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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ORANGE – CENTRAL JUSTICE COURT
12

13 **People of the State of California,**

14 Plaintiff,

15 v.

16
17 **Association for Police and Sheriffs, Inc., a
California Nonprofit Public Benefit
18 Corporation; Lloyd Jones; Calvin Butler,
Jr.; Rollie Mosley; Shannon Ripley; Public
19 Awareness, LLC, a California Limited
Liability Company; Courtesy Call, Inc., a
20 Nevada Corporation; Michael Marvin;
Frederick E. Cheney, Jr.; and DOES 1-50,
21 inclusive.**

22 Defendants.
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CASE NO.

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

1. Breach of Fiduciary Duty
2. Deceptive and Misleading Charitable Solicitation
3. Negligence
4. Violations of Registration, Reporting & Recordkeeping Statutes
5. Engaging in Unfair Competition
6. Disseminating False or Misleading Statements

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

3 **General Allegations**

4 1. Plaintiff is the People of the State of California. The Attorney General, who brings
5 this action on plaintiff’s behalf, is the duly elected Attorney General of the State of California and
6 is charged with the general supervision of all charitable organizations within this State, all
7 commercial fundraisers for charitable purposes doing business in this State and with the
8 enforcement and supervision over trustees and fiduciaries who hold or control property in trust
9 for charitable and eleemosynary purposes. The Attorney General is authorized to enforce, in the
10 name of the People, the provisions of the Supervision of Trustees and Fundraisers for Charitable
11 Purposes Act (Gov. Code, § 12580 et seq.) the Nonprofit Corporation Law (Corp. Code, § 5000 et
12 seq.), and the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.).

13 2. At all times material herein, defendants and each of them have been transacting
14 business in the County of Orange. The violations of law hereinafter described have been and are
15 now being carried out in part within said county and elsewhere.

16 3. In January 2001, defendant ASSOCIATION FOR POLICE AND SHERIFFS, INC.
17 (hereinafter “APS”) was formally incorporated as a California nonprofit public benefit
18 corporation. APS’ principal place of business is located in the County of Orange. APS holds,
19 and at all times material herein held, all of its assets in trust for charitable purposes. In or around
20 May 2001, APS applied for and ultimately received an exemption from taxation under section
21 501(c)(3) of the Internal Revenue Code of the United States. Pursuant to its Articles of
22 Incorporation, APS’ charitable purpose is “to provide transitional shelters for battered women and
23 children.”

24 4. Defendant LLOYD JONES (hereinafter “JONES”) is a resident of Orange County.
25 At all times relevant herein, defendant JONES is, and was, an officer and/or director of APS and
26 has owed fiduciary duties of care and loyalty to APS and its charitable beneficiaries.

27 5. Plaintiff is informed and believes and thereon alleges that defendant CALVIN
28 BUTLER, JR. (hereinafter “BUTLER”) is a resident of Maricopa County, State of Arizona. At

1 all times relevant herein, defendant BUTLER is, and was, an officer and/or director of APS or *de*
2 *facto* officer and/or director of APS and has owed fiduciary duties of care and loyalty to APS and
3 its charitable beneficiaries.

4 6. Plaintiff is informed and believes and thereon alleges that defendant ROLLIE
5 MOSLEY (hereinafter “MOSLEY”) is a resident of San Bernardino County. At all times relevant
6 herein, defendant MOSLEY is, and was, an officer and/or director of APS or *de facto* officer
7 and/or director of APS and has owed fiduciary duties of care and loyalty to APS and its charitable
8 beneficiaries.

9 7. Plaintiff is informed and believes and thereon alleges that defendant SHANNON
10 RIPLEY (hereinafter “RIPLEY”) is a resident of Orange County. At all times relevant herein,
11 defendant RIPLEY is, and was, an officer and/or director of APS or *de facto* officer and/or
12 director of APS and has owed fiduciary duties of care and loyalty to APS and its charitable
13 beneficiaries.

14 8. Defendant PUBLIC AWARENESS, LLC (hereinafter “PUBLIC AWARENESS”) is
15 a California limited liability company with its principal place of business in Riverside County,
16 California.

17 9. From at least January 2005 through December 31, 2005, for compensation, defendant
18 PUBLIC AWARENESS solicited funds in the State of California for charitable purposes on
19 behalf of APS. Further, PUBLIC AWARENESS hired and compensated employees to solicit
20 funds for charitable purposes for APS. By virtue of the actions of PUBLIC AWARENESS
21 described throughout this Complaint, it is a “commercial fundraiser for charitable purposes”
22 (hereinafter abbreviated throughout this Complaint as “commercial fundraiser”) within the
23 meaning of Government Code section 12599. As a commercial fundraiser, PUBLIC
24 AWARENESS is subject to the Attorney General’s supervision and enforcement over charitable
25 funds and assets and has a duty to account to the Attorney General for all funds.

26 10. Defendant COURTESY CALL, INC. (hereinafter “COURTESY CALL”) is a Nevada
27 for-profit corporation with its principal place of business in Las Vegas, Nevada.
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1 11. From at least January 2005 through October 2008, COURTESY CALL solicited
2 funds in the State of California for charitable purposes on behalf of APS. Further, it hired and
3 compensated employees to solicit funds for APS. By virtue of the actions of COURTESY CALL
4 described throughout this Complaint, it is a commercial fundraiser within the meaning of
5 Government Code section 12599. As a commercial fundraiser, COURTESY CALL is subject to
6 the Attorney General’s supervision and enforcement over charitable funds and assets and has a
7 duty to account to the Attorney General for all funds.

8 12. Plaintiff is informed and believes and thereon alleges that defendant MICHAEL
9 MARVIN (hereinafter “MARVIN”) is a resident of San Diego County, California, and is engaged
10 in business as a sole proprietor doing business as Safety Enforcement. During the period of
11 January 2004 through at least October 2008, MARVIN solicited funds in the State of California
12 for charitable purposes on behalf of APS. Further, he hired and compensated employees to solicit
13 funds for APS. By virtue of the actions of MARVIN described throughout this Complaint, he is a
14 commercial fundraiser within the meaning of Government Code section 12599. As a commercial
15 fundraiser, MARVIN is subject to the Attorney General’s supervision and enforcement over
16 charitable funds and assets and has a duty to account to the Attorney General for all funds.

17 13. Plaintiff is informed and believes and thereon alleges that Defendant FREDERICK E.
18 CHENEY, JR. (hereinafter “CHENEY”) is a resident of Kern County, California, and is engaged
19 in business as a sole proprietor doing business as Cheney Enterprises. From approximately
20 January 2008 to the present, CHENEY solicited funds in the State of California for charitable
21 purposes on behalf of APS. Further, he hired and compensated employees to solicit funds for
22 APS. By virtue of the actions of CHENEY described throughout this Complaint, he is a
23 commercial fundraiser within the meaning of Government Code section 12599. As a commercial
24 fundraiser, CHENEY is subject to the Attorney General’s supervision and enforcement over
25 charitable funds and assets and has a duty to account to the Attorney General for all funds.

26 14. Defendants DOES 1 through 50 are named as fictitious defendants who have
27 participated with or acted in concert with one or more of the defendants, or who have acted on
28 behalf of or as agents, servants or employees of one or more of the defendants named herein, but

1 whose true names and capacities, whether individual, corporate, or otherwise, are presently
2 unknown to plaintiff. Plaintiff is informed and believes and thereon alleges that defendants
3 DOES 1 through 50 have directly or indirectly participated in and are responsible for the acts and
4 omissions that are more specifically described herein and plaintiff's damages as alleged herein
5 were proximately caused by such defendants. Because plaintiff is presently uninformed as to the
6 true names and capacities of defendants DOES 1 through 50, plaintiff sues them herein by
7 fictitious names, but will seek leave to amend this complaint when their true names and capacities
8 are discovered.

9 15. The named defendants and defendants DOES 1 through 50 have committed and
10 continue to commit the breaches of fiduciary duty, violations of trust, violations of law and other
11 wrongful acts as alleged hereafter in the Complaint. In order to preserve charitable assets and to
12 prevent waste, dissipation and loss of charitable assets in this State to the irreparable damage of
13 plaintiff, it is necessary that the requested injunctive relief herein prayed for be granted.

14 **FIRST CAUSE OF ACTION**

15 **Breach of Fiduciary Duty**

16 **(Against Defendants JONES, BUTLER, MOSLEY,**
17 **RIPLEY, and DOES 1 through 50)**

18 16. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
19 of the allegations of paragraphs 1 through 15 of this Complaint.

20 17. Plaintiff is informed and believes and thereon alleges that defendants JONES,
21 BUTLER, MOSLEY, RIPLEY and DOES 1 through 50 and each of them are, and at all times
22 relevant herein were, officers and/or directors or *de facto* officers and/or *de facto* directors of APS
23 and have owed fiduciary duties of due care and loyalty to the charity. Plaintiff is further informed
24 and believes and thereon alleges that each of the aforementioned defendants have breached their
25 duties of care and loyalty to APS by engaging in, participating in, aiding and abetting, and
26 facilitating unlawful actions, or omissions, including, but not limited to, the following
27 acts/omissions in violation of common law trust principles and state statutes (including, but not
28 limited to, Corporations Code sections 5231, 5233, and 5237):

- 1 a. Causing substantial charitable funds to be improperly and unlawfully diverted for the
2 personal benefit of defendant JONES and others;
- 3 b. Engaging in a scheme to improperly and unlawfully divert substantial charity funds
4 by causing funds to be disbursed to personal acquaintances of defendant JONES, who
5 then provided “kickbacks” of funds from those disbursements to JONES;
- 6 c. Engaging in self-dealing transactions in violation of Corporations Code section 5233;
- 7 d. Causing APS to incur very substantial overdraft check fees for checks drawn on APS
8 accounts that had insufficient funds to cover them;
- 9 e. Failing to ensure that APS’ activities and operations were conducted in furtherance of
10 its charitable purpose of providing transitional shelters for battered women and
11 children;
- 12 f. Causing APS to unlawfully engage in activities and operations while suspended by
13 the California Franchise Tax Board including, but not limited to, soliciting donations
14 for APS through its commercial fundraisers and web site;
- 15 g. Causing APS to become delinquent by failing to timely file its annual reports with the
16 Attorney General’s Registry of Charitable Trusts (hereinafter “Registry of Charitable
17 Trusts”);
- 18 h. Causing APS to unlawfully engage in charitable solicitation in California through its
19 commercial fundraisers while APS was delinquent in filing its annual report with the
20 Registry of Charitable Trusts;
- 21 i. Failing to timely file APS’ annual informational return for 2007 with the Internal
22 Revenue Service (IRS Form 990);
- 23 j. Failing to timely and adequately respond to the Attorney General’s demand for
24 information and documents from APS;
- 25 k. Causing APS to engage in misleading and deceptive solicitation practices with its
26 commercial fundraisers PUBLIC AWARENESS, COURTESY CALL, MARVIN and
27 CHENEY, including the dissemination of false information to donors;
- 28

1 l. Causing APS to conduct solicitation campaigns in violation of Government Code
2 section 12599.6 as more specifically described in paragraphs 22 through 26 below,
3 which are incorporated by reference as if fully set forth herein; and

4 m. Failing to observe corporate formalities as required by law and by APS' bylaws.

5 18. At all times relevant herein, the defendants named in this cause of action and DOES 1
6 through 50 have failed to act in good faith, in the best interests of APS, and with such care as an
7 ordinarily prudent person in a like position would use under similar circumstances.

8 19. As a proximate cause of the breaches of fiduciary duty of care and loyalty of the
9 named defendants in this cause of action and DOES 1 through 50, APS and its charitable
10 beneficiaries have been damaged in an amount presently unknown to the Attorney General and
11 which cannot be ascertained without an accounting by these defendants. The facts necessary to
12 ascertain the exact amount of damages to APS and its charitable beneficiaries are within the
13 special knowledge of the aforementioned defendants. However, the Attorney General estimates
14 the total damages exceed \$200,000.

15 20. Plaintiff is also entitled to injunctive relief to remedy defendants' breach of fiduciary
16 duty and to plaintiff's attorney fees and costs.

17 21. The acts as alleged in this cause of action were willful, wanton, malicious and
18 oppressive and were undertaken with the intent to defraud APS and its charitable beneficiaries
19 and thus justify the awarding of exemplary and punitive damages against the defendants named in
20 this cause of action and DOES 1 through 50.

21 **SECOND CAUSE OF ACTION**

22 **Deceptive and Misleading Solicitation in**

23 **Violation of Government Code Section 12599.6**

24 **(Against Defendants APS, JONES, BUTLER, MOSLEY, RIPLEY,**

25 **PUBLIC AWARENESS, COURTESY CALL, and DOES 1 through 50)**

26 22. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
27 of the allegations of paragraphs 1 through 21 of this Complaint.

1 23. Under Government Code section 12599.6, charitable organizations and their
2 commercial fundraisers are prohibited from misrepresenting the purpose or beneficiary of a
3 charitable solicitation. Charitable organizations and commercial fundraisers are prohibited from
4 using any unfair or deceptive practices or engaging in fraudulent conduct that creates a likelihood
5 of confusion or misunderstanding. Charitable organizations and commercial fundraisers are also
6 prohibited from misrepresenting that the charitable organization will receive an amount greater
7 than the actual net proceeds reasonably estimated to be retained by the charity for its charitable
8 purposes. Charitable organizations must establish and exercise control over their fundraising
9 activities and must assure that their fundraising activities are conducted without coercion.

10 24. The defendants named in this cause of action and DOES 1-50 organized, managed,
11 directed and/or executed APS' solicitation campaign from approximately 2005 through 2008 in a
12 manner that violated state and federal laws and resulted in deception and confusion of donors. On
13 information and belief, defendants APS, JONES, BUTLER, MOSLEY, RIPLEY and DOES 1-50
14 authorized misleading telemarketing scripts that concealed material facts and made false
15 representations as to how the donations would be used by APS and what amounts APS would
16 receive from the solicitation campaigns. They also failed to exercise control over APS'
17 fundraising activities. As officers/directors or *de facto* officers/directors of APS, JONES,
18 BUTLER, MOSLEY, RIPLEY and DOES 1 through 50 were responsible for the fundraising
19 activities of APS. Commercial fundraisers PUBLIC AWARENESS, COURTESY CALL and
20 DOES 1-50, executed deceptive and fraudulent solicitation campaigns throughout California and
21 obtained donations and payments from California residents on behalf of APS.

22 25. The unfair or deceptive acts or practices and fraudulent conduct of the defendants
23 named in this cause of action and DOES 1 through 50 that created a likelihood of confusion or
24 misunderstanding on the part of donors include, but are not limited to, the following:

- 25 a. Defendants failed to disclose to potential donors prior to the charitable solicitation
26 that the solicitation was being made by a commercial fundraiser (i.e., paid
27 telemarketer); further, some donors were falsely told that the solicitation was being
28 made by a volunteer or a "police volunteer;"

- 1 b. Donors were falsely told that the purpose of APS was to provide assistance to injured
2 law enforcement officers and their families and other similar untrue purposes;
- 3 c. Donors were falsely told in the pledge confirmation cards that the Board of Directors
4 of APS were volunteers who included career law enforcement officers; the pledge
5 confirmation card also falsely implied that APS was a “police or sheriffs group;”
- 6 d. Misrepresentations concerning the purpose of the donation were made, including that
7 it would be used to benefit local law enforcement and their programs or to benefit
8 families of local fallen police officers;
- 9 e. Some donors were falsely told that their donation would help domestic violence
10 victims when, in fact, a very negligible portion, or none, of the donations was used
11 for that purpose;
- 12 f. Donors both in California and outside California were falsely told that their donations
13 would be used “locally;” further, the pledge confirmation cards falsely told donors
14 that the Board of Directors “seek out the people and the support systems nationwide
15 where funds are needed most;”
- 16 g. Donors were falsely told that all of their donations would go to APS for its charitable
17 program expenses when, at most, only approximately 10 percent of the donation
18 actually went to APS and the rest to the commercial fundraisers; of the approximate
19 10 percent that actually did go to APS, most or all of those funds were used for the
20 personal benefit of defendant JONES and others;
- 21 h. Telemarketers employed by COURTESY CALL and PUBLIC AWARENESS misled
22 potential donors by mailing pledge *confirmation* cards or invoices to people who had
23 not made a pledge to donate to APS; and
- 24 i. APS authorized, and PUBLIC AWARENESS carried out, the distribution of
25 stickers/decals that could be used for display on a motor vehicle, which state
26 “Association for Police and Sheriffs” and bear the APS seal insignia. This
27 sticker/decals suggests that APS has an affiliation with, or endorsement by, public
28 safety personnel such as police and sheriffs, which is untrue.

1 damages are in an amount presently unknown to the Attorney General and cannot be ascertained
2 without an accounting by defendants. The facts necessary to ascertain the exact amount of
3 damages are within the special knowledge of the defendants named in this cause of action and
4 DOES 1 through 50. Plaintiff is also entitled to injunctive relief as a remedy for defendants'
5 breach of fiduciary duty, civil penalties, and payment of its attorney fees and costs.

6 32. The Attorney General has authority to remedy the breach of fiduciary duty of the
7 named individual defendants in this cause of action and DOES 1-50 pursuant to Corporations
8 Code sections 5142, subdivision (a)(5), and 5250, Government Code section 12598, Business and
9 Professions Code sections 17510.8, 17535, 17536 and common law. The Attorney General has
10 authority to remedy the breach of fiduciary duty of defendants PUBLIC AWARENESS,
11 COURTESY CALL, and DOES 1-50, pursuant to Government Code sections 12598 and 12599,
12 subdivision (g), Business and Professions Code sections 17510.8, 17535, 17536 and common
13 law.

14 **FOURTH CAUSE OF ACTION**

15 **Negligence**

16 **(Against Defendants JONES, BUTLER, MOSLEY, RIPLEY,** 17 **PUBLIC AWARENESS, COURTESY CALL and DOES 1 through 50)**

18 33. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
19 of the allegations of paragraphs 1 through 32 of this Complaint.

20 34. At all times relevant herein, defendants JONES, BUTLER, MOSLEY, RIPLEY and
21 DOES 1 through 50, voluntarily undertook the duties and responsibilities of director and/or
22 officer of APS whether or not formally elected as director or officer and whether or not they had
23 resigned as such. The voluntary undertaking of these duties and responsibilities created a duty on
24 the part of these defendants to exercise due care in the performance of those duties and
25 responsibilities.

26 35. Defendants JONES, BUTLER, MOSLEY, RIPLEY and DOES 1 through 50
27 breached the duty of care they owed to APS by committing the actions and omissions set forth in
28

1 paragraph 17 above, and committing other actions and omissions of which plaintiff is currently
2 unaware.

3 36. Plaintiff is informed and believes and thereon alleges that, as a proximate result of the
4 breach of the duty of care of defendants JONES, BUTLER, MOSLEY, RIPLEY and DOES 1
5 through 50 owed to APS as alleged in this cause of action and as a result of the failure of these
6 defendants to operate the corporation in the manner required by law, charitable assets have been
7 improperly diverted from APS to defendant JONES and others. APS and its charitable
8 beneficiaries have been damaged in an amount presently unknown to the Attorney General and
9 which cannot be ascertained without an accounting by defendants. The facts necessary to
10 ascertain the exact amount of damages to APS and its charitable beneficiaries are within the
11 special knowledge of these defendants. The Attorney General is entitled to an accounting from
12 these defendants for their expenditures and disposition of all income and assets which they
13 obtained from APS, or improperly diverted from APS to one or more of the other defendants or
14 otherwise wasted through their breach of duty of due care, fraud, or other wrongful acts. Plaintiff
15 estimates the total damages proximately caused by defendants' actions and omissions set forth in
16 this cause of action exceed \$200,000. Plaintiff is also entitled to its attorney fees and costs.

17 37. When defendants APS, JONES, BUTLER, MOSLEY, RIPLEY, PUBLIC
18 AWARENESS, COURTESY CALL and DOES 1 through 50, solicited and accepted donations
19 for APS and its charitable beneficiaries, they owed a duty of care to the donors to ensure that the
20 donations and funds were used for the specific charitable purposes for which they were solicited.
21 On information and belief, the failure to use donations for the purpose for which they were
22 solicited took place from 2005 to the present.

23 38. All defendants named in this cause of action and DOES 1 through 50 breached their
24 fiduciary duty to the donors by their cooperative efforts which proximately caused the charitable
25 funds donated to APS to be improperly diverted for purposes other than the purposes for which
26 the donations were solicited and made. As a result of that breach of duty, the charitable
27 beneficiaries of APS have been injured, in the aggregate, in an amount presently unknown to
28 plaintiff. The facts necessary for calculation of the receipts and disbursements, and thus the

1 amount owed to the beneficiaries, are within the special knowledge of defendants. The Attorney
2 General is entitled to an accounting from all defendants named in this cause of action and DOES
3 1 through 50 for the receipt and disposition of all donations they obtained on behalf of APS.
4 Plaintiff is also entitled to its attorney fees and costs.

5 **FIFTH CAUSE OF ACTION**

6 **Solicitation by a Commercial Fundraiser in Violation of**
7 **Registration and Reporting Statutes**
8 **(Against Defendants MARVIN, CHENEY, COURTESY CALL,**
9 **and DOES 1 through 50)**

10 39. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
11 of the allegations of paragraphs 1 through 15 of this Complaint.

12 40. Government Code section 12599 requires all commercial fundraisers to be registered
13 with the Registry of Charitable Trusts prior to soliciting any funds in this state for charitable
14 purposes. Such registrations along with a fee are required to be submitted annually by January 15
15 of each calendar year in which the commercial fundraiser does business in this State.
16 Commercial fundraisers are also required to file with the Registry of Charitable Trusts an annual
17 financial report accounting for all funds collected pursuant to each solicitation campaign for
18 charitable purposes during the preceding year. The financial report must be filed no later than 30
19 days after the close of the preceding calendar year.

20 41. Government Code section 12599.6 prohibits any solicitation in this State by a
21 commercial fundraiser whose registration with the Registry of Charitable Trusts has expired and
22 prohibits solicitation by a commercial fundraiser who has failed to file timely and accurate
23 financial reports with the Registry of Charitable Trusts.

24 42. Plaintiff is informed and believes and thereon alleges that defendant MARVIN's
25 commercial fundraiser registration with the Registry of Charitable Trusts expired in December
26 2005. Yet MARVIN solicited donors in California for APS as a commercial fundraiser during at
27 least 2006, 2007, 2008. Plaintiff is further informed and believes that MARVIN failed to file
28 with the Registry of Charitable Trusts annual financial reports for 2005, 2006, 2007 and 2008 for

1 fundraising for APS and yet continued to solicit in California as a commercial fundraiser during
2 those years to the present.

3 43. Plaintiff is informed and believes and thereon alleges that defendant CHENEY failed
4 to file with the Registry of Charitable Trusts an annual financial report for its solicitation
5 campaign for APS for 2008, yet it continued to solicit charitable donations for APS to the present.

6 44. Defendant COURTESY CALL failed to file with the Registry of Charitable Trusts
7 any financial report for its solicitation campaign for APS conducted during the period of August
8 10, 2006 to August 18, 2007. Further, it filed a false, grossly inaccurate financial report for its
9 commercial fundraising activities for APS conducted during the period of August 19, 2007 to
10 December 31, 2007. Yet COURTESY CALL conducted charitable solicitation campaigns for
11 APS continuously from at least January 2005 until approximately October 2008.

12 45. Government Code section 12599.5 requires all applicants for registration and renewal
13 of registration as a commercial fundraiser in this State to submit a cash deposit of \$25,000 or
14 bond in that amount by an admitted surety in favor of the State of California for the benefit of all
15 persons damaged by a commercial fundraiser's solicitation activities in this State. Plaintiff is
16 informed and believes that defendant MARVIN solicited charitable donations on APS' behalf
17 during all of 2008 to the present despite the fact that his surety bond expired on or about August
18 12, 2008. Plaintiff is informed and believes that defendant CHENEY solicited charitable
19 donations for APS during all of 2008 and to the present despite the fact that his bond expired on
20 or about November 12, 2007.

21 46. Government Code section 12599, subdivision (h), requires that, at least 10 days prior
22 to the commencement of a solicitation campaign, a commercial fundraiser must file with the
23 Registry of Charitable Trusts a notice ("Notice of Intent to Solicit for Charitable Purposes")
24 (hereinafter "Notice of Intent to Solicit") that contains the following: the name, address and
25 telephone number of the commercial fundraiser; the name address and telephone number of the
26 charitable organization with whom the commercial fundraiser has contracted; the method of
27 fundraising; the projected dates the campaign will begin and end; and the name address and
28

1 telephone number of the person responsible for directing and supervising the work of the
2 commercial fundraiser under the contract.

3 47. Plaintiff is informed and believes and thereon alleges that defendant CHENEY failed
4 to file any Notice of Intent to Solicit prior to the fundraising it conducted for APS during 2008.
5 Defendant MARVIN failed to file any Notice of Intent to Solicit prior to the fundraising it
6 conducted for APS during years 2007 and 2008. Defendant COURTESY CALL failed to file a
7 Notice of Intent to Solicit prior to the fundraising it conducted for APS during the period of
8 August 10, 2006 to August 18, 2007.

9 48. Defendants' conduct as alleged in this cause of action violated Government Code
10 sections 12599, 12599.5 and 12599.6. Plaintiff is entitled to civil penalties, injunctive relief and
11 attorney fees and costs as a result.

12 **SIXTH CAUSE OF ACTION**

13 **Failure to Comply with the Recordkeeping**

14 **Requirements of Government Code Section 12599.7**

15 **(Against Defendants PUBLIC AWARENESS and DOES 1 through 50)**

16 49. Plaintiff re-alleges and incorporates by reference as though fully set forth herein each
17 of the allegations of paragraphs 1 through 15 of this Complaint.

18 50. Pursuant to Government Code section 12599.7, commercial fundraisers must
19 maintain, for at least 10 years from the completion of each solicitation campaign, records
20 containing, *inter alia*, the following information, which shall be available for inspection upon
21 demand by the Attorney General:

- 22 a. The date and amount of each contribution received as a result of a solicitation
23 campaign and, for all noncash contributions, the name and mailing address of each
24 contributor;
- 25 b. The name and residence address of each employee, agent, or other person involved in
26 the solicitation campaign; and
- 27 c. Records of all revenue received and expenses incurred in the course of the solicitation
28 campaign.

- 1 b. Some potential donors were falsely told that the solicitation was being made by a
2 volunteer or police volunteer;
- 3 c. They misrepresented the percentage or amount of charitable contributions that would
4 go to APS for its charitable program;
- 5 d. They misrepresented the charitable purposes of APS;
- 6 e. They misrepresented how and where the charitable donations would be used;
- 7 f. Potential donors were falsely told that APS' Board of Directors included volunteers
8 who were career law enforcement officers and the pledge confirmation card falsely
9 implied that APS was a police or sheriffs group;
- 10 g. They breached their fiduciary duty to donors and the charitable beneficiaries of APS
11 by failing to ensure that the donations were used for the purposes for which they were
12 solicited;
- 13 h. They sent pledge *confirmation* cards to donors who had not made any charitable
14 donation pledge;
- 15 i. They sent potential donors decals that suggested that APS had an affiliation with, or
16 endorsement by, public safety personnel such as police and sheriffs, which was
17 untrue;
- 18 j. They engaged in abusive telemarketing acts such as yelling and being rude; calling
19 repeatedly (with the intent to annoy and harass); calling after 8:00 p.m.; blocking
20 Caller ID; and failing to honor a person's prior "do not call" request;
- 21 k. Defendant COURTESY CALL failed to file Notices of Intent to Solicit prior to each
22 solicitation campaign it conducted for APS;
- 23 l. Defendant COURTESY CALL filed a false, grossly inaccurate fundraising report for
24 a solicitation campaign it conducted for APS during the period of August 19, 2007 to
25 December 31, 2007;
- 26 m. Defendant PUBLIC AWARENESS failed to maintain accurate and complete records
27 as required by statute and failed to adequately respond to the Attorney General's
28 statutory demand to produce those records; and

1 n. Defendants other than PUBLIC AWARENESS engaged in activity for APS,
2 including charitable solicitation, while APS was suspended by the Franchise Tax
3 Board and while APS was delinquent in its reporting with the Registry of Charitable
4 Trusts.

5 56. Defendants APS, JONES, BUTLER, MOSLEY, RIPLEY, PUBLIC AWARENESS,
6 COURTESY CALL and DOES 1 through 50, in engaging in and participating in the acts of unfair
7 competition as alleged in the paragraph 55 above, have violated the following statutes and
8 regulations:

- 9 a. Government Code section 12591.1;
- 10 b. Government Code section 12599;
- 11 c. Government Code section 12599.6;
- 12 d. Government Code section 12599.7;
- 13 e. Business and Professions Code section 17510.8;
- 14 f. Business and Professions Code section 17510.85;
- 15 g. Revenue and Taxation Code sections 23301 and 23775;
- 16 h. California Code of Regulations, title 11, division 1, chapter 4, section 308; and
- 17 i. Federal regulations established by the Federal Trade Commission (“Telemarketing
18 Sales Rule”), (16 C.F.R., § 310.3 [deceptive telemarketing acts or practices]; § 310.4
19 [abusive telemarketing acts or practices]).

20 57. Defendants SAFETY ENFORCEMENT (during years 2005 through 2008),
21 CHENEY ENTERPRISES (during year 2008) and DOES 1-50 (during years unknown), engaged
22 in unfair competition within the meaning of Business and Professions Code section 17200 by
23 failing to comply with registration and reporting requirements and by conducting solicitation
24 campaigns for charitable purposes for APS when APS was suspended by the State of California
25 Franchise Tax Board and when it was delinquent in its reporting to the Registry of Charitable
26 Trusts. Defendants committed and continue to commit acts of unfair competition including, but
27 not limited to, the following:
28

- 1 a. They failed to apply for registration and/or registration renewal prior to engaging in
- 2 solicitation for charitable purposes for APS in this State;
- 3 b. They failed to file a Notice of Intent to Solicit prior to commencing each charitable
- 4 solicitation campaign for APS in this State;
- 5 c. They failed to comply with the surety bond requirements prior to conducting
- 6 charitable solicitation campaigns in this State on behalf of APS;
- 7 d. They failed to file the required financial reports in connection with each charitable
- 8 solicitation campaign they conducted on APS' behalf in this State; and
- 9 e. They engaged in charitable solicitation for APS while APS was suspended by the
- 10 Franchise Tax Board and while APS was delinquent in its reporting with the Registry
- 11 of Charitable Trusts.

12 58. Defendants SAFETY ENFORCEMENT, CHENEY ENTERPRISES and DOES 1
13 through 50, in engaging in and participating in the acts of unfair competition, as alleged in
14 paragraph 57 above, have violated the following statutes and regulations:

- 15 a. Government Code section 12591.1;
- 16 b. Government Code section 12599;
- 17 c. Government Code section 12599.5;
- 18 d. Government Code section 12599.6;
- 19 e. Revenue and Taxation Code sections 23301 and 23775; and
- 20 f. California Code of Regulations, title 11, division 1, chapter 4, section 308.

21 59. 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 \$150,000. Defendants should also be required to reimburse the Attorney General all reasonable
24 attorney's fees and costs incurred in conducting this action, as provided by Government Code
25 section 12598.

26 60. 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 APS by any means or any act or practice found by this court to constitute unfair

1 competition under Business and Professions Code section 17200, all said monies to be distributed
2 by this court to charitable institutions for use for purposes similar to that of APS.

3 61. Pursuant to Business and Professions Code section 17203, plaintiff is further entitled
4 herein to injunctive relief against the defendants named in this cause of action and DOES 1
5 through 50, prohibiting them from engaging in further acts of unfair competition.

6 **EIGHTH CAUSE OF ACTION**

7 **Disseminating False or Misleading Statements in Violation of**

8 **Business & Professions Code Section 17500**

9 **(Against Defendants APS, JONES, BUTLER, MOSLEY, RIPLEY**

10 **PUBLIC AWARENESS, COURTESY CALL, and DOES 1 through 50)**

11 62. Plaintiff re-alleges and incorporates by reference herein each and every allegation
12 contained above in paragraphs 1 through 61 of this Complaint.

13 63. Defendants named in this cause of action and DOES 1 through 50 violated Business
14 and Professions Code section 17500 by deliberately disseminating or causing to be disseminated
15 to California residents and to residents of other states untrue and misleading statements in the
16 course of conducting their charitable solicitation campaigns, including but not limited to the
17 misrepresentations set forth in paragraphs 25 and 55, above. Defendants and each of them knew
18 or reasonably should have known that the representations made in their charitable solicitation
19 campaigns were false or misleading at the time the statements were made. As a result of the false
20 or misleading statements defendants made in the course of conducting their charitable solicitation
21 campaigns, pursuant to Business and Professions Code section 17500 and 17536, plaintiff is
22 entitled to civil penalties against each defendant in an amount which is presently unknown, but
23 believed to be in excess of \$150,000.

24 **NINTH CAUSE OF ACTION**

25 **For Involuntary Dissolution**

26 **(Against Defendant APS and DOES 1 through 50)**

27 64. Plaintiff re-alleges and incorporates by reference herein each and every allegation
28 contained in paragraphs 1 through 63 of this Complaint.

1 may now be, and order and declare that all such property or the proceeds thereof is impressed
2 with a trust for charitable purposes, that defendants are constructive trustees of all such charitable
3 funds and assets in their possession, custody or control, and that the same shall be deposited
4 forthwith in Court by each and every defendant now holding or possessing the same or claiming
5 any rights, title or interest therein. In addition, that these defendants be surcharged and held liable
6 and judgment entered against each of them for any and all such assets for which they fail to
7 properly account, together with interest thereon at the legal rate from the date of liability thereon;
8 and that any and all expenses and fees incurred by defendants in this action be borne by the
9 individual defendants and each of them and not by APS or any other public or charitable
10 corporation or fund;

11 3. Pursuant to Government Code section 12599, subdivision (f), for a permanent and
12 preliminary injunction, enjoining MARVIN, CHENEY, COURTESY CALL and DOES 1-50,
13 from soliciting any donations from California residents until such time as defendants have filed
14 complete and accurate annual reports, and fully comply with California's registration
15 requirements;

16 4. For damages due APS and its charitable beneficiaries resulting from the breaches of
17 fiduciary duty of all defendants named in this Complaint and DOES 1 through 50 in an amount to
18 be determined following an accounting from these defendants, plus interest at the legal rate until
19 the judgment is paid;

20 5. Pursuant to Business and Professions Code sections 17203, 17510.8 and 17535,
21 and/or the equitable powers of the court, that defendants be ordered to pay into court an amount
22 equal to the amount of funds solicited from the public on behalf of APS by any means, act or
23 practice found by the court to constitute unfair competition under Business and Professions Code
24 section 17200 or as a result of false or misleading statements under Business and Professions
25 Code section 17500, all said monies to be distributed by the court to charitable institutions for use
26 for purposes similar to that of APS.

27 6. For punitive and exemplary damages against defendants JONES, BUTLER,
28 MOSLEY, RIPLEY, and DOES 1 through 50 according to proof;

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

4 8. Pursuant to Business and Professions Code section 17206, that the Court assess a civil
5 penalty of two thousand five hundred dollars (\$2,500) against all named defendants and DOES 1
6 through 50 for each violation of Business and Professions Code section 17200 per day, as proved
7 at trial, in an amount no less than \$150,000;

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

13 10. Pursuant to Business and Professions Code sections 17500 and 17536, that the Court
14 assess a civil penalty of two thousand five hundred dollars (\$2,500) against each of the
15 defendants named in the Third and Eighth Causes of Action and DOES 1 through 50 for each
16 violation of Business and Professions Code sections 17500 and 17510.8 per day, as proved at
17 trial, in an amount no less than \$150,000;

18 11. Pursuant to Business and Professions Code section 17535, for a preliminary and
19 permanent injunction enjoining defendants named in the Third and Eighth Causes of Action and
20 DOES 1 through 50, their successors, agents, representatives, employees and all persons who act
21 in concert with, or on behalf of, defendants from engaging in acts violating Business and
22 Professions Code sections 17510.8 and/or 17500, including, but not limited to, those acts alleged
23 in this Complaint.

24 12. That the Court order the involuntary dissolution of APS pursuant to the provisions of
25 Corporations Code section 6518, provide for satisfaction of all of its lawful debts, and establish a
26 procedure for determining the disposition of all remaining assets of APS in a manner consistent
27 with its charitable purpose and consistent with any restrictions that have been placed upon any of
28 APS' remaining assets;

