

1 XAVIER BECERRA
Attorney General of California
2 TANIA IBANEZ
Senior Assistant Attorney General
3 JAMES TOMA
Supervising Deputy Attorney General
4 SONJA K. BERNDT
Deputy Attorney General
5 State Bar No. 131358
300 South Spring Street, Suite 1702
6 Los Angeles, CA 90013
Telephone: (213) 269-6553
7 Fax: (213) 897-7605
E-mail: sonja.berndt@doj.ca.gov
8 *Attorneys for Plaintiff*

ORIGINAL FILED

MAR 08 2018

**LOS ANGELES
SUPERIOR COURT**

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

RECEIVED

MAR 08 2018

12
13
14 THE PEOPLE OF THE STATE OF
CALIFORNIA,

15 Plaintiff,

16 v.

17 THE NATIONAL CANCER COALITION,
INC., a Delaware Nonprofit Nonstock
18 Corporation.

19 Defendant.
20

Case No. BC69065 DEPT. 38

**FINAL JUDGMENT AND
PERMANENT INJUNCTION**

21 Plaintiff, the People of the State of California ("Plaintiff"), through its attorney Xavier
22 Becerra, Attorney General of the State of California ("Attorney General") by Deputy Attorney
23 General Sonja K. Berndt; and Defendant The National Cancer Coalition, Inc. ("National Cancer
24 Coalition") (also collectively referred to herein as "the Parties"), having stipulated and consented
25 to the entry of this Final Judgment and Permanent Injunction ("Judgment") without the taking of
26 proof and without trial or adjudication of any fact or law except as specifically set forth herein;
27 without this Judgment constituting evidence of or an admission by Defendant regarding issues of
28 law or fact alleged in the Complaint on file except as specifically set forth herein; with all parties

1 having waived their right to appeal; and the Court having considered the matter and good cause
2 appearing:

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

4 **I. PARTIES AND JURISDICTION**

5 1. This Court has jurisdiction of the subject matter of this action, jurisdiction over the
6 parties to this action, and venue is proper in this Court.

7 2. Defendant National Cancer Coalition, at all relevant times, has transacted business in
8 the County of Los Angeles and elsewhere in the State of California.

9 3. This Judgment is entered pursuant to, and subject to, California Business and
10 Professions Code section 17200 et seq. and Government Code sections 12586.2, 12591, 12591.1,
11 subdivision (f), and 12599.6.

12 **II. DEFINITIONS**

13 4. The following definitions apply to this Judgment:

14 a.) Generally Accepted Accounting Principles (“GAAP”) refers to the set of
15 principles many nonprofit organizations follow in their financial reporting and that are
16 established by the Financial Accounting Standards Board (“FASB”). The FASB
17 Accounting Standards Codification (“ASC”) is the single authoritative source of GAAP for
18 nongovernmental organizations in the United States. All nonprofit organizations that solicit
19 in California must maintain their financial records on the basis of GAAP;

20 b.) “The Original Source” means the first donor in a series of donations of the
21 same pharmaceutical(s).

22 **III. CONCLUSION OF LAW**

23 5. Pursuant to Generally Accepted Accounting Principles, California Business and
24 Professions Code section 17510.5, and California Business and Professions Code section 17200
25 et seq., Defendant National Cancer Coalition was, and is, precluded from using any market prices
26 other than appropriate international medicinal product prices for charitable and donor
27 organizations in valuing gifts in kind of pharmaceuticals that were/are restricted for distribution
28 and/or use outside the United States, and in including those values in National Cancer Coalition’s

1 public financial reporting and other representations to the public. Defendant National Cancer
2 Coalition admits that its use of U.S. market prices in valuing its pharmaceutical donations
3 overseas violated GAAP and California law because the pharmaceuticals were restricted to use
4 and distribution outside the U.S.

5 **IV. INJUNCTIVE RELIEF**

6 6. Under Business and Professions Code section 17203, and Government Code section
7 12591.1, subdivision (f), Defendant National Cancer Coalition and its agents, and employees, and
8 all other persons in active concert or participation with National Cancer Coalition, who receive
9 actual notice of this Judgment, whether acting directly or indirectly, are permanently restrained
10 and enjoined from:

11 a.) Using any market prices other than appropriate international medicinal product
12 prices for charitable and donor organizations to value gifts in kind of pharmaceuticals that
13 are restricted for distribution and/or use outside the United States;

14 b.) Using any market prices other than appropriate international medicinal product
15 prices for charitable and donor organizations to value gifts in kind of pharmaceuticals
16 unless they receive from all donors of the pharmaceuticals, including the Original Source,
17 affidavits under penalty of perjury stating that the pharmaceuticals are allowed to be
18 distributed in the United States under any circumstances and without any notice to, or
19 approval from the donors or any other person/entity and so long as such distribution in the
20 United States is in furtherance of the nonprofit organization's charitable purposes and is not
21 prohibited by any federal or state laws. Such affidavits shall be maintained for a period of
22 not less than 10 years from the date of the donation and shall be produced upon the demand
23 of any state or federal agency;

24 c.) Including as revenue and/or program expense in any nonprofit organization's
25 financial reporting the value of any gift in kind that is purchased either directly or indirectly
26 by that nonprofit organization, other than the purchase price;

27 d.) Including as revenue or program expense in any nonprofit organization's
28 financial reporting the value of any gift in kind unless that nonprofit organization has sole

1 discretion to determine the ultimate beneficiary/end recipient of the gift in kind and written
2 documentation to support that fact;

3 e.) Including as revenue in any nonprofit organization's financial reporting the
4 value of any gift in kind unless, prior to the receipt of such gift in kind, the nonprofit
5 organization receives a donation letter specifically noting, *inter alia*, whether the gift in
6 kind is subject to any restriction imposed by any donor of the gift in kind, including the
7 Original Source of the gift in kind;

8 f.) Including as program expense in a nonprofit organization's financial reporting
9 the value of any gift in kind that is delivered outside the United States unless, prior to the
10 donation of the gift in kind, the donor organization has determined that the donee has the
11 need for the gift in kind and has the ability to, and will, use the gift in kind in furtherance of
12 the donor organization's charitable purposes;

13 g.) Including as program expense in a nonprofit organization's financial reporting
14 the value of any gift in kind that is delivered outside the United States unless that donor
15 nonprofit organization receives from the ultimate beneficiary/end recipient written
16 acknowledgement of receipt of the donation and documentation showing that the gift was
17 used in furtherance of the donor's charitable purpose;

18 h.) Making any misrepresentation in a charitable solicitation in violation of
19 Government Code section 12599.6, Business and Professions Code section 17200 et seq., or
20 Business and Professions Code section 17500; and

21 i.) Submitting for filing on behalf of a charitable organization any statement,
22 report, financial statement, IRS Form 990, attachment or other information to be filed with
23 the Attorney General that contains information, a statement, or an omission that is false or
24 misleading.

25 7. Defendant National Cancer Coalition shall dissolve according to the provisions
26 governing nonprofit nonstock corporations in the State of Delaware as well as the dissolution
27 provisions set forth in its Certificate of Incorporation as amended and restated September 12,
28 2008 (September 2008 Amended Certificate of Incorporation). Within 30 days of National

1 Cancer Coalition's receipt of the Court-executed Judgment, it shall commence taking the
2 necessary steps to wind down its affairs, liquidate its assets, dissolve and distribute all net assets
3 to a qualifying charitable organization as set forth in Section VIII of its September 2008
4 Amended Certificate of Incorporation. Defendant National Cancer Coalition shall complete its
5 wind up and dissolution within 180 days of its receipt of the Court-executed Judgment. Such
6 time period may be extended for good cause by mutual agreement of the Parties.

7 **V. MONETARY RELIEF**

8 8. Judgment in the amount of \$500,000 is entered in favor of Plaintiff against National
9 Cancer Coalition as civil penalties pursuant to Business and Professions Code section 17206.
10 Execution of the monetary relief portion of this Judgment shall be suspended based upon National
11 Cancer Coalition's inability to pay. Plaintiff's agreement to the suspension of the monetary relief
12 in this Judgment is expressly premised upon the truthfulness, accuracy, and completeness of the
13 Financial Disclosure Form prepared by Defendant Overall as President and Chief Executive
14 Officer of National Cancer Coalition, and signed by him under penalty of perjury on February __,
15 2018.

16 9. The suspension of the monetary relief portion of this Judgment will be lifted as to
17 Defendant National Cancer Coalition, upon motion by Plaintiff, if the Court finds that Hall
18 Overall failed to disclose any material asset, materially misstated the value of any asset, or made
19 any other material misstatement or omission in the representations made in the sworn Financial
20 Disclosure Form referenced in Paragraph 8, above. If the suspension of the monetary relief
21 portion of this Judgment is lifted pursuant to this provision, the Judgment becomes immediately
22 due in the amount specified in Paragraph 8, above.

23 **VI. GENERAL PROVISIONS**

24 10. The Judgment is a final and binding resolution of all civil violations arising from the
25 Complaint. The Judgment shall act as res judicata to bar any civil action by Plaintiff against
26 Defendant National Cancer Coalition relating to all acts, errors, or omissions arising from or
27 relating directly or indirectly to any of the allegations set forth in the Complaint. The Judgment
28 settles all claimed civil violations, known or unknown, suspected or unsuspected, which have

1 been or could have been derived from or asserted in the Complaint as a result of the investigation
2 against Defendant National Cancer Coalition, its officers, directors, and employees.

3 11. This Judgment shall not constitute an admission or finding of any wrongdoing, fault,
4 violation of law, or liability of National Cancer Coalition except that it admits the Conclusion of
5 Law set forth in paragraph 5 of this Judgment.

6 12. This Judgment does not constitute an approval by the California Attorney General of
7 Defendant's past, present or future business acts and practices.

8 13. Nothing in this Judgment shall be construed as relieving National Cancer Coalition of
9 the obligation to comply with all local, state and federal laws, regulations or rules, nor shall any
10 of the provisions of this Judgment be deemed to be permission to engage in any acts or practices
11 prohibited by such laws, regulations, or rules.

12 14. If any portion of this Judgment is held invalid by operation of law, the remaining
13 terms of this Judgment shall not be affected and shall remain in full force and effect.

14 15. Pursuant to Code of Civil Procedure section 664.6, jurisdiction is retained by the
15 Court for the purpose of enabling any party to the Judgment to apply to the Court at any time for
16 such further orders and directions as may be necessary or appropriate for the construction or the
17 carrying out of this Judgment, for the modification of any of the injunctive provisions hereof, for
18 enforcement of compliance herewith, and for the punishment of violations hereof, if any.

19 16. The Clerk is ordered to enter this Judgment forthwith.

20
21 DATED: MAR 08 2018

MAUREEN DUFFY-LEWIS

JUDGE OF THE SUPERIOR COURT