

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

THE PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN, Attorney General of the
State of New York,

Plaintiff,

- against -

COALITION AGAINST BREAST CANCER, INC.,
ANDREW SMITH, DEBRA KOPPELMAN,
PATRICIA SCOTT, CAMPAIGN CENTER, INC.,
AND GARRETT MORGAN,

Defendants.

Index No.

SUMMONS

**Plaintiff designates Suffolk
County as the place of trial**

TO THE ABOVE-NAMED DEFENDANTS:

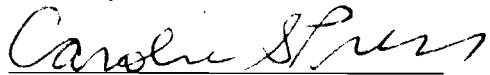
YOU ARE HEREBY SUMMONED to answer in this action and serve a copy of your answer (or if the complaint is not served with the summons, to service a notice of appearance) on the Plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service.

If this summons is not personally served upon you, or if this summons is served upon you outside of the State of New York, then your answer or notice of appearance must be served within thirty (30) days.

If you fail to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
June 27, 2011

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York.

By: 
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Assistant Attorney General, Charities Bureau
120 Broadway, 3rd Floor
New York, New York 10271
(212) 416-8401

TO: COALITION AGAINST BREAST CANCER, INC.
ANDREW SMITH
DEBRA KOPPELMAN
PATRICIA SCOTT
CAMPAIGN CENTER, INC.
GARRETT MORGAN

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COMPLAINT

Eric T. Schneiderman, Attorney General of the State of New York, on behalf of the People of the State of New York, alleges the following against Coalition Against Breast Cancer, Inc., a New York not-for-profit corporation (“CABC”); Andrew Smith (“Smith”), Debra Koppelman (“Koppelman”), and Patricia Scott (“Scott”), CABC's officers and directors; Campaign Center, Inc., a New York business corporation (“Campaign Center”); and Garrett Morgan, Campaign Center's founder and president (“Morgan,” and collectively with CABC, Koppelman, Smith, Scott and Campaign Center, the “Defendants”).

NATURE OF THE CASE

1. CABC is a sham charity that has diverted nearly all of the millions of dollars raised in the name of breast cancer to its officers, directors and fundraisers. Falsely claiming research affiliations with hospitals such as Memorial Sloan-Kettering and using other lies and exaggerations, Defendants deceive donors into believing that their donations will help eradicate breast cancer through research, mammogram screening and other programs. In reality, CABC

spends none of its funds on eradicating breast cancer, nor does CABC have any research affiliation whatsoever with Memorial Sloan-Kettering or any other hospital nor does it conduct or fund any research on breast cancer or any other cancer. Nor does CABC perform any mammograms or other breast cancer screening nor is it affiliated with any mammography screening facilities and, as its own records show, CABC spends virtually nothing on breast cancer prevention.

2. Instead, in the last five years alone—a period that has witnessed 200,000 women die from breast cancer and millions more fighting to survive it—CABC has squandered and misused virtually all of the \$9.1 million it raised in the name of breast cancer. By its own records, during this period, CABC spent less than 4% of the donations it received on any purported charitable programs, and almost none of the donations—less than one-half of one percent—went for charitable purposes authorized under its certificate of incorporation. In 2008, a year in which CABC raised over \$1.4 million from the public, it spent a mere \$374 for mammograms. In the last three years, despite raising over \$4 million, CABC funded mammograms for only 11 women.

3. In short, Defendants have misused and wasted millions of charitable dollars that could have been used to treat and potentially save an untold number of breast cancer victims across this state and country.

4. Andrew Smith and Garrett Morgan, longtime friends and business associates, launched the CABC fundraising operation in 1995 to exploit the breast cancer movement for their personal financial benefit, at a time when both were in need of cash. Smith was emerging from personal bankruptcy and Morgan was being investigated for his role in a fraudulent meals-on-wheels charity, which was later ordered permanently shut-down.

5. Smith and Morgan launched CABC despite having no connection to the breast cancer cause. From its inception, CABC has served as a cash machine for Morgan, Smith and other insiders. Defendant Smith best summarized CABC's *raison d'être* in a February 2010 email he sent to Morgan following a sharply critical press article that questioned CABC's legitimacy:

We are in a bad place. You need the money and so do I.

6. The CABC business model is straightforward: pick a sympathetic cause; lie and mislead donors about how donations will be used; provide a veneer of legitimacy by creating a website to exaggerate the organization's mission; spend a token amount on charitable programming; divert nearly all of the funds raised to the founders and other insiders; and ensure that there is no board oversight.

7. From CABC's inception, Smith has handpicked the board, appointing his family and friends, including his former wife, Lori Smith, and then later, his girlfriend, Debra Koppelman, and her friend Patricia Scott, none of whom had any experience in the breast cancer cause or non-profit management, much less the capacity to fulfill their fiduciary responsibilities as directors. As a result, CABC has operated without any financial oversight and without any controls preventing self-dealing and conflicts of interests, allowing it to run as a convenient piggy bank for CABC's directors and Morgan.

8. Were CABC a bona fide charity and were its board providing even the most basic oversight, it would have been apparent that CABC's mission was not being carried out, given that even after 15 years of operation, virtually none of the money raised in CABC's name went to legitimate charitable purposes. But CABC has no functioning board, with directors serving in name only. They perform no oversight, exercise no fiduciary responsibilities, and are simply

content to continue the CABC fundraising operation led by Morgan, so long as they are paid their unjustified salaries and benefits.

9. Indeed, CABC's directors—Smith, Koppelman and Scott—have completely abdicated their fiduciary oversight responsibilities by ceding control over CABC's fundraising operations and strategy to Morgan and his for-profit telemarketing company, the Campaign Center. With no oversight, Campaign Center has gone unchecked and engaged in fraudulent fundraising tactics on CABC's behalf, including lying or grossly exaggerating the scope of CABC's charitable activities and mailing phony pledge invoices.

10. Smith, Koppelman and Scott have failed to exercise any diligence concerning whether the amount paid to Campaign Center is reasonable. Year after year, they renew the Campaign Center's contract without ever attempting to negotiate more favorable terms with the Campaign Center, or reaching out to other fundraisers not connected to Morgan to obtain a better deal for CABC. Instead, last year, CABC actually increased Campaign Center's cut from 80% to 85% even though there had been no change or improvement in the services provided. They even gave Campaign Center the exclusive right as "broker" to select other fundraisers for CABC.

11. Smith, Koppelman and Scott, who are all employed elsewhere, have used the charitable funds raised by Morgan to improperly pay themselves salaries, retirement benefits, dental, medical and other benefits—even free BlackBerry phones—despite providing no services warranting these benefits.

12. Smith and Koppelman have also engaged in substantial insider transactions in violation of the Not-for-Profit Corporation Law, including \$105,000 in loans to Smith, a \$50,000 loan to Koppelman, and a risky stock sale by Smith to CABC.

13. In short, the Defendants have exploited the generosity of sympathetic donors by defrauding them out of millions of dollars that were intended for legitimate breast cancer causes.

14. Smith, Koppelman and Scott are liable for breaches of fiduciary duty, self-dealing, and failure to oversee CABC's charitable assets, in violation of the Not-for-Profit Corporation Law and the Estates, Powers and Trusts Law. They also are liable for false and misleading reports filed by CABC with the Attorney General, in violation of the Executive Law.

15. Defendants Garrett Morgan and Campaign Center are liable for violations of the Executive Law's prohibition on illegal acts and schemes to defraud in connection with charitable fundraising. All Defendants are liable under the General Business Law for engaging in a pattern of deceptive acts and practices and for submitting false reports to the Attorney General by failing to disclose all of Campaign Center's arrangements and contracts with CABC.

PARTIES

16. The Attorney General is responsible for overseeing the activities of New York not-for-profit corporations and the conduct of their officers and directors, in accordance with New York's Not-for-Profit Corporation Law ("N-PCL"), Estates, Powers & Trusts Law ("EPTL"), and Executive Law ("Exec. Law"). Charitable organizations that solicit in New York must register with the Office of the Attorney General ("OAG") and file annual reports under Exec. Law 172 and 172-b (subject to certain exceptions not applicable here). Similarly, persons seeking to raise funds on behalf of a charitable organization must register with the OAG and file copies of fundraising contracts and interim/closing statements as required by Exec. Law §§173 and 173-a (subject to certain exceptions not applicable here).

17. The Attorney General maintains offices at 120 Broadway, New York, New York.

18. CABC is incorporated in New York as a Type B (charitable), not-for-profit corporation under § 402 of the N-PCL. Its principal office is located at 2 Patton Road, St. James, New York.

19. CABC is registered with the New York State Attorney General's Charities Bureau. It files annual financial reports with the Charities Bureau, including the New York CHAR 500 Form and a copy of the federal IRS Form 990 filed with the Internal Revenue Service. CABC's certificate of incorporation states that its purposes are:

- "1) To provide public awareness as to prevention, cause and treatment of Breast Cancer.
- 2) To provide aid to care-giver organizations whose goals include the support and assistance of women afflicted with Breast Cancer."

CABC's certificate of incorporation has never been amended.

20. CABC has received an exemption from federal income tax from the IRS under § 501(c)(3) of the Internal Revenue Code ("Section 501(c)(3)"). Its certificate of incorporation requires it to operate in a manner consistent with Section 501(c)(3), stating: "the corporation ... shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under IRC [Internal Revenue Code] § 501(c)(3) or corresponding provisions of any subsequent Federal tax laws."

21. Andrew Smith resides at 93 Peconic Bay Boulevard, Aquebogue, New York. Smith is one of the founders of CABC. Apart from a brief absence in 2009, Smith has served continuously as a member of CABC's board of directors since CABC's incorporation in 1995, and has also served as an officer of the corporation, including as Treasurer.

22. Debra Koppelman resides at 2 Patton Road, St. James, New York, in a home owned by Smith. Koppelman has served as a member of CABC's board of directors since at

least 2005. She has also served as its Vice President, Director of Development and Director of Programs.

23. Patricia Scott resides at 301 East 79th Street, New York, New York. Smith has served as a member of CABC's board of directors since 2006. She has been identified as CABC's President in filings with the OAG and the IRS.

24. Campaign Center is a New York for-profit corporation that provides professional fundraising services to CABC. Campaign Center maintains offices at 189 South Wellwood Avenue, Suite B, Lindenhurst, New York. Campaign Center is registered with the Attorney General's Charities Bureau as a professional fund raiser, pursuant to the Executive Law.

25. Garrett Morgan resides at 173 Secatogue Lane West, West Islip, New York. He is the founder, owner and president of Campaign Center.

JURISDICTION AND VENUE

26. The Attorney General brings this action on behalf of the People of the State of New York under the Executive Law, the N-PCL, the EPTL, the General Business Law ("GBL"), and as *parens patriae*.

27. Under Exec. Law § 63(12), the Attorney General is authorized to bring an action for injunctive relief, restitution, damages, costs, and other relief in connection with repeated and persistent or illegal acts in the transaction of business.

28. Under Exec. Law § 175, the Attorney General is authorized to bring an action based on violations of Article 7-A of the Executive Law to enjoin the fraudulent solicitation or collection of charitable funds and for an order removing any director or other person responsible for the violations.

29. Under N-PCL §§ 720(a) and 720(b), the Attorney General is authorized to bring an action to require the directors and officers of a New York not-for-profit corporation to account for the mismanagement of corporate assets and for transfers, loss, or waste of corporate assets in violation of their fiduciary duties; to recover all resulting damages from such officers and directors; and to set aside an unlawful conveyance, assignment or transfer of corporate assets, where the transferee knew of its unlawfulness.

30. Under N-PCL §§ 706(d) and 714(c), the Attorney General is authorized to seek removal of corporate officers and directors for cause, including for violations of their fiduciary duties.

31. Under EPTL § 8.1-4(m), the Attorney General may institute appropriate proceedings to secure the proper administration of a not-for-profit corporation.

32. Under N-PCL § 112(a)(1), the Attorney General is authorized to bring an action to dissolve a not-for-profit corporation that has acted beyond its capacity or power, or to restrain it from carrying on unauthorized activities.

33. Under N-PCL § 1101(a)(2), the Attorney General is authorized to bring an action to dissolve a corporation that has exceeded the authority conferred upon it by law, or has carried on, conducted or transacted its business in a persistently fraudulent or illegal manner.

34. Under N-PCL § 112(a)(7) and § 1102(a)(2)(D), the Attorney General is authorized to petition for a judicial dissolution of a corporation where the “directors . . . in control of the corporation have looted or wasted the corporate assets, have perpetuated the corporation solely for their personal benefit or have otherwise acted in an illegal, oppressive or fraudulent manner.”

35. Under GBL § 349, the Attorney General is authorized to seek an order enjoining deceptive acts or practices in the conduct of any business, trade or commerce.

36. Under GBL 350-d, the Attorney General can seek the imposition of civil penalties in the amount of \$5,000 against a corporation or an individual for each deceptive act or practice under GBL § 349.

37. The Attorney General also has common law *parens patriae* authority to conserve charitable property and to protect the public from fraudulent solicitation.

38. Because all of the parties maintain residences and/or business addresses in Suffolk County, and Defendants' actions originated there, venue is properly laid in Suffolk County, as provided in New York Civil Practice Law and Rules § 503 and N-PCL § 1110.

STATEMENT OF FACTS

Exploiting Breast Cancer for Personal Profit

39. CABC was created over fifteen years ago to exploit the breast cancer cause for the personal profit of Smith and his friends.

40. Emerging from personal bankruptcy and in need of cash, Smith turned to Morgan for help in starting CABC. Morgan once employed Smith at his professional fundraising business.

41. Smith incorporated CABC in 1995, appointing himself, his then-wife and a friend as CABC's directors.

42. Prior to starting CABC, Smith had no experience running a charitable organization or involvement with the breast cancer cause. However, breast cancer was emerging as a national charitable cause and of particular concern on Long Island and Smith knew that his friend Morgan had a professional fundraising business that profited off of charitable causes.

43. Operating out of Morgan's fundraising office, Morgan and Smith launched CABC's fundraising operation in 1995 just as another sham fundraising operation Morgan was working on had come under scrutiny by the Attorney General's Office. That operation, run with Morgan's business associate, Michael Buonanno ("Buonanno"), fraudulently raised funds for a sham meals-on-wheels charity based in Long Island. The meals-on-wheels fundraising operation was ordered shut-down, with Morgan and others ordered to comply with numerous measures to protect the public against fraudulent fundraising practices.

44. Smith, Morgan and Buonanno were all old friends with longstanding financial ties. Among other things, Buonanno, Smith and Morgan were "multi-level marketing" distributors of air and water filters, making money by recruiting new distributors and receiving commissions off their sales.

45. Smith and his friends have all benefitted financially from the CABC operation. Smith has paid himself generous compensation, despite being fully-employed elsewhere. Morgan became the outside fundraiser, and later arranged to be paid 80-85% of every dollar raised and an additional percent of every dollar raised from other professional fundraisers he recruited. Buonanno became the outside financial advisor for CABC's investment and retirement accounts funded from charitable contributions that Defendants have diverted for their personal benefit, as well as its insurance broker for medical and insurance policies that CABC took out for the benefit of Smith and Koppelman.

46. Smith has at all times controlled the composition of CABC's three-person board, appointing his family, friends and associates to serve as directors, ensuring that there would be no independent oversight of the CABC operation.

47. CABC has never held elections for its officers or directors during the approximate 14-year period from the time of inception until the commencement of the Attorney General's investigation, an outright violation of CABC's bylaws and New York State law.

48. None of CABC's directors or officers had any training or experience in not-for-profit management when they were appointed by Smith.

49. For example, in 2005, Smith asked Koppelman, with whom he was living at the time, to join the board as a paid director to fill a vacancy, despite her lack of not-for-profit experience. When another vacancy arose in 2006, Smith and Koppelman asked Scott, a friend of Koppelman's, to join the board as a paid director, despite her lack of not-for-profit experience.

50. In CABC's filings with the Attorney General's office, Scott is identified as President, Smith is identified as Treasurer, and Koppelman as VP and/or Director of Programs. These titles are meaningless.

51. Scott's title of President was a fiction created by Smith and Koppelman. According to the CABC bylaws, the President "shall be the chief executive officer of the corporation" and "shall have the general management of the affairs of the corporation." However, Scott has had no rights or responsibilities as a "President" or chief executive. Despite her lofty title, Scott has served only in a nominal support role with no decision-making authority or leadership responsibilities.

52. Scott was not even aware until early 2010—approximately three years after the practice began—that she was identified as "President" on CABC's filings.

53. Additionally, although Smith is identified as "Treasurer," in fact it is Koppelman who controls the checkbook and writes checks for CABC, including for fundraiser commissions and other expenses.

Using CABC as a Front for Personal Benefits

54. Although they are each employed elsewhere, Smith, Koppelman and Scott have used CABC as a personal piggy bank to subsidize their lifestyles, collectively paying themselves hundreds of thousands of dollars in salaries, retirement benefits, and medical and dental benefits.

55. Year after year, the salary and benefits collectively paid to the three directors vastly exceeded the amount spent on charitable activities.

56. Smith and Koppelman, who run the CABC operation out of Smith's home in which Koppelman lives, have paid themselves over \$550,000 in salaries combined for 2005 through 2009, and another \$150,000 in retirement accounts, funded entirely by CABC. CABC's board has never documented the process by which the directors and officers set their salaries, as a properly governed board would.

57. Koppelman's annual compensation from CABC has steadily increased, reaching \$87,282 while Smith's at one point reached \$62,382, despite being fully-employed or nearly fully-employed elsewhere as recruiters.

58. These amounts are unreasonable and wholly out of proportion to the services they purport to have performed for CABC. For example, Smith testified before the OAG that he devoted, on average, two hours a week for CABC. Even giving credit to his testimony, Smith is paying himself the equivalent of \$480 per hour.

59. In addition, Koppelman and Smith have caused CABC to provide them with medical and dental benefits, and to pay for 100% of those benefits with no individual contribution made by either director. These premiums total at least \$9,000 per year.

60. Since joining the board in 2006, Scott has received over \$107,000 in total compensation despite working full-time as a regional marketing and sales manager for a

cosmetics company. Like Smith and Koppelman, Scott has received generous retirement benefits fully funded by CABC, with no individual contributions.

61. Not content with receiving this excessive compensation and benefits, the directors also gave themselves Blackberry devices, whose cost was covered entirely by CABC, despite there being no business justification for them. CABC has also paid the expenses for both Koppelman and Smith's personal home television, internet and phone packages.

Ceding Control of Charitable Fundraising to Morgan

62. CABC has effectively ceded control over fundraising to Morgan and Morgan's for-profit businesses. Morgan is not a CABC director or officer.

63. Smith, Koppelman and Scott have allowed Morgan to exert this control, paying him huge sums, because he provides the cash flow to pay for their excessive and unjustified salaries, benefits and deferred compensation.

64. CABC outsources nearly all of its fundraising business to Campaign Center, which is owned by Morgan, or to other professional fundraisers selected by Morgan, for which Morgan is paid an additional fee.

65. CABC is by far Campaign Center's largest fundraising client. In the last five years alone, CABC has paid Campaign Center over \$3.5 million.

66. Under its contracts with Campaign Center, CABC pays Morgan and the Campaign Center a minimum of 80-85% of the funds raised.

67. Ignoring their fiduciary responsibilities, CABC's board has blindly renewed Campaign Center's professional fundraising contract year after year, despite the fact that its terms are unfavorable to CABC.

68. In fact, the Campaign Center contract renews automatically, without any input or oversight by CABC. The CABC board has not sought to renegotiate any of its terms or seek a more favorable arrangement with an independent third party.

69. Last year CABC made its bad deal with Morgan even worse when it agreed to increase the fundraising fees paid to Campaign Center even though it was under no obligation or pressure to do so, as the prior contract terms were not set to expire for another eight months, and Campaign Center was actually producing weaker fundraising totals.

70. In addition to Morgan's lucrative Campaign Center fundraising contract, Morgan has further profited off of CABC by obtaining the right to recruit other fundraisers to solicit for CABC and then getting a cut of the donations raised by them.

71. Under a series of "broker" agreements, CABC has agreed to pay Campaign Center a percentage of all funds raised by the fundraisers recruited by Morgan. Inexplicably, CABC pays Campaign Center and Morgan these additional amounts indefinitely, rather than making a single payment to reasonably compensate him for the services provided.

72. Further demonstrating Morgan's influence over CABC, in 2010, CABC agreed to an even more favorable arrangement for Morgan by making the broker arrangement "exclusive" and lowering the amount guaranteed to CABC under the arrangement.

73. CABC's acquiescence to Morgan's request had no legitimate business justification, but instead served only to appease Morgan so that Morgan would continue the CABC fundraising operation and generate the funds needed to pay for the directors' unjustified salaries and benefits.

Fraudulent Fundraising

74. For years Defendants have lied to and grossly misled the public about how donations will be used.

75. Defendants falsely claim that CABC has research affiliations with such hospitals as Memorial Sloan-Kettering in New York and John T. Mather Memorial Hospital on Long Island, when it has never had any research affiliations with these institutions.

76. Defendants falsely claim that CABC is helping "women survive" through "research" relating to breast cancer and by providing a mammography van, when in fact it does not conduct any cancer research of any kind and it has no mammography van.

77. Defendants falsely claim that CABC provides "constant" seminars and forums for women, when in fact it does not do so.

78. Defendants grossly exaggerate and mislead donors about the existence of a "mammography fund," claiming that donations into this fund will "help sponsor a mammography for women that have lost their insurance" and "help provide free mammographies for women that have no insurance." In fact, CABC has spent virtually none of its funds on mammographies. In the last three years alone, despite raising over \$4 million, CABC funded mammographies for only 11 women. In 2008, a year in which the organization raised over \$1.4 million from the public, a mere \$374 went to underwriting mammographies.

79. Defendants deceive donors into believing that donations are used for "eradicating" breast cancer, when no money is used for that purpose. On CABC's website, which is designed to pull at donors' heartstrings with stock-photos of children with their mothers and emotional music asking "I will remember you.... Will you remember me?" CABC solicits donations so that the "dream" of "eradicating breast cancer" can be realized, and shamelessly

tells CABC's donors that they should "take personal pride in the important role they have played in making this dream possible."

80. In addition, acting under Morgan's direction and control and in coordination with CABC, Campaign Center telemarketers use various fraudulent fundraising tactics to maximize the donations collected and the commissions paid to Campaign Center. Documents obtained by the Attorney General's Office as well as evidence collected by an undercover investigator with the Attorney General's Office who worked at Campaign Center's Lindenhurst, New York call-center demonstrate that:

- (a) Campaign Center will send donors an "official invoice" claiming that the individual had agreed to make a pledge and owes a certain amount when in fact the donor declined to make a pledge.
- (b) In some cases, these pledge "invoices" are sent to individuals who never even received a phone call.
- (c) Campaign Center will send invoices out repeatedly, even after a pledge has been paid, in an attempt to elicit duplicate payments on a pledge.
- (d) Campaign Center solicitors falsely tell potential donors that they are calling for a "local" charity that is based in the same town as the potential donor and are raising funds to provide "local" free mammographies, in order to convey the false impression that donations will stay in the local community. In fact, Campaign Center telemarketers, who are based in Lindenhurst, New York, merely change the name of the town in their script depending on where the potential donor lives. For example, telemarketers will falsely say, "We are calling to help the local

women of East Meadow” when in fact no money is being used to help the women of East Meadow.

- (e) Campaign Center solicitors use false names, varying their last name to attempt to identify with the perceived racial, religious or ethnic group of the potential donor, in violation of Article 7-A of the Executive Law. A Latino undercover investigator from the Attorney General’s office was asked not to use his real last name when calling donors and was asked to instead use the name " Powers” or “Booth."
- (f) Campaign Center solicitors fail to disclose that they are paid professional solicitors employed by a professional fundraiser, in violation of Article 7-A of the Executive Law.
- (g) Campaign Center solicitors routinely stress that CABC gives free mammographies, when virtually no funds are used for that purpose.

81. Campaign Center has failed to take any reasonable steps to substantiate any of the claims its solicitors make to the public on behalf of CABC. Morgan has turned a blind-eye to the content of scripts for CABC, and in testimony before the OAG, has claimed ignorance of CABC's operations, despite launching CABC with his longtime personal friend, Smith, fifteen years ago and spending those years closely working with Smith to raise millions of dollars for CABC.

Lack of Oversight

82. Smith, Koppelman and Scott have breached their fiduciary duties and are complicit in the scheme to defraud the public because they have permitted CABC’s fraudulent fundraising to persist and have failed to exercise any appropriate oversight over Campaign Center or other professional fundraisers raising money in its name.

83. Smith, Koppelman and Scott serve as CABC's only three officers and its only three directors. As a result, there is no one on the CABC board who is in a position to provide independent oversight to ensure that charitable funds are properly spent.

84. In fact, CABC never held regular board meetings or kept board minutes, prior to receiving the Attorney General's subpoena in 2010.

85. Prior to the Attorney General's investigation, CABC's board took no steps to review, approve or even receive solicitation materials used by Campaign Center and other professional fundraisers, nor did CABC ensure that the fundraising material used by its fundraisers was accurate.

86. CABC's board has taken no steps to adopt or maintain internal controls to ensure that charitable assets are properly administered, such as prohibiting directors and officers from signing checks to themselves or requiring two signatures on checks for large amounts.

87. CABC has not put in place any controls to protect against self-dealing or inappropriate insider transactions, nor has it adopted a conflict of interest policy. Among other things, Koppelman routinely wrote and signed checks to herself, including one marked "loan" for \$50,000, as well as all her own paychecks.

88. Additionally, CABC does not conduct due diligence to ensure that new fundraisers recruited by Morgan are reputable before CABC signs a contract with them.

89. Morgan has facilitated new deals for CABC with at least two fundraisers that were sued by the OAG for fraud and barred from soliciting charitable donations in New York: Resource Center and Outreach Calling. Resource Center was sued by the Attorney General in 2010 for fraudulent fundraising practices and ordered to shut down; Outreach Calling is run by

Mark Gelvan, who had been sued by the Attorney General in 2002 and is now permanently barred from carrying on fundraising activities in New York.

90. In short, Smith, Koppelman and Scott have run CABC for their personal benefit without any proper oversight, and have taken no steps to ensure charitable assets are preserved and used for charitable purposes consistent with CABC's stated mission.

Engaging in Self-Dealing Transactions

91. The actions of Smith, Koppelman and Scott have not been in good faith or in the best interests of CABC.

Illegal Loans to Smith

92. Section 716 of the N-PCL prohibits loans to officers and directors of a not-for-profit corporation.

93. In 2008, Smith caused CABC to make two loans to him, in the amounts of \$100,000 and \$5,000. These loans were completely unsecured, with no security, collateral or guarantee.

94. Koppelman and Scott acquiesced in these unsecured loans to Smith. Koppelman wrote and signed the loan checks on CABC's corporate checking account.

95. These loans were *per se* violations of N-PCL § 716, which prohibits loans to directors and officers of a New York not-for-profit corporation.

96. In addition to being unlawful, the loans were improper because the purpose of the loans was unrelated to CABC's purposes as set out in its certificate of incorporation.

97. Rather, the purpose of the \$105,000 in loans, as Smith has now admitted, was to provide him with funds to make an investment with Agape World.

98. Agape World was, in fact, a Ponzi scheme, and Smith lost his entire investment.

99. There was no contemporaneous written agreement documenting the amount of the loans, interest due, a repayment schedule, or any other key terms one would expect to find with a six-figure loan. Smith only created a promissory note for the \$100,000 loan sometime in 2009, many months after receiving the loan and only after CABC's accountant insisted that he document and repay the loan.

100. Smith, Koppelman and Scott breached their fiduciary duties by permitting and causing CABC to make loans to Smith in violation of N-PCL § 716, and by failing to have any security for the loan or even documenting any basic terms.

Illegal Loan to Koppelman

101. In 2008, Koppelman wrote a check to herself for \$50,000 for a loan.

102. Smith not only acquiesced in the loan to Koppelman, but suggested it.

103. The loan was intended to help Koppelman purchase from Smith the 2 Patton Road residence, where the CABC operation is based. (The transaction ultimately did not take place.) Thus, both Smith and Koppelman had a financial interest in and stood to benefit from the loan.

104. Smith and Koppelman breached their fiduciary duties by permitting and causing CABC to make a loan to Koppelman, in violation of N-PCL § 716.

Smith's Self-Interested Sale of Low-Value Securities to CABC

105. In January 2009, Smith acquired 2,500 shares of stock in Empire National Bank (ticker symbol "EMPK"), a start-up local bank that in October 2010 was found to have unsafe and unsound banking practices. Morgan was also an investor. Smith paid \$25,000, or \$10 per share for the securities.

106. In 2009, after the value of the stock had declined, Smith decided to sell his holdings of Empire National Bank stock. At that time, Empire National Bank stock was not

trading on the NYSE or NASDAQ, but rather on the Over-the-Counter Bulletin Board. Selling 2,500 shares at once on this market would have driven down the price of the stock given the very low trading volume in the stock and would have required payment of a commission.

107. Smith asked CABC to purchase the stock from him, transferring the risk of loss from Smith to CABC. On August 1, 2009 Smith sold the securities to CABC for \$20,000, or \$8 per share. The purchase of such stock by CABC was highly unusual, in that CABC has otherwise held investments only in mutual funds, not in individual stocks.

108. Without doing any research or due diligence, Koppelman assented to the transaction, even though it was clearly not in the best interest of a not-for-profit corporation to have funds tied up in a fundamentally illiquid investment. In fact, in the two weeks after Smith sold his shares to CABC, there was zero trading volume in Empire stock.

109. Scott was not consulted on the transaction, which was carried out without her knowledge or consent. As a result, the transaction was not approved by a majority of disinterested directors, as Koppelman was the only director aware of the transaction who did not have a financial interest in the transaction.

110. Koppelman wrote and signed the check for \$20,000 for the purchase.

111. The Empire Bank stock transaction was exclusively in Smith's interest, and not in the best interest of CABC. Smith and Koppelman breached their fiduciary duties by permitting and causing this transaction.

112. As of June 23, 2011, Empire National Bank stock was trading at \$5.80 per share and CABC's holdings were worth \$14,500—a loss of \$5,500—which is down nearly 28% since CABC purchased the stock from Smith.

Scheme to Obtain Unemployment Insurance Benefits

113. Smith, after losing one of his prior full-time jobs, concocted a scheme in 2009 to conceal his CABC compensation so he could apply for and receive unemployment insurance.

114. In the spring of 2009, Smith told Koppelman and Scott that he was going to take a “leave of absence” from the CABC Board. With Koppelman's acquiescence, Smith then appointed his friend Parrish Minnies to take his place on the Board, without formal election.

115. Minnies is Koppelman’s former brother-in-law (a fact which Koppelman did not disclose when asked about Minnies in testimony before the Attorney General). Minnies is a house painter by trade. He had no prior experience as an officer, director, or employee of a not-for-profit corporation or any connection to the breast cancer cause. Yet, Smith appointed Minnies not only as a director of CABC but also as its treasurer, despite Minnies having no financial background or experience. By his own admission, Minnies did not even have a personal bank account.

116. Notwithstanding Minnies' lack of experience or qualifications, Smith arranged for, and Koppelman permitted, Minnies to be paid at the same base salary rate that Smith was being paid—approximately \$50,000 annually.

117. During the six months Minnies served as director and treasurer of CABC, Minnies performed no services for CABC warranting the salary that CABC paid him.

118. In fact, Minnies was simply a straw man established by Smith, to collect Smith’s salary and secretly forward it on to Smith. Smith and Minnies had a joint checking account, opened in May 2009. As Minnies’ “paychecks” were deposited into the account, Smith would write checks to himself, or for his benefit, in approximately the same amount.

119. Minnies never physically received a single paycheck. Instead, Koppelman gave his paychecks to Smith, who deposited them into the joint account, and then wrote checks as described above.

120. Of over \$19,000 deposited into the joint account, all but \$800 went to Smith or for his benefit.

121. Thus, Smith continued to indirectly draw a salary from CABC for several months, while collecting approximately \$6,500 in unemployment insurance payments and avoiding payroll taxes.

122. When Smith had found a new job, he re-claimed his CABC board seat and resumed receiving his salary directly from CABC.

123. Smith's fraudulent actions during his phony leave of absence, while claiming unemployment benefits, constituted an abuse of the not-for-profit corporation, and yet another example of Smith using CABC for his personal benefit.

Filing False and Misleading Reports with the Attorney General

124. Smith, Koppelman and Scott caused material misstatements and omissions in the reports filed with OAG and made available to the public, including the following:

- (a) The Forms 990 filed with the OAG for 2006 through 2009 omitted \$120,000 in retirement benefits from the individual compensation reported for Smith, Koppelman and Scott.
- (b) The Forms 990 filed with the OAG for 2006 through 2009 vastly overstate hours of work performed by Smith, Koppelman, Scott, and (for 2009) Parrish Minnies.

- (c) The Forms 990 filed with the OAG for 2006 through 2009 falsely report CABC's officers, e.g., (i) falsely identifying Scott as President although there had been no election of her to that position, Scott herself was totally unaware that she had been identified as President, and Scott performed no functions as President; and (ii) falsely identifying Minnies as Treasurer, although there had been no election of him to that position, Minnies himself was totally unaware that he had been identified as Treasurer, and Minnies performed no functions as treasurer of CABC.
- (d) For the Forms 990 filed with the OAG for 2006-2008 the "broker" commissions paid to Campaign Center are not disclosed as fundraising expenses, thus misleading the public as to the true amount that CABC was spending on fundraising and on Campaign Center in particular.
- (e) The Forms 990 filed with the OAG for 2008 and 2009 falsely report that meetings of CABC's board and committees were documented, when in fact no meetings were even held.
- (f) The Form 990's filed with the OAG for 2008 and 2009 falsely report compensation as earned by Minnies when in fact it was paid to Smith, as a result of the arrangement between the two.
- (g) The financial statements filed along with the Form 990 for 2008 falsely reports as assistance from the "Mammography Fund" \$17,283; in fact, more than half of this amount actually represents the cost of health and dental insurance purchased for the benefit of Smith and Koppelman.

125. Smith and Koppelman, by signing and submitting these reports to the Attorney General, intentionally misled the Attorney General and the donating public as to the true nature of CABC's compensation and fundraising expenses.

126. In particular, the underreporting of compensation, together with the exaggerated statements of hours worked, were designed to mislead OAG and the public into believing that the compensation paid to the directors was reasonable and commensurate with services rendered, rather than unreasonable and excessive.

Failing to Disclose Existence of Broker Agreements

127. Morgan failed to disclose in annual filings with the Attorney General's office his "broker" agreements with CABC that guaranteed him a percentage of all donations raised by professional fundraisers he recruited.

128. As a professional fundraiser soliciting funds in New York State, Morgan is required to file an annual registration statement with the Attorney General's Charities Bureau, known as the Form CHAR 13. This form, at Part F, Question 1, requires fundraisers to disclose if they have "been associated at any time with any of the charitable organizations disclosed in Part H [i.e., those with which the registrant has professional fundraising contracts] in any manner other than pursuant to a [fundraising] contract" disclosed or filed with the Attorney General. If the answer is "yes", then the fundraiser must explain the nature of the other relationship with the charity.

129. Instead of disclosing the existence of the broker agreements, Morgan consistently and falsely answered "no" to Question 1 in Part F of the Campaign Center registration statements, which he signed under penalty of perjury and submitted to the Attorney General.

130. The failure to disclose the "broker" arrangement meant that the Attorney General and the public were misled as to the true percentages going to CABC under its contracts for fundraising services in New York.

131. For example, Morgan helped to "broker" a new contract between CABC and Crown Management Services, Inc. ("Crown"). On the face of this contract, which is filed with the OAG, Crown receives 80% of funds raised and CABC receives the remaining 20%. However, due to the operation of the undisclosed "broker" arrangement, Morgan receives an additional 5% from CABC's share, thus increasing total fundraising fees paid by CABC for Crown's fundraising services to 85% and decreasing CABC's share to 15%.

132. Moreover, the fees Campaign Center receives as "broker" fees are not disclosed on the interim closing statements (CHAR Form 037) that Campaign Center files annually with the Attorney General, reporting, among other things, the total revenues collected and retained by the fundraiser. Nor is the CABC Campaign Center broker agreement itself filed with the Attorney General's Office.

133. Because Morgan submitted false registration statements to the Attorney General that failed to disclose the existence of the broker agreement, the true percentage going to CABC under the Crown contract was hidden from the Attorney General and from the public.

Spending Funds for Unauthorized Purposes

134. CABC claims to make grants to individuals for "medical assistance" and "scholarships." However, the *de minimis* amounts that CABC claims to spend on these programs are not even authorized under CABC's certificate of incorporation.

135. CABC's certificate of incorporation has two narrow purposes for which charitable funds may be spent:

- 1) To provide public awareness as to prevention, cause and treatment of Breast Cancer.
- 2) To provide aid to care-giver organizations whose goals include the support and assistance of women afflicted with Breast Cancer.

136. Thus, CABC's certificate of incorporation actually bars CABC from making the scholarship and medical assistance grants to individuals at all.

137. In addition, the purported grants of medical assistance were made simply upon request, including to individuals connected to CABC, without CABC applying any objective criteria or conducting any due diligence whatsoever to prove that the claimed medical expenses were actually incurred. For instance, CABC gave a \$9,500 grant—by far the largest of its kind—to one of Morgan's employees at the Campaign Center, without requiring any proof of the medical expenses she had incurred, or verification of her financial need. CABC also awarded scholarship grants to the children of this same employee.

138. CABC has simply taken other applicants at their word. In total, CABC distributed \$14,500 for purported medical expenses without requiring documentation that the expenses claimed had actually occurred or any showing of financial need.

139. Further, in making these scholarship and medical assistance grants, CABC violates provisions in its certificate of incorporation that bar CABC from carrying out activities not permitted under Internal Revenue Service rules applicable to organizations exempt under Internal Revenue Code Section 501(c)(3).

140. To ensure that funds are put to legitimate charitable use, the Internal Revenue Service has made it clear that charitable tax-exempt organizations such as CABC are not permitted to distribute funds to individuals in a freewheeling, unchecked manner. Specifically, an organization that purports to provide charity via grants to individuals must (i) use an objective set

of criteria to determine need or eligibility for the funds and (ii) maintain records to support its determinations of individual eligibility. CABC does neither. In fact, in the absence of objective criteria and documentation requirements, CABC has demonstrated the very favoritism and private benefits that are prohibited by Internal Revenue Code Section 501(c)(3).

FIRST CAUSE OF ACTION

Scheme to Defraud – Exec. Law §§ 172-d(2) & 175(2)(a),(c) (Against All Defendants)

141. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

142. Defendants have engaged in a fraudulent scheme in connection with charitable solicitations, obtained money by false pretenses and representations, and engaged in repeated fraudulent and illegal acts and activities in connection with charitable solicitations, including but not limited to: (a) making false and misleading statements about CABC programs, including false and misleading statements about purported research affiliations that CABC has with other institutions; (b) deceiving donors that their contributions would be used to help eradicate breast cancer, when in fact none of its funds are used for this purpose; (c) falsely representing to donors and potential donors that their support will help provide mammographies for uninsured or needy women when, in fact, virtually no funds are used for this purpose; (d) failing to clearly describe CABC programs and activities, in violation of Exec. Law §§ 172-d(3) & 175(2)(g); (e) using false and misleading promotional materials, in violation of Exec. Law § 172-d(3); and (f) failing to apply contributions in a manner substantially consistent with the solicitations being made or with CABC's stated charitable purposes, as expressed in its Certificate of Incorporation.

143. Accordingly, the Defendants should be temporarily and permanently enjoined from the solicitation and collection of charitable funds, as authorized by Exec. Law § 175(2)(a) and (c).

SECOND CAUSE OF ACTION

Scheme to Defraud – Exec. Law §§ 172-d(2) & 175(2)(a),(c) (Against Campaign Center and Morgan)

144. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

145. In addition to the acts described under the First Cause of Action, Defendants Campaign Center and Morgan also have engaged in a fraudulent scheme in connection with charitable solicitations, obtained money by false pretenses and representations, and engaged in illegal acts in connection with charitable solicitations by, *inter alia*, (a) sending an “official invoice” claiming that the individual has made a pledge and owes a certain amount even where the individual in question has already declined to contribute; (b) sending “official invoices” to people who have never even been contacted before about donating; (c) sending out repeated invoices, apparently in the hope of receiving multiple payments for the same pledge; (d) falsely telling potential donors to CABC that they are based in the same town as the potential donor, in order to convey the false impression that the funds are being raised for a local charity and will stay in the community; and (e) failing to make the disclosures required under Article 7-A of the Executive Law including, among other things, disclosure of solicitors’ true names, their employment by Campaign Center, and their paid status.

146. Accordingly, Defendants Campaign Center and Morgan should be temporarily and permanently enjoined from the solicitation and collection of charitable funds, as authorized by Exec. Law §§ 175(2)(a) and (c).

THIRD CAUSE OF ACTION

Failure to Apply Funds Consistently with Corporate Purposes or Solicitations – Exec. Law §§ 172-d(4) & 175(2)(e)(i) (Against CABC, Smith, Koppelman and Scott)

147. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

148. Defendants CABC, Smith, Koppelman and Scott have failed to apply funds solicited from the public in a manner substantially consistent with CABC's charitable purposes or with solicitations to the public, in violation of Exec. Law §§ 172-d(4) & 175(2)(e)(i).

149. Accordingly, Defendants CABC, Smith, Koppelman and Scott should be temporarily and permanently enjoined from the solicitation and collection of charitable funds, as authorized by Exec. Law § 175(2)(e)(i).

FOURTH CAUSE OF ACTION

False Filings – Exec. Law §§ 172-d(1) & 175(2)(d) (Against CABC, Smith, Koppelman and Scott)

150. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

151. CABC, Smith and Koppelman have made materially false and misleading statements and omissions in CABC's annual reports filed with the Attorney General, including but not limited to: failing to accurately and completely report the compensation paid to CABC's directors and officers; falsely reporting that meetings of CABC's board and committees were documented, when in fact no meetings were held; vastly overstating the hours of work performed by Smith, Koppelman, Scott and Minnies; falsely reporting compensation as earned by Minnies when in fact it was paid to Smith; and falsely reporting the amount of assistance granted for mammograms.

152. These false and misleading filings have misled the Attorney General and the public as to how CABC's charitable assets were being used.

153. Accordingly, CABC, Smith, Koppelman and Scott should be temporarily and permanently enjoined from further solicitations, pursuant to Exec. Law § 175(2)(a) and (d).

FIFTH CAUSE OF ACTION

False Filings – Exec. Law §§ 172-b, 172-d(1), and 175(2)(a),(d) (Against Campaign Center and Morgan)

154. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

155. Defendants Campaign Center and Morgan made materially false and misleading statements and omissions in Campaign Center's annual registration statements filed with the Attorney General, in that they failed to disclose the existence of Campaign Center's broker agreements with CABC, in violation of Exec. Law §§ 172-b, 172-d(1) and 175(2)(d).

156. This material omission has misled the Attorney General and the public as to the full extent of fundraising commissions paid by CABC.

157. Accordingly, Campaign Center and Garrett Morgan should be temporarily and permanently enjoined from further solicitations, pursuant to Exec. Law § 175(2)(a) and (d).

SIXTH CAUSE OF ACTION

Persistent Fraud or Illegality in Business - Exec. Law § 63(12) (Against Campaign Center and Morgan)

158. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

159. Defendant Campaign Center, under the direction of Defendant Morgan, has engaged in repeated fraudulent and illegal acts and demonstrated fraud and illegality in the conduct of its business in that it (a) makes or allows false statements in charitable solicitations,

including that CABC has a research affiliation with Memorial Sloan-Kettering when no such affiliation exists; (b) makes or allows false statements in solicitations and advertising materials by affirmatively representing that charitable solicitations are used for specific purposes such as breast cancer research, mammography vans, and educational seminars, when in reality funds do not go toward these purposes; (c) makes or allows false statements leading potential donors to believe that CABC is a "local" charity, whose activities benefit the communities that are being targeted with calls, when in fact very few New Yorkers have benefited from CABC's mammography assistance; (d) sends an "official invoice" claiming that the individual has made a pledge and owes a certain amount even where the individual in question has already declined to contribute; (e) sends an "official invoice" to people who have never even been contacted before about donating; (f) sends out repeated invoices, apparently in the hope of receiving multiple payments for the same pledge; (g) falsely tells potential donors to CABC that they are based in the same town as the potential donor, in order to convey the false impression that the funds are being raised for a local charity and will stay in the community; and (h) ignores disclosure requirements of the Executive Law which require, among other things, disclosure of solicitors' true names, their employment by Campaign Center, and their paid status.

160. Accordingly, as authorized by Exec. Law § 63(12), Defendants Campaign Center and Garrett Morgan should be enjoined from conducting any fundraising activities for CABC, and ordered to pay restitution and damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
Deceptive Acts or Practices - GBL § 349
(Against All Defendants)

161. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

162. Defendants have engaged in a pattern of deceptive acts and practices in the conduct of CABC business in that Defendants, *inter alia*, have (a) made or allowed false statements in charitable solicitations, including that CABC has a research affiliation with Memorial Sloan-Kettering when no such affiliation exists; (b) made or allowed false statements in solicitations and advertising materials by affirmatively representing that charitable solicitations are used for specific purposes such as breast cancer research, mammography vans, and educational seminars, when in reality funds do not go toward these purposes; and (c) made or allowed false statements leading potential donors to believe that CABC is a "local" charity, whose activities benefit the communities that are being targeted with calls, when in fact very few New Yorkers have benefited from CABC's mammography assistance.

163. Accordingly, as authorized by GBL § 349, Defendants should be enjoined from such unlawful acts and practices and ordered to pay restitution of any monies or property obtained directly or indirectly by any such unlawful acts, in an amount to be determined at trial.

164. As authorized by GBL § 350-d, Defendants should be ordered to pay civil penalties of \$5,000 for each violation of GBL § 349, in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION

Deceptive Acts or Practices - GBL § 349 (Against Campaign Center and Morgan)

165. In addition to the acts described under the Seventh Cause of Action, the Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

166. Campaign Center, under the direction and control of Defendant Morgan, has engaged in a pattern of deceptive acts and practices in the conduct of Campaign Center and CABC business, in that Defendants, *inter alia*, (a) send an "official invoice" claiming that the individual has made a pledge and owes a certain amount even where the individual in question

has already declined to contribute; (b) send “official invoices” to people who have never even been contacted before about donating; (c) send out repeated invoices, apparently in the hope of receiving multiple payments for the same pledge; (d) falsely tell potential donors to CABC that they are based in the same town as the potential donor, in order to convey the false impression that the funds are being raised for a local charity and will stay in the community; (e) ignored disclosure requirements of the Executive Law which require, among other things, disclosure of solicitors’ true names, their employment by Campaign Center, and their paid status, and clear descriptions of the charitable programs for which they are soliciting; (f) willfully concealed the existence of the broker arrangement between CABC and Campaign Center, thereby withholding information from the public and the OAG as to the amount of money raised by professional fundraisers that goes to CABC.

167. Accordingly, as authorized by GBL § 349, Defendants Campaign Center and Morgan should be enjoined from such unlawful acts and practices and ordered to pay restitution of any monies or property obtained directly or indirectly by any such unlawful acts, in an amount to be determined at trial.

168. As authorized by GBL § 350-d, Campaign Center and Morgan should be ordered to pay civil penalties of \$5,000 for each violation of GBL § 349, in an amount to be determined at trial.

NINTH CAUSE OF ACTION

Breach of Fiduciary Duties – N-PCL §§ 717 & 720 (Against Smith, Koppelman and Scott)

169. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

170. Smith, Koppelman and Scott have failed to discharge their duties as officers and directors of CABC with the degree of care, skill, prudence, diligence, and undivided loyalty required of them in that, among other things, they have: (a) operated CABC for their own personal benefit and private inurement; (b) awarded themselves excessive compensation in amounts grossly disproportionate to the services actually provided to CABC; (c) caused CABC to make, and allowed others to make on its behalf, solicitation statements that are materially false and misleading; (d) caused materially false and misleading reports to be filed with the Attorney General, which underreported director and officer compensation; (e) failed to institute and maintain internal controls; (f) caused and/or allowed CABC to make illegal loans to Smith and Koppelman, in violation of N-PCL § 716; (g) caused and/or allowed CABC to enter into a stock transaction with Smith which was not in the best interest of the organization; (h) failed to ensure that CABC's programs adhere to the purposes set forth in its certificate of incorporation and are administered consistently with Internal Revenue Code requirements applicable to 501(c)(3) organizations; (i) caused and/or allowed CABC to enter into fundraising and broker contracts that were not in the best interest of the organization; and (j) failed to exercise reasonable oversight of fundraising activities carried on by professional fundraisers acting in the name of CABC.

171. By the foregoing acts and omissions, Smith, Koppelman and Scott have breached their fiduciary duties owed to CABC pursuant to N-PCL § 717. Smith, Koppelman and Scott are thus liable under N-PCL §§ 720(a) (1) (A) and (a) (1)(B) to account for their conduct in the neglect and violation of their duties in the management and disposition of corporate assets, and for their conduct in transferring CABC assets to themselves and others, and causing loss and waste of CABC corporate assets, and to pay restitution and damages to CABC.

TENTH CAUSE OF ACTION
Unlawful Distributions to Directors and Officers
N-PCL §§ 719(a)(1)
(Against Smith, Koppelman and Scott)

172. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

173. Smith, Koppelman and Scott, in their capacity as directors of CABC, have voted for and/or concurred in the improper distribution of the corporation's cash or property to themselves, including in the form of excessive compensation and benefits that were grossly disproportionate to the level of services provided.

174. Accordingly, Smith, Koppelman and Scott are jointly and severally liable to CABC under N-PCL §§ 719(a)(1) for the injury suffered by CABC as a result of those transactions.

ELEVENTH CAUSE OF ACTION
To Set Aside An Unlawful Transaction – NPCL § 720(a)(2)
(Against Smith and CABC)

175. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

176. The conveyance, assignment and transfer of \$20,000 from CABC to Smith in exchange for 2,500 shares of Empire National Bank stock was unlawful in that the transaction (a) was not fair and reasonable to CABC and (b) was not authorized by a majority of directors not interested in the transaction.

177. Smith was aware of the unlawfulness of the transaction.

178. Accordingly, the transaction should be set aside under N-PCL § 720(a)(2), with the \$20,000 purchase price returned to CABC, with interest, and the securities returned to Smith.

TWELFTH CAUSE OF ACTION
Conduct Necessitating Removal of Officers and Directors –
N-PCL §§ 706 & 714
(Against Smith, Koppelman and Scott)

179. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

180. Smith, Koppelman and Scott have consistently and repeatedly breached their fiduciary obligations as officers and directors of CABC, in that they have, *inter alia*, (a) operated CABC for their own personal benefit and private inurement; (b) awarded themselves excessive compensation in amounts grossly disproportionate to the services actually provided to CABC; (c) caused CABC to make, and allowed others to make on its behalf, solicitation statements that are materially false and misleading; (d) caused materially false and misleading reports to be filed with the Attorney General, which underreported director and officer compensation; (e) failed to institute and maintain internal controls; (f) caused and/or allowed CABC to make illegal loans to Smith and Koppelman, in violation of N-PCL § 716; (g) caused and/or allowed CABC to enter into a stock transaction with Smith which was not in the best interest of the organization; (h) failed to ensure that CABC's programs adhere to the purposes set forth in its certificate of incorporation and are administered consistently with Internal Revenue Code requirements applicable to 501(c)(3) organizations; (i) caused and/or allowed CABC to enter into fundraising and broker contracts that were not in the best interest of the organization; and (j) failed to exercise reasonable oversight of fundraising activities carried on by professional fundraisers acting in the name of CABC.

181. Accordingly, Smith, Koppelman and Scott should be removed for cause as directors and officers of CABC, and permanently barred from re-election under N-PCL §§ 706(d) and 714(c).

THIRTEENTH CAUSE OF ACTION

**Failure to Properly Administer Charitable Assets – EPTL § 8-1.4
(Against Smith, Koppelman and Scott)**

182. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

183. As directors and officers of CABC, Smith, Koppelman and Scott are trustees under EPTL § 8-1.4(a), responsible for the proper administration of CABC's charitable assets. Smith, Koppelman and Scott have failed to properly administer CABC's charitable assets in that they have, *inter alia*, (a) operated CABC for their own personal benefit and private inurement; (b) awarded themselves excessive compensation in amounts grossly disproportionate to the services actually provided to CABC; (c) severely limited CABC's spending on mission-related programs in order to maximize the funds available to themselves for compensation; (d) failed to institute and maintain internal controls; (e) caused and/or allowed CABC to make illegal loans to Smith and Koppelman, in violation of N-PCL § 716; (f) caused and/or allowed CABC to enter into a stock transaction with Smith which was not in the best interest of the organization; (g) failed to exercise reasonable diligence before awarding grants to individuals, including by failing to review claims of need; and (h) caused and/or allowed CABC to enter into fundraising and broker contracts that were not in the best interest of the organization.

184. Smith, Koppelman and Scott should be removed as trustees of CABC, and ordered to account for their failure and to provide restitution to CABC.

FOURTEENTH CAUSE OF ACTION

**Dissolution under N-PCL §§ 112(a)(1) & 1101(a)(2)
(Against CABC)**

185. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

186. CABC has exceeded the authority conferred upon it by law, and acted beyond its capacity or power as provided by law and its certificate of incorporation, in that, among other things, CABC (a) conducts activities for profit or gain, in violation of N-PCL § 102(a)(5)(1); (b) distributes income and profits, in violation of N-PCL §§ 102(a)(5)(2) and 515; and (c) engages in private inurement, in violation of N-PCL § 102(a)(5)(2) and its certificate of incorporation.

187. CABC has conducted its business in a persistently fraudulent and illegal manner, in that CABC has, among other things, (a) filed materially false and misleading reports with the Attorney General that materially misstate director and officer hours and compensation, among other items, in violation of Exec. Law § 172-d(1); and (b) persistently made false and misleading solicitation statements to the public in violation of Exec. Law § 172-d(2)-(4).

188. CABC has, by the abuse of its powers contrary to public policy of the state, become liable to be dissolved.

189. Accordingly, CABC should be dissolved pursuant to N-PCL §§ 112(a)(1) and 1101(a)(2) and its remaining assets and future assets, if any, applied to charitable uses consistent with its mission as set forth in its Certificate of Incorporation, as authorized by N-PCL §§ 1115(a) and 1008(a)(15).

FIFTEENTH CAUSE OF ACTION

Dissolution under N-PCL §§ 112(a)(7) & 1102 – for Wasting of Corporate Assets and Perpetuation of Corporation Solely for Personal Benefit (Against CABC)

190. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

191. Under N-PCL § 112(a)(7), the Attorney General may maintain an action to “enforce any right given under this chapter to...a director or an officer of a Type B...corporation.”

Under N-PCL § 1102(a)(2)(D), any director of a not-for-profit corporation may petition the court for judicial dissolution where “the directors . . . in control of the corporation have looted or wasted the corporate assets, have perpetuated the corporation solely for their personal benefit, or have otherwise acted in an illegal, oppressive or fraudulent manner.”

192. Smith, Koppelman and Scott, as the directors in control of CABC, have wasted its corporate assets, perpetuated the corporation for their personal benefit and otherwise acted in an illegal, oppressive or fraudulent manner.

193. Accordingly, CABC should be dissolved in accordance with N-PCL §§ 1102(a)(2)(D) and 112(a)(7) and its remaining assets and future assets, if any, applied to charitable uses consistent with CABC’s mission as set forth in its Certificate of Incorporation, pursuant to N-PCL §§ 1115(a) and 1008(a)(15).

PRAYER FOR RELIEF

Plaintiff demands judgment against Defendants as follows:

- A. Enjoining Defendants from soliciting or collecting charitable contributions from the public;
- B. Enjoining Defendants from accessing, using, or distributing CABC funds or other assets, including intellectual property;
- C. Rescinding the securities transaction in Empire National Bank stock, ordering Smith to refund the \$20,000 purchase price paid by CABC for the stock, plus interest, and to take back the securities;
- D. Requiring Smith to repay the unemployment benefits he improperly received, plus interest;

E. Removing Defendants Smith, Koppelman and Scott as officers and directors of CABC;

F. Enjoining Defendants Smith, Koppelman and Scott from serving as officers, directors, trustees or equivalent positions of CABC or any other not-for-profit corporation in the future;

G. Holding Defendants Smith, Koppelman and Scott liable for their waste and misappropriation of CABC's charitable assets, in an amount to be determined at trial;

H. Ordering Defendants to pay restitution and damages under Exec L § 63(12), Exec. Law Art. 7-A, and GBL § 349, in an amount to be determined at trial;

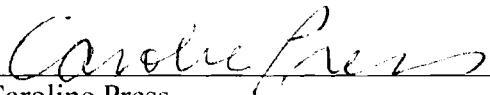
I. Imposing civil penalties against each of the Defendants in the amount of \$5,000 for each violation of GBL § 349, under § 350-d, in an amount to be determined at trial;

J. Dissolving CABC, with its remaining assets, including any future assets, to be

- K. transferred to charitable uses consistent with CABC's stated mission; and
- L. Granting such other and further relief as is just and proper.

Dated: June 27, 2011
New York, New York

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