

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKPEOPLE OF THE STATE OF NEW YORK, BY
ERIC T. SCHNEIDERMAN, ATTORNEY
GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

v.

YISROEL SCHULMAN,

Defendant.

Index No. 453119/2017

SummonsDate Index No. Purchased:
November 29, 2017

TO THE ABOVE NAMED DEFENDANT:

YISROEL SCHULMAN
60 Sutton Place South
New York, New York 10022

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is that a substantial part of the events or omissions giving rise to the claim occurred in New York County.

Dated: New York, New York
November 29, 2017ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
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Charities Bureau
120 Broadway
New York, New York 10271
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COMPLAINT

The People of the State of New York, by their attorney, Eric T. Schneiderman, Attorney General of the State of New York (the “Attorney General,” or “Plaintiff”), for their complaint allege as follows:

BACKGROUND AND NATURE OF THE ACTION

1. The Attorney General brings this action on behalf of the People of the State of New York to hold Yisroel Schulman (“Schulman”), the co-founder and former President and Attorney-in-Charge of the New York Legal Assistance Group Inc. (“NYLAG”), a New York Not-for-Profit Charitable Corporation, liable for his repeated breaches of fiduciary duty to NYLAG and other charitable organizations with which he was affiliated.

2. Pursuant to Section 8-1.4 of the Estates Powers & Trusts Law (“EPTL”), Section 112 of the Not-for-Profit Corporation Law (“N-PCL”) and Sections 63(12) and 172 of the New York State Executive Law (“Exec. Law”), the Attorney General conducted an investigation (the “OAG

Investigation”), in connection with which it subpoenaed documents and testimony and interviewed witnesses. The allegations herein are based on the information obtained in the course of the OAG Investigation.

3. As set forth in more detail below, beginning no later than 1998 and continuing through at least 2013, Schulman diverted millions of dollars in charitable funds from NYLAG, a charitable organization providing free legal services to low-income New Yorkers, to other charitable organizations that he controlled. Schulman later returned a portion of the diverted funds, but he did not have authority from the board of directors of NYLAG (the “Board”) to divert NYLAG’s charitable funds in this manner and doing so was inconsistent with NYLAG’s charitable purpose of providing legal assistance to low-income individuals.

4. Schulman executed a series of financial transactions before ultimately transferring funds to the organizations that he controlled and, in certain instances to himself. In addition to reaping personal financial benefits, Schulman also made the transfers to enhance his reputation and standing in his community – i.e., so that he could appear to be a much greater benefactor of the organizations with which he was affiliated than he could be by using his own personal funds.

5. In particular, Schulman diverted NYLAG’s funds by improperly using NYLAG’s IOLA Interest On Lawyer Account (“IOLA”) accounts. Schulman deliberately used NYLAG’s IOLA accounts as the source of the diverted funds because he knew that NYLAG’s accountants did not audit those accounts and that the Board would not be monitoring those accounts when it reviewed the financial statements prepared by the accountants.

6. Schulman directed the diverted charitable funds from NYLAG’s IOLA accounts to various donor-advised funds and similar accounts (collectively “DAFs”) that Schulman established as *de facto* “investments” at FJC: A Foundation of Philanthropic Funds (“FJC”),

which sponsors DAFs. As set forth in more detail below, DAFs are accounts set up at a sponsoring organization (here, FJC), which must be a grant-making charity, for which the donor establishing the account turns over control and ownership of the assets to the sponsoring organization. The sponsoring organization agrees, however, to allow the donor to make recommendations on the grants that are to be made with the donated funds. The grants the sponsoring organization makes must be to a qualified not-for-profit organization and may not benefit the donor setting up the DAF.

7. By choosing DAFs to hold NYLAG's funds rather than a bank or investment account, Schulman avoided the regulatory oversight applied to investment and bank deposits and the internal controls that such financial institutions typically employ to police the accounts themselves. DAFs are not intended to be investment vehicles and the transactions in DAFs are not subject to anti-money laundering rules and other financial regulations. FJC, accordingly, did not exercise such oversight of its DAFs and did not have sufficient internal controls to ensure that DAFs held as "investments" for others are not misused. The controls FJC had were not sufficient to prevent wrongdoing of the type that Schulman engaged in here.

8. Beginning in the mid- to late-1990's and continuing over the next decade, Schulman opened over a dozen DAFs and similar accounts at FJC. Some of the accounts were for the benefit of NYLAG (the "NYLAG DAFs") and some were accounts that he established in his individual capacity for non-NYLAG purposes (the "non-NYLAG DAFs"). Although Schulman informed the Board about a number of the accounts he established for NYLAG as "investments," he concealed from the Board two significant accounts that had been set up with NYLAG's funds and that should have been used for NYLAG's charitable purposes: the NYLAG Operating Support Fund and the NYLAG Attorneys' Fees Fund.

9. From 1999 through 2013, Schulman diverted at least \$2.3 million from NYLAG to: (i) the NYLAG Operating Support Fund and the NYLAG Attorneys' Fees Fund and (ii) the non-NYLAG DAFs. During this same period, Schulman caused approximately \$1.7 million to be transferred back to NYLAG, but did so in a manner that did not reveal the particular accounts at FJC from which the funds were being transferred.

10. In January 2015, after NYLAG received a federal grand jury subpoena, the NYLAG Board commenced an internal investigation, which led the Board to learn of Schulman's diversions. As of January 2015, when Schulman learned of the federal investigation, his diversions exceeded the amount he had previously returned to NYLAG by at least \$800,000 inclusive of the interest that NYLAG would have obtained from investing those funds. After Schulman's diversions were uncovered, Schulman recommended that FJC make grants of its charitable assets to NYLAG to repay it for the money Schulman diverted, without disclosing to FJC, as required, that the grants would benefit him personally. As a result of Schulman's improper recommendations, FJC made grants back to NYLAG totaling \$1,255,000 from a non-NYLAG DAF and the NYLAG Operating Support Fund (which, as set forth below, had been renamed to remove any reference to NYLAG). Schulman's diversion of NYLAG's charitable assets for non-NYLAG purposes constituted a breach of his fiduciary duties of loyalty and obedience.

11. Schulman also breached his duty to safeguard and properly invest NYLAG's assets by recommending that NYLAG establish DAFs at FJC to "invest" NYLAG's assets, including its multi-million reserve fund.

12. The DAFs were not appropriate investment vehicles because unlike a true investment, when donors to DAFs contribute funds to the accounts, they must give up legal

ownership and control over those funds as a condition of the contribution. The donors retain no right to demand return of their donated assets. Schulman knew this, but nevertheless decided to relinquish legal control over NYLAG's charitable assets to FJC because it served yet another improper objective. By granting legal ownership and control over the funds to FJC, Schulman avoided accounting for the monies held in DAFs as assets on NYLAG's balance sheet. This falsely made NYLAG appear to potential donors as in greater need of donations than it truly was. In reality, however, at all times, Schulman expected and FJC tacitly agreed to return the DAF assets back to NYLAG in grants made at NYLAG's request. Schulman was able to convince NYLAG's accountants to go along with this accounting treatment because he informed them that NYLAG had given up control of the assets and did not have any agreement that required them to be returned to NYLAG. As a result of Schulman's actions, the annual reports that NYLAG filed with the Charities Bureau of the Attorney General's Office (the "Charities Bureau") were materially misleading to potential donors, as well as to governmental regulators.

13. As detailed below, Schulman further breached his duties to NYLAG and the other not-for-profit organizations with which he was affiliated by, among other things:

- (a) recommending that FJC make grants from DAFs to organizations that he controlled that would, in turn, use the granted funds for Schulman's personal benefit, without disclosing to FJC the benefits he would receive; (b) paying himself tens of thousands of dollars as a consultant for one such organization, without disclosing to FJC or NYLAG that he was moonlighting; and
- (c) using NYLAG's IOLA accounts to transact business for other organizations he controlled and for his family, without disclosing his activities to NYLAG's Board as required by N-PCL § 715.¹

¹ Section 715 of the N-PCL was amended in 2014. Under the earlier version of the statute (as well as under the revised statute), a corporate officer was required to disclose any interest he or she had in a transaction with the corporation.

14. In this action, the Attorney General seeks to hold Schulman accountable for his breaches of fiduciary duty and diversion of charitable assets that should have been used by NYLAG for the provision of legal services to low-income New Yorkers. In particular, in this action, the Attorney General asserts claims against Schulman for, among other things:

(a) breaching his fiduciary duty to NYLAG by failing to properly administer NYLAG's charitable assets and improperly diverting those assets to be used for non-NYLAG purposes, including for his own benefit; (b) causing NYLAG to make materially misleading filings with the Charities Bureau and misleading donors to NYLAG by misstating NYLAG's assets in its books and records; (c) interfering with the proper administration of charitable assets held by FJC by using the FJC accounts for his private benefit and failing to adequately disclose to FJC the purpose of grants he recommended; and (d) breaching his fiduciary duty to other charitable organizations that he controlled by misusing their charitable assets, including by directing the use of their charitable assets for his own benefit. As a result, the Attorney General seeks an order compelling Schulman to account for his wrongdoing and to pay restitution to the organizations whose funds were misused and diverted and banning Schulman from serving as an officer or director of any not-for-profit organization in New York.

THE PARTIES

15. Plaintiff The Attorney General is responsible for overseeing the activities of New York not-for-profit corporations and the conduct of their officers and directors, as well as for ensuring that charitable assets are properly administered, in accordance with the N-PCL, the EPTL, the Executive Law, and his common law *parens patriae* authority.

16. Defendant Schulman is an attorney admitted to practice in New York in 1987, who resides in New York County in New York State. Schulman was one of the co-founders of NYLAG in or about 1989, and led that organization from that time until February 3, 2015, when he was forced to resign by the NYLAG Board.

OTHER RELEVANT ENTITIES

17. Nonparty NYLAG is a Section 501(c)(3) exempt Not-for-Profit Charitable Corporation formed under the laws of New York in 1989. NYLAG has been registered with the OAG Charities Bureau from 1991 continuously through the present pursuant to Article 7-A of the Executive Law and Article 8 of the EPTL. NYLAG provides free legal services to low-income people in New York in need of representation in civil matters, including with respect to immigration, healthcare, public benefits and housing.

18. Schulman has, at various times, served on the board of a number of other small charitable organizations and, with respect to two of the entities, referred to herein as nonparty Charitable Entity One and nonparty Charitable Entity Two, also served as an officer. During the relevant time period, Schulman exercised control over the financial affairs of Charitable Entity One and Charitable Entity Two.

19. Nonparty FJC, which does business as FJC: A Foundation of Philanthropic Funds, is a sponsoring organization for DAFs and is a section 501(c)(3) exempt Not-for-Profit Charitable Corporation formed under the laws of New York in 1995. FJC has been registered with the OAG Charities Bureau since 1995.

JURISDICTION AND APPLICABLE LAW

20. The Attorney General brings this action on behalf of the People of the State of New York pursuant to N-PCL §§ 112, 515, 552, 554, 717 and 720, EPTL § 8-1.4 and Article 7-A of the Executive Law and under his *parens patriae* authority.

21. Charitable organizations holding assets and operating in New York, subject to certain exceptions, must register and file annual reports with the Charities Bureau, pursuant to EPTL §§ 8-1.4(d) and (f). In addition to the registration requirements of the EPTL, charitable organizations soliciting contributions in New York must also register and file annual reports under Article 7-A of the Executive Law. The annual reports filed pursuant to the EPTL and the Executive Law are called CHAR500s and they must include copies of an organization's annual IRS filings, called a Form 990, and, for organizations such as NYLAG, which file under the Executive Law and meet certain monetary thresholds, copies of the organization's audited financial statements. CHAR500s are required to be signed by: (i) the organization's President or Authorized Officer and (ii) its Chief Financial Officer or Treasurer, both of whom must certify, under penalties of perjury, that the report, including all attachments, is true and accurate.

22. Registration with the Charities Bureau is required, in part, to enable the Attorney General to exercise statutory oversight of charities that conduct activities and/or solicit charitable contributions in New York and to ensure that funds and other property entrusted to those organizations are administered properly. The registry also serves as an important source of information for members of the public concerning not-for-profit organizations. The failure of an organization to file accurate reports impedes the Attorney General's exercise of his statutory authority to oversee charitable organizations and deprives New Yorkers of access to reliable information concerning charities operating in this State.

23. Pursuant to Section 112(a) of the N-PCL, the Attorney General is authorized to bring an action or special proceeding: “(7) 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;” . . . and “(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].”

24. Pursuant to Sections 508 and 515(a) & (b) of the N-PCL, a not-for-profit corporation may not pay any part of its income or profit to its directors or officers and may not pay more than reasonable compensation to its officers and directors for the services they provide.

25. Directors and officers of charitable organizations have a fiduciary duty to invest the charity’s funds prudently. The New York Prudent Management of Institutional Funds Act, N-PCL §§ 550 – 558 (“NYPMIFA”), provides that “each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.” N-PCL § 552. In addition, pursuant to Section 554 of the N-PCL, any delegation of the management of investment responsibility must be made with “the care that an ordinarily prudent person in a like position would exercise under similar circumstances as required by [N-PCL § 717].” Pursuant to Section 557 of the N-PCL, NYPMIFA applied to all institutional funds in existence at the time of its enactment. NYPMIFA, in Section 551 of the N-PCL, defines an institutional fund to include any funds held by a charity, but excludes program-related assets, such as real property owned by a charity that is used for its operations (and not as an investment). Before NYPMIFA became effective in September 2010, this fiduciary duty to invest the charity’s funds prudently was governed by EPTL § 8-1.4 and N-PCL § 717.

26. Pursuant to Section 717 of the N-PCL, directors and officers of a not-for-profit corporation are required to act in good faith and with that degree of diligence, care and skill that ordinarily prudent persons in their positions would exercise under similar circumstances. In addition, pursuant to N-PCL Section 717, directors and officers of a not-for-profit corporation are required to act with undivided loyalty toward the corporation.

27. Pursuant to Section 720 of the N-PCL, the Attorney General is authorized to bring an action to procure a judgment against an individual for misconduct as an officer of a New York not-for-profit corporation and to require the defendant to account for and pay damages arising out of, among other things: “[t]he neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge” or “[t]he acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.”

28. Pursuant to Article 8 of the EPTL, the Attorney General is responsible for supervising the administration of charitable property in the State of New York by any individual, group of individuals, corporation, trust or other legal entity holding and administering property for charitable purposes.

29. Section 8-1.4(m) of the EPTL authorizes the Attorney General to institute appropriate proceedings to secure the proper administration of any not-for-profit corporation organized under the laws of this State for charitable purposes.

30. Pursuant to Section 172-d of the Executive Law, no person shall “[m]ake any material statement which is untrue in . . . [a] financial report or any other forms or documents required to be filed” with the Attorney General’s office pursuant to Article 7-A of the Executive Law.

31. Pursuant to Section 175(2) of the Executive Law, the Attorney General is authorized to bring an action against a charitable organization or any other persons acting for it or on its behalf, in relevant part: to enjoin such organization and persons from continuing the solicitation or collection of funds, and for an order awarding restitution and damages and costs, and to seek other relief which the court may deem proper whenever the Attorney General shall have reason to believe that the charitable organization or other person has violated Article 7-A, has solicited funds through fraudulent means, has made a material false statement in filings with the Attorney General made pursuant to Article 7-A (registration filings and financial reports), or has failed to apply funds solicited from the public in a manner substantially consistent with its charitable purposes.

FACTUAL BACKGROUND

The Imprudent Decision to Invest NYLAG's Reserve Funds at FJC

32. By the late 1990s, NYLAG had amassed a substantial reserve fund for an organization its size,² due in large part to a gift from a major donor in the early 1990s. The reserve fund originally was maintained at the UJA Federation of New York that was earmarked for NYLAG's benefit, but, in the fiscal year ending June 30, 1992, the donor determined that NYLAG should have "more control over the money," and transferred the funds to NYLAG. In 1998, Schulman recommended to NYLAG's Board that it transfer the reserve fund, which at the time was valued at approximately \$2.45 million, to a DAF at FJC.

² For the fiscal year ending June 30, 1998, NYLAG had \$1.67 million in revenues and \$624,808 in total assets at year-end (excluding the \$2.45 million reserve fund held at FJC in DAFs).

How DAFs Function

33. A DAF is a fund or account established for the purpose of making charitable contributions over time. See 26 U.S.C. § 4966. The organization where the DAF is established, the sponsoring organization, must be a tax-exempt not-for-profit entity. See id. The sponsoring organization (here, FJC), *not* the donor, has legal ownership and control over the assets in the DAF. See id. The sponsoring organization agrees to consider the recommendations from the donor (or anyone appointed by the donor to make recommendations) concerning the identification of, and distributions to, the ultimate charitable beneficiaries. As a general matter, distributions may only be made to qualified tax-exempt charities.³ See id. While the money is held by the sponsoring organization, it is usually invested in some manner, allowing the value of the assets from the original donation to grow pending their distribution. A DAF, however, fundamentally differs from an investment because the donor relinquishes legal ownership of the assets, including all earnings, and the funds in a DAF remain at all times charitable assets legally owned by the sponsoring organization. Although the donor may make recommendations concerning grants, it is the sponsoring organization, not the donor that has the ultimate authority to determine how the funds will be distributed. The donor has no legal recourse if the sponsoring organization does not follow a recommendation.

34. Before making a grant, sponsoring organizations typically perform due diligence on recommended beneficiaries to ensure that they are appropriate recipients. At a minimum, in order to comply with IRS regulations as well as charities laws prohibiting private benefit from charitable funds, the sponsoring organization typically will confirm that the recommended

³ Because the sponsoring organization is a tax-exempt charity, the donor can take a tax deduction for the full amount of the donation at the time it is made to the DAF, even though the money is not immediately disbursed to the ultimate charitable beneficiaries.

beneficiary is a tax-exempt organization and that the donor recommending the grant will not receive any benefits from it. See 26 U.S.C. § 4958(c)(2). FJC's due diligence process required the recommender to affirm that the grant was not being used for, among other things, "personal pledges of financial support or obligation" or dues (other than for a qualifying religious organization) and that "[n]o benefit or privilege" was being provided to the recommender in connection with the grant. Similarly, FJC required a corollary certification from the recipient of the grant. The checks FJC issued when it made grants provided, in pre-printed language, that the person endorsing the check is certifying that the granted funds were not being used to benefit the recommender of the grant.

35. Sponsoring organizations may conduct additional due diligence before issuing a grant to a recommended organization to determine whether there are any red flags, such as open investigations into the organization or publicized allegations of wrongdoing, which would raise concerns about whether a grant would be used appropriately.

36. The sponsoring organization may decline to follow a grant recommendation if it determines from its due diligence that the recipient is not qualified, red flags have been raised or the mission of the intended recipient is inconsistent with the mission of the sponsoring organization.⁴ Under such circumstances, the donor has no legal basis to challenge the sponsoring organization's decision.

37. FJC offered donors DAFs, and beginning in or about early 2007, it offered donors another form of donor account called a designated-fund account. FJC's designated-fund accounts share the same key attribute of DAFs – the donor gives up its ownership interest in the

⁴ For example, FJC would not follow a grant recommendation that would benefit an organization that it determines is sympathetic to neo-Nazi causes.

funds when they are deposited into an account with FJC, the sponsoring organization. Thus, as with DAFs, FJC, and not the donor, has ultimate decision-making authority concerning how the funds in a designated-fund account are to be used. The only material difference between a DAF and a designated-fund account is that a designated-fund account is intended to be used for the exclusive benefit of a single charity that is designated at the time the account is opened, while DAFs may be used to make grants to more than one charity. The term “donor-advised fund” is a recognized term of art and defined in the Pension Protection Act of 2006 (and specifically does not include a fund that is set up for the benefit of only one entity). See 26 U.S.C. § 4966(d)(2)(A) & (B)(i). In contrast, the term “designated-fund account” has no statutorily defined legal meaning.

The DAFs Established By Schulman and NYLAG at FJC

38. In May 1998, NYLAG transferred its entire reserve fund of \$2.45 million to FJC “to establish a Donor Advised Fund under [FJC’s] procedures for the operation of Donor Advised Funds.”

39. The recommendation to open the DAF at FJC for NYLAG’s reserve fund was made by Schulman and approved by NYLAG’s Board in reliance on Schulman’s strong recommendation. Schulman made the recommendation based in part on his pre-existing relationship with FJC’s founders. In 1996, FJC’s founders established a small DAF at FJC and gave Schulman authority to recommend charitable donations for the account.

40. During the relevant period, NYLAG continued to maintain the DAF that it had set up with its reserve fund and established at least eight (8) more DAFs and designated-fund accounts at FJC. Schulman did not disclose to NYLAG’s Board two of those accounts, the

NYLAG Operating Support Fund and the NYLAG Attorney's Fees Fund, which had been established for NYLAG with contributions from NYLAG.

41. In 2007, some of the accounts that were originally opened as DAFs were converted to designated-fund accounts that pre-designated NYLAG as the sole beneficiary. Schulman did not make this change to the NYLAG Operating Support Fund, which was intended to be used for NYLAG's benefit but which Schulman caused to be transferred, as described below, to divert monies to non-NYLAG organizations under his control. Several of the NYLAG DAFs were closed in 2011. The DAF set up with NYLAG's reserve fund, which was the largest account (and which was later converted to a designated-fund account), was maintained at FJC until early 2015.

42. In addition to the NYLAG DAFs and the original account set up for him by FJC's founders, Schulman established a number of other accounts at FJC that gave him authority to make grant recommendations in his personal – i.e., non-NYLAG – capacity. During the relevant period, Schulman was associated with at least seven DAFs at FJC that were not established by, or for the benefit of NYLAG, referred to herein as the non-NYLAG DAFs.

43. As detailed below, the decision to place NYLAG's investments, including its reserve fund, in DAFs (and, later, designated-fund accounts) with FJC was not prudent. NYLAG intended to use the funds it placed at FJC in the near- and long-term future, but FJC was not, and is not, an investment company or bank and the DAFs and designated-fund accounts that NYLAG set up with FJC were not appropriate investment vehicles because, among other things, NYLAG had to give up legal ownership and control over the charitable assets in those accounts as a condition of contributing the funds to the accounts.

NYLAG's Loss of Control Over Its Assets

44. As the legal owner of the assets in the DAFs that NYLAG established, FJC, not NYLAG, had the ultimate decision making authority over the distribution of those funds.

45. FJC was required by law to use the assets in the funds it sponsored for charitable purposes, and agreed to consider NYLAG's suggestions on such use, but, as set forth above, it was under no legal obligation to honor NYLAG's recommendations, including a recommendation that sought to grant the assets back to NYLAG for its charitable purposes. In particular, FJC could have determined that it would not follow NYLAG's recommendations when serious questions had been raised about alleged fraud or wrongdoing at the organization. If FJC made such a determination, it would have been acting fully within its rights and NYLAG would have lost all of its reserves, which totaled several million dollars, without any legal right to challenge FJC's decision.

46. The decision to place NYLAG's investments, including its reserve fund, in DAFs (and, later, designated-fund accounts) with FJC was neither prudent nor consistent with Schulman's duty to ensure that NYLAG's assets were administered for its benefit. FJC was not, and is not, an investment company or bank and the DAFs and designated-fund accounts that NYLAG set up with FJC were not prudent investment vehicles because, among other reasons, NYLAG had to give up legal ownership and control over the charitable assets in those accounts. By setting up the DAFs at FJC as *de facto* investments, Schulman and NYLAG's Board, which approved the plan, subjected NYLAG to the risk that it could not obtain the return of its funds when it needed them.

47. When he was examined under oath, Schulman admitted that he knew that he was causing NYLAG to give up legal control over its reserve funds when he opened the DAFs and

designated-fund accounts at FJC and, in any event, FJC account documents made this fact clear. The account opening documents for the DAFs and designated-fund accounts at FJC expressly provide that the assets transferred to FJC become FJC's property for FJC's charitable purposes, with the donor only retaining the privilege to make recommendations. For example, the FJC account opening documents from 1999, which are substantively the same as account opening documents in later years, summarized the procedures applicable to donor-advised funds and provided that "*FJC owns the contributed assets in each Donor Advised Fund outright and has complete control over them for the charitable purposes of the FJC. The donors and designees do not have any power to restrict the absolute rights of the FJC as owner of the assets.*"⁵ It, therefore, was clear that although NYLAG would be able to make recommendations, FJC had the ultimate authority "over the selection of the charities to receive funds and the timing and amounts of the distributions." Schulman signed the account opening documents for every account at FJC opened by NYLAG.

48. NYLAG's financial statements for the fiscal year ending June 30, 1998 also confirm that when NYLAG set up the account at FJC in May 1998 with its \$2.45 million reserve fund, it gave up legal control of those assets. Note 3 to the 1998 financial statements, entitled "Support of Other Institutions," explains the May 1998 transfer to FJC and provides, in pertinent part: "[a]ll funds donated/transferred to [FJC] became the sole property of [FJC] and are non-reciprocal. NYLAG has the privilege of making written recommendations with respect to distributions from the fund. However, in accordance with Internal Revenue Service regulations, *[FJC] shall have the ultimate authority over the selection of charities to receive funds.*"

⁵ Unless otherwise indicated, all emphasis is added.

The Misreporting of NYLAG's Assets

49. Another consequence of NYLAG's improper transfer of its reserve funds to DAFs and designated-fund accounts with FJC was that it facilitated the misrepresentation and underreporting by millions of dollars in assets that were, as a practical matter, available to and intended to be used by NYLAG.

50. In particular, when NYLAG purported to "invest" its reserve fund with FJC in May 1998, it took the \$2.45 million in the reserve fund off its balance sheet, because, as noted in NYLAG's financial statements, NYLAG no longer had an ownership interest in the money.

51. NYLAG's tax returns also misleadingly characterized the transfer of funds to FJC as a program-related expense, describing it as "[s]upport of other institutions," even though NYLAG did not use the funds in that manner. Schulman fully intended at all times to treat – and in fact, did treat – the account at FJC as an investment for NYLAG's own benefit.

52. The transaction taking the reserve fund off the books was described in a note to NYLAG's audited financial statements for the fiscal year ending June 30, 1998, the first year it occurred, and referenced again in the audited financial statements for the fiscal year ending June 30, 1999. The note was omitted from NYLAG's financial statements in subsequent years, however, and, for the next decade, no reference was made to the reserve fund (or any other DAFs or designated-fund accounts) in NYLAG's filings with the Charities Bureau, which, as noted above, included its IRS Form 990s and its audited financial statements.

53. The assets taken off NYLAG's books constituted a significant portion of NYLAG's total assets; after the \$2.45 million in NYLAG's reserve fund was transferred in 1998 to a DAF at FJC, NYLAG's total assets on its balance sheet, as reported in its IRS Form 990s and audited financial statements, was only \$624,808. Thus, in the late 1990's, the assets at FJC represented

over 75% of the funds that NYLAG considered to be assets available for program and operational needs and the assets on its balance sheet represented less than 25% of those holdings. Throughout the first decade of the 2000s, the funds NYLAG held off the books in the reserve fund and in other accounts at FJC remained substantial.

54. Notwithstanding that NYLAG gave up legal ownership and did not report on its audited financial statements the assets held at FJC, Schulman considered NYLAG to be the *de facto* owner of those assets. Schulman believed that he would be able to cause the return of those assets to NYLAG by recommending a grant back to NYLAG and he and NYLAG treated the assets as NYLAG's throughout this period.

55. Because NYLAG held significant assets in DAFs and designated-fund accounts that were treated as *de facto* investments – albeit investments without full ownership rights – that were not disclosed on the annual reports filed with the Charities Bureau, those reports materially understated NYLAG's financial position.

56. As a result, for over a decade, NYLAG appeared to potential donors as having substantially less money than it actually had. This was not accidental; it was one of the primary reasons why Schulman recommended the transfer of NYLAG's reserves to DAFs rather than investment accounts.

57. In the late 1990s, NYLAG was turned down for a grant precisely because the grantor deemed NYLAG's assets sufficient to meet its needs. As Schulman testified, "nobody wants to give money to . . . an organization . . . when you have . . . a three million dollar cash surplus sitting in accounts." His solution was to use DAFs to take the assets off the books to create the illusion that NYLAG had fewer assets than it actually did and avoid the negative impact on its

fundraising. When examined, Schulman admitted that “investing” in the DAFs made NYLAG “appear to the outside to be less – to be less financially well off [than] it actually was in reality.”

58. As a result of taking the money in the DAFs and designated-fund accounts at FJC off the books, a prospective donor to NYLAG looking at its annual reports to the Charities Bureau would see an organization with net assets that ranged from approximately \$1 million to a high of \$2 million at the end of the decade. Not apparent from the annual reports or NYLAG’s audited financial statements, however, were the millions of dollars in reserve funds NYLAG held in DAFs at FJC, which, as noted above, totaled over \$7 million by 2010.⁶

59. During the period from 2001 to 2011, Schulman signed under penalty of perjury NYLAG’s annual reports to the Charities Bureau that misrepresented its financial status because they did not include reference to the millions of dollars in DAFs that NYLAG treated as investments.⁷

60. NYLAG’s annual reports to the Charities Bureau required a second signature by the organization’s Chief Financial Officer (“CFO”) or Treasurer. Schulman caused NYLAG’s bookkeeper, who was supervised directly by Schulman, to sign the annual reports identifying herself as NYLAG’s CFO even though she did not hold that title or a comparable position and did not have the same expertise as a CFO or Treasurer.

61. NYLAG’s reports to the Charities Bureau continued to understate its net assets until the fiscal year-ending June 30, 2011, when NYLAG’s auditors advised the organization that the

⁶ NYLAG’s audited financial statements from this time-period do include a reference to a relatively small investment at FJC in a “pooled investment fund”, but do not disclose the full amount in NYLAG’s FJC accounts. The notes to the audited financial statements explain that this “pooled investment fund” “represent[s] contributions received during the fiscal [year] which are temporarily restricted by the donors for future periods.” For example, in 2010, although NYLAG’s DAFs and designated-fund accounts at FJC were valued at over \$7 million, only \$217,307 was reported in the financial statements as being in “pooled investment fund” at FJC.

⁷ The annual reports filed during this period covered fiscal years 2000 to 2010.

funds held at FJC must be brought back on NYLAG's books. NYLAG used these same auditors in 1998 when they removed the assets from its balance sheet. They changed their view on the accounting treatment after learning that under NYLAG's arrangement with FJC, the organization was exercising more control over those assets than they previously understood. NYLAG followed this advice, but subsequent financial statements omitted any reference to the change in treatment in its financial statements.⁸ The funds being returned to the books were simply reported under grants and contributions without any disclosure that the funds originally had belonged to NYLAG. Thus, NYLAG's net assets jumped from \$2.7 million in 2010 to over \$10 million in 2011. The filings with the Charities Bureau misleadingly indicated that this change was a result of a substantial increase in grants or other influx of money, not merely a change in accounting treatment of assets held at FJC.

Schulman Took Advantage of the Lack of Controls Over NYLAG's Accounts at FJC

62. The loss of an ownership interest in, and misreporting of the funds held in the accounts at FJC, were not the only problems with the transfer of NYLAG's assets to FJC. Unlike a bank or investment company holding funds for the benefit of others, FJC did not have controls in place to protect the funds placed in DAFs as "*de facto* investments" and these accounts operated outside of the regulatory scheme in place to protect investments and bank deposits.

63. As explained above, as a sponsoring organization, FJC was set up for the purpose of distributing charitable donations; it was not designed to safeguard invested funds for its donors. In particular, FJC became the owner of the assets contributed to DAFs it sponsored and, therefore, did not need to ensure that the donor's interests in those assets were protected in the

⁸ NYLAG did not regain an ownership interest in the accounts when it changed their accounting treatment; FJC remained the legal owner.

same manner as if those donors retained an ownership interest. Rather, FJC's policies were focused on ensuring that the assets it held were granted to bona-fide charities.

64. In this regard, FJC had procedures concerning who could make recommendations on the funds it sponsored, but those procedures were set up with individual, not organizational, recommenders in mind. FJC did not require a corporate resolution to set up accounts when a not-for-profit organization was the donor and treated the individual listed on the account at the organization as the recommender on the account, rather than the organization itself. Thus, the individual recommender on a corporate account could unilaterally recommend all grants, change the name of the account and transfer funds between FJC accounts, all without providing evidence of approval from the not-for-profit corporation or its board.

65. This gap in FJC's controls over corporate accounts allowed Schulman to manipulate the various NYLAG and Non-NYLAG DAFs and divert millions of dollars in charitable funds belonging to NYLAG to non-NYLAG purposes, including for his own benefit.

The Diversion of NYLAG's Assets

66. Beginning no later than 1998 and continuing through at least 2013, Schulman diverted millions of dollars in charitable funds from NYLAG to other organizations that he controlled. In doing so, Schulman enhanced his own reputation by taking the credit for making donations to organizations in his community using NYLAG's money.

67. To avoid being detected, Schulman limited his diversions to transferring funds from NYLAG's IOLA accounts to DAFs and designated-fund accounts at FJC. Schulman used NYLAG's IOLA accounts as the source of the diverted funds because he knew that NYLAG's accountants did not audit those accounts and that, as a result, the Board would not be monitoring those accounts when it reviewed the financial statements prepared by the accountants. Similarly,

Schulman chose to divert the funds to accounts that he set up at FJC because, as detailed above, those accounts were not reflected on NYLAG's books and records and were not audited by NYLAG's accountants.

68. As noted above, beginning in the mid- to late-1990's and continuing over the next decade, Schulman opened over a dozen DAFs and designated-fund accounts at FJC. Although Schulman informed the Board about several of the accounts he established for NYLAG at FJC, he failed to do so with respect to at least two significant accounts that had been set up with NYLAG's funds to be used for NYLAG's charitable purposes: (a) the NYLAG Operating Support Fund; and (b) the NYLAG Attorneys' Fees Fund. Each of these DAFs was funded with NYLAG's money, through transfers Schulman directed from NYLAG's IOLA accounts.

The Transfers from the IOLA Accounts to FJC

69. During the course of his tenure at NYLAG, Schulman caused a portion of donations to NYLAG to be deposited into NYLAG's IOLA accounts. This was not the way NYLAG typically handled contributions and not an appropriate use of NYLAG IOLA accounts.

70. From 1999 through 2013, Schulman diverted at least \$2.3 million from NYLAG's IOLA accounts to accounts at FJC that were not reviewed by NYLAG's Board or auditors, specifically: (i) the NYLAG Operating Support Fund and the NYLAG Attorneys' Fees Fund and (ii) the non-NYLAG DAFs that he set up for his own purposes. During this same period, Schulman caused approximately \$1.7 million to be transferred back to NYLAG, but did so in a manner that did not reveal the particular accounts at FJC from which the funds were being transferred. In particular, when transferring funds back to NYLAG from the NYLAG Operating Support Fund and the NYLAG Attorneys' Fees Fund, Schulman requested that FJC report that the grants as made anonymously.

71. The diversions that Schulman orchestrated during this period included hundreds of thousands of dollars that Schulman transferred from NYLAG's IOLA accounts to non-NYLAG DAFs. Once the funds were in the non-NYLAG DAFs, Schulman used the funds to benefit his own causes and not to benefit NYLAG, as they were required to be used. The remaining diverted funds, totaling over \$2 million, were deposited into the NYLAG Operating Support Fund and the NYLAG Attorneys' Fees Fund.

72. Schulman kept the funds in the NYLAG Operating Support Fund and the NYLAG Attorneys' Fees Fund out of reports to NYLAG's board for two primary reasons.

73. First, just as he did not want NYLAG to appear to be too well funded to outside donors, Schulman did not want NYLAG to appear too well funded to its Board members, who were important donors to NYLAG in their own right. As he put it, when testifying under oath, he did not provide details on all the accounts at FJC to the Board because if the Board knew about all "monies at FJC that were available for operations, people would be dis-incentivized on the board from contributing." Thus, Schulman ensured that the statements for the NYLAG Operating Support Fund and the NYLAG Attorneys' Fees Fund were not shared with NYLAG's Board and that all references to those accounts were omitted from the reports made to NYLAG's Board.

74. Second, as a practical matter, Schulman exercised exclusive control over the funds in the NYLAG Operating Support Fund and the NYLAG Attorneys' Fees Fund and he used the money in the NYLAG Operating Support Fund for his own purposes.⁹ On occasion, as described below, Schulman would cause grants to be made from FJC to organizations that he

⁹ Schulman did not utilize all the funds he diverted to the NYLAG Operating Support Fund and the NYLAG Attorneys' Fees Fund, choosing instead to maintain his own reserve of funds at the FJC to use as he pleased.

controlled that would then disburse the funds to him individually as repayment of alleged loans he made to them or as alleged consulting fees. Other times, he directed grants to organizations he controlled, or to his pet causes, using NYLAG's assets to enhance his reputation as a philanthropist in his community.

75. In order to use NYLAG funds for his own purposes without being discovered, Schulman took improper advantage of his ability to exercise unilateral authority over the FJC accounts due to the lack of controls at FJC. In particular, Schulman manipulated the names and control over the assets in those accounts. Thus, when he opened the NYLAG Operating Support Fund and diverted NYLAG funds to it, he intentionally treated the account as a corporate account and included a reference to NYLAG in the fund's name even though he kept this account hidden from NYLAG's Board. In this way, a superficial review of the transfers from NYLAG's IOLA accounts would not seem suspicious because the funds were being contributed to an account at FJC that seemingly was connected with NYLAG. Schulman diverted NYLAG funds to this hidden account through 2005, making the last transfer in December 2005 in the sum of \$216,000. Similarly, the other hidden account, the NYLAG Attorney's Fee Fund, also referenced NYLAG in its name.¹⁰

76. To hide his actions further, before Schulman used the NYLAG Operating Support Fund for non-NYLAG purposes, he swapped its name with the name of a non-NYLAG DAF that he controlled and removed all association with NYLAG from the account. In particular, in April 2006, Schulman instructed FJC to change the name of the NYLAG Operating Support Fund to the Director's Discretionary Fund, which was the exact name of a different DAF at FJC that

¹⁰ Schulman did not use any of the funds in the NYLAG Attorney's Fees Fund for non-NYLAG purposes and did not change its name.

Schulman personally – i.e., not in his capacity as a NYLAG officer – controlled and historically used to recommend grants to non-NYLAG charities. Schulman then changed the name of the original (personal) Directory’s Discretionary Fund to the Peshva Devora Fund, a fund named in honor of his mother.

77. The original Director’s Discretionary Fund had approximately \$6,000 in it at the time of the name change, while the NYLAG Operating Support Fund was much larger, holding just under \$600,000 of NYLAG’s charitable assets.

78. Schulman was able to swap the account names without difficulty or alerting anyone at NYLAG because the lax protocols at FJC for corporate accounts did not require Schulman to provide any form of corporate authorization.

79. Schulman swapped the account names so that, once he started to cause grants to be made to non-NYLAG causes from the newly named Director’s Discretionary Fund, it would not raise a red flag to anyone at FJC. In other words, once the account no longer appeared to be associated with NYLAG, Schulman knew FJC would not suspect any problem with him recommending grants to organizations other than NYLAG. This is particularly true because, by their very nature, DAFs may be used for grants to any charitable organizations and are not typically set up as “investment” vehicles where the funds return to the donor.

80. Schulman also ensured that this particular account, unlike all of NYLAG’s other accounts at FJC, was never converted to a designated-fund account where all of the account’s assets were pre-designated to benefit NYLAG. Any recommendation to use funds in a designated-fund account other than for the designated beneficiary would raise a red flag at FJC and, by not converting this account from a DAF, Schulman was able to avoid raising any such red flags when he diverted those assets to non-NYLAG purposes.

81. After switching the name of the NYLAG Operating Support Fund to the Director's Discretionary Fund, a non-NYLAG account, Schulman used the approximately \$600,000 in NYLAG's assets that he had transferred into that fund in earlier years – which were intended to be used for NYLAG's operating expenses¹¹ – for non-NYLAG purposes. In particular, beginning in 2008, Schulman caused FJC, by making grant recommendations to it without the NYLAG Board's knowledge or consent, to make improper grants to the Schulman Entities from the former NYLAG Operating Support Fund, including the following:

- In December 2008, Schulman caused a \$200,000 grant to be made to Charitable Entity One.
- In September 2010, Schulman caused a \$500,000 grant to be made to Charitable Entity Two, but shortly thereafter had Charitable Entity Two return the funds to FJC.
- In February 2011, Schulman caused a \$10,000 grant to be made to another charitable entity.
- In 2011, Schulman caused a \$525,000 grant to be made to Charitable Entity Two, which subsequently contributed funds to a non-NYLAG DAF that Schulman controlled at FJC bearing his initials, the YYS Fund. Schulman then made repeated grants from the YYS Fund to Charitable Entity One.
- In March 2012, Schulman caused a \$40,000 grant to be made to Charitable Entity One.

¹¹ Schulman testified that the funds in the NYLAG Operating Support Fund were not intended to be used in the fiscal year received, but would be used in the following year or two.

82. Ultimately, in the summer of 2012, Schulman caused Charitable Entity One to donate \$523,200 back to the former NYLAG Operating Support Fund. Even after this donation, approximately \$200,000 more had been transferred to the Charitable Entities than had been donated back to the account.

83. Schulman asserts that he was unaware of the name change and that FJC made the change on its own. However, if he was truly unaware of the name change as he asserts, it would also mean that he failed to notice that approximately \$600,000 of NYLAG's charitable assets, which he was charged with overseeing, went missing for over 8 years. This included when NYLAG closed most of its significant FJC accounts other than its reserve fund in the fiscal year ending June 30, 2011 and had the funds in those accounts granted back to it. Remarkably, when Schulman was asked "whether [he] was concerned at any point in time between 2006 and 2015 as to what happened to this \$500,000 [sic] that no longer appeared on any account statement that [he was] receiving," he testified that he "was not. I mean, I didn't – I don't think I thought about it."

84. Schulman's failure to keep track of what he acknowledged was "a significant amount of" NYLAG's charitable funds was a violation of his fiduciary duty to safeguard NYLAG's assets.

Schulman's Misuse of FJC's Charitable Assets

85. Schulman not only improperly failed to ensure that NYLAG's DAFs remained intact and were used solely for NYLAG, but he also improperly caused FJC to make grants from accounts on which he was the recommender to organizations in which he exerted considerable influence, and then used his influence within those organizations to cause them to use the funds granted from FJC for his own benefit.

86. When he was examined under oath, Schulman stated that he recommended grants from FJC to Charitable Entity One so that in part it could pay back loans he asserts he made to it. When he recommended the grants, Schulman did not disclose to FJC that he was a creditor of Charitable Entity One or that the grant proceeds would be used to pay off debts he stated were owed to him. As detailed above, FJC's policies and procedures, in accordance with applicable provisions of the tax and charities law, required such disclosure.

87. Once Charitable Entity One received the grant funds from FJC, Schulman used his control of that organization to disburse the funds to himself, as repayment of the loans that he claims to have made to Charitable Entity One. Similarly, Schulman also caused FJC to make grants to Charitable Entity One so that it could pay him a consulting fee for work that he asserted he was doing for it. Schulman signed the checks from these charities to himself, yet in neither case did Schulman disclose to FJC that he would benefit from the grants.

88. For example, in 2012 alone, Schulman admitted that he recommended that FJC grant "[o]ver \$200,000" to Charitable Entity One. Some of the grants from FJC came to Charitable Entity One in large lump sums, while many others matched the exact amount, \$3,500, of Schulman's purported consulting fee to Charitable Entity One. For example, in 2012, Charitable Entity One was in the process of closing down because, among other things, it was having financial difficulties. Schulman was the largest, but not the only, creditor of Charitable Entity One at the time and was one of the people at Charitable Entity One making the decisions concerning who Charitable Entity One would pay. In that year alone, Charitable Entity One paid him more than \$220,000, as repayment of loans Schulman claims he made and for consulting fees for work he asserts he performed for that entity.

89. From 2005 through 2014, Schulman wrote checks to himself from Charitable Entity One's account totaling \$429,751.30, which exceeds the total of his purported loans to Charitable Entity One and his consulting fees by more than \$100,000.

90. The only evidence of the loans Schulman provided to the OAG was in the form of cancelled checks for \$246,291.88 that Schulman claims were advanced for the benefit of Charitable Entity One. These checks do not, however, indicate that they were intended as loans. Many are checks to third parties, including individuals, with no written indication on the check how they relate to Charitable Entity One. Not a single check Schulman produced as evidence has any indication on it that it was intended as a loan.

91. Schulman similarly caused FJC to make grants to Charitable Entity Two for the purpose of repaying loans that he purportedly made to it without disclosing to FJC that he would benefit from the grants. As with the grants to Charitable Entity One, Schulman's actions violated FJC's rules.

92. After FJC issued grants to Charitable Entity Two, Schulman used his control of Charitable Entity Two to disburse the funds to himself. On one occasion in June 2011, he caused a grant to be made so that he could repay himself \$260,000 that he asserts he loaned to Charitable Entity Two. The claimed loan to Charitable Entity Two was undocumented by a loan agreement and Schulman has not produced copies of any checks from himself to Charitable Entity Two that he contends are evidence of the loan.¹² Schulman did not seek approval from, or notify, Charitable Entity Two's board before writing the check to repay himself. Schulman

Schulman has produced several checks to Charitable Entity Two that he asserts he wrote on behalf of Charitable Entity One to pay certain obligations of Charitable Entity One to Charitable Entity Two but has asserted that those checks, which total far less than \$260,000, are evidence of loans to Charitable Entity One.

asserts that transaction was undone in subsequent months and Charitable Entity Two returned the grant to FJC.

93. Had Schulman followed FJC's rules requiring the disclosure of any personal benefits that a recommender will receive from a grant, FJC's policies and procedures would not have permitted it to approve the grants to Charitable Entity One and Charitable Entity Two that were used to make disbursements to Schulman.

After NYLAG Learned Of The Diversions,
Schulman Caused FJC to Partially Reimburse NYLAG

94. At the time NYLAG learned of Schulman's diversions, they exceeded the amount he had previously returned to NYLAG by at least \$800,000 including interest.

95. Prior to his forced resignation, in January 2015, Schulman caused FJC to issue grants from FJC's charitable assets totaling \$1,255,000. The grants in January 2015 that Schulman caused FJC to make to NYLAG for his diversions came from the renamed NYLAG Operating Support Fund, which was originally established as a NYLAG DAF with NYLAG's funds, as well as from the YYS Fund, a non-NYLAG DAF that held non-NYLAG funds, which Schulman controlled. Schulman did not disclose to FJC that he was causing the grants to be made in an attempt to resolve NYLAG's investigation of his actions. It was a violation of FJC's rules and the prohibition on private benefit for Schulman to direct grants from FJC's charitable funds in an attempt to resolve NYLAG's claims against him in his personal capacity.

Schulman's Non-NYLAG Consulting Work

96. In 2012 and 2013, Schulman began performing consulting services for Charitable Entity One for a monthly \$3,500 fee. Schulman asserts that he worked many hours a week, as Charitable Entity One's consultant, often doing so at night from NYLAG's offices and using its resources. He did

not disclose to NYLAG's Board that he was taking on the consulting work for Charitable Entity One and did not receive permission to do so. Schulman was hired to be the full-time director and Attorney-in-Charge of NYLAG and could not take on other paid work without disclosure to and approval of NYLAG's Board.

Schulman's Diversion of Legal Fees to Non-NYLAG FJC Accounts

97. Schulman would occasionally direct matters that NYLAG could not handle to other law firms. On several occasions, he entered into fee sharing arrangements with the firms to which he directed the matters.¹³ However, instead of using those fees for the benefit of NYLAG, Schulman directed the firms to deposit the fees into non-NYLAG FJC accounts on which he was the recommender.

Schulman's Improper Removal of NYLAG Business Records

98. Before he was ordered to start working from home in late January 2015, and, ultimately, asked to resign in February 2015, Schulman had copies made of certain NYLAG business records, and removed those copies from NYLAG's office without Board approval. Although he now asserts that he only removed copies, many of NYLAG's records of its transactions with FJC are incomplete, with Schulman having possession of documents that NYLAG does not.

¹³ The scope of OAG's investigation concerning the circumstances relating to the fee sharing agreements was limited and, for the purposes of this pleading, it is presumed that the fee sharing agreements were consistent with all applicable ethical rules.

FIRST CAUSE OF ACTION**For Breach of
Fiduciary Duty to NYLAG Under N-PCL §§ 717 and 720**

99. The Attorney General repeats and re-alleges the allegations set forth in paragraphs 1-98 above as though more fully set forth herein.

100. Schulman failed to discharge his duties as an officer of NYLAG with the degree of care, skill, prudence, diligence and undivided loyalty required of him pursuant to N-PCL § 717. In particular, as set forth below, Schulman violated N-PCL § 717 by breaching his fiduciary duties of loyalty, care and obedience.

101. Schulman breached his fiduciary duty of loyalty to NYLAG by, among other things:

- a. Diverting NYLAG's assets for his own benefit and the benefit of other organizations he controlled or favored;
- b. failing to disclose the existence of, and reports concerning, the NYLAG Operating Support Fund and the NYLAG Attorney's Fee Fund to NYLAG's Board;
- c. using NYLAG's assets, including its offices, computers and bank accounts, in business he conducted for himself and for other organizations;
- d. during the time he was supposed to be working full-time for NYLAG, working as a consultant for Schulman Entity One without disclosing and receiving approval for such work from NYLAG's Board;
- e. during the time he was supposed to be working full-time for NYLAG, performing legal services for Schulman Entity Two and Schulman Entity One without disclosing and receiving approval for such work from NYLAG's Board; and
- f. improperly taking NYLAG's business records from NYLAG's office without consent.

102. Schulman breached his fiduciary duty of care to NYLAG by, among other things:

a. transferring NYLAG's funds, including its reserve funds, to DAFs and designated-fund accounts at FJC and, as a result, giving up NYLAG's ownership interest in those funds;

b. failing to adequately monitor NYLAG's "investment" accounts at FJC and to ensure that the funds in those accounts were used for NYLAG's purposes; and

c. failing to ensure that NYLAG maintained adequate records of its transactions with FJC.

103. Schulman also had a fiduciary duty of obedience to NYLAG that, among other things, required him to ensure that NYLAG complied with all applicable laws and regulations and devoted the organization's resources to its mission. Schulman breached his fiduciary duty of obedience to NYLAG by, among other things:

a. transferring NYLAG's funds, which were required to be used for NYLAG's charitable purposes, to (i) FJC where they were required to be used for FJC's charitable purposes and (ii) the Schulman Entities;

b. using NYLAG's assets, including its offices, computers, equipment and its IOLA accounts, for non-NYLAG purposes; and

c. failing to ensure that NYLAG filed accurate reports with the Charities Bureau and the Internal Revenue Service

104. Schulman's breaches of fiduciary duty have damaged NYLAG by, among other things, causing its assets to be diverted for non-NYLAG purposes and be wasted.

105. Accordingly, Schulman is liable under N-PCL § 720(a)(1) to account and pay restitution and/or damages, plus interest at the statutory rate of 9%, for his conduct in the neglect and violation of his duties in the management and disposition of NYLAG's charitable assets and in causing loss and waste of those assets by his breaches of fiduciary duty.

SECOND CAUSE OF ACTION
For Breach of
EPTL § 8-1.4 With Respect to NYLAG

106. The Attorney General repeats and re-alleges the allegations set forth in paragraphs 1-105 above as though more fully set forth herein.

107. Section 8-1.4(m) of the EPTL authorizes the Attorney General to institute appropriate proceedings to secure the proper administration of any not-for-profit corporation organized under the laws of this State for charitable purposes.

108. Schulman, in his capacity as the President and Attorney-in-Charge of NYLAG was a trustee pursuant to EPTL Section 8-1.4 because he held and administered property for charitable purposes in the State of New York.

109. As set forth in paragraphs 1 - 105 above, Schulman failed to administer the charitable assets of NYLAG entrusted to his care properly and, as a result, should be ordered to account for his breaches and to make restitution and/or pay damages, plus interest at the statutory rate of 9%, to NYLAG. In addition, Schulman should be permanently barred from serving as an officer, director or trustee of any not-for-profit or charitable organization incorporated or authorized to conduct business in the State of New York.

THIRD CAUSE OF ACTION
For Breach of NYPMIFA, EPTL § 8-1.4 and N-PCL § 717 With Respect to NYLAG

110. The Attorney General repeats and re-alleges the allegations set forth in paragraphs 1-109 above as though more fully set forth herein.

111. Pursuant to NYPMIFA and EPTL§ 8-1.4 and N-PCL § 717, directors and officers of charitable organizations have a fiduciary duty to invest the charity's funds prudently.

112. Schulman's decision, which he convinced the Board to approve, to "invest" NYLAG's reserve funds and other assets with FJC and, from 2010 on, to keep the majority of its assets there, was imprudent for two primary reasons.

113. First, Schulman caused NYLAG to transfer several millions of dollars to FJC without any explicit commitment that NYLAG would receive the benefit of its own money for use as NYLAG dictated. In fact, FJC is a not-for-profit organization that sponsors donor-advised funds where a condition of the donation is that the donor loses all legal right to and control over the donated funds. FJC is not an investment company or bank. FJC was not a prudent or appropriate institution to hold NYLAG's reserve funds because the moneys NYLAG transferred to FJC were not an investment at all, but rather were a donation to FJC that Schulman caused NYLAG to make with the tacit understanding, but no legal right to ensure, that FJC would donate the funds back to it in the future.

114. Second, the decision to place NYLAG's reserve funds in DAFs and designated-fund accounts with FJC was imprudent because FJC was not equipped to handle corporate accounts and the DAFs that NYLAG set up at FJC did not have sufficient controls to ensure that they were administered solely for NYLAG's benefit.

115. NYLAG has been damaged by Schulman's decision to "invest" virtually all of its net assets at FJC where, among other things, Schulman caused its assets to be diverted for non-NYLAG purposes and be wasted.

116. Accordingly, Schulman is liable for violating the requirements of N-PCL §§ 552, 717 and EPTL § 8-1.4 and must account and pay restitution and/or damages, plus interest at the statutory rate of 9%, for his conduct in the neglect and violation of his duties in the management and disposition of NYLAG's charitable assets and in causing loss and waste of those assets by

failing to invest NYLAG's assets prudently. In addition, Schulman should be permanently barred from serving as an officer, director or trustee of any not-for-profit or charitable organization incorporated or authorized to conduct business in the State of New York.

FOURTH CAUSE OF ACTION

For False Filings Under Executive Law §§ 172-d(1) & 175(2)(d)

117. The Attorney General repeats and re-alleges the allegations set forth in paragraphs 1-116 above as though more fully set forth herein.

118. Schulman made materially false and misleading statements and omissions in the annual reports NYLAG filed with the Attorney General that Schulman certified, by, among other things:

- a. causing NYLAG's annual reports and audited financial statements relating to the period from June 30, 1998 to June 30, 2010, to materially understate its assets;
- b. misrepresenting the nature of NYLAG's expenses in its annual report for the fiscal year ending June 30, 1998 and misrepresenting the nature of its revenues in the fiscal year ending June 30, 2011 when the accounts at FJC were brought back on NYLAG's books and listed as a contribution; and
- c. causing NYLAG's bookkeeper to sign NYLAG's CHAR500s as its Chief Financial Officer when she did not hold that title.

119. As a result, Schulman violated Section 172-d(1) of the Executive Law and, pursuant to Section 175(2)(d) of the Executive Law should be enjoined from soliciting or collecting funds on behalf of any charitable organization operating in this State and from serving as an officer, director or trustee of any not-for-profit or charitable organization incorporated or authorized to conduct business in the State of New York.

FIFTH CAUSE OF ACTION**For Breach of****EPTL § 8-1.4 With Respect to the Misuse of FJC's Charitable Assets**

120. The Attorney General repeats and re-alleges the allegations set forth in paragraphs 1-119 above as though more fully set forth herein.

121. Section 8-1.4(m) of the EPTL authorizes the Attorney General to institute appropriate proceedings to secure the proper administration of any not-for-profit corporation organized under the laws of this State for charitable purposes.

122. Schulman was an actual or de facto trustee (as defined under EPTL 8-1.4(a)) of FJC by virtue of the role he played in administering the charitable assets held in DAFs at FJC.

123. Schulman interfered with the proper administration of FJC's charitable assets by, among other things, recommending grants to charitable and religious organizations with which he was affiliated and thereafter causing such funds to be used for Schulman's personal benefit when he recommended such grants without disclosing to FJC the true purpose of the grants. Schulman's conduct violated the prohibition on private benefit under the charities laws as well as FJC's rules.

124. As a result of the foregoing, Schulman should be ordered to account for the benefits he received from charitable and religious organizations receiving grants from FJC at his recommendation, including Schulman Entity One, Schulman Entity Two and NYLAG, and to make restitution and/or pay damages, plus interest at the statutory rate of 9%, to FJC. In addition, Schulman should be permanently barred from serving as an officer, director or trustee of any not-for-profit or charitable organization incorporated or authorized to conduct business in the State of New York.

SIXTH CAUSE OF ACTION**For Breach of
Fiduciary Duty to Schulman Entity One and Schulman Entity Two Under N-PCL
§§ 717 and 720**

125. The Attorney General repeats and re-alleges the allegations set forth in paragraphs 1-124 above as though more fully set forth herein.

126. As an officer and director of Schulman Entity One and Schulman Entity Two, Schulman owed fiduciary duties to each entity.

127. Schulman breached his fiduciary duty of loyalty to the Schulman Entities, by, among other things, causing Schulman Entity One and Schulman Entity Two to use their charitable assets to make payments to him (purportedly as repayment of undocumented loans and for consulting fees).

128. Schulman's breaches of fiduciary duty have damaged the Schulman Entities by, among other things, causing their assets to be diverted for improper purposes and wasted.

129. Accordingly, Schulman is liable under N-PCL §§ 720(a)(1) to account and pay restitution and/or damages, plus interest at the statutory rate of 9%, for his conduct in the neglect and violation of his duties in the management and disposition of the charitable assets of Schulman Entity One and Schulman Entity Two and in causing loss and waste of those assets by his breaches of fiduciary duty.

SEVENTH CAUSE OF ACTION**For Breach of
EPTL § 8-1.4 With Respect to the Schulman Entity One and Schulman Entity Two**

130. The Attorney General repeats and re-alleges the allegations set forth in paragraphs 1-129 above as though more fully set forth herein.

131. Section 8-1.4(m) of the EPTL authorizes the Attorney General to institute appropriate proceedings to secure the proper administration of any not-for-profit corporation organized under the laws of this State for charitable purposes.

132. Schulman was an actual or de facto trustee (as defined under EPTL 8-1.4(a)) of Schulman Entity One and Schulman Entity Two by virtue of the role he played in administering their charitable assets.

133. As set forth in paragraphs 1-98 and 125-129 above, Schulman failed to administer the charitable assets of the Schulman Entity One and Schulman Entity Two entrusted to his care properly and, as a result should be ordered to account for his breaches and to make restitution and/or pay damages, plus interest at the statutory rate of 9%, to the Schulman Entity One and Schulman Entity Two. In addition, Schulman should be permanently barred from serving as an officer, director or trustee of any not-for-profit or charitable organization incorporated or authorized to conduct business in the State of New York.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General, on behalf of the People of the State of New York, respectfully requests judgment:

(a) ordering Schulman to account for his conduct in diverting and wasting the assets of NYLAG and to make restitution and/or pay damages for the improper diversions of NYLAG's assets that he directed, plus interest at the statutory rate of 9%;

(b) ordering Schulman to return to NYLAG all property, including copies of NYLAG's business records, that he removed from NYLAG without permission;

(c) ordering Schulman to account for his conduct in recommending grants from FJC that would inure to his personal benefit and to make restitution and/or pay damages for the improper diversions of FJC's assets that he directed, plus interest at the statutory rate of 9%;

(d) ordering Schulman to account for his conduct in permitting the assets of Schulman Entity One and Schulman Entity Two to be diverted and wasted and to make restitution and/or pay damages for the improper diversions of the assets of Schulman Entity One and Schulman Entity Two that he directed, plus interest at the statutory rate of 9%;

(e) permanently enjoining Schulman from serving as a director, officer or other fiduciary of any (i) charitable corporation, trust, foundation or other charitable entity organized under New York law; (ii) corporation, trust, foundation or other entity holding charitable assets in New York; or (iii) corporation, trust, foundation or other entity which solicits charitable contributions in New York;

(f) permanently enjoining Schulman from soliciting or collecting charitable contributions in New York;

(g) awarding the Attorney General the costs, disbursements and fees associated with this action; and

(h) granting such other and further relief as this Court deems just and proper.

Dated: New York, New York
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