

1 XAVIER BECERRA
Attorney General of California
2 TANIA M. IBANEZ
Senior Assistant Attorney General
3 ELIZABETH S. KIM
Supervising Deputy Attorney General
4 JULIANNE MOSSLER
Deputy Attorney General
5 State Bar No. 243749
455 Golden Gate Avenue, Suite 11000
6 San Francisco, CA 94102-7004
Telephone: (415) 510-3494
7 Fax: (415) 703-5843
E-mail: Julianne.Mossler@doj.ca.gov
8 *Attorneys for the People of the State of California*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11
12 **THE PEOPLE OF THE STATE OF CALIFORNIA,**
13 Plaintiffs,

14 v.

15 **MOVE AMERICA FORWARD, A CALIFORNIA**
16 **NONPROFIT PUBLIC BENEFIT CORPORATION;**
17 **SALVATORE RUSSO; MELANIE MORGAN;**
18 **HOWARD KALOOGIAN; SHAWN CALLAHAN;**
19 **RUSSO, MARSH & ASSOCIATES, A LIMITED**
LIABILITY COMPANY; AND DOES 1 THROUGH
50, INCLUSIVE,

20 Defendants.

Exempt from Filing and Reporter Fees --
Gov. Code, § 6103

Case No.

COMPLAINT FOR CIVIL PENALTIES, AN
ACCOUNTING, A CONSTRUCTIVE
TRUST, RESTITUTION, REMOVAL OF
DIRECTORS, AND FOR OTHER RELIEF
ARISING FROM:

(1) BREACH OF FIDUCIARY DUTY (BUS.
& PROF. CODE, §17510.8; CORP. CODE, §§
5231, 6215, 6320)

(2) AIDING AND ABETTING A BREACH
OF FIDUCIARY DUTY (GOV. CODE, §
12596)

(3) SELF-DEALING (CORP. CODE, § 5233)

(4) UNJUST ENRICHMENT (CIV. CODE, §
2224)

(5) DECEPTIVE AND MISLEADING
SOLICITATIONS (BUS. & PROF. CODE, §
17510.8; CORP. CODE, § 6215; GOV. CODE,
§ 12599.6)

(6) FAILING TO COMPLY WITH

4 Plaintiffs, the People of the State of California, file this Complaint, and complain and allege
5 as follows:

6 **PARTIES**

7 1. Plaintiffs, the People of the State of California, are the true beneficiaries of the
8 charitable assets held by Move America Forward, and include members of the class of charitable
9 beneficiaries of Move America Forward.

10 2. The Attorney General, Xavier Becerra, who brings this action on behalf of the People,
11 is the Attorney General of the State of California, and has the primary responsibility for
12 supervising charitable trusts, “for ensuring compliance with trusts and articles of incorporation,
13 and for protecting assets held by charitable trusts and public benefit corporations.” (Gov. Code, §
14 12598.) The Attorney General may bring charitable trust enforcement actions under the
15 provisions of the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Gov.
16 Code, § 12580 et seq.), the Nonprofit Corporation Law (Corp. Code, § 5000 et seq.), and those
17 provisions of the Business and Professions Code that prohibit unlawful, unfair, and fraudulent
18 business practices (Bus. & Prof. Code, § 17200 et seq., and § 17510 et seq.) Additionally, the
19 Attorney General is entitled to recover all reasonable fees and actual costs incurred in this
20 charitable trust enforcement action as set forth in section 12598, subdivision (b) of the
21 Government Code, to be used for the Attorney General’s charitable trust enforcement
22 responsibilities. (Gov. Code, § 12586.2.)

23 3. Defendant Move America Forward is a California nonprofit public benefit
24 corporation. As such, all of the assets of Move America Forward are held subject to a charitable
25 trust, for the benefit of its charitable beneficiaries.

26 4. Move America Forward is operated by defendants Salvatore Russo, Melanie Morgan,
27 Howard Kaloogian, and Shawn Callahan. (Collectively, OFFICER/DIRECTOR
28 DEFENDANTS.)

1 5. Move America Forward has its headquarters in Sacramento County, State of
2 California, and has engaged in fundraising activities in Sacramento County, and throughout the
3 State of California.

4 6. Move America Forward filed its Articles of Incorporation with the California
5 Secretary of State on June 2, 2004, and received tax-exempt status from the Internal Revenue
6 Service, under 26 U.S.C. section 501(c)(3) of the Internal Revenue Code, in 2004 based on its
7 representation that it would operate as a charitable organization. Move America Forward's
8 federal Employer Identification Number (EIN) is 84-1627277.

9 7. Move America Forward registered with the Attorney General's Registry of Charitable
10 Trusts (Registry) on December 31, 2005, and was assigned registration number 126661.

11 8. Defendant Salvatore Russo (Russo) is a resident of Sacramento County, State of
12 California. Russo has a law degree, and is the "Chief Strategist" For Move America Forward.
13 From 2004 to present, Russo was and continues to be a director of Move America Forward, and
14 owed and continues to owe fiduciary duties of care, loyalty, and to act in good faith in the best
15 interest of Move America Forward and its charitable beneficiaries, and a duty to put their interests
16 ahead of his own. Russo is also co-founder and "Chief Strategist" of the political action
17 organization known as "Tea Party Express," which, at all times relevant, occupied office space
18 provided by Move America Forward at no charge.

19 9. Defendant Melanie Morgan (Morgan) is a resident of Marin County, State of
20 California. Morgan is the Chairman of the board of Move America Forward. From 2005 to
21 present, Morgan was and continues to be an officer or director of MAF, and owed and continues
22 to owe fiduciary duties of care, loyalty, and to act in good faith in the best interest of Move
23 America Forward and its charitable beneficiaries, and a duty to put their interests ahead of her
24 own. Morgan's actions or inaction allowed other OFFICER/DIRECTOR DEFENDANTS to
25 divert charitable funds away from Move America Forward and its beneficiaries, among other
26 wrongdoings.

27 10. Defendant Howard Kaloogian (Kaloogian) is a resident of the state of New
28 Hampshire. From 2005 to present, Kaloogian was and continues to be an officer or director of

1 Move America Forward, and owed and continues to owe fiduciary duties of care, loyalty, and to
2 act in good faith in the best interest of Move America Forward and its charitable beneficiaries,
3 and owes a duty to put their interests ahead of his own. Kaloogian is an attorney, and also is
4 chairman of an organization co-founded by Russo, Tea Party Express.

5 11. On information and belief, defendant Shawn Callahan (Callahan) is a resident of
6 Sacramento County, State of California. Before becoming Move America Forward's Executive
7 Director, Callahan was employed by Russo at defendant Russo Marsh & Associates. From 2009
8 to present, Callahan was and continues to be the Executive Director of Move America Forward,
9 and owed and continues to owe fiduciary duties of care, loyalty, and to act in good faith in the
10 best interest of Move America Forward and its charitable beneficiaries, and a duty to put their
11 interests ahead of his own.

12 12. On information and belief, defendant Russo Marsh & Associates Inc. (Russo Marsh)
13 is a California company, located at the same address occupied by Move America Forward: 3105
14 Fite Circle, Suite 108, Sacramento, California 95827. At all times relevant, Russo Marsh
15 occupied space in Move America Forward's premises free of charge, and performed marketing
16 and consulting services for Move America Forward.

17 13. Defendants DOES 1 through 50 are named as fictitious defendants who participated
18 with or acted in concert with one or more of the defendants, or who acted on behalf of or as
19 agents, servants or employees of one or more of the defendants, but whose true names and
20 capacities, whether individual, corporate, or otherwise, are presently unknown to the People. On
21 information and belief, defendants DOES 1 through 50 have directly or indirectly participated in
22 and are responsible for the acts and omissions that are more specifically described below, and the
23 relief that the People seek were proximately caused by such defendants. Because the People are
24 presently uninformed as to the true names and capacities of defendants DOES 1 through 50, the
25 People sue them by fictitious names, but will seek leave to amend this Complaint when their true
26 names and capacities are discovered.

27 JURISDICTION AND VENUE

28 14. At all times relevant, defendants and each of them transacted business in Sacramento

1 County, and elsewhere in the state of California. Defendant Move America Forward operates its
2 business in Sacramento County, and defendants Russo and Callahan are residents of Sacramento
3 County. The violations of law described in this Complaint were and are now being carried out, in
4 part, in Sacramento County and throughout the State of California. This Court has jurisdiction
5 under Article VI, section 10, of the California Constitution, and section 393 of the Code of Civil
6 Procedure.

7 GENERAL ALLEGATIONS

8 15. Whenever reference is made in this Complaint to any act of any corporate or other
9 business defendant, such allegation shall mean that said defendant and its owners, officers,
10 directors, agents, employees, or representatives did or authorized such acts while engaged in the
11 management, direction, or control of the affairs of such defendant and while acting within the
12 scope and course of their duties. Whenever reference is made in this Complaint to any act of
13 defendants, such allegation shall mean that each defendant acted individually and jointly with the
14 other defendants named in that cause of action.

15 16. Whenever reference is made in this Complaint to any act of any individual defendant,
16 such allegation shall be deemed to mean that said defendant is and was acting (a) as a principal,
17 (b) under express or implied agency, and/or (c) with actual or ostensible authority to perform the
18 acts so alleged on behalf of himself and/or on behalf of every other defendant.

19 17. Move America Forward was founded in 2004 by defendants Russo, Morgan, and
20 Kaloogian to support active-duty troops, and promote the United States' war efforts. For
21 example, in 2005, Move America Forward organized a caravan of about 4,000 activists to
22 confront grieving military mother Cindy Sheehan during her vigil at then-president George W.
23 Bush's ranch in Crawford, Texas. Move America Forward also attempted to shut down director
24 Michael Moore's anti-war film, *Fahrenheit 9/11*. In approximately 2006, Move America
25 Forward began its program of fundraising for "care packages" to be sent to active-duty troops.
26 Russo is listed on Move America Forward's IRS Forms 990 (Return of Organization Exempt
27 from Income Tax) as a director and "Chief Strategist."

28 18. Under Corporations Code section 5213, nonprofit public benefit corporations like

1 Move America Forward are required to have, at minimum, a president/chairperson, a secretary,
2 and a treasurer/chief financial officer.

3 19. According to Move America Forward's Bylaws, the officers of the corporation are:
4 (1) president; (2) vice president; (3) secretary; and (4) treasurer. The president acts as the
5 executive officer and general manager; the vice president has duties and responsibilities in
6 management of the corporation; the secretary keeps the minutes and corporate seal; and the
7 treasurer is the chief financial officer of the corporation.

8 20. Since at least 2008, defendant Morgan has functioned as Move America Forward's
9 "Chairman," but the offices of secretary and treasurer/chief financial officer have been vacant.

10 21. Defendant Russo Marsh is a for-profit political marketing and consulting firm with a
11 focus on Tea Party politics and pro-war candidates. Defendant Russo is the owner, president,
12 and/or director of Russo Marsh. Move America Forward pays Russo Marsh to handle the
13 placement of television, radio, print, internet or other advertising, and to manage Move America
14 Forward's major fundraising programs. Move America Forward also pays all the rent for office
15 space used by Russo Marsh.

16 22. Move America Forward's Articles of Incorporation set out that: "The property of this
17 corporation is irrevocably dedicated to educational purposes and no part of the net income or
18 assets of this corporation shall ever inure to the benefit of any director, officer or member thereof
19 or to the benefit of any private person."

20 23. Move America Forward's Bylaws state that it is organized exclusively for "charitable
21 and educational purposes on issues of importance nationally including to provide and promote
22 support for our brave men and women in the Armed Forces, without regard to race, creed, sex or
23 national origin and consistent with applicable laws governing such activities."

24 24. According to its website, Move America Forward "is a military charity and the
25 nation's largest grassroots pro-troop organization." Move America Forward claims that its care
26 package program has delivered 315 tons of care packages to troops in Afghanistan and Iraq, and
27 sponsored trips to Iraq with Gold Star parents, and radio talk show hosts. Move America
28 Forward's website does not describe or disclose its support of political causes or its financial

1 relationships with Russo's for-profit companies.

2 25. Move America Forward's website also did not describe or disclose the financial
3 relationships it had with Frontline Strategies and DonationSafe; two for-profit companies
4 operated by defendant Callahan from 2009 to 2013, and from 2011 to 2014, respectively.

5 26. According to the IRS, "all section 501(c)(3) organizations are absolutely prohibited
6 from directly or indirectly participating in, or intervening in, any political campaign on behalf of
7 (or in opposition to) any candidate for elective public office. Contributions to political campaign
8 funds or public statements of position (verbal or written) made on behalf of the organization in
9 favor of or in opposition to any candidate for public office clearly violate the prohibition against
10 political campaign activity." ([https://www.irs.gov/charities-non-profits/charitable-
11 organizations/the-restriction-of-political-campaign-intervention-by-section-501-c-3-tax-exempt-
12 organizations.](https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501-c-3-tax-exempt-organizations))

13 27. Despite the IRS prohibition, Move America Forward operated a political action
14 committee called Move America Forward Freedom Political Action Committee (MAFPAC).
15 MAFPAC's website describes it as "a Political Action Committee *organized and brought to you*
16 *by Move America Forward.*" (Emphasis added.)

17 28. Move America Forward does not tell donors that a portion of charitable donations are
18 used to promote political causes and campaigns. For example, in 2012, Move America Forward
19 issued press releases officially endorsing U.S. Congressional candidate Michael Grimm, and U.S.
20 Senate candidate Josh Mandel. Both endorsements were produced on Move America Forward
21 letterhead that prominently displays the "MoveAmericaForward.org" logo. Shortly after Grimm
22 was elected to Congress, he was sentenced to eight months in prison for tax evasion.

23 ([https://www.nytimes.com/2015/07/18/nyregion/michael-grimm-former-congressman-gets-8-
24 month-sentence.html?_r=0.](https://www.nytimes.com/2015/07/18/nyregion/michael-grimm-former-congressman-gets-8-month-sentence.html?_r=0))

25 29. Move America Forward also pays all the rent on office space occupied by MAFPAC,
26 and for office space occupied by Russo's and Kaloogian's political action organization, Tea Party
27 Express. By providing free office space, Move America Forward indirectly participates in the
28 political campaigns endorsed by MAFPAC and Tea Party Express. ([http://www.mafpac.org/;](http://www.mafpac.org/)

1 <http://www.teapartyexpress.org/2016-endorsements.>)

2 30. Move America Forward falsely reported on its IRS Form 990 that it did not engage in
3 direct or indirect political campaign activities on behalf of candidates for political office.

4 31. In 2004, Move America Forward stated in its IRS Form 1023 (Application for
5 Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code), that members
6 of the board would be independent, and not “disqualified persons” and would not have any
7 business or family relationships with “disqualified persons.”

8 32. Defendant Russo March is a political marketing and consulting firm supporting Tea
9 Party and military causes. For example, it supported defendant Morgan’s campaign asking
10 Congress to censure former president Jimmy Carter, and it also supported defendant Kaloogian’s
11 efforts to dissuade CBS from airing a miniseries that he believed was critical of former president
12 Ronald Reagan. Russo Marsh also provided consulting and marketing services to Kaloogian
13 while he served in the California Assembly.

14 33. Defendant Russo’s for-profit companies were and continue to be involved in every
15 aspect of Move America Forward’s programs, from “consulting,” to transferring care package
16 funds, purchasing items for care packages, fundraising, and media buying. In addition to
17 receiving rent-free office space, Russo’s for-profit companies are routinely paid high fees and
18 commissions by Move America Forward.

19 34. Defendant Russo owned and operated The Campaign Store, LLC (The Campaign
20 Store), which, during the times alleged in this Complaint, transferred deposits to Move America
21 Forward’s bank account. Russo used The Campaign Store to intercept online donations, then
22 charged fees ranging from 7.55% to 10.06% to transfer the remaining funds to Move America
23 Forward’s bank account. The Campaign Store did not have any employees and did not add any
24 value to the transactions. Instead, it served simply as a vehicle for defendant Russo to skim off a
25 percentage of donations received by Move America Forward through his for-profit company. As
26 with Russo’s other for-profit enterprises, Move America Forward paid all the rent for office space
27 used by The Campaign Store before The Campaign Store was dissolved in 2016.

28 35. Beginning with its 2011 IRS Form 990 and Form RRF-1 (Annual Registration

1 Renewal Fee Report to Attorney General of California), Move America Forward stopped
2 reporting its self-dealing transactions with The Campaign Store, even though it continued to pay
3 significant fees and commissions to The Campaign Store through at least November 2014.

4 36. Between 2008 and 2014, Move America Forward paid The Campaign Store at least
5 \$492,485.00 for “bank service charges.” This is in addition to, and significantly higher than, the
6 2.2% of the transaction total plus 30¢ per transaction fees automatically charged by PayPal.

7 37. The Campaign Store also charged Move America Forward additional fees for “order
8 fulfillment” of the care packages purchased by donors. The fees ranged from 7.95% to 13.15% of
9 the order total. The Campaign Store operated as nothing more than an “online shopping cart,”
10 and added no value to the procurement, processing, or shipping of the care packages.
11 Nevertheless, The Campaign Store received approximately \$505,722.00 in order fulfillment fees
12 from Move America Forward between January 2008 and October 2014.

13 38. Russo’s for-profit consulting firm, defendant Russo Marsh, also gets a cut of the
14 action. Russo Marsh orders items for use by Move America Forward in its care packages, such as
15 coffee and beef jerky, among others. Russo Marsh then forwards the vendor bill to Move
16 America Forward for payment, and charges Move America Forward an additional commission of
17 17.65% of the total amount of each vendor order.

18 39. From 2008 to part way through 2013, Russo Marsh also charged and Move America
19 Forward paid a 15% “management fee” to manage “extraordinary events.”

20 40. Russo Marsh also receives a 15% commission from Move America Forward for the
21 placement of advertising.

22 41. Between January 2008 and November 2011, Move America Forward paid
23 approximately \$821,372 in fees, commissions, and “expense reimbursements” to Russo Marsh.

24 42. In January 2012, Russo Marsh began charging Move America Forward a \$5,000.00
25 “consulting fee” in lieu of itemized expense reimbursements and commissions.

26 43. Fees and commissions are not the only way that Russo’s for-profit companies
27 squeezed money to benefit Russo from charitable donations intended for combat troops. Move
28 America Forward also pays and/or paid all the rent for office space it shares with Russo Marsh,

1 The Campaign Store, Tea Party Express, MAFPAC, and Russo's affiliate, Dutra
2 Communications. Move America Forward also paid all the rent for office space it shared with
3 Callahan's for-profit companies, Frontline Strategies and DonationSafe. In exchange for Move
4 America Forward's payment of all the rent for all the for-profit companies, Russo allows Move
5 America Forward to share the mailing list of potential donors used by Tea Party Express, and
6 provides monthly updates to the list.

7 44. The OFFICER/DIRECTOR DEFENDANTS have never calculated the value of Tea
8 Party Express's donor list updates or compared it to the value of the free office space provided by
9 Move America Forward to all of their for-profit companies.

10 45. Move America Forward does not, and did not, have written contracts with any of
11 Russo's or Callahan's for-profit companies. The OFFICER/DIRECTOR DEFENDANTS have
12 never required written contracts between Move America Forward and Russo's or Callahan's for-
13 profit companies, or negotiated the terms of service or compensation. The
14 OFFICER/DIRECTOR DEFENDANTS also have never seriously considered bids from
15 disinterested third-party vendors for the services, or conducted any research to determine whether
16 the services provided by Russo's or Callahan's for-profit companies were necessary or if they
17 could be obtained from disinterested third-parties at a lower cost.

18 46. In 2008, Move America Forward reported \$1,958,616.00 in revenue from charitable
19 donations. Of that, \$673,857.00, or more than 34% of those charitable donations were paid to
20 Russo's for-profit companies.

21 47. In 2009, Mover America Forward reported \$1,623,298.00 in revenue from charitable
22 donations. Of that, \$770,871.00, or more than 47% of those charitable donations were paid to
23 Russo's for-profit companies.

24 48. In 2010, Mover America Forward reported \$1,476,604.00 in revenue from charitable
25 donations. Of that, \$578,069.00, or more than 39% of those charitable donations were paid to
26 Russo's for-profit companies.

27 49. In 2011, Move America Forward reported \$1,490,644.00 in revenue from charitable
28 donations. Of that, \$184,761.00, or more than 12% of those charitable donations were paid to

1 Russo's for-profit companies. This is also the first year that Move America Forward stopped
2 reporting business expenses related to The Campaign Store on its IRS Form 990. However,
3 Move America Forward's bank records demonstrate that it continued to pay commissions to The
4 Campaign Store through November 2014. Therefore, defendant Russo actually received a larger
5 portion of Move America Forward's charitable assets, through his for-profit companies, but it
6 went unreported.

7 50. In 2012, Move America Forward reported \$1,274,424.00 in revenue from charitable
8 donations. Of that, \$133,433.00, or more than 10% of those charitable donations were paid to
9 Russo's for-profit companies. Again, Move America Forward failed to report additional
10 commissions it paid to Russo through The Campaign Store.

11 51. In 2013, Move America Forward reported \$982,758.00 in revenue from charitable
12 donations. Of that, \$141,485.00, or more than 14% of those charitable donations were paid to
13 Russo's for-profit companies. Again, Move America Forward failed to report additional
14 commissions it paid to Russo through The Campaign Store.

15 52. In 2014, Move America Forward reported \$1,083,522.00 in revenue from charitable
16 donations. Of that, \$100,000.00, or approximately 9% of those charitable donations were paid to
17 Russo's for-profit companies. Again, Move America Forward failed to report additional
18 commissions it paid to Russo through The Campaign Store. This was also the year that Move
19 America Forward became aware that it was being investigated by the California Department of
20 Justice, Office of the Attorney General.

21 53. In 2015, Move America Forward reported \$1,425,314.00 in revenue from charitable
22 donations. Of that, \$70,259.00, or approximately 5% of those charitable donations were paid to
23 Russo's for-profit companies.

24 54. Move America Forward, through its OFFICER/DIRECTOR DEFENDANTS, never
25 reported the self-dealing with defendant Callahan's for-profit companies, DonationSafe and
26 Frontline Strategies on either its IRS Forms 990, or the forms RRF-1 filed with the Attorney
27 General's Registry of Charitable Trusts.

28 55. Defendants Move America Forward, Russo, Morgan, Kaloogian, and Callahan made

1 material misrepresentations to donors. For example, in February 2013, Move America Forward
2 launched a fundraising campaign to provide care packages to all 800 Marines in a 1st Marine
3 Division battalion nicknamed Geronimo. Move America Forward claimed to have met its
4 fundraising goal and sent care packages to the marines in Afghanistan. But on information and
5 belief, the marines of Geronimo were not in Afghanistan during the fundraising drive, and were
6 instead deployed to Okinawa, Japan. Moreover, at least some of the images Move America
7 Forward used in its solicitations were actually taken without permission from competitor
8 charities, Operation Gratitude and AdoptAPlatoon, at unaffiliated events.

9 56. Also in 2013, Move America Forward falsely claimed to have a corporate partnership
10 with the Walter Reed National Military Medical Center, which is operated by the U.S.
11 Department of Defense.

12 57. On at least one occasion, Move America Forward invaded the privacy of an injured
13 veteran by using his name and story without permission, in order to obtain donations.

14 58. The above-mentioned practices by defendants intentionally mislead both potential
15 and actual donors, as they give donors a flawed view of Move America Forward's charitable
16 reach, and also provide a false sense of effectiveness of the administration of Move America
17 Forward's mission.

18 59. The named individual defendants and defendants DOES 1 through 50 have
19 committed and continue to commit the breaches of fiduciary duty, violations of trust, violations of
20 law and other wrongful acts as alleged in this Complaint. In order to preserve charitable assets
21 and to prevent waste, dissipation and loss of charitable assets in this State to the irreparable
22 damage of the People of this State, it is necessary that the requested injunctive relief and removal
23 of officers and directors be granted, charitable funds recovered on behalf of the People, and
24 penalties assessed against defendants.

25 60. Unless otherwise stated in this Complaint, the actions and omissions forming the
26 bases of the causes of action alleged in this Complaint occurred on or after January 1, 2008.
27 Unless otherwise stated in this Complaint, plaintiffs and the Attorney General did not have
28 knowledge or information of the facts and circumstances underlying these causes of action before

1 February 20, 2015, when Move America Forward responded to the Attorney General's first
2 document demand in connection with the Attorney General's investigation of Move America
3 Forward. Plaintiffs did not discover these circumstances before that date, and could not in the
4 exercise of reasonable diligence have discovered them before that date.

5 **FIRST CAUSE OF ACTION**
6 **BREACH OF FIDUCIARY DUTY**
7 **(AGAINST DEFENDANTS RUSSO, MORGAN, KALOOGIAN,**
8 **CALLAHAN, AND DOES 1 THROUGH 25.)**

9 61. The People re-allege and incorporate by reference each of the allegations of
10 paragraphs 1 through 60 of this Complaint.

11 62. The People are informed and believe that at all times relevant, defendants Russo,
12 Morgan, Kaloogian, Callahan, and DOES 1 through 25, were officers and/or directors and/or de
13 facto directors and/or agents of Move America Forward and owed fiduciary duties of due care,
14 loyalty and good faith to act in the best interest of Move America Forward. The People are
15 further informed and believe that each defendant breached his fiduciary duties to Move America
16 Forward by engaging in, participating in unlawful actions, or omissions, including, but not
17 limited to, the acts or omissions discussed below in violation of common law trust principles and
18 state statutes (including, but not limited to, Corporations Code section 5231).

19 **A. Failure to Exercise Duties of Care, Loyalty, and Good Faith in the Best**
20 **Interest of Move America Forward by Russo, Morgan, and Kaloogian.**

21 63. Corporations Code section 5231, subdivision (a), requires corporate directors to
22 perform their duties in good faith, in the best interests of the corporation, and "with such care,
23 including reasonable inquiry, as an ordinarily prudent person in a like position would use under
24 similar circumstances." Defendants Russo, Morgan, and Kaloogian violated their duties to Move
25 America Forward by:

- 26 1. Allowing the diversion of substantial charitable assets to defendants Russo and
27 Callahan through their for-profit companies;
- 28 2. Failing to research and solicit bids for services from disinterested third-party vendors;
3. Failing to engage in good faith negotiation of services and compensation between

1 Move America Forward and Russo's for-profit companies, and between Move America Forward
2 and Callahan's for-profit companies;

3 4. Failing to adequately deliberate whether hiring Russo's and Callahan's for-profit
4 companies to provide services to Move America Forward was in the best interest of Move
5 America Forward;

6 5. Failing to require written contracts setting out the terms and conditions of the services
7 provided by Russo's and Callahan's for-profit companies to Move America Forward, and the
8 compensation provided by Move America Forward;

9 6. Failing to comply with statutory requirements before allowing Russo and Callahan to
10 engage in self-dealing transactions with Move America Forward;

11 7. Using charitable donations to pay rent for office space occupied by Russo's for-profit
12 companies, Callahan's for-profit companies, MAFPAC, Tea Party Express, and Dutra
13 Communications;

14 8. Failing to exercise due care in their review of Move America Forward's IRS Forms
15 990 and RRF-1 forms, resulting in inaccurate reports being filed with government agencies;

16 9. Allowing Move America Forward to make material misrepresentations to members of
17 the public and governmental agencies;

18 10. Violating state law and Move America Forward's bylaws by failing to appoint
19 corporate officers; and

20 11. Risking Move America Forward's IRC section 501(c)(3) nonprofit tax-exempt status
21 by engaging in prohibited political activity, including supporting political candidates and
22 providing free office space for MAFPAC, and Tea Party Express.

23 **B. Failure to Exercise Duties of Care, Loyalty, and Good Faith in the Best Interest**
24 **of Move America Forward by Callahan.**

25 64. As an Executive Director of Move America Forward, Callahan has an affirmative
26 fiduciary duty to protect the interests of Move America Forward, and to refrain from doing
27 anything that injures Move America Forward or deprives it of profit or advantage. The fiduciary
28 duty owed to Move America Forward applies to all officers with management duties and

1 discretion, not just to those with the ability to control the corporation. An officer or director is
2 liable for damages incurred by the corporation even if he received no consideration from the
3 transaction in question. Callahan breached his duties to Move America Forward by:

- 4 1. Allowing the diversion of substantial charitable assets to defendants Russo and
5 Callahan through their for-profit companies;
- 6 2. Failing to solicit bids for services from disinterested third-party vendors;
- 7 3. Failing to engage in good faith negotiation of services and compensation between
8 Move America Forward and Russo's for-profit companies, and between Move America Forward
9 and Callahan's for-profit companies;
- 10 4. Failing to adequately deliberate whether hiring Russo's and Callahan's for-profit
11 companies to provide services to Move America Forward was in the best interests of Move
12 America Forward;
- 13 5. Failing to require written contracts setting out the terms and conditions of the services
14 provided by Russo's and Callahan's for-profit companies to Move America Forward, and the
15 compensation provided by Move America Forward;
- 16 6. Failing to comply with statutory requirements before allowing Russo and Callahan to
17 engage in self-dealing transactions with Move America Forward;
- 18 7. Using charitable donations to pay rent for office space occupied by Russo's for-profit
19 companies, Callahan's for-profit companies, MAF PAC, Tea Party Express, and Dutra
20 Communications;
- 21 8. Failing to exercise due care in the review of Move America Forward's IRS Form
22 990s and RRF-1 forms, resulting in inaccurate reports being filed with government agencies;
- 23 9. Allowing Move America Forward to make material misrepresentations to members of
24 the public and governmental agencies;
- 25 10. Violating state law and Move America Forward's bylaws by failing to appoint
26 corporate officers; and
- 27 11. Risking Move America Forward's IRC section 501(c)(3) nonprofit tax-exempt status
28 by engaging in prohibited political activity, including supporting political candidates and

1 providing free office space for MAFPAC, and Tea Party Express.

2 65. As a proximate result of the breach of duty as alleged in this cause of action, Move
3 America Forward and its charitable beneficiaries have been damaged in an amount presently
4 unknown to plaintiffs but believed to be in excess of \$250,000.00, and the People seek restitution.

5 66. As a result of the breach of duty described above, Move America Forward and its
6 charitable beneficiaries were damaged in an amount to be proven at trial, plus interest at the legal
7 rate, which must be paid by defendants Russo, Callahan, Morgan, and Kaloogian and Does 1-25.

8 67. Each of these violations exposes defendants to penalties for each act or omission.
9 (Gov. Code, § 12591.1, subds. (a) & (c).) As a result of the aforementioned violations, under
10 Government Code section 12591.1, the People are entitled to civil penalties in an amount that is
11 presently unknown, but believed to be in excess of \$84,000.00.

12 **SECOND CAUSE OF ACTION**
13 **AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY**
14 **(Against defendants Russo, Marsh & Associates, and Does 26 through 50.)**

15 68. The People re-allege and incorporate by reference each of the allegations of
16 paragraphs 1 through 67 of this Complaint.

17 69. The People are informed and believe and thereon allege that defendants Russo Marsh,
18 and DOES 26 through 50, aided and abetted in the breach of duty of the OFFICER/DIRECTOR
19 DEFENDANTS for the purpose of advancing their own interests or financial advantage.

20 70. On information and belief defendant Russo Marsh received excessive compensation
21 for services at the expense of Move America Forward and its beneficiaries.

22 71. As a proximate result of the aiding and abetting and/or participating in the breach of
23 duty as alleged in this cause of action, Move America Forward and its charitable beneficiaries
24 have been damaged in an amount presently unknown to plaintiffs but believed to be in excess of
25 \$250,000.00, and the People seek restitution.

26 72. In doing the acts alleged in this cause of action, Russo Marsh, and DOES 26 through
27 50 acted in callous disregard of the rights of Move America Forward, its charity beneficiaries, and
28 donors knowing that their conduct was substantially certain to injure them.

///

1 **THIRD CAUSE OF ACTION**
2 **ENGAGING IN SELF-DEALING**
3 **(Against defendants Russo, Callahan, Morgan, and Kaloogian and Does 1 through 25.)**

4 73. The People re-allege and incorporate by reference each of the allegations of
5 paragraphs 1 through 67 of this Complaint.

6 74. Corporations Code section 5233 defines “self-dealing transactions” as those
7 transactions involving the corporation in which one or more of its officers or directors has a
8 material financial interest. In order to ratify a self-dealing transaction, the board must establish
9 that the corporation met all of the following conditions: (A) the corporation entered into the
10 transaction for its own benefit; (B) the transaction was fair and reasonable to the corporation; (C)
11 the transaction was approved by the board in good faith by a vote of the uninterested directors;
12 and (D) the board determined that the corporation could not have obtained a more advantageous
13 arrangement. (Corp Code, § 5233, subs. (d)(2)(A)-(d)(2)(D).) The OFFICER/DIRECTOR
14 DEFENDANTS and Defendants Does 1-25 did not comply with this requirement when they
15 allowed Move America Forward to retain Russo’s for-profit companies Russo Marsh and The
16 Campaign Store, and Callahan’s for-profit companies, DonationSafe and Frontline Strategies.

17 75. On information and belief, during the times alleged in the Complaint, defendant
18 Russo was the owner, director, and/or officer of defendant Russo Marsh, and The Campaign Store
19 which provided services in exchange for money or other valuable consideration from Move
20 America Forward.

21 76. At the time Move America Forward entered into the transactions, Russo was a
22 director of Move America Forward and had a material financial interest because he was receiving
23 monies from Russo Marsh and The Campaign Store, but Russo failed to follow the disclosure
24 requirements for self-dealing transactions set out in Corporations Code section 5233. The
25 agreements were not approved by the California Attorney General, and they were not fair and
26 reasonable to Move America Forward at the time they occurred.

27 77. The transactions Move America Forward entered into with Russo, Russo Marsh, and
28 The Campaign Store during the period of January 2008 to the present constituted self-dealing
29 transactions within the meaning of Corporations Code section 5233 and none of the exceptions in

1 that section apply. Defendants Morgan, Kaloogian, and Callahan, and Does 1-25 knew or should
2 have known that all of the transactions involving Move America Forward, Russo, Russo Marsh,
3 and The Campaign Store were self-dealing transactions. In the alternative, if the defendants other
4 than defendant Russo did not know of the self-dealing nature of these transactions, it was because
5 defendant Russo wrongfully concealed the transactions from the other OFFICER/DIRECTOR
6 DEFENDANTS in bad faith and in breach of his duties of care and loyalty to Move America
7 Forward.

8 78. On information and belief, during the times alleged in the Complaint, defendant
9 Callahan was the owner, director, and/or officer of DonationSafe and Frontline Strategies which
10 provided services in exchange for money or other valuable consideration from Move America
11 Forward.

12 79. At the time Move America Forward entered into the transactions, Callahan was Move
13 America Forward's Executive Director, and had a material financial interest in the transaction
14 because he was receiving monies from DonationSafe and Frontline Strategies. But Callahan
15 failed to follow the disclosure requirements for self-dealing transactions set out in Corporations
16 Code section 5233. The agreements were not approved by the California Attorney General, and
17 they were not fair and reasonable to Move America Forward at the time they occurred.

18 80. The transactions Move America Forward entered into with Callahan, DonationSafe,
19 and Frontline Strategies constituted self-dealing transactions within the meaning of Corporations
20 Code section 5233, and none of the exceptions in that section apply. Defendants Russo, Morgan,
21 and Kaloogian and Does 1-25 knew or should have known that all of the transactions involving
22 Move America Forward, Callahan, DonationSafe, and Frontline Strategies were self-dealing
23 transactions. In the alternative, if the defendants other than defendant Callahan did not know of
24 the self-dealing nature of these transactions, it was because defendant Callahan wrongfully
25 concealed the transactions from the other OFFICER/DIRECTOR DEFENDANTS in bad faith
26 and in breach of his duties of care and loyalty to Move America Forward.

27 81. As a result of the self-dealing described above, Move America Forward and its
28 charitable beneficiaries were damaged in an amount to be proven at trial, plus interest at the legal

1 rate, which must be paid by defendants Russo, Callahan, Morgan, and Kaloogian and Does 1-25.

2 82. Under section 5233, plaintiffs are entitled to an accounting from the
3 OFFICER/DIRECTOR defendants, defendants Does 1-25, and Russo Marsh for any profits or
4 other benefits they made or received from the transactions, and they must be ordered to pay them
5 over to Move America Forward. To the extent Move America Forward suffered any damages as
6 a proximate result of the transactions, it seeks restitution and defendants Russo, Callahan,
7 Morgan, and Kaloogian and Does 1-25, must pay those damages to Move America Forward.

8 **FOURTH CAUSE OF ACTION**
9 **UNJUST ENRICHMENT**
10 **(Against defendants Russo, Morgan, Kaloogian, Callahan,**
11 **Russo Marsh & Associates, and Does 1 through 50.)**

12 83. The People re-allege and incorporate by reference each of the allegations of
13 paragraphs 1 through 82 of this Complaint.

14 84. All charitable organizations granted tax-exempt status under IRC section 501(c)(3)
15 are prohibited from allowing net earnings to inure to the benefit of any person having a personal
16 and private interest in the organization's activities.

17 85. Here, defendants Russo, Morgan, Kaloogian, and Callahan, and DOES 1 through 50
18 violated the prohibition against private inurement by allowing Move America Forward to pay
19 excessive and unnecessary fees and commissions, and other compensation to Russo Marsh, The
20 Campaign Store, DonationSafe, and Frontline Strategies for the personal financial benefit of
21 defendants Russo and Callahan.

22 86. The People are informed and believe and thereon allege that as a result of the breach
23 of trust and duty of loyalty perpetrated by defendants Russo, Morgan, Kaloogian, Callahan, and
24 DOES 1 through 50, Russo, Callahan, and Russo Marsh were unjustly enriched in an amount
25 presently unknown. By virtue of the breach of trust, defendants Russo, Morgan, Kaloogian,
26 Callahan, Russo Marsh, and DOES 1 through 50 hold all assets as constructive trustees for the
27 benefit of Move America Forward and its charitable beneficiaries. Defendants Russo, Morgan,
28 Kaloogian, Callahan, Russo Marsh, and DOES 1 through 50 must make full restitution to Move
America Forward for the benefit of the charitable beneficiaries of Move America Forward.

1 **FIFTH CAUSE OF ACTION**
2 **DECEPTIVE AND MISLEADING SOLICITATIONS**
3 **(Against defendants Move America Forward, Russo, Morgan, Kaloogian, Callahan,**
4 **and Does 1 through 50.)**

4 87. The People re-allege and incorporate by reference each of the allegations of
5 paragraphs 1 through 72 of this Complaint.

6 88. Defendants Move America Forward, Russo, Morgan, Kaloogian, and Callahan
7 violated Government Code section 12599.6, subdivisions (a), (f)(2), and (f)(4) by engaging in
8 unlawful, unfair, fraudulent or deceptive business practices through printed and verbal
9 solicitations, and social media sites using images, quotes, and information that were copied and
10 plagiarized from other organizations to mislead donors regarding the scope of Move America
11 Forward's affiliations and reach, while at the same time providing a false sense of the
12 effectiveness of the administration of its mission.

13 89. Defendants committed and continue to commit breach of fiduciary duty, and
14 deceptive and misleading actions including but not limited to the following:

- 15 1. Misrepresenting, explicitly or implicitly, the percentage or amount of charitable
16 contributions used for charitable programs;
- 17 2. Misrepresenting how and where charitable donations are used;
- 18 3. Breaching their fiduciary duty to donors, and to charitable beneficiaries by failing to
19 ensure that the donations are used for the purposes for which they were solicited;
- 20 4. Using restricted donations for purposes other than the purposes for which they were
21 given;
- 22 5. Engaging in or allowing improper self-dealing transactions;
- 23 6. Making false or misleading statements in informational returns (IRS Form 990 and
24 RRF-1) for Move America Forward by failing to report self-dealing transactions; and
- 25 7. Plagiarizing text and photographs from other websites without attribution to falsely
26 represent Move America Forward's affiliations and reach, and provide a false sense of security as
27 to the effectiveness of the administration of its mission.

28 90. Defendants' misleading representations, and violations of reporting requirements

1 have resulted in damages to Move America Forward. (Bus. & Prof. Code, § 17510.8; Gov. Code,
2 § 12599.6, subds. (f)(1) and (f)(4); Corp. Code, § 6215.). In addition, as a result of the
3 aforementioned misrepresentation to potential donors, under Government Code section 12591.1,
4 the People are entitled to civil penalties in an amount which is presently unknown, but believed to
5 be in excess of \$500,000.

6 91. Because the misrepresentations were proximately caused by the breach of trust of
7 defendants Russo, Morgan, Kaloogian, and Callahan, all penalties and attorney fees and costs
8 should be assessed against the defendants Russo, Morgan, Kaloogian, and Callahan jointly and
9 severally, but not Move America Forward.

10 **SIXTH CAUSE OF ACTION**
11 **FAILING TO COMPLY WITH STATUTES AND REGULATIONS**
12 **OF THE ATTORNEY GENERAL**
13 **(Against defendants Move America Forward, Russo, Morgan, Kaloogian, Callahan,**
14 **and Does 1 through 50.)**

15 92. The People re-allege and incorporate by reference each of the allegations of
16 paragraphs 1 through 72 of this Complaint.

17 93. Defendants' actions as described in this Complaint violated Government Code section
18 12599.6, subdivision (f)(1) by failing to report the self-dealing transactions between Move
19 America Forward and The Campaign Store from 2011 through 2014.

20 94. Defendants' actions as described in this Complaint violated Government Code section
21 12599.6, subdivision (f)(1) by failing to report the self-dealing transactions between Move
22 America Forward and Frontline Strategies from 2009, 2010, 2011, and 2013, and between Move
23 America Forward and DonationSafe from 2011 to 2014.

24 95. Defendants' actions as described in this Complaint violated Corporations Code
25 section 5213, subdivision (a) by failing to appoint corporate officers.

26 96. Each of these violations exposes defendants to penalties for each act or omission.
27 (Gov. Code, § 12591.1, subds. (a) & (c).) As a result of the aforementioned violations, under
28 Government Code section 12591.1, the People are entitled to civil penalties in an amount that is
presently unknown, but believed to be in excess of \$13,000.00.

///

- 1 1. Breach of fiduciary duty as described in the First Cause of Action;
- 2 2. Self-dealing as described in the Third Cause of Action; and
- 3 3. Unjust enrichment as described in the Fourth Cause of Action.

4 105. The People request that this Court order an accounting to be performed by the
5 defendants, and filed with the Court. The People further request that this Court order individual
6 defendants to personally pay the costs of such accounting.

7 **RELIEF REQUESTED**

8 WHEREFORE, the People pray for judgment as follows:

9 1. For the removal of defendants Russo, Morgan, Kaloogian, and Callahan and Does 1-
10 25 from their capacities as director, officer, de facto director, or any other management position
11 in Move America Forward, and enjoin them, their employees, agents, servants, representatives,
12 successors, and assigns, and any and all persons acting in concert or participation with them, and
13 all other persons, corporations, or other entities acting under, by, through, or on their behalf, from
14 doing any of the following: (1) expending, disbursing, transferring, encumbering, withdrawing or
15 otherwise exercising control over any funds received by or on behalf of Move America Forward,
16 or rightfully due Move America Forward; and (2) conducting business of any kind on behalf of,
17 or relating to Move America Forward other than that specifically requested by the Court.

18 2. For an order appointing a receiver to manage Move America Forward's affairs, and
19 for an order for defendants Russo, Morgan, Kaloogian, and Callahan and Does 1-25 to surrender
20 all of Move America Forward's property, books and records, to a receiver who will protect Move
21 America Forward's charitable assets, and account for all corporate assets.

22 3. For an order prohibiting defendants Russo, Morgan, Kaloogian, and Callahan and
23 Does 1-25 from acting as a founder, officer, director, agent, employee, or a fiduciary for any
24 charitable corporation, charitable association, charitable organization, or charitable trust within
25 the State of California;

26 4. For an order prohibiting defendants Russo, Morgan, Kaloogian, and Callahan and
27 Does 1-25 from soliciting charitable donations and assets in California or from any resident of
28 California;

1 5. For restitution due Move America Forward and its charitable beneficiaries resulting
2 from the breaches of fiduciary duty of defendants Russo, Morgan, Kaloogian, and Callahan in an
3 amount to be determined following an accounting, plus interest at the legal rate until the judgment
4 is paid;

5 6. For an order compelling defendants Russo, Morgan, Kaloogian, and Callahan and
6 Does 1-50 to provide an accounting, at their own expense, of any profits or other benefits
7 made/received from the self-dealing transactions alleged, and from misuse and diversion of
8 charitable assets, and compelling them to pay all profits and benefits over to Move America
9 Forward along with interest at the legal rate. To the extent Move America Forward suffered any
10 damages as a proximate result of these transactions, for an order compelling defendants to pay
11 them over to Move America Forward;

12 7. That the court assess civil penalties against defendants under Government Code
13 section 12591.1 for violations of the Supervision of Trustees and Fundraisers for Charitable
14 Purposes Act (Gov. Code § 12580, et seq.), and provide that all such penalties be paid by
15 defendants other than Move America Forward to the California Department of Justice, Office of
16 the Attorney General;

17 8. For the People's plaintiffs' costs of suit and other costs under Government Code
18 sections 12597 and 12598, and as otherwise permitted by law;

19 9. For attorney fees as provided in Government Code section 12598, subdivision (b),
20 and Code of Civil Procedure section 1021.8, and as otherwise permitted by law; and

21 10. For such other and further relief as the Court may deem just and proper.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIS COMPLAINT IS DEEMED VERIFIED UNDER THE PROVISIONS OF CODE OF
CIVIL PROCEDURE SECTION 446.

Dated: July 23, 2019

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
ELIZABETH S. KIM
Supervising Deputy Attorney General



JULIANNE MOSSLER
Deputy Attorney General
*Attorneys for the People of the State of
California*

SF2019201656
21547823.doc