

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

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In the Matter of

**Investigation by Eric T. Schneiderman, Attorney General of  
the State of New York, of**

Assurance No. 17-105

BREAST CANCER SURVIVORS FOUNDATION, INC. aka  
WOMEN'S BREAST CANCER RELIEF ASSOCIATION,  
AND YULIUS POPLYANSKY,

Respondents.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York, Eric T. Schneiderman, (“OAG”), commenced an investigation pursuant to the Not-for-Profit Corporation Law (“N-PCL”), the Estates, Powers, and Trusts Law § 8-1.4, and the Executive Law (“Exec. Law”) Article 7-A §§ 172 and 175, into whether a proceeding or action should be instituted against the Breast Cancer Survivors Foundation, Inc., *aka* Women’s Breast Cancer Relief Association (the “Foundation”), and Doctor Yulius Poplyansky (“Dr. Poplyansky”), the Foundation’s president and chief executive officer (the Foundation and Poplyansky shall be referred to collectively herein as the “Respondents”).

This Assurance of Discontinuance (“Assurance”) contains the Findings of OAG’s investigation, to which the Foundation and Dr. Poplyansky agree, and the relief agreed to by the Respondents:

## **I. OAG'S FINDINGS**

### **A. The Breast Cancer Survivors Foundation**

1. On June 1, 2010, the Foundation was incorporated as a charitable corporation in the State of Delaware.

2. In July 2010, the Foundation registered with the OAG Charities Bureau in order to solicit charitable donations in the State of New York and was assigned N.Y. Registration # 42-13-89. The Foundation was also known as Women's Breast Cancer Relief Association.

3. The Foundation was originally located in New Jersey, then home of Dr. Poplyansky. Shortly after its formation, the Foundation relocated with Dr. Poplyansky to Aventura, Florida. The Florida address used by the Foundation is a "virtual office" with no permanent designated space, conference room or file storage, and essentially acts as a location where mail may be received.

### **B. Dr. Poplyansky and Mark Gelvan Begin The Foundation**

4. Dr. Yulius Poplyansky immigrated from Riga, Latvia, to New Jersey in 1979. Since that time, Dr. Poplyansky has become an established physician in Florida specializing in internal medicine. Dr. Poplyansky does not specialize in women's health issues, oncology or breast cancer.<sup>1</sup>

5. Mark Gelvan currently operates and controls for-profit fundraising entities that solicit donations on behalf of charities in nearly all fifty states, as well as entities that support those fundraisers. These fundraising entities make millions of dollars nationwide each year and typically retain between 85%-90% of every dollar they collect in donations to the client charities.

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<sup>1</sup> The OAG interviewed Dr. Poplyansky on April 7, 2017 in a proffer session. Certain Findings herein are based on statements made by Dr. Poplyansky during this proffer session as well as other investigative efforts of the OAG.

Mark Gelvan was the subject of a litigation brought by the OAG in 2004 that resulted in his being permanently barred from the professional fundraising industry in New York. *See Spitzer v. All-Pro Telemarketing Assoc.'s Corp. and Mark Gelvan*, Index No. 6726-02 (N.Y. Sup. Ct., Albany Co. June 9, 2004). Mark Gelvan is also the subject of a 2014 Assurance of Discontinuance with the OAG wherein Mark Gelvan was subject to penalties for his and his company's violation of the 2004 ban. *In the Matter of the Investigation by Eric T. Schneiderman of Mark Gelvan and Raising Money, Inc.*, Assurance No. 14-095 (April 16, 2014).

6. Dr. Poplyansky turned to Mark Gelvan for advice in pursuing charitable endeavours. Dr. Poplyansky was close personal friends with Mark Gelvan's father ("Mr. Gelvan") and his family. Dr. Poplyansky and Mr. Gelvan met in their native Latvia and their friendship endured both Dr. Poplyansky's and the Gelvans' relocation to the United States. For several years both gentlemen maintained their close friendship in New Jersey sharing in family events. When Dr. Poplyansky initially had difficulty finding employment with a foreign medical degree, Mr. Gelvan provided employment so that Dr. Poplyansky could support his family. Dr. Poplyansky was there for the birth of Mr. Gelvan's son, Mark Gelvan, in Riga, Latvia, saw Mark Gelvan grow up in both Riga and New Jersey, and attended Mark Gelvan's wedding and other important life events. Like his father, Mark Gelvan, too, became a close personal friend of Dr. Poplyansky.

7. Dr. Poplyansky knew that Mark Gelvan worked in the professional fundraising industry. For that reason, in late 2009, Dr. Poplyansky approached Mark Gelvan for his assistance with a proposal to raise money to provide prosthetics and treatment to Israelis who had been injured by explosive devices. Prior to that time, Dr. Poplyansky had informally solicited donations from his patients and community for these causes with some success. Dr.

Poplyansky did not have any experience running a charitable organization or undertaking substantial fundraising efforts. Mark Gelvan declined to assist Dr. Poplyansky with his proposed venture, but presented Dr. Poplyansky with an alternative cause that Mark Gelvan represented could have a greater impact. Mark Gelvan suggested that Dr. Poplyansky channel his focus on breast cancer—a proven charitable money-maker—and that Mark Gelvan would handle the fundraising aspects. As a result, Mark Gelvan, under the guise of assisting Dr. Poplyansky in establishing the Foundation, effectively did so himself.

8. Dr. Poplyansky agreed and was referred to the law firm of Copilevitz & Canter, LLC (“Copilevitz & Canter”), to assist in the formation and filings of the Foundation. According to financial statements from Mark Gelvan’s company, Outsource 3000, Inc. (“Outsource”), Outsource loaned the Foundation \$5,000 in May 2010 in “start up” money to help the Foundation get a jump start on the its fundraising campaign.

9. Dr. Poplyansky relied on the advice of Copilevitz & Canter, along with Mark Gelvan, with respect to all aspects of the Foundation.

### **C. The Foundation’s Fundraising Materials Are False And Misleading**

10. By the fall of 2010, the Foundation was formed and actively soliciting donations nationwide using professional fundraisers. The Foundation’s fundraisers typically phoned individuals to solicit “pledges” of donations. When a donor committed to donating to the Foundation, a follow-up mailing outlining the purported program services of the Foundation was sent to the pledging donor to collect payment. The Foundation’s 990 tax returns for 2010-2014 show that the Foundation’s professional fundraisers raised \$2,455,979 in 2011, \$2,626,556 in 2012, \$3,626,702 in 2013, \$2,985,533 in 2014 on the Foundation’s behalf. The Foundation received less than 10% of these funds.

11. The Foundation and its fundraisers knew or should have known that the materials being disseminated on its behalf to raise donations contained false and misleading representations. It was, however, Mark Gelvan who orchestrated the creation of all materials. The Foundation itself provided no direct services or program services, but instead provided monetary grants to clinics that then provided services and mammograms. The description of the Foundation's program services and its mission in its solicitation materials, financial statements and tax returns are false and misleading in the following ways:

a. The Foundation's solicitations contain a personal attestation, purportedly from an unattributed doctor associated with the Foundation, movingly describing the doctor's experience with breast cancer patients whose cancer was not detected in time to save the patient from dying: "I was personally devastated when I lost several patients to Breast Cancer. By the time they came to our facility they were in stage four and it was already too late." This doctor and the patients described are fictional. Neither Dr. Poplyansky nor any of the leadership or employees of the Foundation had any medical expertise with breast cancer or even oncology. Moreover, the solicitation leads the reader to believe that the Foundation had a facility where it saw patients; it did not.

b. The Foundation's solicitations state that the Foundation "provides a forum for breast cancer survivors to convene and to be able to discuss issues related to Breast Cancer." The Foundation's tax returns repeat this claim in the description of the Foundation's mission. The financial statements of the Foundation go further and state that the Foundation holds meetings and conferences for the public where physicians, oncologists, breast cancer survivors, and other individuals can exchange vital information

about breast cancer and breast cancer related issues. The Foundation did not, in fact, provide any such forum or hold any such conferences.

c. The Foundation's solicitations contain a statement that the Foundation "looks forward to participating in an international pharmaceutical program striving to help save lives of women everywhere from this deadly disease." The Foundation never participated in, or even planned to participate in, an international pharmaceutical program. Rather, Dr. Poplyansky rejected Mark Gelvan's proposal to ship antibiotics to Honduras as part of a "gift-in-kind" program where the Foundation would credit the value of the antibiotics as revenue on its tax returns and also as donated items. This would make the Foundation appear more profitable and enhance its program activities. Dr. Poplyansky refused this proposal because he could not verify the recipients in Honduras. Accordingly, the "international pharmaceutical program" was a creation of the Foundation's fundraisers that was never seriously contemplated as a program service of the Foundation.

d. The inclusion in the solicitations of pictures of physicians administering breast exams and checking x-rays alongside directions for administering a self breast exam and accompanied by the caduceus, a symbol of medicine, mislead the donor to believe the Foundation is, itself, a medical establishment providing these services. The Foundation has no staff, no medical equipment and no expertise to provide these services. At best, the Foundation made small grants to clinics that provided such services. Yet, each year the Foundation's tax returns reported the number of women who purportedly received mammograms and breast diagnostic services funded by the Foundation, implying the Foundation provided the services directly. The figures range from 400

women in 2011 to 11,000 women in 2014. Moreover, these figures are estimates, but are not qualified as such on the tax returns. Once a grantee clinic received the funds from the Foundation, the Foundation asserted no control over how those funds were spent and, for privacy reasons, was often not advised as to how the funds were actually spent.

**D. Dr. Poplyansky Delegated the Foundation's Vetting, Selection and Supervision of Its Professional Fundraisers to the Detriment of the Foundation**

12. Dr. Poplyansky stated that he delegated the vetting, selection and supervision of the Foundation's professional fundraisers to Mark Gelvan. He did so at Gelvan's insistence and pursuant to Gelvan's assurances that the fundraisers' conduct was permissible – and standard – in the industry. Accordingly, the Foundation's leadership who were vested with duties of loyalty and care were not themselves evaluating whether its professional fundraisers' contracts or conduct were in the best interest of the Foundation. Had the Foundation performed due diligence into its fundraisers, it might have learned that Mark Gelvan's financial interests were at odds with choosing fundraisers that were in the Foundation's best interests. Mark Gelvan has business relationships with, and profited handsomely from, the professional fundraisers and other consultants he selected for the Foundation.

13. Dr. Poplyansky did not know the names of his professional fundraisers, performed no due diligence on the fundraisers that were selected for the Foundation, never conducted site visits or spoke directly to the Foundation's professional fundraisers, and had only a basic understanding of the economic terms of the Foundation's professional fundraising contracts. For example, for the majority of the Foundation's existence, Dr. Poplyansky incorrectly believed that the Foundation would receive 10% of the donations collected on its behalf with the fundraisers retaining 90%. In reality, the Foundation received less than 8% of its donations. Dr. Poplyansky stated that while he received the fundraising contracts from the Foundation's attorneys, he

trusted the attorneys and Mark Gelvan, and, thus, signed them at their instruction without reviewing or understanding the terms of the contracts.

14. Dr. Poplyansky also did not appreciate the magnitude of the fundraising campaigns launched on behalf of the Foundation by Mark Gelvan through professional fundraisers, or that the campaigns would yield millions of dollars in donations every year. Dr. Poplyansky explained that he expected to raise only a few thousand dollars through professional fundraising and initially believed and hoped that his informal fundraising efforts or corporate sponsorships might eventually obviate the need for professional fundraising. This vision never came to pass as professional fundraising remained the only source of actual revenue for the Foundation for its entire 6-year existence.

15. The Foundation's largest professional fundraiser was Outreach Calling, Inc. ("Outreach Calling"). The Foundation's tax returns show that Outreach Calling was paid the bulk of the Foundation's donation revenue -- \$2,214,587 in 2011, \$2,363,265 in 2012, \$2,961,192 in 2013 and \$2,118,932 in 2014. Outreach Calling, in turn, according to its accountant, pays Mark Gelvan's company, Outsource, millions of dollars in revenue each year. In fact, Outreach Calling is the sole source of revenue for Outsource. In turn, Form W-2s from Outsource show that Mark Gelvan and his wife were paid hundreds of thousands of dollars each year from Outsource during the life of the Foundation. Dr. Poplyansky stated that he had no idea how or whether Mark Gelvan was being compensated for his work with the Foundation and believed that much, if not all, of what Mark Gelvan did for the Foundation was being done without charge on the basis of Dr. Poplyansky's friendship with Mark Gelvan and his father.

16. In addition to financially benefiting from the Foundation's fundraisers, the accounting records of Outreach Calling and Outsource show that Mark Gelvan effectively

controls Outreach Calling. Among other things, Outreach Calling has paid several expenses of Outsource (and vice versa). For example, when Outsource was having difficulty securing a checking account, Outreach Calling paid Mark Gelvan directly. Also, when Mark Gelvan was required to pay a \$50,000 penalty to the OAG for violating his prohibition against professional fundraising in New York 2014, these funds originated from Outreach Calling. Mark Gelvan also executed an agreement with Outreach Calling at the same time the Foundation was formed wherein Mark Gelvan was awarded an irrevocable option to purchase the shares of Outreach.

17. When it came to soliciting donations in New York where Mark Gelvan is prohibited from fundraising directly, Dr. Poplyansky stated that Mark Gelvan selected the entities the Foundation would use as professional fundraisers in the New York market. Mark Gelvan chose fundraisers with which Outreach Calling regularly subcontracts, including the now-defunct Menacola Marketing, Inc., which raised over a half a million dollars alone from New York residents from October 2010-October 2014. Indeed, New York was a lucrative source of charitable donations for the Foundation. In 2011, New Yorkers contributed the second most donations, and in 2013 was the fourth highest source of revenue to the Foundation nationwide.

18. In 2016, the Foundation's auditors sought clarification concerning Mark Gelvan's role with the Foundation. Mark Gelvan misrepresented in an email to Dr. Poplyansky and the Foundation's auditors that neither he, Outsource, nor "any other company in which I may have ownership interest," had a relationship with the Foundation or derived economic benefit from the Foundation and that "[a]ny statements to the contrary would be false." In the same email, Mark Gelvan further misrepresented that he had not acted, among other roles, as a fundraising consultant to the Foundation.

### **E. The Foundation Abdicated Responsibility for its Core Internal Operations To Mark Gelvan**

19. The Foundation's board failed to discharge its duties, instead ceding control to Mark Gelvan, who was not identified as a director or officer of the Foundation.

20. The only permanent members of the Foundation's board were Dr. Poplyansky and his wife. The composition of the Foundation's board otherwise was constantly shifting in the number and identity of board members. The Foundation held only five telephonic meetings from 2010 through 2015. The participants were Dr. Poplyansky and his wife, Mark Gelvan, and an attorney from Copilevitz & Canter. Dr. Poplyansky stated that in 2016, Mark Gelvan – who purportedly had no position with the Foundation -- offered to “replace” Dr. Poplyansky and make Dr. Poplyansky an “honorary” member of the Foundation's board.

21. Dr. Poplyansky, as a director and officer of the Foundation, undertook specific duties to the Foundation, its intended beneficiaries and donors. Directors and officers are required to “discharge the duties of their respective positions in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.” N-PCL § 717(a). These duties apply whether or not the director or officer is compensated. Dr. Poplyansky, while not compensated for his work for the Foundation, nonetheless was legally obligated, but failed, to discharge these duties. As a result, the Foundation continued to collect donations, but was bereft of competent leadership or healthy internal operations. This diverted millions of dollars away from legitimate breast cancer charities and programs.

22. Dr. Poplyansky has no training or experience – formal or informal – in managing or leading any type of corporate enterprise (not-for-profit or otherwise). He lacks a fundamental appreciation or understanding of: (i) corporate formalities; (ii) prudent management of the Foundation's assets with respect to fundraising costs; (iii) systems to ensure appropriate

reporting and monitoring of the operation of the Foundation and its contractors, and to detect potential violations of law; (iv) conflicts of interest; (v) managing reputational issues; or (vi) reporting obligations of not-for-profits, including the role of outside auditors.

23. Dr. Poplyansky's passivity resulted in a constructive delegation of responsibilities to Mark Gelvan, who was either involved in, or completely eclipsed, Dr. Poplyansky's decision-making and other responsibilities during the entirety of the Foundation.<sup>2</sup> Mark Gelvan acted on behalf of the Foundation, or was actively involved in, nearly every aspect of the Foundation's internal operations. This included: (i) handling the Foundation's outside accounting matters, including the retention of the Foundation's outside auditors and their audits of the foundation; (ii) retaining and managing the Foundation's fundraisers; (iii) organizing, attending and preparing the Foundation's board minutes; (iv) securing the Foundation's office space location in Florida; (v) coordinating the response to media attacks on the reputation of the Foundation; (vi) managing and approving the content and appearance of the Foundation's website and other ministerial operational tasks; (vii) managing the application process and selecting of clinics to receive grants from the Foundation; and (viii) assisting in the preparation of the Foundation's response to the OAG's subpoenas and investigation into the Foundation.

24. The Foundation's abdication of its operational responsibilities was acute in its relationship with its outside accounting firm, McEnerney Brady & Co., LLC ("McEnerney"). In order to solicit charitable donations in several states, including New York, the Foundation is required to submit, among other things, a Form 990 tax return and audited financial statements to

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<sup>2</sup> In order to function, the Foundation had one employee, a program director that handled the Foundation's grant administration, and an outside bookkeeper. Dr. Poplyansky testified that both were recommended by Mark Gelvan. To the extent he was consulted, Dr. Poplyansky did review requests for grants and engage in the decision-making process concerning which clinics were to receive grants from the Foundation.

the attorneys general or other state regulators governing charitable donations. Mark Gelvan selected McEnerney to prepare the 990 tax returns and perform audits of the financial statements for the Foundation. Mark Gelvan had used McEnerney for his personal taxes and the taxes of his related businesses for years, and was the source of several referrals to McEnerney.

25. Dr. Poplyansky signed the necessary forms relating to the auditing and accounting of the Foundation. However, Mark Gelvan actively – and almost exclusively – interfaced with McEnerney in nearly every aspect of the Foundation’s audits. An internal McEnerney email states that Mark Gelvan informed McEnerney at the beginning of the Foundation’s engagement that the doctor “speaks very little English” – a statement that is completely false. Dr. Poplyansky stated that he did not understand that Mark Gelvan was actively working with McEnerney and did not authorize McEnerney to work with Mark Gelvan on Dr. Poplyansky’s behalf.

26. McEnerney’s emails and work papers also show that Mark Gelvan lobbied McEnerney to adopt an accounting treatment that made the Foundation’s high fundraising costs appear comparatively smaller. When in 2016 the firm that acquired McEnerney put a stop to the accounting treatment, Mark Gelvan – without Dr. Poplyansky’s permission -- sought a competing opinion from a second accountant on this treatment and forwarded it to the Foundation’s auditors. Ultimately, Dr. Poplyansky stated that Mark Gelvan told him that the Foundation would need new auditors because McEnerney was simply not finishing the Foundation’s tax returns on time. In reality, the Foundation was not the party that terminated the auditor/client relationship.

**F. The Foundation Received Less Than 10 Cents Of Every Dollar Donated Due To Additional Undisclosed Fundraising Fees**

27. Dr. Poplyansky did not understand the basic economic consequences of the Foundation’s arrangements with its professional fundraisers. In addition to hiring fundraisers to

solicit donations, Dr. Poplyansky signed an agreement to retain a for-profit New Jersey company called Mail Response Services, Inc. (“Mail Response”), which purports to help charities process nationwide donations. Mail Response is yet another company inextricably intertwined with Mark Gelvan and the fundraisers the Foundation hired at Mark Gelvan’s direction. Dr. Poplyansky, however, did not know about these connections. Nor did he understand what service Mail Response was providing, or that Mail Response took a fee of 2% of the Foundation’s gross collected donations, leaving, at most, only 8 cents of every dollar donated for the Foundation.

28. The donations solicited by the Foundation’s fundraisers are funneled to a bank account in the Foundation’s name in Wisconsin. At the close of each evening, Mail Response “sweeps” all the donations in that account into Mail Response’s own bank account at that same Wisconsin bank. Mail Response deducts a 2% fee from the 10% to be distributed to the Foundation and then disburses the remainder to the charity. Mail Response also sends the fundraisers’ portion – 90% of every dollar - directly to the fundraisers. In actuality, the purported “processing” service provided by Mail Response inures primarily to the benefit of the Foundation’s fundraisers by ensuring they are paid before the Foundation ever takes custody of its donations in its operating accounts.

29. Moreover, any service provided by Mail Response should have been paid for by its fundraisers – not the Foundation. The Foundation’s contract with Mail Response calls for the performance of the same services that were already covered by the Foundation’s contracts with its fundraisers. Mail Response agreed to “provide coordination with fulfillment and related services, including assistance with processing and disbursement of funds received by [the Foundation] resulting from [The Foundation’s] fundraising activities.” However, the

Foundation's contract with Outreach provides that Outreach – not the Foundation – would be responsible for payment of these expenses in exchange for 90% of every dollar donated to the Foundation:

Outreach shall be responsible *for all costs of the campaign* such as the costs of the various functions provided, including but not limited to research, telephone costs, telemarketer expense, management, training, travel, list acquisition or exchange fees, equipment costs, and such other reasonable and necessary expense of the campaign.

30. From 2011 to 2014, the Foundation was contractually obligated to pay Mail Response nearly \$200,000 for these services based on the donations raised by Outreach alone but concealed this fee, falsely reporting to regulators that the Foundation was receiving 10% - not 8% of a donor's dollar.

#### **G. False, Incomplete, and Delinquent Filings with the Charities Bureau**

31. Pursuant to Executive Law Section § 172-b, the Foundation was required to file annual certifications with the OAG's Charities Bureau, under penalty of perjury, called "Form CHAR500s." For organizations with annual revenues over \$500,000 like the Foundation, the Form CHAR500 must contain a completed Form CHAR500 Annual Filing Form, a copy of the Foundation's Form 990 IRS Tax Return, its audited financial statements, and the identity of the fundraisers acting on the Foundation's behalf in the State of New York.

32. The Foundation's fundraisers soliciting in New York are required to register with New York State (Exec. Law § 173), and to file copies of their contracts with the Foundation. (Exec. Law § 173-a(1).) The fundraisers are required to certify in forms submitted to the OAG the gross donations they collect from New Yorkers and how much of those donations are being used to compensate their fundraising activities ("Form CHAR037"). (Exec. Law § 173-a(1).) The charities must certify under penalty of perjury that the information submitted by the

fundraiser in the Form CHAR037 is true, correct and complete in accordance with the laws of the State of New York.

33. Copilevitz & Canter prepared the Foundation's filings and assured Dr. Poplyansky and his wife that the content was true and accurate. The Foundation's filings with the Attorney General were then signed by Dr. Poplyansky and his wife. The filings are false and incomplete statements, omit material facts and contain inconsistencies concerning the Foundation and its fundraisers' activities in New York, which make it impossible to determine accurately the identity of its professional fundraisers or how much the Foundation raised in donations from solicitations in New York in any given year:

a. In 2011 and 2012, the Foundation failed to disclose its retention of professional fundraiser Menacola on its Form CHAR500, which raised over \$330,000 on behalf of the Foundation in these two years from residents of the State of New York;

b. In 2013, the Foundation falsely claimed a reporting exemption on its Form CHAR500 on the basis that its total contributions from New York State did not exceed \$25,000 and that the Foundation did not engage a professional fund raiser or fund raising counsel to solicit contributions. However, during that year its (again) undisclosed professional fundraiser Menacola raised over \$120,000 on the Foundation's behalf in this year from residents of the State of New York;

c. Professional fundraiser Safety Publications, Inc. ("Safety"), raised \$70,684 in 2013 on behalf of the Foundation in 2013, which the Foundation underreported as \$58,668. For its part, Safety failed to accurately and timely report the funds it raised on behalf of the Foundation from February 2013 to February 2016;

d. From January 2, 2015 to the present, the Foundation has failed to file a Form CHAR500 disclosing the amounts the Foundation's professional fundraisers raised on the Foundation's behalf in 2015 or 2016 even though they raised over \$200,000 from residents of the State of New York. Similarly, Menacola failed to file Form CHAR037s covering all donations raised on behalf of the Foundation in 2015 and 2016; and

e. The Foundation did not submit its annual filing with the OAG's Charities Bureau for years 2015 or 2016. Accordingly, the OAG administratively cancelled the Foundation's registration to solicit charitable donations in the State of New York on December 16, 2016.

## **II. CONCLUSIONS OF LAW**

1. By engaging in the conduct described above, the Foundation:

- (a) Because of the misleading statements contained in fundraising solicitations, violated Exec. Law § 172-d(2);
- (b) Made material misstatements in its reports to the OAG, including concerning the identity of the Foundation's fundraisers, its program services and its revenues in Form CHAR500s and financial reports required to be filed with the OAG Charities Bureau in violation of Exec. Law § 172-d(1);
- (c) Made material misstatements concerning the "net amount retained by the charity" on Form CHAR037s required to be filed with the OAG Charities Bureau in violation of Exec. Law § 172-d(1);
- (d) Failed to register with the OAG Charities Bureau in 2015 and 2016 though it solicited donations from residents of the State of New York during these periods, in violation of Exec. Law §§ 173(a) and 172-d(7) and (10);
- (e) Failed to apply charitable contributions in a manner substantially consistent with claims made in its charity solicitations in violations of Exec. Law § 172-d(4); and

2. By engaging in the conduct described above, Dr. Poplyansky breached his fiduciary duties to the Foundation.

3. The Respondents do not contest the OAG's assertion that their actions violated the statutory provisions cited above.

### **III. RELIEF**

WHEREAS, the Foundation and Dr. Poplyansky agree with the above Findings of the OAG;

WHEREAS The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Exec. Law § 63(15), in lieu of commencing a statutory proceeding for violations of Article 7-A of the Exec. Law and the N-PCL from January 2010 to the Effective Date of this Assurance;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Respondents that, in consideration of the making and execution of this Assurance, the following terms apply:

#### **A. Monetary Relief**

1. The Foundation has certified that it has \$341,043.66 in funds in its possession, custody or control. Upon the Effective Date of this Assurance, the Foundation shall transfer these funds to its attorneys, Connors LLP, 1000 Liberty Building, Buffalo, New York 14202, to be held in escrow until the dissolution of the Foundation, for the application of costs associated with the winding down of the Foundation subject to OAG's approval as set forth below (the "Escrow Fund").

2. If any funds come into the possession of the Foundation after the Effective Date of this Assurance, the Foundation will report the same to the OAG within five business days after possession, and will transfer those funds to the Escrow Fund.

3. The Foundation will seek the approval of the OAG prior to any disbursement from the Escrow Fund.

4. Prior to the dissolution of the Foundation, and upon request by the OAG, the Foundation will direct that the balance of the Escrow Fund, which constitutes the remaining charitable assets of the Foundation, be paid to the New York Department of Law. This payment shall be made by cashiers or attorney's check or money order payable to the New York Department of Law. OAG shall distribute the balance of the charitable assets it receives to a charity or charities providing substantially similar services to the Foundation's stated purpose.

**B. Programmatic Relief**

5. The Foundation ceased all fundraising activities nationwide at least as of April 12, 2017 and the Foundation agrees that it will not resume fundraising operations in any jurisdiction nationwide.

6. The board of directors and all officers of the Foundation, except for Dr. Poplyansky, have resigned, and the Foundation agrees that no board member or officer will resume any of these roles.

7. The Foundation's registration to solicit donations in New York was cancelled in December 16, 2016 and the Foundation shall not seek to renew its registration in the State of New York or in any other state nationwide.

8. The Foundation will work with the OAG Charities Bureau to complete all registration documents required by the OAG for 2015 and 2016.

9. The Foundation shall initiate dissolution proceedings in the State of Delaware no later than thirty days after the Effective Date.

10. Dr. Poplyansky shall remain the President of the Foundation and its sole board member until its dissolution and shall provide whatever cooperation or necessary assistance to the Foundation and the OAG to effect the cancellation, dissolution, cooperation and disbursement of corporate assets described in the aforementioned paragraphs at the cost and expense of the Foundation. Dr. Poplyansky shall not receive any compensation for such activities.

**C. Bars & Suspensions:**

11. Other than Dr. Poplyansky's continuing role as President and sole board member of the Foundation for the purpose of dissolving and winding down the foundation as described in the preceding paragraph, Dr. Poplyansky agrees that he is permanently barred from serving as an officer, director, trustee or fiduciary, of any not-for-profit or religious corporation or other charitable organization or trust incorporated, formed, registered, operating or soliciting contributions in any of the fifty United States or any United States Territory or Commonwealth.

**D. Cooperation With Ongoing Investigation:**

12. Dr. Poplyansky shall execute the letter of apology to the People of New York and to the individuals and families that have been impacted by breast cancer, in the form attached hereto as Exhibit A.

13. The Foundation has waived its attorney-client and work product privileges with respect to its representation by Copilevitz & Canter, and will provide whatever cooperation or necessary assistance to the OAG to obtain documents and information from Copilevitz & Canter.

14. The OAG's investigation into the employees, agents, consultants, auditors and professional fundraisers of the Foundation and into Mark Gelvan's and his associated entities continues. The Foundation and Dr. Poplyansky agree that, until the date when the OAG's

investigation is concluded, they will agree to provide full, complete and prompt cooperation with the OAG's investigation and related proceedings and actions, including testifying therein, against any other person, corporation or entity.

15. At any time, and upon thirty (30) days written notice from the OAG, the Respondents shall provide the OAG with, in the OAG's sole discretion, either a report dealing, or a certification affirming their compliance with the requirements set forth in this Assurance.

16. The Respondents expressly agree and acknowledge that a default in the performance of any obligation under this Section is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated herein in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in the Conclusions of Law herein pursuant to Exec. Law § 63(15).

### **III. MISCELLANEOUS**

#### **Subsequent Proceedings**

1. In any subsequent investigation, civil action, or proceeding by the OAG to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided, the Respondents expressly agree and acknowledge:

a. that any statute of limitations or other time-related defenses are tolled from and after the Effective Date of this Assurance;

b. that the OAG may use statements, documents or other materials produced or provided by the Respondents prior to or after the Effective Date of this Assurance; and

c. that courts of the State of New York must adjudicate the matter, and that the Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue.

2. If a court of competent jurisdiction determines that the Respondents have violated the Assurance, the Respondents shall pay to OAG the reasonable cost, if any, of such determination and of enforcing this Assurance, including legal fees, expenses, and court costs.

### **Effects of Assurance**

3. This Assurance shall be binding on and inure to the benefit of the Respondents and their respective successors and assigns, provided that no party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

4. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

### **Communications**

5. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing, shall reference Assurance No. 17-105, and shall be directed as follows: (i) if to the Foundation or to Dr. Poplyansky, to Terrence Connors, Esq., Connors LLP, 1000 Liberty Building, Buffalo, New York 14202; (ii) if to the OAG, to: Elizabeth Ann Fitzwater, Esq., Assistant Attorney General, Charities Bureau, 120 Broadway, 3rd Floor, New York, NY 10271 or in her absence, to the person holding the title of Bureau Chief, Charities Bureau.

## **Representations and Warranties**

6. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Respondents and their counsel and OAG's own factual investigation as set forth in the OAG Findings above. The Respondents represent and warrant that neither they nor their counsel have made any material representations to the OAG that are inaccurate or misleading. If any material representations by the Respondents or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

7. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondents in agreeing to this Assurance.

8. The Respondents represent and warrant, through their signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

## **General Principles**

9. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' obligations under this Assurance are enduring.

10. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondents violate the Assurance after its Effective Date.

11. This Assurance may not be amended except by an instrument in writing signed on behalf the Respondents to this Assurance.

12. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole

discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

13. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles, and its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

14. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

15. The effective date of this Assurance shall be May 26, 2017 (the "Effective Date").

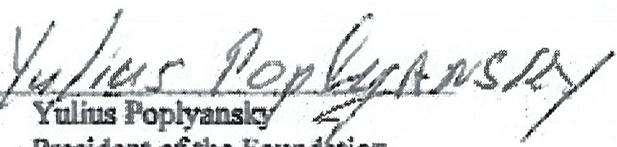
Dated: May 26, 2017

ERIC T. SCHNEIDERMAN  
*Attorney General of the State of New York*  
120 Broadway  
New York, NY 10271

By:   
Elizabeth Ann Fitzwater, Esq.  
Assistant Attorney General

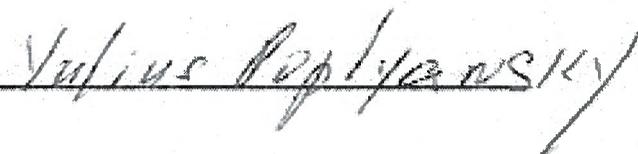
Dated: May 26, 2017

BREAST CANCER SURVIVORS  
FOUNDATION, INC.

By:   
Yulius Poplyansky  
President of the Foundation

Dated: May 26, 2017

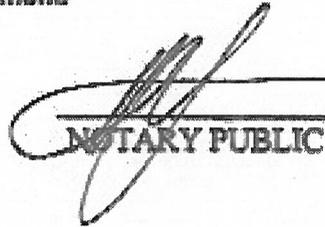
YULIUS POPLYANSKY



STATE OF Florida )

COUNTY OF Miami Dade ) <sup>SS.:</sup>

On this 20 day of May, 2017, Yulius Poplyansky, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned, a notary public in and for the State of Florida, and acknowledged to me that he executed the within instrument by his signature on the instrument.

  
\_\_\_\_\_  
NOTARY PUBLIC



OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

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In the Matter of the

**Investigation by Eric T. Schneiderman, Attorney General of  
the State of New York, of**

Assurance No. 17-105

BREAST CANCER SURVIVORS FOUNDATION, INC. aka  
WOMEN'S BREAST CANCER RELIEF ASSOCIATION,  
AND YULIUS POPLYANSKY.

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**EXHIBIT A**

I was the founder and President of the Breast Cancer Survivors Foundation (the "Foundation"). This letter is my apology, on behalf of myself and the organization, to the individuals that donated to the Foundation and to the individuals and families that have been impacted by breast cancer.

My desire to begin a charity was borne from a basic desire to help people. I am a doctor and I have committed my entire career- from Riga, Latvia to New Jersey to Florida - to helping and healing. While my informal fundraising activities were originally directed at raising money in my community for prosthetics and treatment for victims of explosives in Israel, one of my best and most trusted friends who worked in the professional fundraising industry convinced me that he could help me make more of a mark with a breast cancer charity. Accordingly, under this friend's guidance, I founded the Foundation.

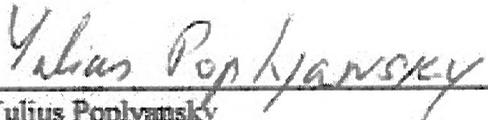
I was never compensated for my role in the Foundation, and I felt that if we helped even one individual with breast cancer, it would have been worth it. It was deeply satisfying to see money being sent from the Foundation to clinics around the United States. I closed my eyes to the fact that for every 10 cents received by a clinic, *at least* 90 cents was going to my fundraisers and to the friend I trusted. I see now that I was completely unequipped to run an organization. The money we raised could have gone to legitimate charities and helped so many more people, which is what I wanted in the first place.

When the Attorney General first started investigating the Foundation, I was angry. This anger was fueled by my fundraising consultant who assured me that the Foundation was doing nothing wrong. I now understand that I had no idea what was going on in my own Foundation and that my desire to help people was taken advantage of by people that just wanted to make money off this very serious cause.

I would caution any individual who is considering taking on a leadership role in a charitable organization to go into it with open eyes and make sure you are up to the task. Even if you are

not receiving money for your work with the charity, you still have duties of loyalty and care to your organization and you can be held accountable for failing to fulfill those duties. For my part, I allowed people to take over my organization and detract from what I believed to be the mission of the Foundation. For that, I am sorry.

Dated: Aventura, Florida  
May 24, 2017

  
\_\_\_\_\_  
Yulius Poplyansky  
President, Breast Cancer Survivor's Foundation