

SETTLEMENT AGREEMENT

I. Parties

This Settlement Agreement (“Agreement”) is entered into between the People of the State of California (“People”), by and through Rob Bonta, the Attorney General of the State of California (“Attorney General”), and Defendant Aid for Starving Children, a nonprofit corporation. The individually named defendants Monte Wilson, Joseph Spiccia, Jeffrey Baughman, Warren Hays, Lane Phillips, and Paul Kelley are referred to as “Directors and Officers.” Aid for Starving Children and the Directors and Officers are collectively referred to as “Defendants.” The People and Aid for Starving Children are referred to as the “Settling Parties.”

II. Recitals

WHEREAS, Aid for Starving Children is a foreign nonprofit corporation doing business in California. It is registered with the Attorney General’s Registry of Charitable Trusts (Registration No. 091578);

WHEREAS, the Attorney General is responsible for supervising charitable organizations, charitable trustees, and professional fundraisers that operate in California, and has a duty to protect charitable assets and donations for the People;

WHEREAS, on May 22, 2019, the People filed a Complaint against Defendants, *The People of the State of California v. Aid for Starving Children, et al.*, and on March 3, 2020, filed the First Amended Complaint (collectively, “the Action”), Sonoma County Superior Court Case No. SCV264521; and

WHEREAS, the Settling Parties, each of whom desires to avoid the expense, uncertainty, and inconvenience of litigation or other administrative action, agree to resolve the Action upon the terms and conditions stated herein;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Settling Parties hereby agree as follows:

III. Primary Terms of Agreement

1. Policies and Practices. Aid for Starving Children represents and agrees that it either has already adopted, or will now adopt and keep in place for a period not less than 7 years from the date this agreement is signed by all Settling Parties, the following policies and procedures regarding written solicitations sent or emailed to potential donors:

a. Pie Charts.

If Aid for Starving Children uses any pie chart or similar visual graphic in its solicitations for donations for the purpose of comparing its program expenses to its management and fundraising expenses as against its total revenue from donations for any given year or years (“Combined Chart”), Aid for Starving Children will also include a pie chart or similar visual

graphic that shows total cash donations and expenses paid by cash donations (“Cash Chart”) for the same given year or years as the Combined Chart and the Cash Chart will be displayed adjacent to the Combined Chart using the same font size and similar color scheme.

b. Cash Donations

If Aid for Starving Children makes any statements in its charitable solicitations for cash donations that expressly state that a certain percentage of a cash donation will go towards charitable program expense, Aid for Starving Children will calculate the percentages using only cash donations.

c. Cost of Meals

If Aid for Starving Children makes any statement in its charitable solicitations for donations that connects a specific dollar amount with the provision of a specific amount of food or meals, Aid for Starving Children will include clear and concise instructions for the public to contact Aid for Starving Children to learn how Aid for Starving Children calculates that specific dollar amount.

d. Administrative Overhead

If Aid for Starving Children uses solicitations that reference its administrative overhead costs, Aid for Starving Children will also include clear and concise instructions directing the public to Aid for Starving Children’s website listing and making available for public viewing the IRS Form 990 for the prior three fiscal years.

e. Records Retention

For a period of 10 years, Aid for Starving Children agrees to obtain, retain and make available to the Attorney General, upon request:

i. For charitable solicitations used by Aid for Starving, a copy of each solicitation and records sufficient to show the time and place of all pictures and anecdotes included in each solicitation;

ii. For grants made to a foreign recipient, regardless of whether that grant is cash or gifts-in-kind, records sufficient to show (a) Aid for Starving Children’s distribution of the grant; and (b) the foreign recipient’s acknowledgement of receipt of the grant; and

iii. For grants made to an intermediary who will distribute the grant to end recipients, a written agreement between Aid for Starving Children and the intermediary pursuant to which the intermediary agrees to restrict its use of funds received for Aid for Starving Children’s specific charitable purpose.

2. Dismissal with Prejudice. Within ten (10) days of the full execution of this Agreement, the Attorney General shall file a Request for Dismissal with prejudice in favor of

Aid for Starving Children of the claims in the First Amended Complaint with each party agreeing to bear its attorneys' fees and costs in the Action.

3. Release. The Settling Parties waive, satisfy, release, acquit, and forever discharge each other from and against any and all claims, counterclaims, actions, defenses, affirmative defenses, suits, rights, causes of action, they have against each other for any claim, defense, or issue brought in the Action or that could have been brought in this Action arising out of the allegations in the First Amended Complaint or arising out of any of ASC's accounting practices or solicitations as of the date the Attorney General filed the First Amended Complaint. Because the release provided by the People is a specific release, Civil Code section 1542 which pertains to general releases does not apply. The release and discharge set forth in this paragraph is binding on the Settling Parties, their predecessors, successors, heirs, employees, officers, agents, beneficiaries, and assigns. This release and discharge shall not be construed to limit or prevent any party's ability to enforce the terms of this Agreement.

IV. Additional Terms of Agreement

4. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

5. The Settling Parties agree that any litigation to enforce the terms and conditions of this Agreement shall be brought in Sonoma County Superior Court, and the Settling Parties expressly reserve all rights not set forth in this Agreement, and except as released in this Agreement, the Settling Parties retain all rights under the law, including but not limited to their rights and remedies under the Supervision of Trustees and Fundraisers for Charitable Purposes Act, located at Government Code § 12580 *et seq.*

6. The Settling Parties have carefully read this Agreement and all of its terms. The Settling Parties represent and warrant that each has the full legal right and authority to execute this Agreement. The Settling Parties have voluntarily signed this Agreement. Each of the individuals signing this Agreement on behalf of an entity is representing and warranting that he or she is fully authorized to execute this Agreement on behalf of the entity for which he or she is signing.

7. This Agreement contains the entire agreement regarding the matters set forth herein, and it supersedes all oral agreements, promises, warranties, representations, explanations, or understandings, if any, between the Settling Parties relating to this Agreement.

8. This Agreement affects the compromise and settlement of disputed and contested claims and defenses, and nothing contained herein shall be construed as an admission regarding the merits of any claim or defense raised by any Settling Party. Nothing in this Agreement gives Aid for Starving Children the right to expressly or impliedly state on its website or any of its solicitations for donations that the Attorney General endorses it or its solicitations for donations in any way.

9. This Agreement may not be introduced or used by any of the Settling Parties as evidence against any other Settling Party in any legal or administrative proceeding, other than to enforce this Agreement.

10. Each of the Settling Parties and their own counsel have reviewed and approved this Agreement, and accordingly the rule of construction to the effect that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Agreement.

11. Any modification or revision to this Agreement must be in writing and signed by all Settling Parties to be enforceable.

12. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any such provision found to be invalid is severable from the remaining provisions of this Agreement.

13. This Agreement may be executed in counterparts, each of which shall constitute an original agreement. Electronic signatures shall constitute an original signature, including signatures sent via fax or electronic mail.

14. Each Settling Party to this Agreement agrees to perform any further acts and to execute and deliver any additional documents that may be reasonably necessary to carry out the provisions and intent of this Agreement.

15. The Agreement shall be effective as of the date it is fully executed by all Settling Parties.

ROB BONTA
Attorney General of California
ELIZABETH S. KIM
Supervising Deputy Attorney General

DATED: 1/10/23


CHRISTOPHER LAMERDIN
Deputy Attorney General
Attorneys for People of the State of California

DATED: January 5, 23


Monte Wilson on behalf of Aid for Starving Children