

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

THE PEOPLE OF THE STATE OF NEW YORK
by LETITIA JAMES, Attorney General of the State of
New York,

**VERIFIED
COMPLAINT**

Plaintiff,

Index No. _____

-against-

PAUL P. MARCHESE, ROBIN S. MAYNARD,
MARCHESE & MAYNARD LLP, and THE HAROLD
& HELEN GOTTLIEB FOUNDATION

Defendants.

Plaintiff, the People of the State of New York, by LETITIA JAMES, Attorney General of the State of New York (“Attorney General,” “OAG”), respectfully alleges the following against Paul Marchese (“Mr. Marchese”) and Robin S. Maynard (“Ms. Maynard”), Marchese & Maynard LLP (“Marchese & Maynard”), and The Harold & Helen Gottlieb Foundation (the “Foundation”):

PRELIMINARY STATEMENT

1. The Attorney General brings this action against two trust and estates attorneys for abusing their positions as fiduciaries to improperly obtain charitable assets for themselves and their law firm. Their actions violated their duties to the Foundation and the ultimate beneficiaries of Ms. Gottlieb’s estate under the New York Estates, Powers, and Trusts Law (the “EPTL”) and the Not-for-Profit Corporation Law (the “N-PCL”).

2. Mr. Marchese and Ms. Maynard, who are attorneys and the sole partners in

Marchese & Maynard, represented Helen D. Gottlieb (“Ms. Gottlieb”) in the last years of her life. Following Ms. Gottlieb’s death in March 2008, Mr. Marchese, as Successor Trustee of the Living Trust of Helen D. Gottlieb (the “Living Trust”), had control of Ms. Gottlieb’s remaining assets. Mr. Marchese and Ms. Maynard also served as the board of directors of the Foundation.

3. Ms. Gottlieb’s Living Trust had a value of over two million dollars at the time of her death. She structured her Living Trust so that upon her death the Living Trust would terminate, and the remainder would go to the Foundation. But before any funds were transferred to the Foundation, Mr. Marchese and Ms. Maynard caused the Living Trust to pay their firm \$598,931.42, purportedly for legal and other services, for which they have no substantiating records. After they transferred the assets to the Foundation, they then paid themselves annual salaries that exceeded the amounts the Foundation gave out in grants and contributions.

4. Mr. Marchese concealed the transfers from the Living Trust by failing to register the Living Trust with the Attorney General’s Charities Bureau as required by law. New York law requires trustees to register trusts that have charitable interests with the Charities Bureau, and to file a copy of the trust instrument, within six months of the date the charitable interest arises. Mr. Marchese was required to register the Living Trust by September 2008, six months after Ms. Gottlieb died, and to file a copy of the Living Trust agreement with the Charities Bureau. He never did. He also failed to file a final accounting of the Living Trust’s expenditures, as required by law.

5. Mr. Marchese did not inform the Attorney General of the existence of the Living Trust or the charitable trust’s payments to his firm until 2019, after the OAG began an inquiry into allegations of self-dealing by the Defendants.

6. Once the existence of the Living Trust came to light, the OAG obtained an accounting from the Defendants. This accounting revealed the large transfers from the Living Trust to Marchese & Maynard. The OAG asked the Defendants to substantiate the work performed by the firm. The Defendants admitted that there were no records of their work – no attorney time sheets, no firm billing records, no invoices, and no record of an engagement letter or retainer agreement with either Ms. Gottlieb or the Living Trust.

7. Mr. Marchese and Ms. Maynard also abused their positions as the sole directors of the Foundation once Ms. Gottlieb passed away. The next year, they caused the Foundation to start paying them annual salaries, and, later, employee benefits. By the end of fiscal year 2020, the last year for which the OAG has records, the Foundation had paid them a total of \$758,334 in salaries – \$280,000 more than the Foundation paid out in charitable grants and contributions in the same period. The Defendants also caused the Foundation to pay \$40,000 to their law firm over a two-year period. The Defendants admit that they do not have records substantiating any legal work they may have performed for those fees.

8. Mr. Marchese belatedly filed a petition, in August 2021, to settle the account of the estate of Ms. Gottlieb in the New York State Surrogate's Court for Nassau County. This was thirteen years after Ms. Gottlieb's death and after several months of discussion with the OAG. Upon issuance of an accounting citation in the Nassau County Surrogate's Court proceeding, the OAG intends to file a motion under CPLR 602 in this court to consolidate in this Supreme Court for Nassau County this proceeding and Mr. Marchese's petition in Surrogate's Court for a settlement of account.

PARTIES

9. Plaintiff is the People of the State of New York by the Attorney General. The Attorney General is responsible for the proper administration of charitable assets in the state, in accordance with the EPTL and the N-PCL and regulates New York charitable trusts and not-for-profit corporations through registration and financial reporting requirements.

10. Defendant Paul P. Marchese is an attorney admitted to practice in New York State in 1994. Mr. Marchese is a partner in the law firm Marchese & Maynard, LLP, located currently at 1129 Northern Boulevard, Suite 303, Manhasset, New York 11030. The New York State Unified Court System reports the law firm's address as 47 Plandome Road, Manhasset, New York 11030. Mr. Marchese is Successor Trustee under the terms of the Living Trust of Helen D. Gottlieb, and one of two directors of The Harold and Helen Gottlieb Foundation, a New York not-for-profit corporation that, upon information and belief, is located at 47 Plandome Road, Manhasset, New York 11030.

11. Defendant Robin S. Maynard is an attorney admitted to practice in New York State in 2003. She is a partner in the law firm Marchese & Maynard, LLP, and one of two directors of The Harold and Helen Gottlieb Foundation.

12. Defendant Marchese & Maynard, LLP, is a New York limited liability partnership. Its principal place of business has been 47 Plandome Road, Manhasset, New York 11030. According to the firm's internet website, it is temporarily located at 1129 Northern Boulevard, Suite 303, Manhasset, New York 11030. On information and belief, the firm consists of four lawyers: Mr. Marchese and Ms. Maynard, the firm's partners, and two associates. See <https://www.mmlawoffice.net/> (last visited April 12, 2022).

13. Defendant The Harold and Helen Gottlieb Foundation is a private New York not-for-profit corporation incorporated in New York in 1999. Its principal place of business is in Nassau County at the law offices of Marchese & Maynard, LLP. The Foundation is recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code and is classified as a private foundation under Section 509(a) of the Internal Revenue Code. The Foundation's certificate of incorporation states that its purpose is "to foster and promote the ideals of Harold and Helen Gottlieb and to foster the ideals, goals, and aspirations that characterize and represent their life work by the encouragement of education and educational excellence through grants, scholarships, and financial assistance to students, institutions and other organizations; to aid, encourage, stimulate, foster and promote artistic and cultural activities through grants, bequests, gifts or otherwise to individuals, groups, institutions." In its IRS Form 990-PF Return of Private Foundation, reporting as of June 30, 2020, the Foundation reported assets with a fair market value of \$1,745,891.

JURISDICTION AND VENUE

14. The Attorney General brings this action on behalf of the People of New York State pursuant to the New York Estates, Powers, and Trusts Law, and the Not-for-Profit Corporation Law.

15. Pursuant to EPTL § 8.1-1(f), the Attorney General represents the ultimate beneficiaries of charitable dispositions and has the duty to enforce the rights of such beneficiaries by appropriate proceedings in the courts.

16. Pursuant to EPTL § 8-1.4(d) and 13 N.Y.C.R.R § 92(a), every trustee must file with the Charities Bureau, within six months after any property held by him or her is required to

be applied to charitable purposes, a copy of the instrument providing for the trustee's title, powers, and duties.

17. Pursuant to EPTL § 8.1-4(i), the Attorney General may investigate transactions and relationships of trustees for the purpose of determining whether property held for charitable purposes has been and is being properly administered.

18. Pursuant to EPTL § 8.1-4(m), the Attorney General is authorized to commence proceedings to secure the proper administration of any trust or corporation holding property for charitable purposes, and to secure compliance with registration and reporting requirements.

19. Pursuant to EPTL § 8.1-9(c)(4), the Attorney General has authority to bring an action to enjoin, void or rescind any related party transaction that violates the provisions of the EPTL or is otherwise not reasonable or in the best interests of the trust at the time the transaction was approved, or to seek restitution and the removal of trustees, or to seek an order requiring a person to account for any profits made from such a transaction and pay them to the trust, pay the trust the value of the use of any of its assets used in such a transaction, return assets lost to the trust as a result of such a transaction, and pay, in the case of willful and intentional conduct, an amount up to double the amount of any benefit improperly obtained.

20. Pursuant to N-PCL § 112(a), the Attorney General is authorized to bring an action “(1) To annul the corporate existence or dissolve a corporation that has acted upon its capacity or power or to restrain it from carrying on unauthorized activities; . . . (5) To dissolve a corporation under article 11 (Judicial dissolution); . . . (7) To enforce any right given under this chapter to members, a director or an officer of a charitable corporation. The attorney-general shall have the same status as such members, director or officer; . . . (10) To enjoin, void or rescind any related party transaction, seek damages and other appropriate remedies, in law or

equity, in addition to any actions pursuant to section 715 (Related party transactions) of [the N-PCL].”

21. Pursuant to N-PCL § 515(b), no director, officer, or member of a not-for-profit corporation who may benefit from compensation for services rendered may be present at or otherwise participate in any board or committee deliberation or vote concerning such person’s compensation.

22. Pursuant to N-PCL §§ 706(d) and 714(c), the Attorney General has authority to bring an action to remove a director from the board of directors of a not-for-profit corporation for cause, including for violations of their fiduciary duties, and the court may bar a director from future service on the board.

23. Pursuant to N-PCL § 715(f), the Attorney General is empowered to bring an action to enjoin, void or rescind any related party transaction between a New York not-for-profit corporation and a related-party who has a financial interest in the transaction that violates § 715 of the N-PCL or is otherwise not reasonable or in the best interests of the corporation at the time the transaction was approved, or to seek restitution, and the removal of directors or officers, or to seek an order requiring a person to account for any profits made from such a transaction, pay the corporation the value of the use of any of its assets used in such a transaction, return assets lost to the corporation as a result of such a transaction, and pay, in the case of willful and intentional conduct, an amount up to double the amount of any benefit improperly obtained.

24. Pursuant to N-PCL § 717, directors of a New York not-for-profit corporation must discharge their duties in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances.

25. Pursuant to N-PCL § 719(a), directors of a New York not-for-profit corporation who vote for or concur in the distribution of the corporation's cash or property to directors other than as permitted under N-PCL § 515 are jointly and severally liable to the corporation for the injury suffered as a result of their actions.

26. Pursuant to N-PCL §§ 720(a) and (b), the Attorney General is authorized to bring an action to compel directors of a New York not-for-profit corporation to account for the management of corporate assets and for transfers, loss, or waste of corporate assets in violation of their fiduciary duties and to recover all resulting damages from such directors.

27. Pursuant to N-PCL §§ 112(a)(7) and 1102(a)(2)(E), the Attorney General is authorized to commence an action for dissolution where the corporation is no longer able to carry out its purposes.

28. The Court has jurisdiction over this action pursuant to its general jurisdiction under the New York Constitution, Art. VI § 7, and New York Judiciary Law § 140-b.

29. Venue is properly set in the county in which the office of the corporation is located at the time of the service on the corporation, Nassau County, pursuant to N-PCL § 1110 and CPLR § 503 because the Foundation and Marchese & Maynard, LLP, are located in Nassau County.

FACTUAL BACKGROUND

30. Helen Gottlieb first retained Mr. Marchese's prior law firm¹ in 1998 to represent her in connection with her duties as executor of the estate of her late husband, Harold Gottlieb. Harold Gottlieb died on September 7, 1997. Ms. Gottlieb's engagement of Marchese &

¹ On information and belief, Mr. Marchese was a partner at Brancato & Marchese P.C., located in Nassau County, prior to establishing a partnership with Ms. Maynard. On information and belief, Mr. Marchese and Ms. Maynard formed their law partnership, Marchese & Maynard, in 2005.

Maynard continued until her death in 2008.

31. Mr. Marchese and Ms. Maynard hold themselves out to the public as experienced lawyers in trusts and estates law. The tagline on the firm's logo at the top of the firm's website, is "Marchese & Maynard LLP, Trust and Estate Attorneys." Rotating banners on the homepage tout their legal services in the areas of estate administration ("Let our extensive experience alleviate your stress and worry about managing your estate"), trust law ("Set up trusts and other such asset protection systems so that the money and property you have can properly go to your beneficiaries"), estate planning and elder law ("Make certain that your loved ones will continue to thrive"), and real estate law. *See* <https://www.mmlawoffice.net/> (last visited April 12, 2022).

32. In addition to providing legal counsel to Ms. Gottlieb in connection with Harold Gottlieb's estate, Mr. Marchese and Ms. Maynard advised Ms. Gottlieb on other matters, including the sale of four successive residences and the purchase of three residences, and the formation of the Foundation. On information and belief, Mr. Marchese and his wife currently reside in one of Ms. Gottlieb's former homes, a large 1893 Victorian house in Sea Cliff, New York.

33. Mr. Marchese and Ms. Maynard also performed tasks for Ms. Gottlieb that were nonlegal in nature, such as helping her pack and unpack artwork for movers, helping her show her homes to prospective buyers, communicating about administrative matters with medical insurers, credit card companies, the Social Security Administration, and the Veterans Administration. Mr. Marchese and Ms. Maynard admit that they charged Ms. Gottlieb the same rate -- \$415 per hour -- for such services as they did for legal services.

The Harold and Helen Gottlieb Foundation is Created

34. In 1999, as part of his firm's legal representation of Ms. Gottlieb, Mr. Marchese established the Foundation, handling the incorporation of the Foundation as a New York not-for-profit corporation.

35. The Foundation's bylaws, in accordance with N-PCL § 702, established the minimum number of positions on the board as three directors. The directors on the certificate of incorporation were Ms. Gottlieb, Mr. Marchese, and an individual named Carole Lentz.

36. New York law requires not-for-profit corporations to register with the Charities Bureau and to file an annual report, the CHAR500. Filers are required to attach a copy of the organization's completed IRS Form 990-PF, the informational tax return required by the IRS, to the CHAR500. The IRS Form 990-PF provides information about the organization's finances and governance.

37. Ms. Gottlieb and her accountant registered the Foundation, as required by law, with the Attorney General's Charities Bureau in February 2004, and, as required, filed a copy of the Foundation's IRS Form 990-PF for fiscal year ending 2003. Upon information and belief, the Foundation was not registered with the Charities Bureau from its creation in 1999 through February 2004.

38. The first IRS Form 990-PF filed by the Foundation said its purpose was to "provide food, shelter, housing & education for those persons who cannot adequately afford the same. The Foundation also contributes to other worthwhile charities who provide shelter and housing for the needy."

39. Under New York law, CHAR500s must be signed and certified by two officers, who state under penalties of perjury, that to the best of their knowledge the CHAR500 and all

attachments are true, correct and complete. From 2005 onward, Mr. Marchese and Ms.

Maynard certified each of the Foundation's submissions.

40. According to the Foundation's IRS Form 990-PFs, the Foundation's board of directors consisted of only two members from 2003 to the present. From 2003 until the end of Ms. Gottlieb's life in 2008, Ms. Gottlieb and Mr. Marchese were the sole directors of the Foundation. After Ms. Gottlieb died, Ms. Maynard took Ms. Gottlieb's seat, and Mr. Marchese and Ms. Maynard served as directors from then until at least June 30, 2020.

The Helen D. Gottlieb Living Trust is Created

41. On information and belief, in 2005, Mr. Marchese prepared Ms. Gottlieb's Last Will and Testament, and the Living Trust, both dated June 1, 2005. The Living Trust named Ms. Gottlieb Grantor and Trustee, and Mr. Marchese Successor Trustee. As Grantor, Ms. Gottlieb delivered her property to the Living Trust.

42. Paragraph Sixth of the Living Trust provided that upon Ms. Gottlieb's death and the payment of outstanding debts and expenses, the Successor Trustee would distribute the entire remainder to the Foundation.

43. Ms. Gottlieb amended Paragraph Sixth in January 2006 to add a single \$50,000 bequest to an individual. At the time of Ms. Gottlieb's death, the Living Trust provided that upon Ms. Gottlieb's death and the payment of outstanding expenses and the \$50,000 bequest, the Successor Trustee would distribute the residue of the Living Trust to the Foundation.

44. According to the Defendants, Ms. Gottlieb had a stroke in late 2005. Upon information and belief, on January 3, 2006, Ms. Gottlieb resigned as trustee of the Living Trust and Mr. Marchese became the Successor Trustee.

45. Ms. Gottlieb died on March 31, 2008.

After Ms. Gottlieb's Life

46. The Living Trust received \$2,050,378.68 from Ms. Gottlieb, according to Mr. Marchese's accounting filed in the Surrogate's Court for Nassau County on or about August 6, 2021.² According to the accounting, the Living Trust's outstanding expenses fell mainly into two categories: (i) expenses arising from Ms. Gottlieb's funeral and the administration of her estate, and (ii) obligations incurred by Ms. Gottlieb to creditors during her lifetime.

47. In the first category, Mr. Marchese, as Successor Trustee, directed the Living Trust to pay Maynard & Marchese, \$252,707.17. According to Mr. Marchese's accounting, these payments were for legal services. This amount is in addition to trustee commissions in the amount of \$62,256 paid to Mr. Marchese. On information and belief, the Defendants do not have records of any legal services provided to the Living Trust for the administration of Ms. Gottlieb's estate.

48. In the second category, Mr. Marchese directed the Living Trust to pay Marchese & Maynard \$346,231.42. The Defendants have not provided any record that Ms. Gottlieb owed this or any other amount, nor have they provided any record that Ms. Gottlieb knew of or agreed to an arrangement whereby Mr. Marchese's law firm would be paid upon her death for purported services to her.

49. In total, Mr. Marchese as Successor Trustee caused the Living Trust to pay Marchese & Maynard \$598,938.59 before distributing the remainder of the trust assets to the Foundation.

² The accounting provided to the OAG in 2019 reported on Schedule A that the trust received \$2,024,863.68 from Ms. Gottlieb. The figure given on the Schedule A provided to the Surrogate's Court in 2021 is \$2,050,378.68, or \$25,515 greater than the figure given in the 2019 accounting.

50. **Mr. Marchese's failure to register the Living Trust with the OAG, as required by law, concealed from the OAG, the regulator, for eleven years, Mr. Marchese's conflicts of interest and his payments of almost \$600,000 to his law firm. The OAG only discovered the conflicts of interest and the payments when it commenced an inquiry into payments by the Foundation to the Marchese & Maynard law firm, and to Mr. Marchese and Ms. Maynard individually.**

51. **After Ms. Gottlieb passed away, the Defendants caused the Foundation to pay Marchese & Maynard an additional \$40,000, purportedly for legal services – \$20,000 in fiscal year ending ("FYE") June 30, 2009, and another \$20,000 in 2010. On information and belief, there is no record that the firm provided any service of any kind in exchange for the payments.**

52. **Mr. Marchese and Ms. Maynard also caused the Foundation to start paying themselves salaries. In FYE June 30, 2010, they caused the Foundation to pay them each \$29,167 in compensation. The next year and every year that followed, the Foundation paid them each \$35,000 in compensation. In FYE ending June 30, 2015, the Defendants began taking pension plan contributions and/or other employee benefits, according to the Foundation's IRS Form 990-PFs. The Foundation's payments to Mr. Marchese and Ms. Maynard in salary alone - \$27,167 each the first year, and \$35,000 each over the next ten years - totaled more than \$750,000. During the same period, the Foundation gave out \$473,000 in grants.**

53. **Upon information and belief, Mr. Marchese and Ms. Maynard chose grant recipients on the basis of their personal interests, rather than in accordance with the Foundation's mission. During Ms. Gottlieb's lifetime, the Foundation made grants exclusively to City Harvest, Food for Survival, Interfaith Nutrition Network, the ASPCA, Bide-a-Wee, and The Polytechnic Fund (the Brooklyn Polytechnic Institute was Harold Gottlieb's alma mater). Mr.**

Marchese and Ms. Maynard stopped funding those charities when Ms. Gottlieb died. Under their leadership, the Foundation began giving grants to cultural and civic organizations in Sea Cliff and the neighboring village of Glen Head, and to the Village of Sea Cliff itself. On information and belief, both defendants have held elected or appointed public office in the Village of Sea Cliff, and are or have been officers, directors, or members of organizations that received Foundation grants. The Foundation also gave to a variety of other organizations, including St. Boniface Catholic Church, where, on information and belief, Ms. Maynard has taught Catechism, a military school in Kansas, and a foundation that has the same address as the Marchese & Maynard office.

54. Mr. Marchese and Ms. Maynard controlled the Foundation and its expenditures. They were able to calibrate spending to elongate the lifespan of the Foundation, and thereby ensure a continuous, steady source of income. As set forth more fully below, these Foundation payments violated New York law.

FIRST CAUSE OF ACTION

Unauthorized Compensation N-PCL §§ 515, 702, & 719(a)(1) (Against Mr. Marchese and Ms. Maynard)

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

56. Pursuant to N-PCL § 515(b), no person who may benefit from compensation by a not-for-profit corporation may be present at or otherwise participate in any board or committee deliberation or vote concerning the person's compensation.

57. Section 702 of the N-PCL and the Foundation's bylaws required the Defendants to maintain a governing board of no fewer than three members.

58. Section 719(a)(1) imposes joint and several liability on directors of a not-for-profit corporation who vote for or concur in the distribution of the corporation's assets to directors except as permitted under N-PCL § 515. Such directors are liable to the corporation for the benefit of creditors or the ultimate beneficiaries of its activities to the extent of any injury suffered by such individuals as a result of such action, or, if there are no such creditors or ultimate beneficiaries so injured, to the corporation to the extent of any injury suffered by the corporation.

59. Mr. Marchese and Ms. Maynard violated N-PCL §§ 515(b) and 702 by operating the Foundation without other directors and causing the Foundation to pay them compensation without the oversight of unconflicted board members.

60. The Foundation had no other activity than awarding grants, which were not very numerous – an average of eight grants a year. Awarding themselves salaries of \$35,000 a year, in violation of N-PCL § 515, while distributing a smaller amount to charitable organizations, they created a sustainable source of annual income and caused injury to the Foundation, and its ultimate beneficiaries, in the amount of their salaries.

61. Mr. Marchese and Ms. Maynard concurred in the distribution of the corporation's assets to directors in direct violation of N-PCL § 515 and are liable to the Foundation to pay restitution in the amount of the compensation they received.

SECOND CAUSE OF ACTION

**Breach of Fiduciary Duty and Waste
N-PCL §§ 717 & 720
(Against Mr. Marchese and Ms. Maynard)**

62. The Attorney General repeats and re-alleges the preceding paragraphs, as though

fully set forth herein.

63. Pursuant to N-PCL § 717, directors of not-for-profit corporations must discharge their duties with the care that an ordinarily prudent person in a like circumstance would exercise under similar circumstances.

64. Pursuant to N-PCL § 720, an action may be brought against a director to procure a judgment compelling the defendant to account for the violation of his or duties, and/or the loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.

65. Mr. Marchese and Ms. Maynard are each directors of the Foundation and, as such, are each under an obligation to discharge their duties as fiduciaries with due care.

66. Mr. Marchese and Ms. Maynard failed to discharge their duties as directors with the degree of care, skill, prudence, diligence and undivided loyalty required of them in that, among other things, they (a) knowingly caused the Foundation to violate its bylaws and provisions of New York law, N-PCL §§ 515, 702, 715, and 719(a)(1); (b) distributed the corporation's assets to themselves and their law firm without oversight; (c) operated the Foundation without implementing appropriate policies, practices or internal controls to protect the Foundation's interests; and (d) caused the Foundation to waste charitable assets in the amount of \$758,334, in violation of the N-PCL.

67. Mr. Marchese and Ms. Maynard violated their duties during every year of service as the directors, engaging in continuous and repeated wrongful conduct.

68. By the foregoing conduct, Mr. Marchese and Ms. Maynard breached their fiduciary duties. They are liable under N-PCL § 720 to account for their conduct in the neglect of their duties in the management and disposition of corporate assets, and to pay damages

resulting from loss and waste of those assets, plus interest at the statutory rate of 9% per year for the harm the Foundation suffered as a result of their breaches. In addition, pursuant to N-PCL § 706(d) they should be permanently removed from their positions as directors of the Foundation and enjoined from serving as officers, directors or trustees, or in any similar capacity, of any not-for-profit charitable organization incorporated in New York State or authorized to conduct business or solicit charitable donations within the state.

THIRD CAUSE OF ACTION

Related Party Transactions

N-PCL § 715

(Against Mr. Marchese, Ms. Maynard, and Marchese & Maynard, LLP)

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

70. New York law provides a statutory framework to protect charitable assets held by not-for-profit corporations and to prevent those with authority to transfer corporate funds from abusing their authority to enrich themselves.

71. Prior to a revision of N-PCL § 715 in 2014, the statute authorized a not-for-profit corporation to void transactions between the corporation and a director if the vote of the interested director was necessary for approval of the transactions, unless the parties to the transactions established affirmatively that the transactions were fair and reasonable to the corporation at the time the transaction was approved.

72. Mr. Marchese and Ms. Maynard continuously abused their positions as directors of the Foundation from 2009 through the present to direct improper and unauthorized payments to themselves and/or their law firm. With respect to the payments to their law firm, Mr. Marchese and Ms. Maynard violated the pre-2014 N-PCL § 715, by causing the Foundation to

pay Marchese & Maynard \$40,000. Neither they nor the law firm affirmatively established that the transactions were fair and reasonable to the Foundation at the time they directed the payments. The defendants are therefore liable to the Foundation in the amount of \$40,000, plus interest at the statutory rate of 9% per year.

FOURTH CAUSE OF ACTION

**Breach of Fiduciary Duty and Waste
EPTL §§ 8-1.4, 8-1.9, 13 NYCRR Part 92
(Against Mr. Marchese, and Marchese & Maynard, LLP)**

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

74. New York law and regulations entrust the supervision of trustees of charitable trusts to the Attorney General. The Attorney General represents the ultimate beneficiaries of charitable dispositions and has a duty to enforce the rights of such beneficiaries.

75. Pursuant to EPTL § 8-1.4(a), a “trustee” means, among other things, any individual, executor, trustee, corporation or other legal entity holding and administering property for charitable purposes, whether pursuant to a will, trust, other instrument or agreement, court appointment, or otherwise pursuant to law, over which the Attorney General has enforcement or supervisory powers.

76. Pursuant to EPTL § 8-1.4(d) and 13 NYCRR Part 92, every trustee shall file a copy of the instrument creating the trust and submit a registration statement to the Attorney General’s Charities Bureau within six months of the date when the assets are required to be applied to charitable purposes. Trustees are also required to file a final report with the Attorney General in a timely manner. The final report may take the form of a judicial or an informal accounting.

77. Pursuant to EPTL § 8-1.4(i), the Attorney General may investigate transactions and relationships of trustees for the purpose of determining whether or not property held for charitable purposes has been and is being properly administered.

78. Trustees must discharge their duties with due care, and they are held to a high standard of conduct with respect to conflicts of interest. Trustees owe the beneficiaries of trusts the duty of undivided loyalty. They may not permit their own interests to conflict with that of the beneficiaries.

79. Mr. Marchese breached his fiduciary duties of loyalty, care, and obedience to the Living Trust and its beneficiaries – principally, the Foundation as remainder beneficiary – by, among other things, (a) causing the Living Trust to pay his firm’s unsubstantiated claims on Ms. Gottlieb’s estate, in disregard of the conflict of interests; and (b) failing to register the Living Trust with the Charities Bureau within six months of Ms. Gottlieb’s death and filing a copy of the trust agreement, as required by law, and failing to file a final accounting until 2019, after the OAG opened an inquiry into allegations of self-dealing by the Defendants, thus depriving the Living Trust, and the charitable interests held by the trust, of the Attorney General’s oversight.

80. Mr. Marchese’s breaches of fiduciary duties damaged the Living Trust and its beneficiary, the Foundation, by causing assets intended for charitable purposes to be diverted for non-charitable purposes and to be wasted. He is liable to account and pay restitution and/or damages in the amount of \$598,938.59, plus interest at the statutory rate of 9% per year for the harm suffered by the Living Trust and its beneficiary, the Foundation, as a result of his breaches.

81. In addition, Mr. Marchese forfeited his right to \$62,256 paid to him as trustee commissions because these commissions were not earned by reason of his breaches of fiduciary duties.

FIFTH CAUSE OF ACTION**Related Party Transactions and Waste
EPTL § 8-1.9**

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

83. Related party transactions by trusts holding charitable interests are governed by EPTL § 8-1.9, which was enacted at the same time as N-PCL § 715 and applies the same rules of independent oversight and review that are applicable to not-for-profit corporations under the N-PCL.

84. Pursuant to EPTL § 8.19(a) “trust” means a trust created solely for charitable purposes, or a trust that continues solely for such purposes after all non-charitable interests have terminated.

85. Pursuant to EPTL § 8-1.9(a)(6) a “related party” means (i) any trustee or key person of the trust or any affiliate of the trust, (ii) any relative of such a person described in clause (i), (iii) or an entity in which such a person has a thirty-five percent or greater ownership interest or, in the case of a partnership or professional corporation, a direct ownership interest in excess of five percent.

86. Pursuant to EPTL § 8-1.9(c)(1), no trust shall enter into a related party transaction unless the transaction is determined by the trustees or an authorized committee of the trustees to be fair, reasonable, and in the trust’s best interest at the time of the determination.

87. Pursuant to EPTL § 8-1.9(c)(2), with respect to any related party transaction in which a related party has a substantial financial interest, before entering the transaction, the trustees must consider alternative transactions, and must contemporaneously document the basis

for the trustees' approval of the transaction, including consideration of alternative transactions.

88. Pursuant to EPTL § 8-1.9(c)(4), the Attorney General may bring an action to void or rescind any related party transaction that violates any provision of EPTL Article 8 or that was otherwise not reasonable or in the best interests of the trust at the time the transaction was approved, or to seek restitution, and the removal of trustees, or seek any person or entity to return or replace any property or other assets lost to the corporation as a result of such transactions, and pay, in the case of willful and intentional conduct, an amount up to double the amount of any benefit improperly obtained.

89. Mr. Marchese as Successor Trustee is a related party of the Living Trust, as is his law firm, a partnership in which, on information and belief, he has a direct ownership interest in excess of five percent. Mr. Marchese used his powers as Successor Trustee to cause the Living Trust to enter into related party transactions with Marchese & Maynard, in violation of the requirements of EPTL § 8.1-9(c)(1) & (2).

90. His conduct in violating the related party transactions provisions was willful and intentional. As a lawyer who professes, on his firm's website, to practice trusts and estates law and who on information and belief is a member of the Elder Law and Trusts and Estates Section of the New York State Law Association, Mr. Marchese knows or should have known the applicable laws governing trusts with charitable interests, specifically, EPTL § 8-1.9.

91. The remedy for breaches of EPTL § 8.1-9 is to return assets lost to the trust as a result of the transactions, and, in the case of willful and intentional conduct, to pay in addition an amount up to double the amount of any benefit improperly obtained. Mr. Marchese acted willfully and intentionally in causing the Living Trust to enter into improper related party transactions with his firm, and is therefore liable to pay restitution in the amount of \$598,938.59,

and, in addition, to pay an amount up to double \$598,938.59.

SIXTH CAUSE OF ACTION

Dissolution of the Foundation – N-PCL §§ 112(a)(7), 1102(a)(2)(E)
(Against the Foundation)

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

93. Under N-PCL § 112(a)(7), the Attorney General may bring an action to enforce any right given under the N-PCL to members, a director, or an officer of a charitable corporation. The Attorney General shall have the same status as such members, director or officer.

94. Under N-PCL § 1102(a)(2)(E), the Attorney General may bring an action for the dissolution of a charitable corporation where the corporation is no longer able to carry out its purposes.

95. The Foundation has been operating for years with only two directors, and the Attorney General seeks removal of Mr. Marchese and Ms. Maynard as directors. The Attorney General seeks an order dissolving the Foundation pursuant to N-PCL § 1102(a)(2)(E), and distributing any assets remaining after the Foundation's liabilities, if any, have been paid to organizations engaged in "substantially similar" charitable activities consistent with the mission set forth in the Foundation's certificate of incorporation, pursuant to N-PCL §§ 1115(a) and 1008(a)(15).

PRAYER FOR RELIEF

The Plaintiff requests judgment against the Defendants as follows:

A. Directing Mr. Marchese and Ms. Maynard to pay the Foundation

\$758,334, an amount equal to the benefits they paid themselves from the Foundation in violation of New York law, plus statutory interest at the rate of 9% per year accruing on this amount; and directing Marchese & Maynard, LLP, to pay the Foundation \$40,000, which is the amount Mr. Marchese and Ms. Maynard caused the Foundation to pay the firm in violation of New York law, plus statutory interest at the rate of 9% per year accruing on this amount;

B. Directing Mr. Marchese to pay the Foundation \$598,938.59, an amount equal to the benefit he directed to Marchese & Maynard, Inc., under a conflict of interest as both Successor Trustee and law firm partner, and in violation of New York law, plus statutory interest at the rate of 9% per year accruing on this amount, and directing him to pay the Foundation, in addition, \$1,197,876.58 for acting willfully and intentionally;

C. Directing Mr. Marchese to pay the Foundation \$62,256, an amount equal to the trustee commissions he received as Successor Trustee, for breaching his fiduciary duties as Successor Trustee, plus statutory interest at the rate of 9% per year accruing on this amount;

D. Dissolving the Foundation, annulling the certificate of incorporation of the Foundation, and terminating the corporate existence of the Foundation;

E. Enjoining Mr. Marchese from serving as an executor, trustee, or

equivalent fiduciary, of an estate or trust holding a charitable interest for a period of five years;

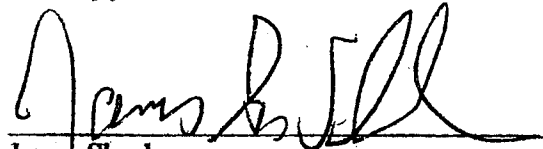
F. Enjoining Mr. Marchese and Ms. Maynard for a period of five years from serving as an officer, director, trustee or in an equivalent position of any not-for-profit or charitable organization incorporated or authorized to conduct business or solicit charitable donations in the State of New York, or a foreign not-for-profit or charitable organization holding charitable assets in New York State; and

G. Granting such other and further relief as is just and proper.

Dated: New York, New York
April 26, 2022

LETTIA JAMES
Attorney General of the State of New York
Attorney for Petitioners

By:



James Sheehan
Charities Bureau Chief
28 Liberty Street
New York, New York 10005
Tel. (212) 416-8401

Yael Fuchs, Co-Chief of the Enforcement Section
PEGGY FARBER, Assistant Attorney General
REBECCA GIDEON, Assistant Attorney General
DEBORAH YURCHUK MCCARTHY, Chief of the Trusts and Estates Section

VERIFICATION

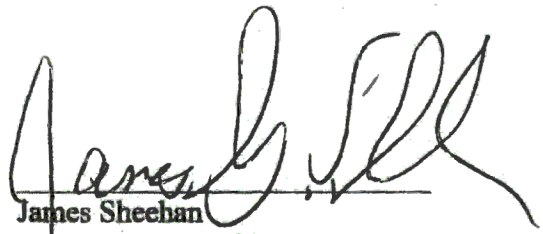
STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

James Sheehan, being duly sworn, deposes and says:

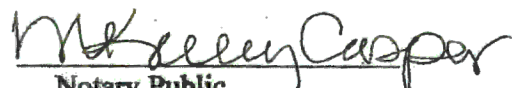
I am Chief of the Charities Bureau in the office of Letitia James, Attorney General of the State of New York (the "Attorney General"). I am duly authorized to make this verification.

I have read the foregoing complaint and am acquainted with the facts alleged therein based on the Attorney General's inquiry into the transactions upon which the complaint is based, the annual filings and materials provided to the Attorney General by Paul S. Marchese, Robin S. Maynard, Marchese and Maynard LLP, and the Harold and Helen Gottlieb Foundation, and the records and materials contained in the files of the Attorney General's Office. To my knowledge based on such acquaintance with the facts, the same are true, except as to those allegations made upon information and belief, and as to those allegations, I believe them to be true.

The reason this verification is not made by the plaintiff is that the plaintiff is a body politic, and the Attorney General is its duly authorized representative.


James Sheehan
Charities Bureau Chief

Sworn to before me this
25th day of April, 2022


Notary Public

M. KELLEY CASPER
Notary Public, State of New York
#01CA5069558
Qualified in Saratoga County
Commission Expires Nov. 25, 2022