Associates and Does 1-
15 100, and the individuals and entities from whom they solicited donations for the Kids Campaign
16 Event, Celebrating Diana, Family Celebration, the Berle Event, the Fox Foundation Event, and
17 the Great Cause Event. The fiduciary relationship was established by statute (Business and
18 Professions Code section 17510.8 and Government Code section 12599), by common law, and
19 by agreement.

20 85. Defendants Tonken, AT Associates, Clarke and Does 1-100 accepted the
21 charitable contributions on behalf of the charitable beneficiaries of these events. The acceptance
22 of those donations established a charitable trust and a fiduciary duty on the part of Tonken, AT
23 Associates, Clarke and Does 1-100 owed to the charitable beneficiaries of these events and to
24 the donors of these events to ensure that the donations were used for these events.

25 86. Tonken, AT Associates, Clarke and Does 1-100 breached their fiduciary duty
26 to the charitable beneficiaries and donors of these events when they caused the funds to be
27 improperly diverted and used for purposes unrelated to the event.

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1 87. As trustees, Tonken, AT Associates, Clarke and Does 1-100 had a duty to the
2 donors and to the beneficiaries of the charitable fundraising events alleged herein to account for
3 the funds they received and held in trust. Defendants breached their fiduciary duty when they
4 failed to provide such an accounting for these events other than the Fox Foundation Event.

5 88. As trustees holding assets in trust for charitable purposes, Tonken, AT
6 Associates, Clarke and Does 1-100 had a duty to segregate contributions collected for these
7 events from other funds and to maintain separate accounting records. Defendants breached their
8 fiduciary duty to the donors and beneficiaries of the events when they commingled funds
9 collected for the events with other funds and failed to keep separate accounting records.

10 89. A fiduciary relationship existed between Tonken, AT Associates and the
11 Gershman Foundation when those defendants solicited donations from the Gershman Foundation
12 to be used for charitable purposes. Defendants accepted the Gershman Foundation's funds and
13 caused them to be deposited into the Performing Arts dba account as well as other Tonken-
14 controlled bank accounts. The acceptance of these funds established a charitable trust and a
15 fiduciary duty on the part of defendants Tonken and AT Associates owed to the Gershman
16 Foundation to ensure that the funds were used for charitable purposes. Defendants breached
17 their fiduciary duty to the Gershman Foundation when they caused the funds to be improperly
18 diverted for non-charitable purposes.

19 90. When Clarke became a signatory on the Celebrating Diana underwriting
20 account, he became an agent/trustee of the beneficiaries and was bound to act with the utmost
21 good faith for the charities' benefit. He owed a duty to the beneficiaries of Celebrating Diana
22 and to the I&L Association to ensure that the funds in that account were used for purposes solely
23 related to the event. Defendant Clarke breached his fiduciary duty when he failed to obtain
24 proper authorization for disbursement of approximately \$200,000 in the account and improperly
25 diverted those funds for purposes unrelated to the event.

26 91. As a charitable trustee, Gershman has a fiduciary duty towards the trust and
27 must refrain from engaging in any acts of self-dealing. Gershman also has a fiduciary duty to
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1 exercise due care to protect and preserve the trust property. Gershman breached her fiduciary
2 duty by engaging in acts of self-dealing and by failing to ensure that donations the Gershman
3 Foundation made were properly distributed to charity instead of to Tonken-controlled bank
4 accounts.

5 92. As a direct and proximate result of the actions of Tonken, AT Associates and
6 Does 1-100 as alleged herein, the beneficiaries of the aforementioned events, as well as the
7 beneficiaries of the Gershman Foundation, have been damaged in an amount presently unknown
8 to plaintiff, but believed to be in excess of \$1 million.

9 93. As a direct and proximate result of the actions of Clarke and Does 1-100 as
10 alleged herein, the beneficiaries of Celebrating Diana have been damaged in an amount presently
11 unknown to plaintiff, but believed to be in excess of \$199,000.

12 94. As a direct and proximate result of Gershman's breach of fiduciary duty, the
13 beneficiaries of the Gershman Foundation and the beneficiaries of Family Celebration and the
14 Berle Event have been damaged in an amount unknown to plaintiff, but believed to be in excess
15 of \$1 million.

16 95. The amount of money due from Tonken, AT Associates, Clarke, Gershman
17 and Does 1-100 to the charitable beneficiaries of the fundraising events at issue in this cause of
18 action are unknown to plaintiff, but are believed to be in excess of \$1.7 million. The exact
19 amount cannot be ascertained without an accounting of the receipts and disbursements of those
20 events. The facts necessary for calculation of the receipts and disbursements, and thus the
21 amount owed to the beneficiaries of the events, are within the special knowledge of defendants.
22 The Attorney General has demanded an accounting from defendants Tonken and AT Associates
23 of all of the funds received from their solicitations related to Family Celebration, Celebrating
24 Diana, the Berle Event, the Kids Campaign Event, the Fox Foundation Event and the Great
25 Cause Event. Defendants have failed to provide an accounting to the Attorney General other
26 than with regard to the Fox Foundation Event.

27 96. In doing the acts alleged in this cause of action, defendants and each of them
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1 engaged in fraudulent, oppressive and malicious conduct and plaintiff is, therefore, entitled to an
2 award of punitive damages in an amount to be decided at the time of trial.

3 97. By reason of each and all of the acts alleged in this cause of action, Tonken,
4 AT Associates, Clarke, and Gershman have failed to comply with the trust which they have
5 assumed and have departed from the public and charitable purposes they were bound to serve.
6 In order to preserve and conserve the assets of the Gershman Foundation and in order to prevent
7 waste, dissipation and loss of charitable donations and assets of other charities in this State to the
8 irreparable damage of the general public including the People of the State of California, it is
9 necessary that the injunctive relief herein prayed for against defendants Tonken, AT Associates,
10 Clarke and Gershman be granted.

11 **THIRD CAUSE OF ACTION**

12 **(For Aiding and Abetting a Breach of Fiduciary Duty)**

13 **(Against Defendants Freedman, Clarke, Ronin Law Group,**

14 **Gershman (as an Individual and as Trustee of**

15 **the Gershman Foundation) and Does 1-100)**

16 98. Plaintiff re-alleges and incorporates by reference herein each and every
17 allegation contained in paragraphs 1 through 97, above.

18 99. Tonken and AT Associates and Does 1-100 breached their fiduciary duty to
19 the donors and beneficiaries of Family Celebration, Celebrating Diana, the Kids Campaign
20 Event, the Berle Event, the Fox Foundation Event, and the Great Cause Event, when they
21 improperly commingled funds and diverted, misused and misappropriated funds specifically
22 donated for the events for purposes unrelated to the events. Tonken, AT Associates and Does 1-
23 100 diverted, misused and misappropriated such funds for purposes that include paying off
24 Tonken's prior debts and making payments to defendants Clarke and the Ronin Law Group that
25 were unrelated to the events.

26 100. On information and belief, defendants Clarke and Ronin aided and abetted
27 and/or participated in Tonken's breach of fiduciary duty for the purpose of advancing Clarke's
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1 own interests or financial advantage. Clarke and Ronin assisted Tonken in the diversion of
2 charity funds by allowing unauthorized disbursements from the Celebrating Diana underwriting
3 account. Clarke and Ronin also aided and abetted Tonken's breach of fiduciary duty by allowing
4 Tonken to deposit charity funds into the Ronin Law Group trust account. On information and
5 belief, Clarke knew or should have known that his receipt of charity funds from Tonken was
6 improper. Clarke deposited checks into the Ronin Law Group trust account that were clearly
7 marked as being designated for charity. Clarke also made checks payable to Gershman, even
8 though Gershman had provided no services for the charity events and payments to Gershman
9 were not authorized by the Giving Back Fund or any other benefitting charity.

10 101. As a proximate result of defendant Clarke's actions in aiding and abetting
11 and/or participating in Tonken's breach of fiduciary duty, the beneficiaries of the charity events
12 have been damaged in an amount presently unknown to plaintiff, but believed to be in excess of
13 \$299,000.

14 102. On information and belief, defendant Gershman, as an individual, aided and
15 abetted and/or participated in Tonken's breach of fiduciary duty for the purpose of advancing
16 her own interests or financial advantage. Gershman authorized Tonken to take money out of the
17 Celebrating Diana account to pay Westside Waldorf School after Gershman reneged on the
18 pledge agreement. Gershman allowed Tonken to pay her personal bills with charity funds. She
19 aided Tonken in diverting money from the Gershman Foundation. As a proximate result of
20 Gershman's actions in aiding and abetting and/or participating in Tonken's breach of fiduciary
21 duty, the beneficiaries of Celebrating Diana, Family Celebration, and the Berle Event have been
22 damaged in an amount presently unknown to plaintiff, but believed to be in excess of \$1 million.

23 103. On information and belief, defendant Freedman aided and abetted and/or
24 participated in Tonken's breach of fiduciary duty for the purpose of advancing Freedman's own
25 interests or financial advantage. Freedman assisted Tonken in the diversion of charity funds by
26 taking over \$300,000 in payments from charity accounts controlled by Tonken. On information
27 and belief, Freedman knew or should have known that his receipt of monies from these accounts
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1 was improper as Freedman provided no services for these events. As a proximate result of
2 defendant Freedman's actions, the beneficiaries of the events have been damaged in an amount
3 presently unknown to plaintiff, but believed to be in excess of \$300,000.

4 104. In doing the acts alleged in this cause of action, defendants and each of them
5 engaged in fraudulent, oppressive and malicious conduct and plaintiff is, therefore, entitled to an
6 award of punitive damages in an amount to be decided at the time of trial.

7 **FOURTH CAUSE OF ACTION**

8 **(For Fraud and Deceit)**

9 **(Against Defendants Tonken, AT Associates, Clarke and Ronin Law Group)**

10 105. Plaintiff re-alleges and incorporates by reference herein each and every
11 allegation contained in paragraphs 1 through 104, above.

12 106. With regard to the allegations of fraud in this cause of action against
13 defendant AT Associates, defendant Tonken made the false representations alleged. As the
14 company's President and Chief Executive Officer, he was authorized to speak for the company.

15 107. With regard to the allegations of fraud in this cause of action against
16 defendant Ronin Law Group, defendant Clarke made the false representations alleged. As the
17 corporation's President and Chief Executive Officer, he was authorized to speak for the
18 corporation.

19 108. With regard to each false representation alleged in this cause of action, the
20 person to whom the representation was made and who relied upon the representation was
21 unaware of the falsity of the representation.

22 109. Defendants owed the charities, donors and beneficiaries a duty to disclose
23 all material facts related to the charity fundraiser events. Defendants failed to disclose and
24 suppressed information as alleged in this cause of action with the intent to induce the charities
25 and donors to act.

26 110. On information and belief, defendants Tonken and AT Associates falsely
27 represented to donors that donations made payable to the American Spirit Foundation would be
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1 used for purposes related to Family Celebration. On further information and belief, at the time
2 defendants made these representations they knew that they were false because they had
3 deposited the donations into Tonken's bank account and intended to use some of the funds for
4 purposes unrelated to Family Celebration. On information and belief, in making the false
5 representations, defendants intended to deceive these donors and to induce the donors to make
6 donations payable to the American Spirit Foundation. In justifiable reliance upon defendants'
7 false representations, these donors made the donations requested by defendants and made their
8 checks payable to the American Spirit Foundation. Had defendants not made the false
9 representations these donors would not have made the requested donations to the American
10 Spirit Foundation.

11 111. On information and belief, defendants Tonken and AT Associates falsely
12 represented to Loreen Arbus that the \$400,000 donation made by the I&L Association would be
13 used for Celebrating Diana. On further information and belief, at the time defendants made this
14 representation they knew it was false because defendants intended to divert, misuse and
15 misappropriate all, or a substantial portion, of this donation to purposes unrelated to the event.
16 On information and belief, in making this false representation, defendants intended to deceive
17 Ms. Arbus and to induce her to facilitate a donation for Celebrating Diana. Ms. Arbus justifiably
18 relied upon defendants' misrepresentation in facilitating this donation. Had the false
19 representation not been made, the donation would not have been made.

20 112. On information and belief, defendants Clarke and Ronin Law Group falsely
21 represented to Marc Pollick that before making any disbursements from the Celebrating Diana
22 underwriting account, Clarke would obtain authorization in writing from Pollick. On further
23 information and belief, when defendants Clarke and Ronin made these representations they knew
24 them to be false because they intended to divert funds from the account without receiving any
25 written authorization from Pollick. On information and belief, in making the false
26 representations, Clarke and Ronin intended to deceive Pollick and to induce him to agree to
27 allow Clarke to be a signatory on the account. In justifiable reliance on the false representation,
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1 Pollick agreed that Clarke could be a signatory on the account. Had defendants not made the
2 false statement, Pollick would not have agreed to allow Clarke to be a signatory on the account
3 and the funds in the account would not have been disbursed for purposes unrelated to
4 Celebrating Diana.

5 113. On information and belief, defendants Tonken and AT Associates falsely
6 represented to Marc Pollick that \$200,000 was needed from the Celebrating Diana underwriting
7 account to secure the presence of Nelson Mandela at Celebrating Diana. On further information
8 and belief, at the time they made this representation they knew that it was false because they
9 intended to divert the funds to defendant Freedman for purposes unrelated to Celebrating Diana.
10 On information and belief, in making this false representation, defendants intended to deceive
11 Pollick and to induce him to authorize the \$200,000 payment. Pollick justifiably relied on the
12 false representation in authorizing the disbursement of \$200,000 from the Celebrating Diana
13 underwriting account. Had the false representation not been made, Pollick would not have
14 authorized the disbursement of \$200,000 from the underwriting account.

15 114. On information and belief, defendants Tonken and AT Associates falsely
16 represented to a representative of the Eichenbaum Foundation that the foundation's \$75,000
17 donation would be used for purposes related to the Kids Campaign Event. On further
18 information and belief, at the time they made this representation they knew that it was false
19 because they intended that all, or a substantial portion, of the donation would be used for
20 purposes unrelated to the event. On information and belief, in making the false representation,
21 defendants Tonken and AT Associates intended to deceive the representative of the Eichenbaum
22 Foundation and to induce the foundation into making a donation. The Eichenbaum Foundation
23 justifiably relied on defendants' false representation in making the donation. On information and
24 belief, had the false representation not been made, the donation solicited by defendants would
25 not have been made.

26 115. On information and belief, defendants Tonken and AT Associates falsely
27 represented to a representative of the Children's Craniofacial Association (CCA) that the CCA's
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1 \$25,000 donation would be used for purposes related to the Kids Campaign Event. On further
2 information and belief, at the time defendants made this representation they knew it was false
3 because they intended that all or a substantial portion of that donation would be used for
4 purposes unrelated to the event. On information and belief, in making the false representation,
5 Tonken and AT Associates intended to deceive the representative of the CCA and to induce the
6 CCA to make the donation. The CCA justifiably relied on defendants' misrepresentation in
7 making its donation. On information and belief, had the false representation not been made, the
8 donation would not have been made.

9 116. Under Civil Code section 2224, Tonken and AT Associates are involuntary
10 trustees of all donations they received through their fraud and deceit. They hold these donations
11 as involuntary trustees for the benefit of the charities who would otherwise have received them.

12 117. Under Civil Code section 2224, Clarke and Ronin are involuntary trustees of
13 all funds to which they gained control through their fraud and deceit. They hold these funds as
14 involuntary trustees for the benefit of the charities who would otherwise have received them.

15 118. As a proximate result of the false representations of Tonken and AT
16 Associates as alleged herein, the beneficiaries of the events mentioned in this cause of action
17 have been deprived of what is due them, in the aggregate, in an amount presently unknown to
18 plaintiff, but believed to be in excess of \$500,000.

19 119. As a proximate result of the misrepresentations of Clarke and Ronin Law
20 Group as alleged herein, the beneficiaries of Celebrating Diana have been deprived of what is
21 due them in an amount presently unknown to plaintiff, but exceeding \$199,000.

22 120. The amount of money due to the beneficiaries of the events at issue from
23 Tonken, AT Associates, Clarke and Ronin Law Group are unknown to plaintiff and cannot be
24 ascertained without an accounting of the receipts and disbursements of the charity events
25 mentioned. The facts necessary for calculation of the receipts and disbursements of the events,
26 and thus the amounts owed by defendants, are within the special knowledge of defendants.

27 121. In doing the acts alleged in this cause of action, defendants and each of them
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1 engaged in fraudulent, oppressive and malicious conduct and plaintiff is, therefore, entitled to an
2 award of punitive damages in an amount to be decided at the time of trial.

3 **FIFTH CAUSE OF ACTION**

4 **(For Negligent Misrepresentation)**

5 **(Against Defendants Tonken, AT Associates, Clarke and Ronin Law Group)**

6 122. Plaintiff re-alleges and incorporates by reference herein each and every
7 allegation contained in paragraphs 1 through 104 above.

8 123. With regard to the allegations of misrepresentation against defendant AT
9 Associates as alleged, Tonken made the misrepresentations alleged. As the company's President
10 and Chief Executive Officer, he was authorized to speak for the company.

11 124. With regard to the allegations of misrepresentation against defendant Ronin
12 Law Group as alleged, Clarke made the misrepresentations alleged. As the corporation's
13 President and Chief Executive Officer, he was authorized to speak for the corporation.

14 125. With regard to each representation alleged in this cause of action, the
15 representation was false and the person to whom it was made and who relied upon it was
16 unaware of the falsity of the representation.

17 126. On information and belief, defendants Tonken and AT Associates
18 negligently misrepresented to donors that donations made payable to the American Spirit
19 Foundation would be used for purposes related to Family Celebration. On further information
20 and belief, at the time defendants made these misrepresentations they had no reasonable ground
21 for believing them to be true because they intended to use some of the funds for purposes
22 unrelated to Family Celebration. In fact, Tonken deposited some of the funds in bank accounts
23 he controlled. On information and belief, in making the misrepresentations, defendants intended
24 to induce the donors to make donations payable to the American Spirit Foundation. In justifiable
25 reliance upon defendants' misrepresentations, these donors made the donations requested by
26 defendants and made their checks payable to the American Spirit Foundation. Had defendants
27 not made the misrepresentations these donors would not have made the requested donations to
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1 the American Spirit Foundation.

2 127. On information and belief, defendants Tonken and AT Associates
3 misrepresented to Loreen Arbus that the \$400,000 donation made by the I&L Association would
4 be used for Celebrating Diana. On further information and belief, at the time defendants made
5 this misrepresentation they had no reasonable ground for believing it to be true because
6 defendants intended to divert, misuse and misappropriate all, or a substantial portion, of the
7 funds donated by the I&L Association for purposes unrelated to the event. On information and
8 belief, in making this misrepresentation, defendants intended to induce Ms. Arbus to facilitate a
9 donation for Celebrating Diana. Ms. Arbus justifiably relied upon defendants' misrepresentation
10 in facilitating the \$400,000 donation for the event from the I&L Association. Had the
11 misrepresentation not been made, the donation would not have been made.

12 128. On information and belief, defendants Clarke and Ronin Law Group
13 negligently misrepresented to Marc Pollick that before making any disbursements from the
14 Celebrating Diana underwriting account, Clarke would obtain authorization in writing from
15 Pollick. On further information and belief, when defendants Clarke and Ronin made this
16 misrepresentation they had no reasonable ground for believing it to be true because they intended
17 to divert funds from the account without any written authorization from Pollick. On information
18 and belief, in making the misrepresentation, Clarke and Ronin intended to induce Pollick to agree
19 to allow Clarke to be a signatory on the account. In justifiable reliance on the misrepresentation,
20 Pollick agreed that Clarke could be a signatory on the account. Had defendants not made the
21 misrepresentation, Pollick would not have agreed to allow Clarke to be a signatory on the
22 account and the funds within the account would not have been improperly diverted for purposes
23 unrelated to Celebrating Diana.

24 129. On information and belief, defendants Tonken and AT Associates
25 negligently misrepresented to Marc Pollick that \$200,000 was needed from the Celebrating
26 Diana underwriting account to secure the presence of Nelson Mandela at Celebrating Diana. On
27 further information and belief, at the time they made this misrepresentation they had no
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1 reasonable ground for believing it to be true, because they intended to direct that the same
2 \$200,000 from the account be given to defendant Freedman for purposes unrelated to
3 Celebrating Diana. On information and belief, in making this misrepresentation to Pollick,
4 defendants intended to induce Pollick to authorize the \$200,000 payment. Pollick justifiably
5 relied on the misrepresentation in authorizing the disbursement of \$200,000 from the Celebrating
6 Diana underwriting account. Had the misrepresentation not been made, Pollick would not have
7 authorized the disbursement of \$200,000 from the account.

8 130. On information and belief, defendants Tonken and AT Associates
9 negligently misrepresented to a representative of the Eichenbaum Foundation that the
10 foundation's \$75,000 donation would be used for purposes related to the Kids Campaign Event.
11 On further information and belief, at the time they made this misrepresentation they had no
12 reasonable ground for believing it to be true, because they intended that all or a substantial
13 portion of the donation would be used for purposes unrelated to the event. On information and
14 belief, in making the misrepresentation, Tonken and AT Associates intended to induce the
15 foundation to make a donation. The Eichenbaum Foundation justifiably relied on defendants'
16 misrepresentation in making the donation. On information and belief, had the misrepresentation
17 not been made, the donation solicited by defendants would not have been made.

18 131. On information and belief, defendants Tonken and AT Associates
19 negligently misrepresented to a representative of the Children's Craniofacial Association (CCA)
20 that the CCA's \$25,000 donation would be used for purposes related to the Kids Campaign
21 Event. On further information and belief, at the time defendants made this misrepresentation
22 they had no reasonable ground for believing it to be true, because they intended that all or a
23 substantial portion of that donation would be used for purposes unrelated to the event. On
24 information and belief, in making the misrepresentation, Tonken and AT Associates intended to
25 induce the CCA to make the donation. The CCA justifiably relied on defendants'
26 misrepresentation in making its donation. On information and belief, had the misrepresentation
27 not been made, the donation would not have been made.

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1 132. Under Civil Code section 2224, Tonken and AT Associates are involuntary
2 trustees of all donations they received through their negligent misrepresentation. They hold these
3 donations as involuntary trustees for the benefit of the charities who would otherwise have
4 received them.

5 133. Under Civil Code section 2224, Clarke and Ronin are involuntary trustees of
6 all funds to which they gained control through their negligent misrepresentation. They hold these
7 funds as involuntary trustees for the benefit of the charities who would otherwise have received
8 them.

9 134. As a proximate result of the misrepresentations of Tonken and AT
10 Associates as alleged herein, the beneficiaries of the events mentioned in this cause of action
11 have been deprived of what is due them, in the aggregate, in an amount presently unknown to
12 plaintiff, but believed to be in excess of \$500,000.

13 135. As a proximate result of the misrepresentations of Clarke and Ronin Law
14 Group as alleged herein, the beneficiaries of Celebrating Diana have been deprived of what is
15 due them in an amount presently unknown to plaintiff, but exceeding \$199,000.

16 136. The amount of money due to the beneficiaries of the events at issue from
17 Tonken, AT Associates, Clarke and Ronin Law Group are unknown to plaintiff and cannot be
18 ascertained without an accounting of the receipts and disbursements of the charity events
19 mentioned. The facts necessary for calculation of the receipts and disbursements of the events,
20 and thus the amounts owed by defendants, are within the special knowledge of defendants.

21 137. In doing the acts alleged in this cause of action, defendants and each of them
22 engaged in negligent conduct and plaintiff is therefore entitled to an award of general and special
23 damages in an amount to be decided at the time of trial.

24 ///

25 ///

26 **SIXTH CAUSE OF ACTION**

27 **(For Constructive Fraud)**

28

**(Against Defendants Tonken, AT Associates, Clarke,
Ronin Law Group and Does 1-100)**

138. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 104, above.

139. Defendants owed a fiduciary duty to the donors from whom they solicited and received donations to disclose all material facts relative to the donation. Defendants also owed a fiduciary duty to the beneficiaries of the events to disclose all material facts relative to the charity fundraising events including material facts, including the safekeeping and preservation of the charitable contributions donated for such events. Defendants failed to disclose and suppressed information as alleged in this cause of action with the intent to induce the charities and donors to act.

140. On information and belief, with regard to Family Celebration, Tonken and AT Associates failed to disclose the following material facts to the donors: that the corporate status of the American Spirit Foundation was suspended; that the donations which they advised to be made payable to the American Spirit Foundation were going to be deposited into Tonken-controlled accounts; that such funds would be commingled with funds unrelated to Family Celebration; and that all or a portion of these donations would be improperly diverted by defendants for purposes unrelated to Family Celebration. On information and belief, the donors were unaware of these facts. The donors justifiably relied upon defendants in making their donations. These donors would not have made their donations payable to the American Spirit Foundation had defendants disclosed the aforementioned material facts.

141. When defendants Tonken and AT Associates solicited donations for Celebrating Diana from the I&L Association, the Lorsch Foundation, and the English Fund defendants failed to disclose the material fact that most of the funds solicited would be improperly diverted for purposes unrelated to the event. On information and belief, the donors were unaware of this fact. The donors justifiably relied upon defendants in making their donations. On information and belief, none of the aforementioned donors would have donated

1 monies for the event had they been informed by defendants that most of the money would be
2 diverted for purposes unrelated to the event.

3 142. At the time Pollick agreed that Clarke could be a co-signer on the
4 Celebrating Diana bank accounts, Tonken, AT Associates and Clarke had a fiduciary duty to
5 disclose to Pollick the material fact that Tonken and AT Associates intended to authorize
6 disbursement of nearly all of the funds in the accounts within a very short time period, including
7 for purposes unrelated to the event. On information and belief, Pollick was unaware of this fact.
8 Pollick justifiably relied upon defendants in allowing Clarke to be a co-signer on the account.
9 Had defendants disclosed this material fact, Pollick would not have agreed that defendant Clarke
10 could be a co-signer on the Celebrating Diana accounts.

11 143. Defendants Clarke and Ronin Law Group entered into a fiduciary
12 relationship both with Loreen Arbus of the I&L Association, a donor of Celebrating Diana, and
13 with the GBF, the fiscal agent of Celebrating Diana, when defendant Clarke agreed to be a
14 signatory on the Celebrating Diana bank accounts. Clarke and Ronin Law Group owed a
15 fiduciary duty to the donors and beneficiaries to ensure that the funds were used for purposes
16 solely related to the event. These defendants had a fiduciary duty to make withdrawals only with
17 the consent and approval of Pollick. When Pollick agreed to allow Clarke to be a signatory on
18 the Celebrating Diana bank accounts, Clarke and Ronin failed to disclose the material facts that
19 they intended to authorize a disbursement of approximately \$50,000 from the Celebrating Diana
20 underwriting account to Ronin without the authorization of Pollick and the disbursement of
21 approximately \$150,000 of additional funds from that account without the authorization of
22 Pollick. On information and belief, neither the donors nor the beneficiaries of the event, nor
23 Pollick, were aware of these facts. Pollick justifiably relied upon defendants in allowing Clarke
24 to be a signatory on the accounts. Pollick would not have allowed Clarke to be a signatory on
25 the Celebrating Diana accounts if Clarke and Ronin had disclosed these material facts to him.

26 144. In soliciting and accepting a \$75,000 donation from the Eichenbaum
27 Foundation and a \$25,000 donation from the Children's Craniofacial Association (CCA) to
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1 underwrite the Kids Campaign Event, Tonken and AT Associates entered into a fiduciary
2 relationship with these donors. Notwithstanding this fiduciary relationship, on information and
3 belief, Tonken and AT Associates failed to disclose the material fact that most of the funds
4 solicited would be improperly diverted for purposes unrelated to the Kids Campaign Event. On
5 further information and belief, the donors were unaware of this fact. The donors justifiably
6 relied on defendants in making their donations. On information and belief, the donors would not
7 have donated monies had they been informed by Tonken that most of their donations would be
8 diverted for purposes unrelated to the event.

9 145. Tonken and AT Associates also had a fiduciary duty to the beneficiaries of
10 the Kids Campaign Event. Tonken failed to disclose to the Kids Campaign the material fact that
11 he was going to divert most of the funds solicited for purposes unrelated to the event. The Kids
12 Campaign was unaware of this fact. Woodrum, on behalf of Kids Campaign, justifiably relied on
13 defendants in authorizing a disbursement of \$60,000 of event funds. Woodrum would not have
14 authorized this disbursement if he had been informed that the funds would be used for purposes
15 unrelated to the event.

16 146. In soliciting donations for the Berle Event and the Great Cause Event,
17 Tonken, AT Associates and Does 1-100 failed to disclose to the donors the material facts that
18 they intended to deposit event funds into Tonken-controlled private accounts and to divert such
19 funds for purposes unrelated to the event. On information and belief, the donors did not know
20 these facts. The donors justifiably relied on defendants in making their donations. On
21 information and belief, had defendants disclosed these facts, the donors would not have donated
22 to the event.

23 147. Under Civil Code section 2224, Tonken and AT Associates are involuntary
24 trustees of all donations they received through their constructive fraud. They hold these
25 donations as involuntary trustees for the benefit of the charities who would otherwise have
26 received them.

27 148. Under Civil Code section 2224, Clarke and Ronin are involuntary trustees of
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1 all funds to which they gained control through their constructive fraud. They hold these funds as
2 involuntary trustees for the benefit of the charities who would otherwise have received them.

3 149. As a proximate result of the failure of Tonken, AT Associates, Clarke, Ronin
4 and Does 1-100, to disclose the material facts as alleged herein, the beneficiaries of Family
5 Celebration, Celebrating Diana, the Berle Event, the Kids Campaign Event, and the Great Cause
6 Event have been deprived of what is due them, in the aggregate, in an amount presently
7 unknown to plaintiff, but believed to be in excess of \$500,000.

8 150. The amount of monies due from Tonken, AT Associates, Clarke, Ronin and
9 Does 1-100 to the beneficiaries of the fundraising events at issue in this cause of action are
10 unknown to plaintiff and cannot be ascertained without an accounting of the receipts and
11 disbursements of those events. The facts necessary for calculation of the receipts and
12 disbursements, and thus the amount owed to the beneficiaries of the events, are within the
13 special knowledge of defendants.

14 151. In doing the acts alleged in this cause of action, defendants and each of them
15 engaged in fraudulent, oppressive and malicious conduct and plaintiff is therefore entitled to an
16 award of punitive damages in an amount to be decided at the time of trial.

17 **SEVENTH CAUSE OF ACTION**

18 **(For Conversion)**

19 **(Against Defendants Tonken, AT Associates, Clarke,**

20 **Ronin Law Group and Does 1-100)**

21 152. Plaintiff re-alleges and incorporates by reference herein each and every
22 allegation contained in paragraphs 1 through 104, above.

23 153. Defendants Tonken, AT Associates and Does 1-100 solicited donations for
24 Family Celebration, Celebrating Diana, the Kids Campaign Event, the Berle Event, the Great
25 Cause Event, the Fox Foundation Event, as well as other events presently unknown to plaintiff.
26 The monies solicited and donated for these events belonged to, and should have benefitted, the
27 beneficiaries of that event. Defendants interfered with the beneficiaries' right of possession of
28

1 the donations by diverting all or a portion of the funds for purposes unrelated to the
2 aforementioned events. On information and belief, defendants' interference was knowing or
3 intentional. The Attorney General has demanded an accounting, and the beneficiaries and
4 donors of the events have demanded the return of the diverted donations. The interference and
5 diversion of donations has caused harm to the charitable beneficiaries.

6 154. The charitable beneficiaries of Celebrating Diana and the Berle Event were
7 entitled to and had the right of possession to all donations including underwriting funds. On
8 information and belief, defendants Clarke, the Ronin Law Group and Does 1-100, intentionally
9 or knowingly interfered with the beneficiaries' right of possession of the donations by diverting
10 all or a portion of the funds for purposes unrelated to the aforementioned events. The Attorney
11 General has demanded an accounting and the GBF and WWS have demanded the return of the
12 diverted funds. The interference and diversion of donations including underwriting has caused
13 harm to the charitable beneficiaries.

14 155. As a proximate result of the diversion of funds by Tonken, AT Assocs, and
15 Does 1-100, the beneficiaries of Family Celebration, Celebrating Diana, the Berle Event, Great
16 Cause Event, the Kids Campaign Event and the Fox Foundation Event, have been damaged, in
17 the aggregate, in an amount presently unknown to plaintiff, but believed to be in excess of \$1
18 million.

19 156. As a proximate result of the diversion of funds by Clarke, the Ronin Law
20 Group and Does 1-100, the beneficiaries of Celebrating Diana and Berle Event have been
21 damaged in an amount presently unknown to plaintiff, but believed to be in excess of \$299,000.

22 157. The total amount of money diverted by Tonken, AT Assocs, Clarke, the
23 Ronin Law Group, and Does 1-100 is unknown to plaintiff and cannot be ascertained without an
24 accounting of the receipts and disbursements of those events.

25 158. In doing the acts alleged in this cause of action, defendants and each of them
26 engaged in fraudulent, oppressive and malicious conduct, and plaintiff is therefore entitled to an
27 award of punitive damages in an amount to be decided at the time of trial.

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1 **EIGHTH CAUSE OF ACTION**

2 **(For Unfair Competition [Bus. & Prof. Code § 17200])**

3 **(Against Defendants Tonken, AT Associates, Gershman**

4 **(as an Individual and as Trustee of the Gershman Foundation),**

5 **Clarke, Ronin Law Group and Does 1-100)**

6 159. Plaintiff re-alleges and incorporates by reference each and every allegation
7 contained in paragraphs 1-155, above.

8 160. Commencing in 2000 and continuing to the present time, Tonken, AT
9 Associates and Does 1-100 solicited and obtained donations and payments from the public,
10 including California residents, in an amount in excess of \$500,000. In soliciting and obtaining
11 those donations and payments, defendants engaged in acts of unfair competition as defined by
12 Business and Professions Code section 17200 by using means that were unlawful, deceptive or
13 unfair for the purpose of obtaining funds that they could then improperly divert, misuse and
14 misappropriate for their own personal, private financial benefit and for other purposes unrelated
15 to the purposes for which said defendants obtained the donations and payments.

16 161. Defendants Tonken, AT Associates and Does 1-100 violated Business and
17 Professions Code section 17200 and continue to commit unfair competition by engaging in acts
18 or practices that include, but are not necessarily limited to, the following:

19 (a) Prior to soliciting funds for charitable purposes and prior to receiving and
20 controlling those funds, Tonken, AT Associates and Does 1-100 failed to register as
21 commercial fundraisers with the Attorney General in violation of Government Code
22 section 12599, subdivision (b);

23 (b) Tonken, AT Associates and Does 1-100 failed to provide an accounting and failed
24 to file the required financial reports with the Registry of Charitable Trusts in violation of
25 Government Code section 12599, subdivisions (c) and (f);

26 (c) In violation of Business and Professions Code section 17510.8 and in breach of
27 their fiduciary duty under common law, Tonken, AT Associates and Does 1-100 solicited
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1 and accepted donations for Family Celebration, Celebrating Diana, the Berle Event, the
2 Kids Campaign Event, the Fox Foundation Event and the Great Cause Event and failed
3 to ensure that each of these donations were used solely for the purpose for which each
4 such donation was made;

5 (d) In breach of their fiduciary duty to the donors and beneficiaries of Celebrating
6 Diana, Tonken, AT Associates and Does 1-100 caused funds deposited into the
7 Celebrating Diana underwriting account to be diverted for defendants' own purposes and
8 for other purposes unrelated to the event and then refused to provide a complete
9 accounting of the funds after they received demands for such accounting;

10 (e) In breach of their fiduciary duty to the donors and beneficiaries of Family
11 Celebration, Tonken, AT Associates and Does 1-100 caused funds solicited for Family
12 Celebration to be deposited into Tonken-controlled bank accounts rather than the
13 accounts monitored by Tanner Mainstain and the GBF and then refused to provide a
14 complete accounting for those funds after they received demands for such accounting and
15 failed to transfer all such funds to the GBF;

16 (f) In breach of their fiduciary duty to the donors and beneficiaries of the Berle
17 Event, Tonken, AT Associates and Does 1-100 deposited funds solicited for the event
18 into Tonken-controlled bank accounts rather than into the accounts monitored by WWS
19 and then refused to provide a complete accounting for those funds after they received
20 demands for such accounting and failed to return funds belonging to the event's
21 charitable beneficiaries;

22 (g) In breach of their fiduciary duty to the Gershman Foundation, Tonken, AT
23 Associates, and Does 1-100 solicited funds from the Gershman Foundation and then
24 diverted, misused and misappropriated those funds specifically earmarked for charitable
25 purposes into Tonken-controlled bank accounts, and used all or a portion of those funds
26 for non-charitable purposes;

27 (h) Defendants Tonken and AT Associates authorized their agent to advise
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1 representatives/agents of *Nsync that in exchange for *Nsync's performance at Family
2 Celebration, 50 percent of the net proceeds from the event would be distributed to the
3 charity of *Nsync's choice, even though these defendants had already entered into an
4 agreement with the Ally McBeal cast members that 100 percent of the net revenues
5 would be distributed to the McBeal charities;

6 (i) Defendants Tonken, AT Associates and Does 1-100 falsely represented to the
7 Ally McBeal representative/agent that Family Celebration would be fully underwritten by
8 the Gershman Foundation. This representation was made to induce the cast members'
9 participation in the event. The cast members agreed to, and did, participate in the event
10 on behalf of their charities. Because the event was not fully underwritten (contrary to the
11 false representation of Tonken), the charitable beneficiaries did not receive the
12 substantial donations that Tonken had promised and represented to the
13 representative/agent of the cast of Ally McBeal;

14 (j) Defendants Tonken, AT Associates and Does 1-100 falsely represented to
15 members of the public that all costs in excess of \$55,000 for Family Celebration would be
16 paid for and underwritten by the Gershman Foundation. On information and belief,
17 defendants falsely stated that the event was fully underwritten to mislead members of the
18 public into purchasing tickets, auction items and advertisement. Because the event was
19 not fully underwritten (contrary to the false representation of defendants), the charitable
20 beneficiaries did not receive the substantial donations that the donors who purchased the
21 tickets, auction items, and advertising were led to believe they would;

22 (k) In violation of Business and Professions Code section 17510.8, and in breach of
23 their fiduciary duty under common law, Tonken and AT Associates solicited donations
24 from Loreen Arbus and the I&L Association for Celebrating Diana, advising Ms. Arbus
25 that, in exchange for the donations, a substantial portion of the net proceeds from the
26 event would be distributed to charities Arbus designated, even though defendants had
27 already entered into an agreement with the English Fund that 100 percent of the net
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1 proceeds from that event would be distributed to the English Fund;

2 (l) In violation of Business and Professions Code section 17510.8, and in breach of
3 their fiduciary duty under common law, Tonken and AT Associates solicited a donation
4 from the Lorsch Foundation for Celebrating Diana, advising the trustee that, in exchange
5 for the donations, the Lorsch Foundation would receive 50 percent of the net proceeds
6 from the event, even though defendants had already entered into an agreement with the
7 English Fund that 100 percent of the net proceeds from the event would be distributed to
8 the English Fund;

9 (m) In violation of Business and Professions Code section 17510.8, and in breach of
10 their fiduciary duty under common law, Tonken and AT Associates entered into an
11 agreement with the Giving Back Fund that provided that, if the GBF acted as fiscal agent
12 for Celebrating Diana, it would receive a portion of the net proceeds from Celebrating
13 Diana, even though defendants had already entered into an agreement that provided that
14 100 percent of the net proceeds would be distributed to the English Fund;

15 (n) In violation of Business and Professions Code section 17510.8, Tonken and AT
16 Associates engaged in fraudulent and deceitful conduct by misrepresenting to the
17 charitable beneficiaries and donors the estimated costs and net proceeds of Family
18 Celebration and the Berle Event;

19 (o) Defendants Tonken, AT Associates and Does 1-100 falsely represented to WWS
20 that the Berle Event would be fully or substantially underwritten. On information and
21 belief, these representations were made to induce WWS to participate as a fiscal agent
22 and as a beneficiary. Because said defendants knew or should have known at the time of
23 the representations that the event would not be fully or substantially underwritten and the
24 event was not fully or substantially underwritten, WWS as well as the other charitable
25 beneficiaries did not receive the substantial donations that Tonken had promised and
26 represented they would;

27 (p) In violation of Business and Professions Code sections 17510.8, and in breach of
28

1 their fiduciary duty under common law, Tonken and AT Associates engaged in fraudulent
2 and deceitful conduct by misrepresenting to Gubb that his payments of funds for the Fox
3 Foundation Event would be given to the Betty Ford Clinic and the Michael J. Fox
4 Foundation. Instead, Tonken diverted the funds for purposes unrelated to the event; and
5 (q) On information and belief, defendants Tonken and AT Associates established or
6 caused to be established private bank accounts using the names of existing nonprofit
7 organizations as dba's on the accounts without the authorization of those nonprofit
8 organizations. In doing so, Tonken misrepresented to the public at large that he was
9 doing business as a nonprofit organization when he was not.

10 162. Defendants Clarke and Ronin Law Group engaged in and participated in
11 acts of unfair competition as defined by Business and Professions Code section 17200 in
12 obtaining control over and diverting charitable funds in an amount over \$299,000 by means that
13 were unlawful, deceptive, or unfair for the purpose of misusing and misappropriating charitable
14 funds for their own personal, private financial benefit and for other purposes unrelated to the
15 purposes for which such funds were donated.

16 163. On information and belief, the actions of Clarke and Ronin Law Group, in
17 violation of Business and Professions Code section 17200 as alleged in this complaint, were done
18 for the purpose of inducing Pollick and the Giving Back Fund to allow defendant Clarke to be a
19 signatory on the Celebrating Diana underwriting account for the purpose of diverting monies in
20 that account for the private gain of defendants Clarke and Ronin. Defendants Clarke and Ronin
21 have committed and continue to commit unfair competition as defined in Business and
22 Professions Code section 17200 by engaging in acts or practices that include, but are not
23 necessarily limited to, the following :

- 24 (a) Clarke misrepresented to Pollick that no funds in the Celebrating Diana account
25 would be disbursed before a written agreement was signed;
- 26 (b) Clarke misrepresented to Pollick that no funds would be disbursed without first
27 receiving a written authorization for disbursement of those funds from Pollick;

1 (c) Clarke breached his fiduciary duty to the donors and beneficiaries of Celebrating
2 Diana by improperly diverting monies from the Celebrating Diana underwriting account
3 for his own private financial gain and for purposes unrelated to the charity event; and

4 (d) Clarke also assisted Tonken in diverting funds from the Berle Event.

5 164. On information and belief, defendant Gershman, in her individual capacity
6 and as trustee of the Gershman Foundation, engaged in and participated in acts of unfair
7 competition as defined by Business and Professions Code section 17200 in obtaining control over
8 and diverting charitable funds from the Gershman Foundation in an amount over \$299,000 by
9 means that were unlawful, deceptive, or unfair for the purpose of misusing and misappropriating
10 charitable funds for Gershman's and Tonken's own personal, private financial benefit.

11 Defendant Gershman has committed and continues to commit unfair competition as defined in
12 Business and Professions Code section 17200 by engaging in acts or practices that include, but
13 are not necessarily limited to, the following:

14 (a) On information and belief, Gershman authorized Tonken to take money out of the
15 Celebrating Diana account to pay Westside Waldorf School after Gershman reneged on
16 her pledge agreement;

17 (b) On information and belief, Gershman engaged in acts of self-dealing in violation
18 of Probate Code section 16004 et seq. by allowing Tonken to pay her personal bills from
19 charity accounts;

20 (c) On information and belief, Gershman allowed Tonken to use her name and the
21 name of Gershman Foundation to entice the participants of Family Celebration and Berle
22 Event to hire Tonken to produce the events on the false promise that the Gershman
23 Foundation would underwrite the events;

24 (d) Gershman aided and abetted Tonken in misrepresenting to the public that the
25 Gershman Foundation was going to underwrite the entire Family Celebration event when,
26 on information and belief, the Gershman Foundation provided no underwriting for the
27 event;

28

- 1 (e) Gershman breached her fiduciary duty to the Gershman Foundation by making
2 donations to defunct charities, which were diverted to Tonken-controlled bank accounts;
- 3 (f) Gershman breached her fiduciary duty to the Gershman Foundation by wrongfully
4 diverting funds from the Gershman Foundation to Tonken, AT Associates and Does 1-
5 100; and
- 6 (g) Gershman breached her fiduciary duty as a trustee of the Gershman Foundation
7 and violated Probate Code section 16000 et seq. by failing to exercise due care in
8 protecting and preserving the Gershman Foundation's trust property, as a result of which
9 the Gershman Foundation's grants were diverted by Tonken, AT Associates and Does 1-
10 100.

11 165. As a result of the aforementioned acts of unfair competition committed by
12 Tonken, AT Associates, Clarke, Ronin Law Group and Gershman, plaintiff is entitled to civil
13 penalties in an amount which is presently unknown, but believed to be in excess of \$350,000.

14 **NINTH CAUSE OF ACTION**

15 **(For Negligence)**

16 **(Against Defendants Tonken, AT Associates, Clarke, Gershman**

17 **(as Trustee of the Gershman Foundation) and Does 1-100)**

18 166. Plaintiff re-alleges and incorporates by reference each and every allegation
19 contained in paragraphs 1 through 104, above.

20 167. When defendants Tonken, AT Associates and Does 1-100 solicited and
21 accepted donations for Family Celebration, Celebrating Diana, the Kids Campaign Event, the
22 Berle Event, the Great Cause Event, and funds for the Fox Foundation Event, they owed a duty
23 of care to the donors and beneficiaries of the events to ensure that the donations and funds were
24 used for the events. Defendants breached that duty of care by commingling these donations and
25 funds with other monies and by diverting, misappropriating, and misusing these charitable funds
26 for purposes unrelated to the events. As a result of that breach of duty the beneficiaries of the
27 events have been injured, in the aggregate, in an amount presently unknown to plaintiff, but
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1 exceeding \$500,000.

2 168. When defendants Tonken, AT Associates and Does 1-100 solicited
3 donations from the Gershman Foundation, they owed a duty of care to the Foundation to ensure
4 that the donations were used for charitable purposes. Defendants breached that duty of care by
5 commingling these donations with other funds and by diverting, misappropriating, and misusing
6 these charitable funds for non-charitable purposes. As a result of that breach of duty, the
7 beneficiaries of the Gershman Foundation have been injured in an amount presently unknown to
8 plaintiff, but exceeding \$350,000.

9 169. Defendants Tonken, AT Associates, Gershman (as trustee of the Gershman
10 Foundation) and Does 1-100 owed a duty of care to the donors and beneficiaries of Family
11 Celebration and the Berle Event to ensure that the events raised a reasonable amount of net
12 proceeds for the beneficiaries. Defendants breached that duty of care by exceeding the proposed
13 budgets, incurring unreasonable expenditures, and unreasonably giving away too many
14 complimentary tickets. Defendant Gershman aided and abetted defendants' breach of duty by
15 causing Family Celebration to incur unreasonable expenses. As a result of these breaches of
16 duty, the Berle event gave almost no funds to the charitable beneficiaries and the Family
17 Celebration beneficiaries received far less than they should have received. The beneficiaries of
18 Family Celebration and the Berle Event have been damaged in an amount presently unknown to
19 plaintiff, but believed to exceed \$500,000.

20 170. When defendant Clarke agreed to be a signatory on the Celebrating Diana
21 underwriting account, he owed a duty of care to the donors and beneficiaries of Celebrating
22 Diana to ensure that the funds deposited in that account were used solely for purposes related to
23 the event. Clarke breached his duty of care by diverting, misusing, and misappropriating these
24 charitable funds for purposes unrelated to the event. As a result of that breach of duty, the
25 beneficiaries of Celebrating Diana have been injured in an amount presently unknown to
26 plaintiff, but exceeding \$199,000.

27 171. Defendant Gershman, as trustee, had a duty of care towards the Gershman
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1 required financial reports for 2001. Gershman and Does 1-100 are subject to civil penalties
2 under Government Code section 12591.1.

3 **ELEVENTH CAUSE OF ACTION**

4 **(For Breach of Pledge Agreement)**

5 **(Against Defendants Gershman (as Trustee of**
6 **the Gershman Foundation), and Does 1-100)**

7 175. Plaintiff hereby re-alleges and incorporates by reference each and every
8 allegation contained in paragraphs 1 through 42, above.

9 176. Gershman, as trustee to the Gershman Foundation, irrevocably pledged to
10 donate \$650,000 to WWS. As trustee, Gershman had the ability to, and did, bind the Gershman
11 Foundation in the pledge. As trustee, Gershman has failed and refused to honor the Gershman
12 Foundation's pledge agreement. WWS accepted the pledge agreement and in reliance thereon
13 WWS honored Gershman publicly at a luncheon that took place in the Summer of 2000, WWS
14 made public announcements in 2001 concerning Gershman's generosity, and WWS staff and
15 board members spent hundreds of hours negotiating the purchase of a new building and entered
16 into a letter agreement for the purchase of the building. WWS is unable to purchase the building
17 because of Gershman's refusal to honor the pledge agreement.

18 177. Gershman, as trustee, also made a pledge agreement with WWS to
19 underwrite four charitable fundraising events for the benefit of WWS. As trustee, Gershman had
20 the ability to, and did, bind the Gershman Foundation in that pledge. Gershman has failed and
21 refused to honor that pledge and has refused to donate the promised underwriting.

22 178. On or about March 6, 2003, WWS assigned in writing to plaintiff the right
23 under the pledge agreement to sue on its behalf for breach of the pledge agreement.

24 179. The public as beneficiary of the charitable purposes of WWS has been
25 injured as a result of Gershman's breach of pledge agreement in an amount unknown to plaintiff,
26 but believed to be in excess of \$1 million.

27 WHEREFORE, plaintiff prays for judgment as follows:
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1 1. For a finding that defendants Tonken, AT Associates and Does 1-100 are
2 commercial fundraisers for charitable purposes within the meaning of Government Code section
3 12599 and for an order requiring them to comply with the provisions of that section;

4 2. For a preliminary and permanent injunction, enjoining defendants Tonken, AT
5 Associates, Does 1-100, their employees, agents, servants, representatives, successors, and
6 assigns, any and all persons acting in concert or participation with them, and all other persons,
7 corporations, or other entities acting under, by, through, or on their behalf from engaging in or
8 performing any of the following acts:

9 a) Soliciting any charitable contributions in this State, borrowing, or conducting
10 business of any kind, on behalf of or in the name of, any nonprofit corporation or other
11 entity holding assets in charitable trust for the benefit of the public until such time as
12 defendants have rendered full and complete, accurate accountings of all funds received
13 by them and/or controlled by them and/or disbursed by them at any time in connection
14 with the charity events mentioned in this Complaint;

15 b) Soliciting any charitable contributions in this State, borrowing, or conducting
16 business of any kind, on behalf of or in the name of, any nonprofit corporation or other
17 entity holding assets in charitable trust for the benefit of the public until such time as
18 defendants have rendered a full and complete, accurate accounting of all funds received
19 by them and/or controlled by them and/or disbursed by them at any time in connection
20 with the Performing Arts Foundation bank account held in defendant Tonken's name

21 c) Soliciting any funds, assets or property for charitable purposes and/or receiving
22 and/or controlling and/or disbursing any funds, assets, or property as a result of a
23 solicitation for charitable purposes in this State prior to fully complying with the
24 registration and reporting requirements set forth in Government Code section 12599,
25 subdivisions (b), (c) and (d); and

26 d) Expending, disbursing, transferring, encumbering, withdrawing, or otherwise
27 exercising control over any funds donated for one or more of the charity events
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1 mentioned in this Complaint without prior authorization from this Court;

2 3. For a preliminary and permanent injunction, enjoining defendant Clarke, his
3 employees, agents, servants, representatives, successors, and assigns, any and all persons acting
4 in concert or participation with him, and all other persons, corporations, or other entities acting
5 under, by, through, or on his behalf from disbursing or causing to be disbursed, from whatever
6 source, any funds received in connection with a charitable campaign or from a charitable donor
7 until he has first provided a full and complete accounting for all funds disbursed from the
8 Celebrating Diana underwriting account and for all funds deposited into the Ronin Law Group
9 Trust Account by, or at the direction of, defendant Tonken from January 1, 2001, to the present;

10 4. For a preliminary and permanent injunction, enjoining defendant Gershman,
11 her employees, agents, servants, representatives, successors, and assigns, any and all persons
12 acting in concert or participation with her, and all other persons, corporations, or other entities
13 acting under, by, through, or on her behalf from authorizing by whatever means, the
14 disbursement of funds from the Gershman Foundation until she has done all of the following: (i)
15 provided a full and complete, accurate accounting of all funds disbursed from the Gershman
16 Foundation from January 1, 2000, to the present, (ii) established procedures satisfactory to the
17 Court to ensure that the disbursements she authorizes from the Gershman Foundation further the
18 charitable purpose of the Foundation, (iii) ensured that the Gershman Foundation has
19 implemented all required policies and procedures related to the disbursement of charitable funds
20 by private foundations as provided for in federal statutes and regulations, and (iv) filed the
21 required financial reports with the Attorney General for the year 2001;

22 5. Pursuant to Business and Professions Code section 17203, for a preliminary
23 and permanent injunction enjoining defendants, their successors, agents, representatives,
24 employees and all persons who act in concert with, or on behalf of defendants from engaging in
25 unfair competition as defined in Business and Professions Code section 17200, including, but not
26 limited to, acts and practices like those alleged in this complaint;

27 6. For damages due the beneficiaries of the events at issue and the beneficiaries
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1 of the Gershman Foundation and prejudgment interest in an amount to be proved at trial, but at
2 least \$1.7 million;

3 7. For a full and complete, accurate accounting from defendants Tonken, AT
4 Associates, Clarke and Gershman concerning the charity events identified in this Complaint and
5 the charitable donations made by the Gershman Foundation from January 1, 2000, to the present;
6 for defendants' expenditure and disposition of all revenues and assets that were solicited and
7 received for Family Celebration, Celebrating Diana, the Kids Campaign Event, the Berle Event,
8 the Fox Foundation Event and the Great Cause Event and from the Gershman Foundation, and
9 which were controlled and improperly diverted from bank accounts through defendants' breach
10 of fiduciary duty, fraud, or other wrongful acts as alleged in this complaint. Upon the rendering
11 of such accounting, that the Court determine the property, real or personal, or the proceeds
12 thereof, to which the beneficiaries of Family Celebration, Celebrating Diana, the Kids Campaign
13 Event, the Berle Event, the Fox Foundation Event and the Great Cause Event and the Gershman
14 Foundation are lawfully entitled, in whatsoever form and in whatsoever hands they may now be,
15 and order and declare that all such property or the proceeds thereof is impressed with a trust for
16 charitable purposes, that defendants are constructive trustees of all such charitable funds and
17 assets and that the same shall be deposited forthwith in Court by each and every defendant now
18 holding or possessing the same or claiming any right, title or interest therein. In addition, that
19 defendants Tonken, AT Associates, Clarke, and Gershman be surcharged and held liable and
20 judgment entered against each of them for any and all such assets for which they fail to properly
21 account, together with interest thereon at the legal rate from the date of liability thereon; and that
22 any and all expenses and fees incurred by defendants in this action be borne by defendants and
23 each of them, and not by any charitable funds or assets;

24 8. Pursuant to Business and Professions Code section 17206, that the Court
25 assess a civil penalty of two thousand five hundred dollars (\$2,500) against defendants for each
26 violation of Business and Professions Code section 17200 per day, as proved at trial, in an
27 amount no less than \$350,000;

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- 9. For punitive and exemplary damages according to proof;
- 10. For plaintiff's costs of suit and other costs pursuant to Government Code sections 12597 and 12598; and
- 11. For such other and further relief as the Court may deem to be just and proper.

DATED: March 13, 2003

Respectfully submitted,
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