

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

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Assurance No. 16-666

In the Matter of the

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

NATIONAL VIETNAM VETERAN FOUNDATION, INC.,  
*aka* AMERICAN VETERAN SUPPORT FOUNDATION.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York, Eric T. Schneiderman, (“OAG”), pursuant to the Not-for-Profit Corporation Law (“N-PCL”) § 112, the Estates, Powers, and Trusts Law (“EPTL”) § 8-1.4, and the Executive Law (“Exec. Law”) Article 7-A §§ 172 and 175, has reviewed whether a proceeding or action should be instituted against the National Vietnam Veterans Foundation, Inc., *aka* American Veteran Support Foundation (the “Foundation”), and David Kaufman (“Kaufman”), the Foundation’s current Vice President (the Foundation and Kaufman shall be referred to herein as the “Parties”). This Assurance of Discontinuance (“Assurance”) summarizes certain findings of OAG’s investigation and sets forth relief to which OAG and the Parties have agreed.

**I. FINDINGS**

OAG has made the following findings:

**A. National Vietnam Veterans Foundation, Inc., *aka* American Veteran Support Foundation**

1. On January 30, 1992, the National Vietnam Veterans Foundation, Inc., was formed as a nonprofit corporation in the District of Columbia.

2. In September 2007, the Foundation registered with the New York Office of the Attorney General Charities Bureau in order to solicit charitable donations in the State of New York and was assigned N.Y. Registration Number 40-51-40. In 2011, the Foundation also began soliciting donations under an alternative trade name, the American Veterans Support Foundation.

3. From 2010 through the beginning of 2016, the Foundation had various members of its board of directors including : (i) John Thomas Burch, Jr., (“Burch”), who served as the Chairman of the Board of the Foundation and its President from the Foundation’s inception until August 12, 2016; (ii) Kaufman, who served as a member of the board, Vice President and Chief Financial Officer from at least 2010 through the present; (iii) Adrian Cronauer, who served as a member of the board from the Foundation’s inception until May 2012; and (iv) John F. Syphrit, who served as a member of the board from May 2012 until September 2014;. During this period John H. Handley, Jr. (“Handley”), served as the Foundation’s “Director of Special Projects.” As directors and officers of the Foundation, these individuals owed the Foundation fiduciary duties including duties of care in the management of the Foundation and its assets and to protect the reputation of the Foundation, duties of loyalty to the Foundation to act solely in its best interest, and duties of obedience to the mission of the Foundation in its advocacy for Vietnam Veterans.

4. The Foundation primarily operated out of two locations. The corporate headquarters in Alexandria, Virginia (the “Virginia Office”), was actually located in Burch’s home and was where Burch primarily operated as President of the Foundation. The second location was located in Fort Lauderdale, Florida (the “Florida Office”). Kaufman and Handley primarily operated out of the Florida Office.

## **B. Fundraising by the Foundation.**

5. The Foundation relied almost exclusively on volume direct mail and telemarketing campaigns initiated by its professional fundraisers for revenue. The Foundation's fundraisers typically called 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 pledging donor to collect payment.

6. Between 2010 and 2014 the Foundation doubled the yearly donations it received from these mailings nationwide from approximately \$3.6 million to \$8.6 million. In its IRS 990 tax returns – which are also filed with the State of New York – the Foundation reported that most of the money raised through its direct mail campaigns was used to pay its fundraisers: (i) 2010- \$4,296,871 raised, \$3,745,904 paid to fundraisers; (ii) 2011 - \$3,630,957 raised, \$3,176,848 paid to fundraisers; (iii) 2012 - \$4,489,637 raised, \$3,968,538 paid to fundraisers; (iv) 2013- \$6,835,659 raised, \$6,087,330 paid to fundraisers; and (v) 2014- \$8,643,900 raised, \$7,736,172 paid to fundraisers.

7. In New York, the Foundation employed a series of fundraising professionals to perform telemarketing and direct mail services on its behalf including, Midwest Publishing-DN, Inc. ("Midwest"), Menacola Marketing, Inc. ("Menacola"), Residential Programs, Inc. ("Residential"), and, most recently, Innovative Teleservices, Inc. ("Innovative").

8. The Foundation represents that from 2010 through 2016 it raised \$1,255,263.24 in donations from New Yorkers: (i) \$677,236.63 from Midwest; (ii) \$362,503.74 from Residential; (iii) 183,920.45 from Menacola; and (iv) \$31,602.42 from Innovative. Pursuant to the Foundation's contracts with the fundraisers, Midwest retained 89% of the donations; Residential

retained 90% of the donations; Menacola retained 85% of the donations; and Innovative retained 86% of the donations.

### **C. False Filings with the Charities Bureau.**

9. Pursuant to Executive Law Section § 172-b, the Foundation was required to file annual certifications with the Attorney General's Charities Bureau, under penalty of perjury, called "Form CHAR500s." Form CHAR500s must contain at least a completed 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.

10. The Foundation's fundraisers soliciting in New York are also required to register with New York State (Exec. Law § 173) and file their contracts with the Foundation. (Exec. Law § 173-a(1).) The fundraisers also must also certify in forms submitted to the OAG representations concerning 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 CHAR037 is true, correct and complete in accordance with the laws of the State of New York.

11. The Foundation's filings with the Attorney General contain omissions and inconsistencies concerning the Foundation and its fundraisers' activities in New York. For example, the Foundation's CHAR 500 reports from 2009 to 2012 to the Attorney General either certified that the Foundation did not use a professional fund raiser, fundraising counsel or commercial co-venturer for fund raising activity in New York or failed to disclose the names of those fundraisers. However, two fundraisers, Midwest and Menacola, filed CHAR037s from

2010 through 2012 showing that the Foundation was raising tens of thousands of dollars from New Yorkers for the Foundation during this time. Another fundraiser, Residential, raised approximately \$380,000 on behalf of the Foundation in 2014 but was not disclosed on its CHAR500.

12. The Foundation was aware that these companies were operating on its behalf in New York and raising significant funds. The Foundation signed the CHAR037s submitted to the OAG by the Foundation's fundraisers certifying that these funds had been raised by these fundraisers on behalf of the Foundation in the State of New York.

13. From 2010 to present the Foundation has never filed a CHAR500 with the OAG disclosing Menacola as a fundraiser acting on its behalf in New York even though Menacola raised nearly \$200,000 in donations from New Yorkers. Moreover, NVVF never disclosed the existence of Menacola or Residential on its Form 990 tax return to the Internal Revenue Service. Accordingly, it is impossible to tell from the Foundation's filings how much the it raised in donations from solicitations in New York.

#### **D. Undisclosed Additional Fundraising Fees**

14. The Foundation also paid a for-profit New Jersey company called Mail Response Services, Inc. ("Mail Response"), an additional 4% of the Foundation's gross collected donations. Mail Response, even though it received well over \$100,000 from the Foundation, was never reported as an "Independent Contractor" receiving more than \$100,000 on the Foundation's 990 tax return filed with the Internal Revenue Service. Nor was Mail Response's existence disclosed in the Foundation's audited financial statements or apparent from the Foundation's general ledgers.

15. The contract between Mail Response and the Foundation calls for some of the same services that were already covered by a contract between the Foundation and another entity, North American Response Services, Inc. (“NAMS”). For example, the Mail Response contract states that Mail Response will receive, open, and process direct mail for the Foundation. These services were never provided by Mail Response because NAMS was already contractually obligated to provide – and being paid for- those services.

16. The donations solicited by Menacola, Residential, and Innovative were all funneled to a bank account where, at the close of each evening, Mail Response would “sweep” all the donations in the account up into Mail Response’s own bank account. Mail Response would then deduct an additional 4% commission from amount to be distributed to the Foundation and would then distribute checks to the charity and its fundraisers.

#### **E. Misuse of Foundation Funds**

17. The telephonic solicitations and direct mail sent by the fundraisers on the Foundation’s behalf represented that donations collected from the public would be applied to the Foundation’s mission: “**Veterans helping Veterans** with the generous support of the American people.” The solicitations provide examples of how a donation would be applied including the provision of personal care packs, guide books with essential services and hospitals, food pantry funding and donations to stand-downs.

18. Much of the money actually received by the Foundation after fundraising expenses and overhead was not spent on the Foundation’s core mission or in the manner described in its direct mail. For example, the Foundation spent thousands of dollars on consultancies with third-parties for studies and reports which work product was never released to the public and had no immediate benefit to Vietnam Veterans in need. The Foundation also spent several thousand

dollars on travel for its board of directors, including a trip to Normandy, France, in 2014, which had no benefit to Vietnam Veterans in need.

**F. Failure to Disclose Contractors And Lack of Internal Controls.**

19. The Florida Office was the primary site of the Foundation's Program Services. From 2010 to 2015 the Foundation entered into contracts with at least three different companies to assist it with its program services: Evergreen Management, Inc. ("Evergreen"), A.A. Specialized Products, Inc. ("AA Specialized"), and Ideal C.W.S. Tradex, Inc. While the Foundation paid these organization hundreds of thousands of dollars during this period, these contractors were never reported as "Independent Contractors" receiving more than \$100,000 on the Foundation's 990 tax returns filed with the Internal Revenue Service.

20. From 2010 to 2014 the Foundation paid Evergreen approximately \$750,000 to run a hotline and print a veteran's guide. Evergreen's President was Handley, the Foundation's "Director of Special Projects," a paid employee of the Foundation, and the signatory on hundreds of thousands of American Veterans Support Foundation solicitations requesting donations from the public. The Foundation was Evergreen's only client and paid Kaufman a salary of \$50,000 from 2008-to 2012, which salary was not publically available information. Kaufman was not receiving a salary from the Foundation during this period.

21. The Foundation's auditor issued multiple management letters to the board of directors of the Foundation concerning "material weaknesses" and "significant deficiencies" concerning the Foundation's relationship with Evergreen. Most notably, the auditor was concerned that while Evergreen was compensated over \$1 million during the lifetime of its purported contract with the Foundation, Evergreen never issued a single invoice for its work to the Foundation.

22. From 2010 to 2012 the Foundation paid AA Specialized approximately \$250,000. Handley was also the President of AA Specialized. Again, the Foundation's auditor issued several management letters to the board of directors of the Foundation concerning "material weaknesses" and "significant deficiencies" concerning the Foundation's relationship with AA Specialized including the lack of a written contract given the material amount being paid to AA Specialized and the complete absence of invoices from AA Specialized.

## **II. PROSPECTIVE RELIEF**

WHEREAS, the National Vietnam Veteran's Foundation, Inc., and David Kaufman, agree with the above Findings of the OAG;

WHEREAS, OAG, finding the relief and agreements in this Assurance to be in the public interest, accepts the terms of this Assurance in lieu of commencing an action or proceeding;

WHEREAS, the OAG and the Parties, each believe that the obligations imposed by this Assurance are prudent and appropriate;

WHEREAS, this Assurance relates only to the liability of the Parties and explicitly does not apply to the liability of other current and former officers, directors, employees, fundraisers or affiliates of the Foundation;

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

### **CORPORATE GOVERNANCE & FUNDRAISING**

1. The Foundation ceased all fundraising activities in the State of New York as of June 13, 2016 and the Foundation agrees that it will not restart fundraising operations.

2. Burch resigned as an Officer, Director or any other role in the Foundation as of August 12, 2016 and the Foundation agrees that Burch will not resume any of these roles.



3. The Foundation shall cancel its registration with the State of New York no later than November 30, 2016 and will not seek to renew its registration in the State of New York. The OAG will consent to such cancellation.

4. The Foundation shall initiate dissolution proceedings in the District of Columbia no later than November 30, 2016.

5. The Foundation has represented that it has less than \$45,000 in funds in its possession, custody or control. If any funds come into the possession the Foundation after the Effective Date of this Assurance, the Foundation will report the same to the OAG.

6. The Foundation will seek the approval of the OAG prior to the disbursement of any funds currently in the possession of the Foundation or that come into the possession of the Foundation.

7. Kaufman shall remain a Vice President of the Foundation until its dissolution and shall provide whatever cooperation or necessary assistance to the Foundation and the OAG to effect the cancellations, dissolution, cooperation and disbursements of corporate assets described in the aforementioned paragraphs at the cost and expense of the Foundation. Kaufman shall not receive any compensation for such activities.

8. Other than Kaufman's role as Vice President of the Foundation as described in the preceding paragraph, Kaufman 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. Kaufman may, however, serve in a spiritual or doctrinal leadership role capacity so long as he is not acting in a fiduciary capacity or has control or direction over finances.

### **COOPERATION WITH ONGOING INVESTIGATION**

9. The Foundation has waived its attorney-client and work product privileges with respect to its representation by Copilevitz & Canter LLC (“C&C”) and Burch & Cronauer, P.C. (“B&C”), and will provide whatever cooperation or necessary assistance to obtain documents and information from C&C or B&C.

10. The OAG’s investigation into the current and former officers, directors, employees and agents of the Foundation continues. The Foundation and Kaufman 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, against any other person, corporation or entity. The Foundation agrees to use its best efforts to secure the full and truthful cooperation of current officers, directors, employees and agents with the ongoing OAG’s investigation and related proceedings and actions.

### **III. ADDITIONAL PROVISIONS**

1. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Parties and their counsel and OAG’s own factual investigation as set forth in the findings above. To the extent that any material representations by the Parties are later found to be inaccurate or misleading, this Assurance is voidable by OAG in its sole discretion.

2. If the Assurance is voided or breached, the Parties agree that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, the Parties expressly agree and acknowledge that this Assurance shall in no way bar or otherwise preclude OAG from commencing, conducting or

prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against the Parties, or from using in any way any statements, documents or other materials produced or provided by the Parties prior to or after the date of this Assurance.

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

4. The Parties represent and warrant, through their signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. The Parties shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects the Parties': (a) testimonial obligations; or (b) right to take contrary legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party.

5. This Assurance may not be amended except by an instrument in writing signed on behalf of OAG and the Parties. This Assurance may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by Parties and the OAG. The Effective Date of this Assurance is the last date on which all of the Parties hereto and the OAG have signed this Assurance.

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

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

8. To the extent not already provided under this Assurance, the Parties shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance.

9. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing, reference Assurance No. 16-166, and shall be directed as follows:

If to OAG, to:

Elizabeth Ann Fitzwater, Esq.  
Assistant Attorney General, Charities Bureau  
120 Broadway, 3rd Floor  
New York, NY 10271

If to the Foundation or to Kaufman to:

Randy M. Friedberg, Esq.  
White & Williams LLP  
7 Times Square, Suite 2900  
New York, New York 10036-6524

10. Acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and the Parties shall make no representation to the contrary.

11. Evidence of a violation of this Assurance by the Parties shall constitute prima facie proof of violation of the applicable law as to that party in any civil action or proceeding thereafter commenced by the OAG.

12. If a court of competent jurisdiction determines that the Parties have breached this Assurance, the breaching party shall pay to OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

13. OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. OAG is willing to accept this Assurance in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of law principles.

14. Except as otherwise set forth herein, nothing contained herein shall be construed as to deprive any person of any private right under the law.

IN WITNESS WHEREOF, this Assurance is executed by the Foundation and Kaufman:

Dated: November 4, 2016

National Vietnam Veterans Foundation, Inc.

By: David Kaufman  
David Kaufman, Vice President of  
the Foundation

Dated: November 4, 2016

David Kaufman

Eric T. Schneiderman

Dated: November \_\_, 2016

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

By: \_\_\_\_\_  
James Sheehan  
Bureau Chief, Charities Bureau

12. If a court of competent jurisdiction determines that the Parties have breached this Assurance, the breaching party shall pay to OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

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National Vietnam Veterans Foundation, Inc.

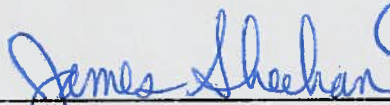
By: \_\_\_\_\_  
David Kaufman, Vice President of  
the Foundation

Dated: November \_\_, 2016

David Kaufman

Dated: November \_\_, 2016

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

By:  \_\_\_\_\_  
James Sheehan  
Bureau Chief, Charities Bureau

