

1 DAVID C. SHONKA
Acting General Counsel

2 TRACY S. THORLEIFSON

3 tthorleifson@ftc.gov

4 DAVID M. HORN

dhorn@ftc.gov

5 MIRY KIM

mkim@ftc.gov

Federal Trade Commission

6 915 Second Avenue, Suite 2896

Seattle, Washington 98174

7 (206) 220-6350 (phone)

(206) 220-6366 (facsimile)

8 Jennifer M. Brennan, Cal Bar No. 225473

9 10877 Wilshire Blvd., Suite 700

Los Angeles, CA 90024

10 (310) 824-4343, jmbrennan@ftc.gov

11 ATTORNEYS FOR PLAINTIFF

12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 SOUTHERN DIVISION

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 AMERICAN VETERANS RELIEF
19 FOUNDATION, INC.; COALITION OF
20 POLICE AND SHERIFFS, INC.;
21 DISABLED FIREFIGHTERS FUND,
22 California corporations; JEFFREY DEAN
23 DUNCAN, individually and as an officer
or director of Coalition of Police and
24 Sheriffs, Inc., and Disabled Firefighters
25 Fund; KATHY CLINKENBEARD,
26 individually; and WILLIAM ROSE,
27 individually and as an officer or director
28 of American Veterans Relief Foundation,

Defendants.

Civil Action No. CV09 -3533 AHM (RNBx)

Complaint

FILED
2009 MAY 18 PM 4:09
CENTRAL DISTRICT OF CALIF.
SANTA ANA

FILED
LOGGED

1 Plaintiff, the Federal Trade Commission ("FTC") for its complaint alleges:

2 1. The FTC brings this action under §§ 13(b) and 19 of the Federal
3 Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
4 Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing
5 Act"), 15 U.S.C. §§ 6101-6108, to obtain permanent injunctive relief, rescission or
6 reformation of contracts, restitution, disgorgement of ill-gotten monies, and other
7 equitable relief as is necessary to redress injury to consumers and the public
8 interest resulting from defendants' violations of Section 5(a) of the FTC Act, 15
9 U.S.C. § 45(a), and in violation of the FTC's Telemarketing Sales Rule ("TSR"),
10 16 C.F.R. Part 310.

11 **JURISDICTION AND VENUE**

12 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
13 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and
14 6105(b).

15 3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and
16 15 U.S.C. § 53(b).

17 **COMMERCE**

18 4. At all times relevant to this complaint, defendants have maintained a
19 substantial course of conduct in or affecting commerce, as "commerce" is defined
20 in Section 4 of the FTC, 15 U.S.C. § 44.

21 **PLAINTIFF**

22 5. Plaintiff FTC is an independent agency of the United States
23 Government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter*
24 *alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which
25 prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC
26 also is charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101-
27 6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the
28 TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts

1 or practices. The FTC is authorized to initiate federal district court proceedings, by
2 its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure
3 such equitable relief as may be appropriate in each case, including restitution and
4 disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

5 DEFENDANTS

6 6. American Veterans Relief Foundation, Inc. ("AVRF"), is located at
7 2521 North Grand Avenue, Suite D, Santa Ana, CA. Articles of incorporation
8 representing that AVRF is a not-for-profit corporation were filed in March 2001.
9 Notwithstanding these incorporation papers, AVRF is organized to carry on
10 business for its own profit or that of its members within the meaning of Section 4
11 of the FTC Act. AVRF's president, defendant William Rose, controls the business
12 affairs of AVRF. Rose, together with defendant Kathy Clinkenbeard, hires
13 telemarketers to solicit charitable contributions on behalf of AVRF from
14 consumers across the United States. AVRF operates in the Central District of
15 California and elsewhere throughout the United States.

16 7. Coalition of Police and Sheriffs, Inc. ("COPS"), is located at 2521
17 North Grand Avenue, Suite D, Santa Ana, CA. Articles of incorporation
18 representing that COPS is a not-for-profit corporation were filed in September
19 2000. Notwithstanding these incorporation papers, COPS is organized to carry on
20 business for its own profit or that of its members within the meaning of Section 4
21 of the FTC Act. COPS' president, defendant Jeffrey Dean Duncan, controls the
22 business affairs of COPS. Duncan, together with defendant Kathy Clinkenbeard,
23 hires telemarketers to solicit charitable contributions on behalf of COPS from
24 consumers across the United States. COPS operates in the Central District of
25 California and elsewhere throughout the United States.

26 8. Disabled Firefighters Fund ("DFF") is located at 2521 North Grand
27 Avenue, Suite D, Santa Ana, CA. Articles of incorporation representing that DFF
28 is a not-for-profit corporation were filed in March 2002. Notwithstanding these

1 incorporation papers, DFF is organized to carry on business for its own profit or
2 that of its members within the meaning of Section 4 of the FTC Act. DFF's
3 president, defendant Jeffrey Dean Duncan, controls the business affairs of DFF.
4 Duncan, together with defendant Kathy Clinkenbeard, hires telemarketers to solicit
5 charitable contributions on behalf of DFF from consumers across the United
6 States. DFF operates in the Central District of California and elsewhere
7 throughout the United States.

8 9. Jeffrey Dean Duncan has been the president of both COPS and DFF
9 since 2005, and has served as a director of DFF since its inception in 2002. In that
10 capacity, individually or in concert with others, at all times material to this
11 complaint, Duncan has formulated, directed, controlled, or participated in the acts
12 and practices of COPS and DFF as alleged herein. He has transacted business in
13 the Central District of California.

14 10. Kathy Clinkenbeard has been directly employed by AVRF, COPS,
15 and DFF since mid-2005. Among other things, Clinkenbeard is in charge of
16 recruiting and overseeing telemarketers to solicit on behalf of the three
17 organizations. Prior to that, although employed by a management company that
18 oversaw fundraising for AVRF, COPS, and DFF, Clinkenbeard worked in the same
19 capacity, locating telemarketers to solicit for AVRF, COPS, and DFF and
20 overseeing their work. Individually or in concert with others, Clinkenbeard has
21 formulated, directed, controlled, or participated in the acts and practices of AVRF,
22 COPS, and DFF as alleged herein. She has transacted business in the Central
23 District of California.

24 11. William Rose has been the president of the board of directors of
25 AVRF since 2005. In that capacity, individually or in concert with others, at all
26 times material to this complaint, Rose has formulated, directed, controlled, or
27 participated in the acts and practices of AVRF as alleged herein. He has transacted
28 business in the Central District of California.

1 **DEFENDANTS' BUSINESS PRACTICES**

2 12. Born of a criminal enterprise, AVRF, COPS, and DFF are sham
3 nonprofits, created and perpetuated to provide steady employment to a handful of
4 individuals and the for-profit telemarketers with which the entities contract. None
5 operates as a bona fide nonprofit whose primary purpose is to serve the public
6 interest. Rather, AVRF, COPS and DFF are instrumentalities of private persons
7 who control the corporate actions to support their private pecuniary interests.

8 **Background – 2000 to mid-2005**

9 13. The three organizations were initially formed by an individual, Joseph
10 Shambaugh, who used them as facades to facilitate raising millions of dollars from
11 generous but unwitting donors. Shambaugh found individuals to serve as
12 presidents of the organizations, but these individuals exercised no oversight. In
13 addition to the presidents, who were also directors, each organization had two other
14 directors, all unpaid. Defendant Duncan was a director of DFF.

15 14. From at least 2000 through mid-2005, Shambaugh siphoned off most
16 of the donated funds that remained after the telemarketers were paid their share
17 (typically 80% to 90% of each dollar donated). He controlled each organization,
18 dictating how much each was allotted to spend on charitable programs (less than
19 2% of the total funds raised in each organization's name), the claims made in
20 solicitations for each, and the states where solicitations were made. Shambaugh
21 was indicted in early 2006 for mail fraud and money laundering in connection with
22 his fundraising operation. The indictment alleged, among other things,
23 misrepresentations by AVRF and COPS in their solicitation materials. Shambaugh
24 fled, and remains a fugitive.

25 15. The presidents of AVRF, COPS, and DFF learned of Shambaugh's
26 criminal troubles in mid-2005 and took action to separate the organizations from
27 Shambaugh's control. The three organizations signed a separation agreement with
28 Shambaugh and collectively moved to a new location.

1 16. Following the move, although nominally staying separate, AVRF,
2 COPS, and DFF have split expenses three ways, sharing employees, rent,
3 insurance, computers, telephones, and other office equipment. They also use the
4 same bank, the same attorney, the same accountant, the same printing company,
5 the same web hosting company, use similar sounding solicitation materials and
6 have similar websites, and contract with the same fundraisers under virtually
7 identical terms.

8 17. The presidents, as well as all the individual board members, except
9 defendant Duncan, resigned from the respective boards in mid-2005. Duncan
10 assumed the presidency of both COPS and DFF and defendant William Rose
11 became president of AVRF. Rose had not been associated with AVRF prior to that
12 time. Without the authorization of their respective boards, Duncan began drawing
13 a salary from both COPS and DFF, and Rose began drawing a salary from AVRF.
14 Duncan also placed his wife on the payrolls of COPS and DFF as a part time
15 employee, and enrolled himself and his wife in health insurance programs paid for
16 by COPS and DFF.

17 18. Other than divorcing themselves from Shambaugh and moving to a
18 new location, AVRF, COPS, and DFF continue to operate in virtually the same
19 manner. They continue to use the solicitation materials drafted by Shambaugh,
20 contract with the same telemarketers on nearly identical terms, use the same form
21 contracts, employ the same individuals, including defendant Kathy Clinkenbeard,
22 and continue to spend only a pittance on charitable programs.

23 19. Expenses paid for by funds donated to AVRF, COPS, and DFF
24 include beer and other party supplies used by the employees and their friends, as
25 well as entertainment items like a propane grill and cable television service. Funds
26 in the COPS and DFF program accounts have also been used by Duncan to pay for
27 travel to Hawaii and Las Vegas, as well as for numerous meals at local restaurants.

28 20. In addition to using the lion's share of donated funds to support the

1 private interests of individual defendants Duncan, Rose, and Clinkenbeard and
2 their telemarketers, AVRF, COPS, and DFF fail to observe normal nonprofit
3 corporate governance procedures. They have no annual budgets, no mission-
4 related goals, and no strategic or financial planning related to programming. The
5 corporate directors – two in addition to the president per organization – are
6 personal friends or relatives of Duncan and Rose. They exercise no oversight or
7 control over Duncan and Rose, allowing them to set their own salaries and hire
8 relatives, and authorizing them to control organizational checking accounts without
9 any oversight or review. In fact, the corporate directors do very little. They do not
10 review corporate decisions, set policy, authorize solicitation materials, or approve
11 payments to officers, employees, or grant recipients. Minutes from official board
12 meetings reflect virtually no official board actions and show that meetings last for
13 less than 30 minutes, on the two to three times per year when they are held.

14 21. AVRF, COPS, and DFF have no volunteers or members working to
15 support their purported charitable purposes. Other than Duncan and Rose, the
16 employees all work solely to support the business of fundraising – recruiting and
17 contracting with telemarketers, processing and depositing donor checks,
18 bookkeeping, and handling complaint calls. Nor do the organizations have any
19 source of income apart from the telemarketing. The charitable programming itself
20 is driven by the telemarketing, with efforts made to direct grants to states where
21 telemarketers are located. Telemarketers acting on behalf of the entities are neither
22 investigated initially, before contracts are signed, nor monitored or reviewed
23 subsequently, even when complaints suggest there may be problems with the
24 telemarketers' practices.

25 *The fundraising operation*

26 22. AVRF, COPS, and DFF contract with about 20 different telemarketers
27 across the country to solicit donations in their names. Most telemarketers solicit
28 for all three organizations. The contracts, which are virtually identical, assign to

1 the telemarketer the right to solicit in specific states, and call for the telemarketer
2 to be paid a percentage of the amount solicited, typically between 80% and 90% of
3 all funds raised.

4 23. The organizations typically provide the telemarketers with
5 telemarketing scripts, brochures, pledge forms, thank you letters, and decals.
6 These solicitation materials bear a toll free number for each organization, so that
7 complaint calls go to AVRF, COPS, and DFF, not the telemarketer. Some
8 telemarketers, with the approval of the organizations, modify the solicitation
9 materials, adding, for example, to the pledge forms and thank you letters, a return
10 address in the state where the telemarketer is calling.

11 24. Telemarketers call prospective donors throughout their contracted
12 region, and send pledge forms to those who agree to make a contribution. Donors
13 mail their checks back to the telemarketer, who bundles the checks and sends them
14 on a weekly basis to the Santa Ana headquarters of COPS, DFF, and AVRF. From
15 there, the checks are processed and deposited in bank accounts for each respective
16 organization. Checks are then cut to the telemarketers for their 80% to 90% of the
17 donated funds. Duncan signs these checks for COPS and DFF. Rose has delegated
18 most account signing authority for AVRF to an employee.

19 25. Defendants do not screen, monitor or review the solicitation practices
20 of their telemarketers. A single mention in the standard fundraising contract
21 admonishes the telemarketer not to misrepresent facts and to obey all state laws,
22 but defendants do not terminate telemarketers whom they know or should know
23 violate this provision. Nor do defendants take other steps to prevent deception.

24 26. Clinkenbeard is the main contact person for the telemarketing
25 operation. She recruits new telemarketers, negotiates contract terms such as the
26 percentage that the telemarketer is to be paid, and responds to their questions and
27 concerns. Clinkenbeard calls or emails the telemarketers about donor complaints
28 received by the organizations and facilitates responses to state attorneys general

1 asking about donor complaints. She is also charged with making sure that the
2 telemarketer is appropriately registered in each jurisdiction where it will be
3 soliciting. Clinkenbeard is a salaried employee of AVRF, COPS, and DFF, and
4 was not an officer or director of any of them.

5 *Misrepresentations about charitable programs*

6 27. The telemarketing scripts, brochures, and other solicitation materials
7 describe to donors the worthwhile programs that contributions will supposedly
8 fund. Central to the success of the appeal is the overarching claim, both express
9 and implied, that donated funds go to a bona fide charity whose primary purpose is
10 to serve the public interest. Here, donated funds go first to the telemarketers who
11 solicit the donations, then for compensation to the officers and employees of the
12 organizations, and then, only after those private interests are served, does the
13 remaining pittance go to charitable programs.

14 28. In part because the vast majority of funds raised in the names of
15 AVRF, COPS, and DFF is spent on fundraising and administrative expenses, in
16 numerous instances claims made to donors about specific programs undertaken by
17 AVRF, COPS, and DFF are false.

18 *AVRF*

19 29. One such false claim is made by AVRF about "Operation
20 Homefront." In solicitation materials written by AVRF and disseminated to
21 donors, AVRF represents that it runs "Operation Homefront," a substantial, bona
22 fide program that provides financial assistance to the families of American soldiers
23 fighting overseas. AVRF also claims that consumers' donations will be used to
24 provide care packages to veterans in VA hospitals nationwide, and to provide
25 financial support for veterans' memorials. In addition, the AVRF solicitation
26 materials strongly imply that the consumer's donation is going to a legitimate
27 nonprofit that will spend a meaningful amount of the money raised on the
28 programs and activities described to the donor.

1 30. The claims about AVRF’s programs are not true. Despite prominently
2 featuring “Operation Home Front” in its brochure, and extensively discussing the
3 needs faced by families of soldiers serving overseas, virtually none of donors’
4 money goes to such families. Nor does AVRF provide care packages to more than
5 a small number of veterans in a few VA hospitals – some 350 packages split
6 among half a dozen VA hospitals in five states once a year at Christmas – a far cry
7 from the ongoing, nationwide program described in the AVRF solicitation
8 materials. Moreover, AVRF provides no financial assistance to veterans’
9 memorials.

10 31. What little funds AVRF does spend on charitable program have been
11 used to provide cash grants of \$250 to \$350 to approximately 250 veterans a year
12 and a handful of VA hospitals. Even this effort falls short of a legitimate program.
13 AVRF has no written qualifications for receipt of the cash grants, no program to
14 screen applicants for need or eligibility, and, other than requiring an honorable
15 discharge, no criteria for evaluating applications. The so-called American Veterans
16 Relief Foundation is not a Foundation, provides little relief to only a few veterans,
17 and exists almost solely for the purpose of paying its officers, employees, and
18 telemarketers.

19 COPS

20 32. The COPS deception begins with its very name. Consumers, told that
21 their donations will go to the Coalition of Police and Sheriffs, reasonably believe
22 that the organization is a coalition with members who are police or sheriffs. This
23 belief is fostered by the ubiquitous image of a police badge on materials sent to
24 donors, and the promise in the COPS brochure that COPS charges “no membership
25 dues.” COPS, however, is not a coalition and it has no “members” who are police
26 officers or sheriffs.

27 33. The solicitation materials provided by COPS to its telemarketers and
28 disseminated by them to donors make additional misrepresentations. Through its

1 telephone scripts, brochures, and thank you letters, COPS claims to operate a
2 substantial, bona fide program to assist police officers injured in the line of duty
3 and the survivors of police officers killed in the line of duty. Such assistance, the
4 solicitation materials claim, is provided especially during the specific interval
5 between injury or death and the onset of official government assistance. Help is
6 promised to “qualified” officers for medical coverage, mortgage and car payments,
7 and costs not covered by their departments. COPS also claims to have a
8 scholarship program for disabled officers and their families. In addition, the COPS
9 solicitation materials strongly imply that the donor’s contribution is going to a
10 legitimate nonprofit that will spend a meaningful amount of the money raised on
11 the programs and activities described to the donor.

12 34. COPS, however, has no “program” to provide benefits to disabled or
13 fallen police officers and their families. Instead, it has provided cash payments to a
14 handful of people – fewer than twelve individuals between 2005 and 2007 – who
15 were, at one time, police officers and who may be disabled. Moreover, it does not
16 appear to focus its efforts on assisting officers waiting for the onset of government
17 benefits. In addition, COPS claims about limiting benefits to “qualified” officers
18 are not true – it has no process to verify whether applicants fall into the specified
19 class of beneficiaries (i.e., injured in the line of duty) or that they need money for
20 the specified purposes described to donors. Indeed, COPS has no way of assuring
21 that its cash payments will be spent on the approved programs. Finally, COPS has
22 no “scholarship program” and has funded education expenses on only two
23 occasions in three years. The so-called Coalition of Police and Sheriffs spends
24 only a de minimis amount of funds raised on any charitable program, and exists
25 almost solely for the purpose of enriching its officers, employees, and
26 telemarketers.

27 *DFF*

28 35. DFF’s solicitation materials – provided by it to its telemarketers and

1 disseminated to donors – also make misrepresentations. Its telephone scripts,
2 brochures, and thank you letters, claim that DFF operates a substantial, bona fide
3 program to assist firefighters injured in the line of duty and the survivors of
4 firefighters killed in the line of duty. Through its “Cash Benefit Program” and its
5 “Death Benefit Program” DFF claims to provide benefits to “qualified” disabled
6 firefighters and their families. Donors are told that DFF focuses on providing
7 benefits especially during the specific interval between the injury or death and the
8 onset of official government assistance. Benefits are to cover medical coverage,
9 memorial services, costs not covered by their department, and other expenses.
10 Through its use of words such as “program,” “qualified,” and “application
11 process,” DFF implies that it routinely reviews applications using specific criteria
12 to determine eligibility for assistance. In addition, the DFF solicitation materials
13 strongly imply that the donor’s contribution is going to a legitimate nonprofit that
14 will spend a meaningful amount of the money raised on the programs and activities
15 described to the donor.

16 36. In fact, DFF has no particular “program” or review process to
17 determine whether applicants were disabled in the line of duty, need help on an
18 interim basis while waiting for official benefits to begin, or otherwise qualify for
19 assistance. DFF has provided support to only a few individuals each year – 20
20 people total between 2005 and 2007 – several of whom do not meet the criteria
21 described to donors because they were not injured in the line of duty. Moreover,
22 DFF has not paid death benefits to the families of firefighters killed in the line of
23 duty regularly, if at all. DFF, like AVRF and COPS, spends only a de minimis
24 amount of funds raised on any charitable program and exists almost solely for the
25 purpose of enriching its officers, its employees, and its telemarketers.

26 *Local benefit claims*

27 37. Telemarketers for AVRF, COPS, and DFF have routinely
28 misrepresented that donated funds will be used in the donor’s community. These

1 misrepresentations can be express, as when donors are told that funds will go to
2 help disabled police or firefighters or homeless veterans in the donor's own
3 community. They can also be implied, as when solicitation materials (approved by
4 AVRF, COPS, or DFF) sent to donors by the telemarketers include a local or in-
5 state address where donors can mail their contributions. If the solicitation materials
6 were to be believed, the organizations have offices in locations across the country,
7 from Boise, Idaho to Washington, D.C.

8 38. Such representations of local benefit are false. COPS and DFF
9 provide assistance to only a few individuals located in only a few communities
10 across the country, while the vast majority of AVRF grant recipients have been
11 from just four states, California, Illinois, Ohio and Wisconsin. The organizations
12 operate out of a strip mall in Santa Ana, California and do not have offices in
13 Boise, Idaho, Washington, D.C., or elsewhere.

14 *Injury*

15 39. Generous donors contributed more than \$19 million to AVRF, COPS,
16 and DFF from 2005 through 2008, believing that their money was going to support
17 legitimate nonprofit organizations that undertook the particular programs described
18 to them. In fact, little or no money was spent on most of the charitable programs
19 described to donors, and, even by defendants' reckoning, only 5.4% of the \$19
20 million raised was spent on any charitable endeavor at all. Instead, the bulk of
21 donated funds was spent supporting the officers and employees of AVRF, COPS,
22 and DFF, and the telemarketers they hired. Not only were individual donors
23 deceived, but their gifts left fewer dollars to support the many legitimate nonprofit
24 organizations that operate real programs for veterans, disabled police officers and
25 disabled firefighters.

26 ///

1 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

2 40. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
3 deceptive acts or practices in or affecting commerce.”

4 **COUNT ONE**

5 **MISREPRESENTATION THAT DONATION IS FOR CHARITY**

6 41. In numerous instances, in connection with soliciting charitable
7 contributions from donors, defendants, directly or through their telemarketers, have
8 represented, expressly or by implication, that the donor’s contribution will go to a
9 legitimate charitable organization whose primary purpose is to serve the public
10 good by assisting veterans, police, or firefighters.

11 42. In truth and in fact, the donor’s contribution does not go to a
12 legitimate charitable organization whose primary purpose is to serve the public
13 good, but instead goes to corporate entities controlled by private persons for
14 individual pecuniary gain.

15 43. Therefore, the representation described in Paragraph 41 is false and
16 misleading and constitutes a deceptive act or practice in violation of Section 5(a)
17 of the FTC Act, 15 U.S.C. § 45(a).

18 **COUNT TWO**

19 **MISREPRESENTATION OF PROGRAM BENEFIT**

20 44. In connection with soliciting charitable contributions from donors,
21 defendants represent, expressly or by implication, that donors’ contributions will
22 be used to fund particular charitable programs. Such representations include, but
23 are not limited to, claims that donated funds will be used to:

24 a. help AVRF operate a specific, substantial charitable program that
25 provides financial assistance to the families of American soldiers fighting overseas;
26 provides “Thinking of You” care packages to veterans in Veterans Administration
27 hospitals across the country; and provides financial support to veterans’
28 memorials;

1 b. help COPS operate specific, substantial charitable programs that
2 1) assist qualified police officers injured in the line of duty, and their families, by
3 paying mortgages, auto loans, and medical bills, and other costs not covered by
4 their departments; and 2) provide a scholarship program to disabled officers and
5 their families; and

6 c. help DFF operate a specific, substantial charitable program that assists
7 qualified disabled firefighters injured in the line of duty, especially during the
8 interval between the injury or death and the onset of official government benefits,
9 by providing cash benefits to pay necessary living expenses such as mortgages,
10 rent, medical coverage, and costs not covered by their departments; and to provide
11 death benefits to the families of firefighters killed in the line of duty.

12 45. In truth and in fact, in numerous instances, little or none of the
13 consumers' donations fund the particular charitable programs described to them,
14 and the consumers' donations are not used to:

15 a. help AVRF operate a specific, substantial charitable program that
16 provides financial assistance to the families of American soldiers fighting overseas;
17 provides "Thinking of You" care packages to veterans in Veterans Administration
18 hospitals across the country; and that provides financial support to veterans'
19 memorials;

20 b. help COPS operate specific, substantial charitable programs that
21 1) assist qualified police officers injured in the line of duty, and their families, by
22 paying mortgages, auto loans, and medical bills, and other costs not covered by
23 their departments; and 2) provide a scholarship program to disabled officers and
24 their families; and

25 c. help DFF operate a specific, substantial charitable program that assists
26 qualified disabled firefighters injured in the line of duty, especially during the
27 interval between the injury or death and the onset of official government benefits,
28 by providing cash benefits to pay necessary living expenses such as mortgages,

1 rent, medical coverage, and costs not covered by their departments; and to provide
2 death benefits to the families of firefighters killed in the line of duty.

3 46. Therefore, the representations described in Paragraph 44 are false and
4 misleading and constitute deceptive acts or practices in violation of Section 5(a) of
5 the FTC Act, 15 U.S.C. § 45(a).

6 COUNT THREE

7 **MISREPRESENTATION OF LOCAL BENEFIT**

8 47. In numerous instances, in connection with soliciting charitable
9 contributions from donors, defendants, directly or through their telemarketers,
10 represent, expressly or by implication, that the donor's contribution will directly
11 benefit persons or programs in the donor's state or local area, or will be earmarked
12 for use in the donor's community.

13 48. In truth and in fact, in numerous instances, little or none of the
14 donor's charitable contribution directly benefits persons or programs in the donor's
15 state or local area, and is not earmarked for use in the donors' community.

16 49. Therefore, the representation described in Paragraph 47 is false and
17 misleading and constitutes a deceptive act or practice in violation of Section 5(a) of
18 the FTC Act, 15 U.S.C. § 45(a).

19 COUNT FOUR

20 **MISREPRESENTATION OF POLICE AFFILIATION**

21 50. In numerous instances, in connection with soliciting charitable
22 contributions from donors, defendant COPS has represented, expressly or by
23 implication, that it is a "coalition" with "police and sheriffs" as members.

24 51. In truth and in fact, COPS is not a coalition and has no police officers
25 or sheriffs as members.

26 52. Therefore, the representation described in Paragraph 50 is false and
27 misleading and constitutes a deceptive act or practice in violation of Section 5(a) of
28 the FTC Act, 15 U.S.C. § 45(a).

1 **COUNT FIVE**

2 **MEANS AND INSTRUMENTALITIES**

3 53. In numerous instances, in connection with soliciting charitable
4 contributions from donors, defendants, individually or in concert with others, have
5 provided their telemarketers with the means and instrumentalities to deceive
6 donors, as described in Paragraphs 41 - 52 above. The means and instrumentalities
7 that defendants have provided include but are not limited to affiliation with a
8 purported nonprofit organization in whose name solicitations can be made and
9 telemarketing scripts and other solicitation materials, such as brochures, donor
10 invoices, decals, and thank you letters, that describe the purported programs of
11 AVRF, COPS and DFF.

12 54. By providing the means and instrumentalities to others for the
13 commission of deceptive acts and practices as described in Paragraph 53,
14 defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

15 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

16 55. Congress directed the FTC to prescribe rules prohibiting abusive and
17 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15
18 U.S.C. §§ 6101 - 6108, in 1994. On August 16, 1995, the FTC adopted the
19 Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became
20 effective on December 31, 1995. On January 29, 2003, the FTC amended the
21 Original TSR by issuing a Statement of Basis and Purpose and the final amended
22 Telemarketing Sales Rule (the "TSR"). 68 Fed. Reg. 4580, 4669.

23 56. The TSR defines "charitable contribution" to mean "any donation or
24 gift of money or any other thing of value." 16 C.F.R. § 310.2(f).

25 57. The TSR defines "donor" to mean "any person solicited to make a
26 charitable contribution." 16 C.F.R. § 310.2(m).

27 58. The TSR defines "telemarketer" to mean "any person who, in
28 connection with telemarketing, initiates or receives telephone calls from a

1 customer or donor.” 16 C.F.R. § 310.2(bb).

2 59. The TSR defines “telemarketing” to mean “a plan, program, or
3 campaign which is conducted to induce the purchase of goods or services or a
4 charitable contribution, by use of one or more telephones and which involves one
5 or more interstate telephone call.” 16 C.F.R. § 310.2(cc).

6 60. The TSR prohibits any person from providing substantial assistance or
7 support to any seller or telemarketer when that person knows or consciously avoids
8 knowing that the seller or telemarketer is engaged in any practice that violates
9 Sections 310.3(a) or (c) or 310.4 of the Rule. 16 C.F.R. § 310.3(b).

10 61. The TSR prohibits telemarketers from making a false or misleading
11 statement to induce a charitable contribution. 16 C.F.R. Part 310.3(a)(4).

12 62. The TSR prohibits, *inter alia*, telemarketers from misrepresenting,
13 directly or by implication, the nature, purpose, or mission of an entity on behalf of
14 which a charitable contribution is being requested; the purpose for which any
15 charitable contribution will be used; the percentage or amount of any charitable
16 contribution that will go to a charitable organization or any particular charitable
17 program; and a charitable organization’s or telemarketer’s affiliation with, or
18 endorsement or sponsorship by, any person or government entity. 16 C.F.R.
19 § 310.3(d)(1), (3), (4), and (6).

20 63. Pursuant to Section 3 (c) of the Telemarketing Act, 15 U.S.C. § 6102
21 (c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the
22 TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in
23 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

24 COUNT SIX

25 ASSISTING AND FACILITATING

26 64. As described in Paragraphs 12 to 39 above, on numerous occasions, in
27 connection with soliciting charitable contributions by telephone, defendants have
28 provided substantial assistance or support to telemarketers while knowing or

1 consciously avoiding knowing that the telemarketers are engaged in acts or
2 practices that violate Sections 310.3(a)(4) and 310.3(d)(1), (3), (4) and (6) of the
3 TSR, thereby violating Section 310.3(b) of the TSR. 16 C.F.R. § 310.3(b).

4 **INJURY TO THE PUBLIC INTEREST**

5 65. Consumers, charitable organizations, and the public interest have all
6 suffered injury as a result of defendants' violations of Section 5(a) of the FTC Act
7 and the TSR. In addition, Defendants have been unjustly enriched as a result of
8 their unlawful practices. Absent injunctive relief by this Court, defendants are
9 likely to continue to injure consumers and charitable organizations, reap unjust
10 enrichment, and harm the public interest.

11 **THIS COURT'S POWER TO GRANT RELIEF**

12 66. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
13 to grant injunctive and such other relief as the Court may deem appropriate to halt
14 and redress violations of the FTC Act and the TSR. The Court, in the exercise of its
15 equitable jurisdiction, may award ancillary relief, including rescission of contracts
16 and restitution, and the disgorgement of ill-gotten monies, to prevent and remedy
17 any violation of any provision of law enforced by the FTC.

18 67. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the
19 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as
20 the Court finds necessary to redress injury to consumers resulting from defendants'
21 violations of the TSR, including the rescission and reformation of contracts, and
22 the refund of money.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Sections
25 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the
26 Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers,
27 requests that the Court:

28 (1) Enter a permanent injunction to prevent future violations of the FTC

1 Act and the TSR by defendants;

2 (2) Award such relief as the Court finds necessary to redress injury to
3 consumers resulting from the defendants' violations of the FTC Act and the TSR,
4 including but not limited to, rescission or reformation of contracts, restitution, the
5 refund of monies paid, and the disgorgement of ill-gotten monies; and

6 (3) Award the FTC the costs of bringing this action, as well as such other
7 and additional equitable relief as the Court may determine to be just and proper.

8

9 DATED: May 18, 2009.

10

Respectfully submitted,

11

DAVID C. SHONKA
Acting General Counsel

12

13

CHARLES A. HARWOOD
Regional Director

14

TRACY S. THORLEIFSON

15

DAVID M. HORN

16

MIRY KIM

17

JENNIFER M. BRENNAN

18

Attorneys for Plaintiff

19

Federal Trade Commission

20

21

22

By: Jennifer Brennan

23

24

Jennifer M. Brennan

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50