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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES  
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17 **THE PEOPLE OF THE STATE OF**  
18 **CALIFORNIA,**

**Plaintiff,**

**v.**

21 **AMERICAN ASSOCIATION OF POLICE**  
22 **OFFICERS, INC., A TEXAS NOT-FOR- PROFIT**  
23 **CORPORATION, ALSO KNOWN AS (A/K/A)**  
24 **VETERAN POLICE ASSOCIATION, INC.;**  
25 **POLICE PROTECTIVE FUND, INC., A**  
26 **NORTH CAROLINA NOT FOR PROFIT**  
27 **CORPORATION; JUNIOR POLICE**  
28 **ACADEMY, A TEXAS NON-PROFIT**  
**CORPORATION, A/K/A POLICE FORCE 2000;**  
**DAVID DIERKS, PHILIP LECONTE;**  
**WEST COAST ADVERTISING, D.B.A.**  
**PROFESSIONAL COMMUNICATIONS**  
**NETWORK ; MARK CHRISTIANSEN**  
**D.B.A. CHARITABLE FUNDRAISING**  
**SERVICES; MARK CHRISTIANSEN;**

COMPLAINT FOR DAMAGES, CIVIL  
PENALTIES, A CONSTRUCTIVE TRUST,  
PRELIMINARY AND PERMANENT  
INJUNCTION, AND FOR OTHER RELIEF  
ARISING FROM

(1) DECEPTIVE AND MISLEADING  
SOLICITATION)  
(2) BREACH OF FIDUCIARY DUTY  
(3)IMPROPER COMPENSATION  
(4) PREPARING, FILING AND  
DISTRIBUTING FALSE AND  
INCOMPLETE RECORDS  
(5) NEGLIGENCE  
(6) VIOLATION OF GOVERNMENT CODE  
SECTIONS 12599 AND 12599.6  
(7) NEGLIGENCE PER SE  
(8) UNFAIR BUSINESS PRACTICES  
(9) FALSE OR MISLEADING  
STATEMENTS

1 **MIKE S. THOMAS; DOES 1-100, inclusive.**

2 **Defendants**

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4 Edmund G. Brown Jr., Attorney General of the State of California (hereinafter “the Attorney  
5 General”), files this complaint as Attorney General on behalf of the People and alleges as follows:

6 **GENERAL ALLEGATIONS**

7 1. Plaintiff is the People of the State of California. The Attorney General, who  
8 brings this action on Plaintiff’s behalf, is the duly elected Attorney General of the State of  
9 California and is charged with the general supervision of all charitable organizations within this  
10 State; with the enforcement of the obligations of trustees, nonprofits, and fiduciaries who hold or  
11 control property in trust for charitable and eleemosynary purposes; and with enforcement  
12 supervision under California’s Unfair Business Practice Act for unlawful, unfair, and fraudulent  
13 business practices within this State. The Attorney General is authorized to enforce, in the name  
14 of the People, the provisions of the Supervision of Trustees and Fundraisers for Charitable  
15 Purposes Act (Gov. Code § 12580 et seq.), the Nonprofit Public Benefit Corporation Law (Corp.  
16 Code §5000, et seq.), the Solicitations for Charitable Purposes Law (Bus. & Prof. Code § 17510  
17 et seq.), and those provisions of the Business and Professions Code which prohibit unlawful,  
18 unfair, or fraudulent business acts or practices within this State (Bus. & Prof. Code §17200 et  
19 seq.)

20 2. At all times material herein, defendants and each of them have been transacting  
21 business in Los Angeles County. The violations of law hereinafter described have been and are  
22 now being carried out in part within said county and elsewhere.

23 3. AMERICAN ASSOCIATION OF POLICE OFFICERS, a Texas not-for-profit  
24 corporation, formerly known as (f/k/a) NATIONAL ASSOCIATION OF VETERAN POLICE  
25 OFFICERS, INC. (hereinafter “AAPO”) is currently located and operated in Los Angeles County,  
26 California. AAPO claims that its charitable purpose is to provide an alliance of law enforcement  
27 professionals and volunteers dedicated to educational programs benefitting police officers,  
28 citizens, and the public in general. From 2005 to 2008, AAPO solicited donations for charitable

1 purposes from individuals and businesses in California and nationwide. The solicitation of  
2 charitable contributions creates a duty to use those contributions for the declared charitable  
3 purpose for which they were solicited, and AAPO holds such assets in charitable trust. From  
4 1990 to 2006, AAPO was operated by WALTER DIERKS, DAVID DIERKS and PHIL  
5 LECONTE.

6 4. JUNIOR POLICE ACADEMY (hereinafter “JPA”), formerly known as POLICE  
7 FORCE 2000, is a Texas nonprofit corporation. JPA’s principal place of business from 2005  
8 through 2008 was in Los Angeles County, California. JPA claims that its charitable purpose is to  
9 provide informational and educational services to school children and to promote a positive  
10 attitude toward persons in positions of authority, such as police officers. From 2004 to 2007, JPA  
11 solicited donations for charitable purposes from individuals and businesses in California and  
12 nationwide. The solicitation of charitable contributions creates a duty to use those contributions  
13 for the declared charitable purpose for which they were solicited, and JPA holds such assets in  
14 charitable trust. From its inception in 1992, through 2006, JPA was operated by WALTER  
15 DIERKS, DAVID DIERKS and PHIL LECONTE.

16 5. POLICE PROTECTIVE FUND (hereinafter “PPF”), a North Carolina nonprofit  
17 corporation, is currently located and operated out of Los Angeles County, California. PPF’s  
18 charitable purpose is similar, if not identical to AAPO’s program. PPF was established to educate  
19 law enforcement professionals on all matters of safety awareness by providing free educational  
20 materials designed to provide safety training information. Since its inception in 1998 to 2006,  
21 PPF has been operated by DAVID DIERKS, ROBERT LECONTE and PHIL LECONTE.

22 6. PHILIP LECONTE (hereinafter “LECONTE”) is a resident of Austin, Texas.  
23 LECONTE has held a position of authority and control over the funds and assets of AAPO, JPA,  
24 and PPF by serving as an officer and director. LECONTE is a fiduciary of property irrevocably  
25 dedicated to charitable purposes.

26 7. DAVID DIERKS (hereinafter “DIERKS”) is a resident of Los Angeles, California.  
27 DIERKS has held a position of authority and control over the funds and assets of AAPO, JPA,  
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1 and PPF by serving as an officer and director. DIERKS is a fiduciary of property irrevocably  
2 dedicated to charitable purposes.

3 8. By operating three related charities, defendant DIERKS and LECONTE were able  
4 to transfer funds from PPF to AAPO, thereby increasing PPF's program expenses and reducing  
5 PPF's administrative expenses. AAPO paid the salaries of DIERKS, LECONTE and other  
6 administrative staff. This allowed PPF to falsely claim in its informational returns and to falsely  
7 report to potential donors that it had low management fees.

8 9. WEST COAST ADVERTISING (hereinafter "WEST COAST"), doing business  
9 as PROFESSIONAL COMMUNICATIONS NETWORK (hereinafter "WEST COAST d.b.a.  
10 PROFESSIONAL COMMUNICATIONS"), is a California for-profit corporation with its  
11 principal place of business in San Diego, California. WEST COAST d.b.a. PROFESSIONAL  
12 COMMUNICATIONS acted as a commercial fundraiser for JPA and PPF. From 2004 through  
13 2008, WEST COAST d.b.a. PROFESSIONAL COMMUNICATIONS' actions, as described  
14 herein, occurred in the State of California.

15 10. MARK CHRISTIANSEN (hereinafter "CHRISTIANSEN"), doing business as  
16 CHARITABLE FUNDRAISING SERVICES ("CHARITABLE FUNDRAISING"), is an  
17 individual with his principal place of business in San Diego County, California. CHARITABLE  
18 FUNDRAISING acted as a commercial fundraiser for JPA and PPF. From 2005 through 2007,  
19 CHARITABLE FUNDRAISING's actions, described herein, occurred in the State of California.  
20 CHRISTIANSEN is a resident of San Diego County, California. CHRISTIANSEN acts as  
21 Owner and President of WEST COAST d.b.a. PROFESSIONAL COMMUNICATIONS.  
22 CHRISTIANSEN has the same principal office or place of business as WEST COAST,  
23 PROFESSIONAL COMMUNICATIONS, and/or CHARITABLE FUNDRAISING.

24 11. MIKE S. THOMAS (hereinafter "THOMAS"), is a resident of San Diego County,  
25 California. THOMAS acts as Vice President and Treasurer of WEST COAST d.b.a.  
26 PROFESSIONAL COMMUNICATIONS. THOMAS has the same principal office or place of  
27 business as WEST COAST d.b.a. PROFESSIONAL COMMUNICATIONS.  
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1           16.     On information and belief, AAPO, PPF, JPA, DIERKS, LECONTE, and DOES 1-  
2 100, authorized misleading telemarketing scripts or failed to exercise the required control to  
3 ensure that the solicitation was not misleading and deceptive.

4           17.     The following misrepresentations were made by Defendants in their deceptive  
5 charitable solicitation campaign for AAPO and PPF:

- 6           **a.**     AAPO and PPF misled donors to believe that their donation would benefit  
7                   their local police department.
- 8           **b.**     Donors to AAPO were told that the solicitation was being made by a volunteer.
- 9           **c.**     Donors in Illinois were told that they were being called by PPF from Illinois  
10                   and donors in Virginia were told that they were being called by PPF from  
11                   Virginia, when PPF did not maintain offices in either Illinois or Virginia.
- 12           **d.**     Donors to AAPO and PPF were told and/or led to believe that they were being  
13                   solicited by police officers or retired police officers.
- 14           **e.**     AAPO Telemarketers misled potential donors by mailing billing invoices to  
15                   people who had not made a pledge to donate to AAPO. The act of sending a  
16                   billing invoice to a resident who did not pledge to donate, is a deceptive  
17                   practice as it creates confusion and gives a false sense of obligation to donate  
18                   to AAPO. The act of sending a billing invoice to residents who did not pledge  
19                   to donate is also a coercive act, as donors felt intimidated to donate to AAPO.
- 20           **f.**     AAPO informed donors in the donor acknowledgment letter that AAPO has  
21                   been guided by distinguished citizens and members of the law enforcement  
22                   community. Given that AAPO and/or its predecessor were sued by  
23                   Massachusetts, Missouri, New Hampshire, Ohio and two times by Illinois, this  
24                   statement is false and misleading. Moreover, from 2005 through most of 2008,  
25                   none of the directors were members of the law enforcement community. The  
26                   website operated by AAPO and PPF also falsely states that AAPO and PPF are  
27                   guided by police veterans.

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- g.** In the donor acknowledgement letters, AAPO thanked donors for their pledge of support for the law enforcement community. This statement is misleading, since the donations benefit AAPO, not the law enforcement community.
- h.** In the donor acknowledgement letters, AAPO told donors that “[a]ll of our programming depends on the private financial support of citizens like you.” This statement was misleading and false. AAPO’s programming did not depend on private financial support of its donors. From 2006- 2007, AAPO received significant financial support from its affiliate charity PPF.
- i.** In the donor acknowledgement letters, AAPO told donors that “[y]our small donation each year makes it possible for the American Association of Police Officers to continue to offer critical support to the next generation of law enforcement.” This statement was misleading and false. AAPO is not providing “critical support” given that in 2006, out of \$1.3 million raised, only \$104,407 was purportedly spent on programming, and in 2007, most of AAPO’s programming expenses were paid to support AAPO’s officers and directors.
- j.** Defendants made misrepresentations to the Attorney General and the public by filing false and misleading registration renewal forms (RRF-1).
- k.** Defendants made misrepresentations to the Attorney General and the public by filing false and inaccurate informational returns (990 Forms).

18. Defendants also engaged in acts of coercion in AAPO and PPF’s solicitation campaign:

- a.** AAPO and PPF telemarketers refused to take donors’ names off their calling lists, even when donors repeatedly asked that their telephone number be removed from the calling list.
- b.** Profanity was used when a donor asked that his telephone number be removed from PPF’s calling list.

1 c. A donor was told by a PPF telemarketer that PPF’s decal sticker would get the  
2 donor out of a ticket.

3 d. PPF telemarketers would hang up on potential male donors who had  
4 previously asked that their telephone number be removed from the calling list.

5 19. Defendants made the following misrepresentation in their deceptive charitable  
6 solicitation campaign for JPA,

7 “The money raised supports the Junior Police Academy’s educational programs and  
8 special projects. Developed by veteran police for middle and high schools it is available  
9 FREE to schools and police departments and also available through the internet –  
10 [www.JuniorPoliceAcademy.org](http://www.JuniorPoliceAcademy.org). We need your help! Can the Junior Police Academy  
11 count on your support?”

12 20. In fact, it is the custom and practice of JPA, DIERKS, LECONTE, and DOES 1-  
13 100, to charge schools and/or police departments for JPA’s educational programs and related  
14 materials. JPA’s educational programs and related materials are not free absent a specific  
15 hardship request by the applicant. Defendants’ misrepresentations and omissions were deceptive  
16 practices that created a likelihood of misunderstanding to the donor.

17 21. Defendants’ conduct violates Government Code section 12599.6. Plaintiff is  
18 entitled to damages, injunctive relief, and civil penalties.

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**SECOND CAUSE OF ACTION**

**BREACH OF FIDUCIARY DUTY AND CHARITABLE TRUST**

**[Against Defendants AAPO, PPF, JPA, DIERKS, LECONTE and DOES 1-100]**

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

24 23. AAPO, PPF, JPA, DIERKS, LECONTE, and DOES 1-100, had a fiduciary  
25 relationship with the donors and beneficiaries of AAPO, PPF, and JPA. The fiduciary  
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1 relationship was established by statute (Bus. & Prof. Code, § 17510.8), by common law, and by  
2 agreement.

3 24. Defendants accepted charitable contributions on behalf of the charitable  
4 beneficiaries of AAPO, PPF, and JPA. The acceptance of those donations established a charitable  
5 trust and a fiduciary duty on the part of defendants to ensure that the donations were used for the  
6 purposes stated during the solicitation as required under Business and Professions Code section  
7 17510.8.

8 25. Defendants breached their fiduciary duty by failing to ensure that donations to  
9 AAPO, PPF, and JPA were properly used for the purposes for which they were solicited as  
10 required by Business and Professions Code section 17510.8. AAPO and PPF donors were told  
11 that their donations benefit their local police department. Instead, AAPO and PPF used the  
12 donations to prepare publications that have a much wider audience. In 2008, donors were told  
13 that their donation would fund the “line of duty death benefit,” however PPF and AAPO ceased  
14 offering the death benefit in August of 2008. JPA donors were told that JPA provided free  
15 educational programs to schools and police departments. In fact, JPA routinely charged schools  
16 and law enforcement agencies for the program materials unless a specific hardship request was  
17 made by the applicant.

18 26. The Attorney General has authority to remedy breach of charitable trust against  
19 AAPO, PPF, JPA, DIERKS, LECONTE, and DOES 1-100, under Corporations Code sections  
20 5142, subdivision (a)(5), 5223, 5250, Government Code sections 12598 and 12599.6, and  
21 Business and Professions Code section 17510.8. Plaintiff is entitled to civil penalties pursuant to  
22 Business and Professions Code section 17536.

23 **THIRD CAUSE OF ACTION**

24 **VIOLATION OF CORPORATION CODE SECTION 5227**

25 **[Against Defendants DIERKS and LECONTE]**

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27 27. Plaintiff re-alleges and incorporates herein by reference each and every allegation  
28 contained in paragraphs 1 through 26.

1 28. Defendants DIERKS and LECONTE were paid salaries in violation of  
2 Corporation Code section 5227. DIERKS was paid \$156,500 in 2005, \$172,900 in 2006, and  
3 \$168,000 in 2007; LECONTE was paid \$161,000 in 2005, \$163,900 in 2006, and \$168,000 in  
4 2007. In addition to the payment of salaries, defendants also received other tangible monetary  
5 benefits, including a Range Rover and a Jeep Cherokee. Under Corporation Code section 5227,  
6 no more than 49 percent of the directors serving on the board may be interested persons. An  
7 interested person is any person who is compensated by the corporation for services rendered to it,  
8 whether as full or part-time employees, or any person related by blood or marriage to such person  
9 employed by the charity. From 2005 to 2007, two out of three directors, DIERKS and  
10 LECONTE, were paid compensation. In 2008, AAPO and PPF had four directors, but two of the  
11 directors, DIERKS and LECONTE, were paid salaries.

12 29. DIERKS and LECONTE were interested persons within the meaning of  
13 Corporations Code section 5227 and their salary payment by PPF and AAPO from 2005 to 2008  
14 violated section 5227. The compensation was also in violation of Government Code section  
15 12586 (g) in that it was not reviewed by the board. Their compensation also violated AAPO's  
16 own conflict of interest policy which required a vote by disinterested board members to ensure  
17 that their compensation was objectively reasonable.

18 30. Because defendants violated Corporations Code section 5227, the Court should  
19 order that their salaries for 2006 and 2008 be disgorged, or that they be removed as directors.

#### 20 **FOURTH CAUSE OF ACTION**

#### 21 **PREPARING, FILING AND DISTRIBUTING FALSE AND INCOMPLETE** 22 **RECORDS**

#### 23 **[Against DIERKS, LECONTE, and DOES 1-100]**

24 31. Plaintiff re-alleges and incorporates herein by reference each and every allegation  
25 contained in paragraphs 1 through 30.

26 32. Under Corporation Code section 6215, any officer, director, employee, or agent of  
27 a public benefit corporation who issues, makes, delivers, or publishes any report, financial  
28 statement, balance sheet or public document respecting the corporation which is false in any

1 material respect, knowing it to be false, or participates in the making, issuance, delivery or  
2 publication thereof with knowledge of the same, is liable for all damages resulting there from to  
3 the corporation. Under Corporations Code section 6812, directors may not distribute or make any  
4 materially false reports or statements about the financial condition of a nonprofit corporation.  
5 Directors are also required to make such book entries or post such notice as required by law.

6 33. Defendants DIERKS, LECONTE, and DOES 1-100, prepared, authorized, and  
7 filed false and inaccurate registration renewal forms (RRF-1) on behalf of AAPO. The RRF-1  
8 form filed by AAPO for 2007, and signed by defendant DIERKS, failed to disclose that AAPO's  
9 non-program expenditures exceeded 50 percent of gross revenues. In 2007, AAPO reported  
10 \$1,440,659 in gross receipts, of which \$493,798 was allegedly spent on program services, and  
11 \$930,645 spent in management and fundraising. Because non-program expenditures exceeded 50  
12 percent of AAPO's gross revenues, this fact should have been disclosed in AAPO's RRF-1 form.

13 34. From 2005 through 2007, Defendants DIERKS, LECONTE, and DOES 1-100,  
14 prepared, authorized, and filed false and inaccurate information returns (990 form) for AAPO by  
15 overstating its program-related expenses. For example, in 2005, defendants reported spending  
16 \$294,722 on AAPO's program services, but \$179,000 of this amount actually represented  
17 fundraising expenses. Likewise, in 2007, Defendants reported \$493,798 spent on AAPO's  
18 program services, but out of that amount \$450,000 consisted of compensation to AAPO's  
19 directors and other employees involved in fundraising and administration. Defendants also  
20 improperly included legal fees incurred in defending a lawsuit filed by the Illinois Attorney  
21 General. By allocating management and fundraising expenses to program services, defendants  
22 provided false financial information in publicly available documents, thereby misleading the  
23 public regarding the efficiency of AAPO's operations.

24 35. Defendants also falsely reported a larger board of directors in AAPO's 990 forms.  
25 In the 990 form for 2007, defendants listed four voting directors, when in fact there were only  
26 three voting directors. In the 990 form for 2005, defendants listed several individuals as current  
27 directors, trustee and key employees, when these individuals did not belong to AAPO's board,  
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1 and did not attend any board meetings in 2005. By making these misrepresentations, AAPO  
2 created the false illusion that it was run by an independent board.

3 36. Defendants DIERKS, LECONTE, and DOES 1-100, prepared, authorized, and  
4 filed false and inaccurate registration renewal forms (RRF-1) on behalf of PPF. The RRF-1  
5 forms filed by PPF for 2006 and 2007, signed by defendant DIERKS, failed to disclose that PPF's  
6 non-program expenditures exceeded 50 percent of gross revenues. The RRF-1 form for 2007 also  
7 failed to report that PPF's funds were used to pay a consent judgment to the State of Missouri and  
8 failed to disclose that PPF was using the services of a commercial fundraiser.

9 37. Defendants DIERKS, LECONTE, and DOES 1-100, prepared, authorized, and  
10 filed false and inaccurate 990 form in 2005-2007 on behalf of PPF by overstating PPF's program  
11 services and understating its fundraising expenses. For example, in 2005, defendants reported  
12 that PPF spent \$1.6 million in program services; however, \$271,811 was paid to professional  
13 fundraisers and this amount should have been allocated to fundraising expenses, not program  
14 services. Likewise in 2006, defendants reported that PPF spent \$1.5 million on program services;  
15 however, out of this amount \$224,899 was paid to professional fundraisers and should have been  
16 allocated to PPF's fundraising expenses. In 2007, defendants reported spending \$1.7 million on  
17 program services, but out of this amount \$350,000 was actually used to pay a Consent Judgment  
18 with the State of Missouri. Because PPF admitted in the Consent Judgment that it engaged in  
19 improper solicitation practices, it was a misleading and deceptive practice to characterize the  
20 payment of a consent judgment as a program-related expense.

21 38. Defendants also falsely reported a larger board in PPF's 990 forms. In 2005,  
22 defendants listed four voting directors, when PPF had only three voting directors. In the 990  
23 form for 2006-2007, defendants listed five voting directors, when in fact there were only three  
24 voting directors. By making these misrepresentations, PPF created the false illusion that it was  
25 run by an independent board.

26 39. In PPF's 990 forms for 2006, defendant PPF answered "no" to question 75c which  
27 asks if any officers, directors, trustees or key employees received compensation from any related  
28 organization, when in fact, Defendant DIERKS and LECONTE received compensation from

1 AAPO. In PPF's 990 forms for 2005-2007, defendant PPF failed to identify that PPF's key  
2 employees also received compensation from other organizations that had business dealings with  
3 PPF.

4 40. JPA's 990 form for 2005 was inaccurate and false. Defendants decreased their  
5 fundraising and management expenses by improperly allocating these expenses as program  
6 services. In 2005, Defendants reported \$425,340 in program services, out of which \$304,476  
7 consisted of fundraising expenses and another \$58,500 consisted of employment related expenses,  
8 including compensation to JPA's directors and other employees. By decreasing management and  
9 fundraising expenses while increasing program service expenses, defendants were able to mislead  
10 the public regarding the efficiency of JPA's operation and the actual fundraising expenses  
11 incurred by JPA.

12 41. Plaintiff is informed and believes, that defendants knew or should have known that  
13 the program services for AAPO, PPF and JPA were much lower than reported on the 990 forms.  
14 Defendants knowingly used an arbitrary and capricious allocation of fundraising costs to program  
15 services even though they knew or should have known that there was no factual basis for such an  
16 allocation. Plaintiff is informed and believes that defendants increased the program service  
17 expenses to deceive the Attorney General and others concerning the true level of JPA's, AAPO's  
18 and PPF's charitable operations.

19 42. AAPO, PPF, and JPA have been damaged by the falsification and publication of  
20 false and inaccurate records. The fabrication and distribution of false records, and the failure to  
21 prepare and maintain accurate records is evidence of gross mismanagement, abuse of authority,  
22 fraud, and is an unlawful business practice. Defendants should be ordered to reimburse AAPO,  
23 PPF, and JPA for all damages and expenses sustained and to be incurred due to their actions and  
24 omissions. Defendants should also be required to reimburse the Attorney General all reasonable  
25 attorney's fees and actual costs incurred in conducting this action, as provided by Government  
26 Code section 12598.

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**FIFTH CAUSE OF ACTION**  
**NEGLIGENCE**

**[Against DIERKS, LECONTE, JPA, AAPO and PPF, and DOES 1-100]**

43. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 42.

44. Defendants DIERKS, LECONTE, and DOES 1-100, as directors, officers, and managers of JPA, AAPO, and PPF, had a duty to prepare and maintain JPA's, AAPO's and PPF's financial records on the basis of Generally Accepted Accounting Principles ("GAAP") as defined by the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board. (Bus & Prof. Code, § 17510.5.) DOES 1 through 100 voluntarily undertook the duties and responsibilities of director and/or officer of JPA, AAPO and PPF, whether or not formally elected as director or officer and whether or not they had resigned as such. The voluntary undertaking of these duties and responsibilities created a duty on the part of these defendants to exercise due care in the performance of those statutory duties and responsibilities.

45. From 2005 to 2007, defendants authorized and approved the 990 forms for PPF and AAPO. These 990 forms improperly allocated fundraising expenses and administrative expenses to program services, and did not comply with AICPA's Statement of Position 98-2 which sets forth the proper method of allocating joint costs.

46. AAPO's and PPF's 990 forms also violated the Internal Revenue Service's instructions for reporting functional expenses, reporting joint costs, reporting payments to affiliates, and reporting insider transactions. As an example, PPF transferred \$601,245 to AAPO in 2006, and \$687,172 in 2007. Although PPF characterized these transfers as payments to affiliates, this was improper because AAPO was not providing any unique services to PPF that were not already related to AAPO's program services. Rather, the transfer of funds from PPF to AAPO was made so AAPO could pay for the salaries of DIERKS, LECONTE, and other administrative expenses. By having AAPO pay for DIERKS and LECONTE's salaries, PPF was able to deflate its administrative and management expenses in its 990 forms filed for 2006 and 2007.

1 47. Defendants owed a duty of care towards PPF, JPA, and AAPO to prepare 990  
2 forms and financial records that complied with the Internal Revenue instructions and met the  
3 standards set forth by GAAP. Defendants also owed a duty of care to donors and beneficiaries, to  
4 provide accurate information in PPF, JPA, and AAPO's 990 forms so that donors could properly  
5 evaluate the efficiency of PPF, JPA, and AAPO's program services.

6 48. Defendants breached their duty of care by failing to prepare accurate informational  
7 returns and failing to comply with the standards set forth by GAAP. As a result of that breach of  
8 duty, the beneficiaries of PPF, JPA, and AAPO have been injured, in the aggregate, in an amount  
9 presently unknown to plaintiff. The facts necessary for calculation of damages is within the  
10 special knowledge of defendants.

11 **SIXTH CAUSE OF ACTION**

12 **VIOLATION OF GOVERNMENT CODE SECTIONS 12599 AND 12599.6**

13 **[Against JPA, PPF, DIERKS, WEST COAST d.b.a. PROFESSIONAL**  
14 **COMMUNICATIONS, CHARITABLE FUNDRAISING, CHRISTIANSEN, THOMAS,**  
15 **and DOES 1-100]**

16 49. Plaintiff re-alleges and incorporates by reference each and every allegation  
17 contained in paragraphs 1 through 48.

18 50. In 2004, 2005, and 2006, JPA, DIERKS, and DOES 1-100, contracted with  
19 PROFESSIONAL COMMUNICATIONS, CHRISTIANSEN, THOMAS, and DOES 1-100, to  
20 conduct a solicitation campaign in the State of California. In 2004, 2005, 2006, and 2007, PPF,  
21 DIERKS, and DOES 1-100, contracted with WEST COAST d.b.a. PROFESSIONAL  
22 COMMUNICATIONS, CHRISTIANSEN, THOMAS, and DOES 1-100, to conduct a solicitation  
23 campaign in the State of California.

24 51. In 2005, 2006, and 2007, JPA, DIERKS, and DOES 1-100, contracted with  
25 CHARITABLE FUNDRAISING, CHRISTIANSEN, and DOES 1-100, to conduct a solicitation  
26 campaign in the State of California. In 2006 and 2007, PPF, DIERKS, and DOES 1-100,  
27 contracted with CHARITABLE FUNDRAISING, CHRISTIANSEN, and DOES 1-100, to  
28 conduct a solicitation campaign in the State of California.

1           52.     For compensation, WEST COAST d.b.a. PROFESSIONAL  
2 COMMUNICATIONS, CHARITABLE FUNDRAISING, CHRISTIANSEN, THOMAS, and  
3 DOES 1-100, solicited funds in California for charitable purposes on behalf of JPA and PPF.  
4 WEST COAST d.b.a. PROFESSIONAL COMMUNICATIONS, CHARITABLE  
5 FUNDRAISING, CHRISTIANSEN, THOMAS, and DOES 1-100, received and/or controlled  
6 funds donated as a result of their solicitations for JPA and PPF. WEST COAST d.b.a.  
7 PROFESSIONAL COMMUNICATIONS, CHARITABLE FUNDRAISING, CHRISTIANSEN,  
8 THOMAS, and DOES 1-100, hired and compensated employees to solicit, receive, and/or control  
9 funds for JPA and PPF.

10           53.     By virtue of the actions of WEST COAST d.b.a. PROFESSIONAL  
11 COMMUNICATIONS, CHARITABLE FUNDRAISING, CHRISTIANSEN, THOMAS, and  
12 DOES 1-100, described herein, they are commercial fundraisers within the meaning of  
13 Government Code sections 12599 and 12599.6.

14           54.     JPA, PPF, DIERKS, and DOES 1-100, violated Government Code section  
15 12599.6, subdivision (c), by entering into solicitation contracts with unregistered commercial  
16 fundraisers CHARITABLE FUNDRAISING, CHRISTIANSEN, and DOES 1-100.

17           55.     As commercial fundraisers for charitable purposes, CHARITABLE  
18 FUNDRAISING, CHRISTIANSEN, and DOES 1-100, were required to register as commercial  
19 fundraisers and file financial reports with the Attorney General's Registry of Charitable Trusts  
20 pursuant to Government Code section 12599, subdivisions (b) and (c), respectively. Defendants  
21 failed to register as commercial fundraisers and failed to file annual financial reports as required.

22           56.     As commercial fundraisers for charitable purposes, WEST COAST d.b.a.  
23 PROFESSIONAL COMMUNICATIONS, CHRISTIANSEN, THOMAS, and DOES 1-100, were  
24 required to file annual financial reports with the Attorney General's Registry of Charitable Trusts  
25 pursuant to Government Code section 12599, subdivision (c). Defendants failed to file annual  
26 financial reports for 2005, 2006, and 2007.

27           57.     Pursuant to Government Code section 12599, subdivision (g), at all times relevant  
28 herein, WEST COAST d.b.a. PROFESSIONAL COMMUNICATIONS, CHARITABLE



1 FUNDRAISING, CHRISTIANSEN, THOMAS, and DOES 1-100, were commercial fundraisers  
2 for charitable purposes and as such are subject to the Attorney General’s supervision. WEST  
3 COAST d.b.a. PROFESSIONAL COMMUNICATIONS, CHARITABLE FUNDRAISING,  
4 CHRISTIANSEN, THOMAS, and DOES 1-100, are constructive trustees for charitable purposes  
5 with regard to all funds collected from solicitations on behalf of JPA and PPF. Defendants have a  
6 duty to account to the Attorney General for all such funds.

7 58. Pursuant to Government Code section 12599, subdivision (f), Plaintiff is entitled  
8 to an injunction against WEST COAST d.b.a. PROFESSIONAL COMMUNICATIONS,  
9 CHARITABLE FUNDRAISING, CHRISTIANSEN, THOMAS, and DOES 1-100, prohibiting  
10 them from soliciting for charitable purposes in this State until they have complied with the  
11 registration and reporting provisions of Government Code section 12599. Under Government  
12 Code section 12591.1, Plaintiff is entitled to civil penalties against JPA, PPF, DIERKS, WEST  
13 COAST d.b.a. PROFESSIONAL COMMUNICATIONS, CHARITABLE FUNDRAISING,  
14 CHRISTIANSEN, THOMAS, and DOES 1-100.

15 **SEVENTH CAUSE OF ACTION**

16 **NEGLIGENCE PER SE**

17 **[Against JPA, PPF, DIERKS, WEST COAST d.b.a. PROFESSIONAL**  
18 **COMMUNICATIONS, CHARITABLE FUNDRAISING, CHRISTIANSEN, THOMAS,**  
19 **and DOES 1-100]**

20  
21 59. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
22 contained in paragraphs 1 through 58.

23 60. Prior to soliciting charitable funds, and before receiving and controlling those  
24 funds, CHARITABLE FUNDRAISING, CHRISTIANSEN, and DOES 1-100, failed to register  
25 as commercial fundraisers in violation of Government Code section 12599, subdivision (b).

26 61. CHARITABLE FUNDRAISING, WEST COAST d.b.a. PROFESSIONAL  
27 COMMUNICATIONS, CHRISTIANSEN, THOMAS and DOES 1-100, failed to file financial  
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1 reports with the Attorney General’s Registry in violation of Government Code section 12599,  
2 subdivision (c).

3 62. JPA, PPF, DIERKS, and DOES 1-100, violated Government Code section  
4 12599.6, subdivision (c ), by entering into solicitation contracts with unregistered commercial  
5 fundraisers CHARITABLE FUNDRAISING, CHRISTIANSEN, and DOES 1-100.

6 63. In violation of Business and Professions Code section 17510.8 and in breach of  
7 their fiduciary duty under common law, JPA, AAPO, PPF, DIERKS, LECONTE, and DOES 1-  
8 100, solicited and accepted donations and failed to ensure that the donations were used for the  
9 purpose for which they were solicited; instead the charitable funds were used for other purposes.

10 64. In violation of Government Code section 12599.6, AAPO, PPF, JPA, DIERKS,  
11 LECONTE, and DOES 1-100, engaged in deceptive and misleading solicitation.

12 65. In violation of Corporations Code section 5227, defendants DIERKS and  
13 LECONTE were improperly paid compensation. Their salary also violated Government Code  
14 section 12586, subdivision (g) as the compensation was not decided by board action.

15 66. In violation of Corporations Code section 6215, defendants DIERKS, LECONTE  
16 and DOES 1-100, prepared false and inaccurate reports.

17 67. In violation of Government Code section 12586, subdivision (e), PPF did not have  
18 an audit committee. The selection and retention of PPF’s auditor was improperly made by  
19 DIERKS.

20 68. The People are the intended beneficiaries of the protections afforded by the above-  
21 referenced provisions, which were designed to preserve charitable assets and protect donors and  
22 the beneficiaries of charity. The Attorney General represents the interests of the People. As a  
23 proximate cause of such breach of statutory duties, defendants were able to divert and misapply  
24 charitable donations intended and dedicated for JPA, AAPO and PPF. JPA, AAPO, and PPF’s  
25 beneficiaries have been injured, in the aggregate, in an amount presently unknown to plaintiff.

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**EIGHTH CAUSE OF ACTION**  
**VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**  
**UNFAIR BUSINESS PRACTICES**  
**[Against ALL DEFENDANTS]**

69. Plaintiff re-alleges and incorporates herein by reference each and every allegation in paragraphs 1 through 68.

70. From 2004-2008, Defendants AAPO, PPF, JPA, DIERKS, LECONTE, WEST COAST d.b.a. PROFESSIONAL COMMUNICATIONS, CHARITABLE FUNDRAISING, CHRISTIANSEN, THOMAS, and DOES 1-100, engaged in unfair business practices by making false, deceptive, and misleading statements to donors to induce them to make charitable contributions to AAPO, PPF, and JPA. Defendants committed and continue to commit acts of unfair competition as defined in Business and Professions Code section 17200, including, but not limited to, the following:

- a. Defendants misrepresented how charitable donations would be used.
- b. Defendants concealed their role as paid solicitors.
- c. Defendants sent billing information to donors who had not made charitable pledges.
- d. Defendants misled donors in Illinois and Virginia by informing the donors that the charity was located in either Illinois or Virginia.
- e. Defendants misled donors regarding the purpose of the charitable solicitations.
- f. Defendants ignored donors' requests that they be removed from PPF's and AAPO's donor lists.
- g. Defendants failed to control and ensure that their fundraising activities were conducted without coercion.
- h. Defendants misled donors to believe that police officers, retired police officers, and volunteers were conducting the solicitation.

- 1                   **i.** Donors and the Attorney General were misled by PPF and AAPO’s RRF-1  
2 forms and informational returns because they were either incomplete or  
3 inaccurate.
- 4                   **j.** Donors and the Attorney General were misled by the annual financial reports  
5 filed by commercial fundraisers because these forms were either not filed, or  
6 were incomplete or inaccurate.

7           71. Defendants engaged in and participated in acts of unfair competition, as defined  
8 by Business and Professions Code section 17200, by violating the following statutes and  
9 regulations:

- 10                   **a.** Government Code section 12599.6, subdivisions (a), (b), (c), (d), and (f).  
11                   **b.** Government Code section 12586, subdivision (e)(2) and (g).  
12                   **c.** Government Code section 12599 (b), (c), (d) and (h).  
13                   **d.** Business and Professions Code section 17510.8.  
14                   **e.** Business and Professions Code section 17510.85.  
15                   **f.** Business and Professions Code section 17510.5.  
16                   **g.** Corporations Code section 5227.  
17                   **h.** Corporations Code section 6215.  
18                   **i.** Federal regulations established by the Federal Trade Commission  
19 (“Telemarketing Sales Rule”), (16 C.F.R. § 310.3 [deceptive telemarketing  
20 acts or practices]; § 310.4 [abusive telemarketing acts or practices]).

21           72. As a result of the aforementioned acts of unfair competition, Plaintiff is entitled to  
22 civil penalties in an amount which is presently unknown, but believed to be in excess of  
23 \$100,000. Defendants should also be required to reimburse the Attorney General all reasonable  
24 attorney’s fees and actual costs incurred in conducting this action, as provided by Government  
25 Code section 12598.

26           73. As a result of the aforementioned acts of unfair competition, defendants should be  
27 ordered to pay into court an amount equal to the amount of funds solicited from the public on  
28 behalf of AAPO, PPF, and JPA by any means or practice found to constitute unfair competition

1 under Business and Professions Code section 17200 or by false and misleading statements under  
2 Business and Professions Code section 17500, all said monies to be distributed by the court to  
3 charitable institutions for use for purposes similar to that of AAPO, PPF, and JPA.

4 74. Pursuant to Business and Professions Code section 17203, plaintiff is further entitled  
5 herein to injunctive relief against the defendants named in this cause of action and DOES 1  
6 through 100, prohibiting them from engaging in further acts of unfair competition.

7 **NINTH CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17500**

9 **FALSE OR MISLEADING STATEMENTS**

10 **[Against ALL DEFENDANTS]**

11 75. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
12 contained in paragraphs 1 through 74.

13 76. Defendants violated Business and Professions Code section 17500 by deliberately  
14 disseminating or causing to be disseminated to California residents and to residents of other states  
15 untrue and misleading statements in the course of conducting their charitable solicitation  
16 campaigns, including but not limited to the misrepresentations set forth in Paragraphs 17 - 20.  
17 Defendants and each of them knew or reasonably should have known that their representations  
18 made in the charitable solicitation campaigns were false or misleading at the time the statements  
19 were made. As a result of the false and misleading statements Defendants made in the course of  
20 conducting their charitable solicitation campaigns, pursuant to Business and Professions Code  
21 section 17500 and 17536, Plaintiff is entitled to civil penalties against each Defendant in an  
22 amount which is presently unknown, but believed to be in excess of \$100,000.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, the People pray for judgment as follows:

25 1. For a preliminary and permanent injunction, enjoining defendants AAPO, PPF, JPA,  
26 DIERKS, LECONTE, and DOES 1 through 100, their employees, agents, servants,  
27 representatives, successors, and assigns, any and all persons acting in concert or participation  
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1 with them, and all other persons, corporations, or other entities acting under, by, through, or on  
2 their behalf, from doing any of the following until they have first provided a full and complete  
3 accounting for all funds received by, and disbursed from, any and all financial accounts of  
4 AAPO, PPF, and JPA from January 1, 2004, to the present: (1) expending, disbursing,  
5 transferring, encumbering, withdrawing or otherwise exercising control over any funds received  
6 by or on behalf of AAPO, PPF, and JPA or rightfully due AAPO, PPF, and JPA except as  
7 authorized by the Court; (2) conducting business of any kind on behalf of, or relating to, AAPO,  
8 PPF, and JPA other than as necessary to assist a Receiver or appointed director(s), to comply with  
9 discovery requests and orders, and as permitted by the Court; and (3) controlling or directing the  
10 operations and affairs of any California nonprofit public benefit corporation;

11 2. That an order issue directing that Defendants DIERKS, LECONTE, WEST COAST,  
12 PROFESSIONAL COMMUNICATIONS, CHARITABLE FUNDRAISING, CHRISTIANSEN,  
13 THOMAS, and DOES 1 through 100 and each of them, render to the Court and to the Attorney  
14 General a full and complete accounting of the financial activities and condition of AAPO, PPF,  
15 and JPA and their dealings with AAPO, PPF, and JPA from January 1, 2004, to the present, to  
16 include the expenditure and disposition of all revenues and assets received by or on behalf of  
17 AAPO, PPF, and JPA. Upon the rendering of such accounting, that the Court determine the  
18 property, real or personal, or the proceeds thereof, to which AAPO, PPF, and JPA and the  
19 charitable beneficiaries thereof are lawfully entitled, in whatsoever form in whosoever hands they  
20 may now be, and order and declare that all such property or the proceeds thereof is impressed  
21 with a trust for charitable purposes, that defendants are constructive trustees of all such charitable  
22 funds and assets in their possession, custody or control, and that the same shall be deposited  
23 forthwith in Court by each and every defendant now holding or possessing the same or claiming  
24 any rights, title or interest therein. In addition, that these defendants be surcharged and held liable  
25 and judgment entered against each of them for any and all such assets for which they fail to  
26 properly account, together with interest thereon at the legal rate from the date of liability thereon;  
27 and that any and all expenses and fees incurred by defendants in this action be borne by the  
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1 individual defendants and each of them and not by AAPO, PPF, and JPA or any other public or  
2 charitable corporation or fund;

3 3. Pursuant to Government Code section 12599, subdivision (f), for a permanent and  
4 preliminary injunction, enjoining WEST COAST, PROFESSIONAL COMMUNICATIONS,  
5 CHARITABLE FUNDRAISING, CHRISTIANSEN, THOMAS, and DOES 1-100, from  
6 soliciting any donations on behalf of AAPO, PPF, and JPA until such time as defendants have  
7 filed complete and accurate annual reports, and fully comply with California's registration  
8 requirements.

9 4. For damages resulting from the breaches of fiduciary duty of all defendants named in  
10 this Complaint and DOES 1 through 100 in an amount to be determined following an accounting  
11 from these defendants, plus interest at the legal rate until the judgment is paid;

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

15 6. Pursuant to Business and Professions Code section 17206, that the Court assess a civil  
16 penalty of two thousand five hundred dollars (\$2,500) against all named defendants and DOES 1  
17 through 100 for each violation of Business and Professions Code section 17200 per day, as  
18 proved at trial, in an amount no less than \$150,000;

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

24 8. Pursuant to Business and Professions Code sections 17500 and 17536, that the Court  
25 assess a civil penalty of two thousand five hundred dollars (\$2,500) against all named defendants  
26 and DOES 1 through 100 for each violation of Business and Professions Code section 17500 per  
27 day, as proved at trial, in an amount no less than \$150,000;

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1           9. Pursuant to Business and Professions Code section 17536, that the Court assess a civil  
2 penalty of two thousand five hundred dollars (\$2,500) against Defendants AAPO, PPF, JPA, and  
3 DOES 1-100, for each violation of Business and Professions Code section 17510.8, as proved at  
4 trial in an amount no less than \$150,000;

5           10. Pursuant to Business and Professions Code sections 17203, 17510.8, and 17535,  
6 and/or the equitable powers of the court, defendants and each of them be ordered to pay into  
7 Court an amount equal to the amount of funds solicited from the public on behalf of AAPO, PPF,  
8 and JPA by means of any act or practice declared by this court to constitute unfair competition  
9 under Business and Professions Code section 17200 or false and misleading statements under  
10 Business and Professions Code section 17500, all said monies to be distributed by this court to  
11 charitable institution(s) for use for purposes similar to those of AAPO, PPF, and JPA.

12           11. For plaintiff's costs of suit and other costs pursuant to Government Code sections  
13 12597 and 12598;

14           12. For plaintiff's attorney fees as provided in Government Code section 12598 and Code  
15 of Civil Procedure section 1021.8; and

16           13. For such other and further relief as the Court may deem to be just and proper.  
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20           **THIS COMPLAINT IS DEEMED VERIFIED UNDER THE PROVISIONS OF CODE**  
21           **OF CIVIL PROCEDURE SECTION 446**

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Dated: May 26, 2009

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