

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

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In the Matter of

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

Assurance No. 18-009

MENACOLA MARKETING, INC., D/B/A NEIGHBORHOOD  
OUTREACH; JOSEPH DEGREGORIO; and KATHERINE  
DEGREGORIO.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York, Eric T. Schneiderman, ("OAG"), commenced an investigation pursuant to the Executive Law ("Exec. Law") Article 7-A and the General Business Law, into whether a proceeding or action should be instituted against Menacola Marketing, Inc., d/b/a Neighborhood Outreach ("Menacola"), its president, Katherine DeGregorio and its manager, Joseph DeGregorio (the "DeGregorios"). Menacola and the DeGregorios shall be collectively referred to herein as the "Respondents."

This Assurance of Discontinuance ("Assurance") contains the Findings of OAG's investigation, to which the Respondents agree, and the relief agreed to by the Parties:

**I. OAG'S FINDINGS**

1. Menacola was a Brooklyn, New York-based business corporation that provided professional fundraiser services, including telemarketing and direct mail, to not-for-profits. Menacola incorporated on October 19, 2006 and first registered with the New York Attorney General's Charities Bureau as a professional fundraiser in 2006.

2. From 2006 until at least June 30, 2016, Menacola operated a fundraising call center in Brooklyn, at various locations. Depending on the volume of business, anywhere from 20-50

callers made telemarketing calls and sent direct mail solicitations to people across the country, including New York, to request donations on behalf of charities.

3. Pursuant to its contracts with its client charities, Menacola was paid approximately 85% of all donations it collected.

#### **Menacola's Contract with the National Vietnam Veterans Foundation**

4. One of Menacola's charity clients was the National Vietnam Veterans Foundation ("NVVF"), a Washington D.C. not-for-profit corporation that was based in Virginia. NVVF shut down in November 2016 following an OAG investigation that found that NVVF's fundraising materials made misrepresentations to donors and NVVF made false filings to the OAG and misused charitable funds.<sup>1</sup>

5. In its public solicitations, including in solicitations made by Menacola, NVVF claimed to provide veterans with personal care packages and guide books. It also claimed to provide veterans with essential services and referrals to hospitals. In addition, NVVF claimed to provide funding for food pantries and veterans stand down events (multi-agency events that seek to provide counseling and services to homeless or otherwise needy veterans). In fact, as the OAG investigation found, most of NVVF's revenue went to pay its fundraisers, and the fraction that went to NVVF was further squandered through mismanagement and abuse.

6. Menacola began soliciting for NVVF in 2010. Menacola was introduced to NVVF by Mark Gelvan ("Gelvan"), a professional fundraiser who is permanently barred from fundraising, directly or indirectly, in New York (the "New York Ban").<sup>2</sup>

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<sup>1</sup> *In the Matter of the Investigation by Eric T. Schneiderman of National Vietnam Veterans Foundation, Inc.*, AOD No. 16-666.

<sup>2</sup> *Spitzer v. All-Pro Telemarketing Associates Corp.*, Order of the Supreme Court of the State of New York, Albany

7. The Respondents acknowledged to the OAG that they were aware that Gelvan was prohibited from fundraising in New York, but claimed that they were not aware that Gelvan was also prohibited from brokering contracts for fundraising in New York.

8. In exchange for Gelvan's brokering services, Menacola agreed to use another Gelvan-controlled company to process payments. For this service, that company retained approximately two to five percent of donations before the donations were distributed to the charity. This was one of the ways that Gelvan was able to profit from fundraising in New York in violation of the New York Ban.

9. With Gelvan's facilitation, Menacola entered into a contract with NVVF to conduct a telephone and mail fundraising campaign in New York. Gelvan retained complete control over the relationship with NVVF, including providing Menacola with the solicitation materials. Respondents never communicated directly with NVVF or any of its agents, and took no steps to verify with NVVF the representations made in the NVVF solicitations.

10. According to reports filed with the OAG, from 2010 through 2016, Menacola raised approximately \$180,000 from New York residents on behalf of NVVF. Pursuant to its contract with NVVF, Menacola retained 85% of the funds raised, or \$153,000.

11. Under the contract, NVVF was due 15% of the funds raised. The OAG investigation found that, in fact, NVVF only received 11% of the funds raised, because the Gelvan-controlled company retained 4% of the funds after Menacola was paid its 85%.

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County, Index No. 6726-02. The New York Ban was part of a court-ordered settlement of a case brought by the Attorney General against Mark Gelvan, and All-Pro Telemarketing Associates Corp., the company he was running at the time, for fraudulent solicitation. Pursuant to the Court Order, Gelvan is prohibited from soliciting contributions for any charitable organizations from any person resident in New York, participating in or controlling such solicitations conducted by any other person, act, directly or indirectly as a professional fundraiser, professional solicitor, fundraising counsel, commercial co-venturer, or as a broker of contracts or agreements contemplating such solicitations.

12. Menacola's solicitations on behalf of NVVF contained numerous material misrepresentations.

- a. The telephonic solicitations and direct mail Menacola sent on NVVF's behalf represented that money raised from the public would be used for the provision of personal care packages and guidebooks. In fact, NVVF did not provide those services or provided them in such minimal amounts as to make the representations misleading.<sup>3</sup>
- b. The telephonic solicitations and direct mail Menacola sent on NVVF's behalf also represented that money raised from the public would be used for funding for food pantries, veterans stand down events, and emergency financial assistance for homeless veterans. In fact, NVVF did not provide those services or provided them in such minimal amounts as to make the representations misleading.
- c. The telephonic solicitations and direct mail Menacola sent on NVVF's behalf also represented that money raised from the public would be used to provide veterans with transportation to and from treatment centers. In fact, NVVF did not provide those services or provided them in such minimal amounts as to make the representations misleading.
- d. Beginning in 2013, Menacola also began raising funds on behalf of the "American Veterans Support Foundation" ("AVSF"). Menacola's direct mail and its

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<sup>3</sup> In the November 2016 Assurance of Discontinuance between the Office of the Attorney General and NVVF, NVVF admitted that "[m]uch of the money actually received by the Foundation after fundraising expenses and overhead was not spent on [NVVF's] core mission or in the manner described in the direct mail. For example, the Foundation spent thousands of dollars on consultancies with third parties for studies and reports which work product was never released to the public and had no immediate benefit to Vietnam Veterans in need. The Foundation also spent several thousand dollars on travel for its board of directors, including a trip to Normandy, France, in 2014, which had no benefit to Vietnam Veterans in need." *In the Matter of the Investigation by Eric T. Schneiderman of National Vietnam Veterans Foundation, Inc.*, AOD No. 16-666.

telemarketing scripts represented that AVSF is a “very special project of National Vietnam Veterans Foundation” when in fact AVSF was merely an alternative name used to conduct additional fundraising for NVVF.

13. Professional fundraisers must have a reasonable basis for believing that the claims they make about a charity in solicitations charities are true. Respondents failed to take any steps to substantiate that the claims contained in the material provided by Gelvan were true. To the extent Respondents relied on Gelvan’s assurances as to the truth of representations, such reliance was not reasonable because Respondents were aware that Gelvan had been previously sanctioned for making misrepresentations in charitable solicitations, and had a financial stake in the revenue generated by Menacola on behalf of NVVF.

14. Respondents also failed to take appropriate action in the face of red flags about Gelvan and other charities he referred to Menacola, for example:

- a. Respondents were aware that certain of its fundraising clients were ordered to or agreed to cease fundraising in certain states because of scrutiny by regulators;
- b. Respondents received, directly and through NVVF, multiple consumer complaints and requests to cancel pledges; and
- c. Respondents knew that Gelvan was banned from fundraising in New York.

**A. False Filings with the Charities Bureau**

15. Menacola repeatedly made misrepresentations to the OAG concerning the status of disciplinary actions in other jurisdictions. Each year Menacola was required to certify, under penalty of perjury, whether it had been the subject of disciplinary or legal action or entered into any agreement with any regulatory body concerning its fundraising activities. Menacola repeatedly certified, “no,” to these inquiries in its annual registrations with the OAG even

though, in 2010, based on violations of fundraising laws, it entered into an Assurance of Discontinuance with Massachusetts which levied a \$20,000 civil penalty and enjoined it from further illegal activity relating to its solicitations in that State.

16. Menacola also failed to disclose that Joseph DeGregorio was a key employee of Menacola, as required by the New York State Professional Fundraiser Registration Form, the CHAR 013.

17. OAG finds that by engaging in the conduct described above, Respondents:

- (a) Made misleading statements in fundraising solicitations, in violation of Exec. Law § 172-d(2); and
- (b) Acted as a professional fundraiser without complying with all filing all required disclosures, in violation of Exec. Law § 172-d(12).

18. The Respondents admit the OAG's factual findings in paragraphs 1-16 and do not contest the OAG's assertion that the facts stated above constitute violations of the statutory provisions cited above in paragraph 17.

## II. RELIEF

19. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Exec. Law § 63(15), in lieu of commencing a statutory proceeding for violations of Article 7-A of the Exec. Law from January 2011 to the Effective Date of this Assurance.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

### A. Monetary Relief

20. Respondents shall pay to the State of New York \$100,000 (the "Monetary Relief Amount"). Respondents agree that they are jointly and severally liable for the Monetary Relief Amount. This amount represents a portion of the charitable funds Menacola collected in

connection with its solicitations on behalf of NVVF that otherwise could have gone to support and improve the welfare of veterans. The OAG shall transfer these funds to a charity or charities providing services substantially similar to those for which NVVF solicited contributions.

21. Respondents have represented to the OAG that each of them has very limited funds with which to pay any judgment or other relief, apart from funds that are exempt from execution, and each has submitted signed and sworn financial statements to that effect. The OAG has relied on the accuracy of these representations in agreeing to the Monetary Relief Amount provided for in paragraph 20 above.

22. Payment of the Monetary Relief Amount shall be paid by cashiers or attorney's check or money order payable to the New York State Department of Law, as follows:

- a. \$35,000 upon signing of this Assurance;
- b. \$32,500 to be paid on or before January 31, 2019;
- c. \$32,500 to be paid on or before January 31, 2020.

23. To secure the payment described in paragraphs 20-22, the DeGregorios will each execute and deliver, at the time of the execution and delivery of this Assurance, the accompanying Affidavit for Judgment by Confession (attached hereto as Exhibits 1 and 2), confessing judgment for the balance Monetary Relief Amount of \$65,000, plus collection fees of 22% of the balance of the Monetary Relief of \$14,300.00 for a total of \$79,300.00, and statutory costs of \$15.00, for a total amount confessed of \$79,315.

24. In the event that Respondents fail to timely and properly make payments as required by paragraph 22, the OAG shall provide the Respondents with thirty (30) days written notice, by first class mail, to cure such failure, and upon the failure of the Respondents to cure such failure, the OAG may file and enter the applicable Affidavit for Judgment by Confession as a judgment

against the Respondents, at any time, and without further notice, for the balance owed pursuant to this Assurance.

**B. Injunctive Relief**

25. Respondents shall not engage, or attempt to engage, in violations of any applicable laws, including but not limited to Article 7-A of the Executive Law, and expressly agree and acknowledge that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 19.

26. Menacola represents that it ceased all fundraising and other business activities no later than December 31, 2016, and Menacola agrees that it will not resume operations in any jurisdiction nationwide, as either Menacola or any other name.

27. Menacola will not seek to renew its registration as a professional fundraiser in the State of New York or in any other state nationwide, as either Menacola or any other name.

28. Menacola will continue work with the OAG Charities Bureau to complete all registration documents required by the OAG.

29. Menacola shall initiate dissolution proceedings in the State of New York no later than thirty days after the Effective Date.

**C. Bars & Suspensions**

30. Katherine DeGregorio shall not, directly or indirectly: (i) solicit any contributions for any charitable organization from any person nationwide, or participate in or control such solicitations conducted by any other person; (ii) act as a professional fund raiser, professional solicitor, fund raising counsel, or commercial co-venturer for the solicitation of charitable contributions from any person nationwide, or as a broker of contracts or agreements contemplating such solicitations; (iii) serve as an officer, director, shareholder, owner, partner,

employee, independent contractor or agent of, nor be otherwise retained or engaged by a professional fund raiser, professional solicitor, fund raising counsel, or any person that sells or brokers contracts or agreements contemplating the solicitation of charitable contributions, from any person nationwide; or (iv) acquire any right to receive any compensation of any kind whatsoever in respect of or derive, directly or indirectly, any benefit from the solicitation of contributions for charitable organizations from any person nationwide or from the sale or brokering of contracts or agreements contemplating such solicitations.

31. Katherine DeGregorio is permanently barred from serving as an officer, director, trustee or fiduciary, of any not-for-profit or religious corporation or other charitable organization or trust incorporated, formed, registered, operating or soliciting contributions in any of the fifty United States, the District of Columbia, and any United States Territory or Commonwealth.

32. Joseph DeGregorio shall not, directly or indirectly: (i) solicit any contributions for any charitable organization from any person nationwide, or participate in or control such solicitations conducted by any other person; (ii) act as a professional fund raiser, professional solicitor, fund raising counsel, or commercial co-venturer for the solicitation of charitable contributions from any person nationwide, or as a broker of contracts or agreements contemplating such solicitations; (iii) serve as an officer, director, shareholder, owner, partner, employee, independent contractor or agent of, nor be otherwise retained or engaged by a professional fund raiser, professional solicitor, fund raising counsel, or any person that sells or brokers contracts or agreements contemplating the solicitation of charitable contributions, from any person nationwide; or (iv) acquire any right to receive any compensation of any kind whatsoever in respect of or derive, directly or indirectly, any benefit from the solicitation of

contributions for charitable organizations from any person nationwide or from the sale or brokering of contracts or agreements contemplating such solicitations.

33. Joseph DeGregorio is permanently barred from serving as an officer, director, trustee or fiduciary, of any not-for-profit or religious corporation or other charitable organization or trust incorporated, formed, registered, operating or soliciting contributions in any of the fifty United States, the District of Columbia, and any United States Territory or Commonwealth.

**D. Cooperation With Ongoing Investigation**

34. Respondents waive their attorney-client and work product privileges with respect to their representation by Copilevitz & Canter, and will provide whatever cooperation or assistance is necessary to the OAG to obtain documents and information from Copilevitz & Canter.

35. The OAG is continuing its investigation into the not-for-profit entities for which Menacola solicited, and into Mark Gelvan and his associated entities. Respondents agree that, until the date on which the OAG's investigation is concluded, each of them agrees to provide full, complete and prompt cooperation with the OAG's investigation and related proceedings and actions, including testifying against any other person, corporation or entity.

36. Katherine DeGregorio shall fully, fairly and truthfully disclose and produce all information, records and other evidence in her possession, custody or control, relevant to all inquiries made by OAG concerning any conduct about which she has any knowledge or information.

37. Joseph DeGregorio shall fully, fairly and truthfully disclose and produce all information, records and other evidence in his possession, custody or control, relevant to all inquiries made by OAG concerning any conduct about which he has any knowledge or information.

38. Katherine DeGregorio shall fully, fairly and truthfully testify at any proceeding, including any examination under oath and at any trial, at such dates and times as OAG may direct in connection with OAG's investigation and/or prosecution of any other person or entity referred to in this agreement. Katherine DeGregorio shall not assert any privilege against self-incrimination in such proceedings.

39. Joseph DeGregorio shall fully, fairly and truthfully testify at any proceeding, including any examination under oath and at any trial, at such dates and times as OAG may direct in connection with OAG's investigation and/or prosecution of any other person or entity referred to in this agreement. Joseph DeGregorio shall not assert any privilege against self-incrimination in such proceedings.

40. Katherine DeGregorio shall participate in any further investigation by OAG relating to persons, activities, or events referenced in this agreement, and any related matters arising from such investigation. This participation shall be as OAG directs and only as OAG directs and authorizes. This participation must be approved in advance by OAG and must be supervised at all times by OAG.

41. Joseph DeGregorio shall participate in any further investigation by OAG relating to persons, activities, or events referenced in this agreement, and any related matters arising from such investigation. This participation shall be as OAG directs and only as OAG directs and authorizes. This participation must be approved in advance by OAG and must be supervised at all times by OAG.

42. Katherine DeGregorio shall meet with the assistant attorneys general and investigators and staff working with or for OAG, and with any other agency or tribunal, as directed by OAG, and shall make documents and records available as directed.

43. Joseph DeGregorio shall meet with the assistant attorneys general and investigators and staff working with or for OAG, and with any other agency or tribunal, as directed by OAG, and shall make documents and records available as directed.

**E. Oversight and Monitoring**

44. The Respondents shall provide the OAG with a certified statement confirming their compliance with the requirements set forth in paragraphs 24-30 of this Assurance, to be submitted to the OAG an annual basis for the following 2 years, to be submitted annually on January 31, 2019 and 2020. The certification shall be in writing be signed under penalty of perjury. In any case where the circumstances warrant, the OAG may require the each or any of the DeGregorios to file an interim certification of compliance upon thirty (30) days' notice.

**III. MISCELLANEOUS**

**Subsequent Proceedings**

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

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

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

- b. that the OAG may use statements, documents or other materials produced or provided by the Respondents prior to or after the Effective Date of this Assurance; and
- c. that courts of the State of New York must adjudicate the matter, and that the Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue.

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

**Effects of Assurance**

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

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

**Communications**

50. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing, shall reference Assurance No. 17-105, and shall be directed as follows: (i) if to Respondents, to Michael Jaccarino, Esq., Aidala Bertuna & Kamins, 546 5th Avenue, 6th Floor, New York, New York 10036; (ii) if to the OAG, to: Yael Fuchs, Esq., Co-Chief, Enforcement Section, Charities Bureau, 120 Broadway, 3rd Floor, New York, NY 10271 or in her absence, to the person then holding the title of Bureau Chief, Charities Bureau.

**Representations and Warranties**

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

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

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

**General Principles**

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

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

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

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

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

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

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

60. The effective date of this Assurance shall be February \_\_, 2018 (the "Effective Date").

Dated: February 21, 2018

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

By:   
Yael Fuchs  
Assistant Attorney General

Dated: February 21, 2018

MENACOLA MARKETING, INC. d/b/a  
NEIGHBORHOOD OUTREACH

By:   
Katherine DeGregorio, President

Dated: February 21, 2018

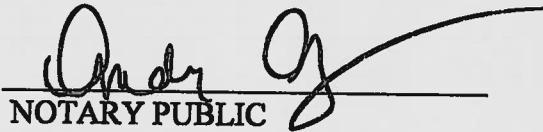
JOSEPH DEGREGORIO



STATE OF New York )  
 ) ss.:  
COUNTY OF Kings )

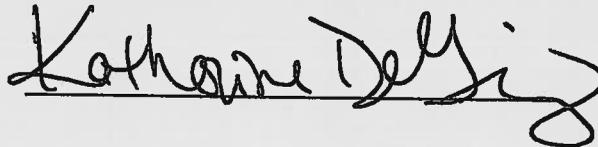
On this 21 day of February, 2018, Joseph DeGregorio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned, a notary public in and for the State of New York, and acknowledged to me that he executed the within instrument by his signature on the instrument.

Andrea Arrigo  
Notary Public, State of New York  
No. 02AR6129396  
Qualified in Richmond County  
Commission Expires On June 20, 20 21

  
NOTARY PUBLIC

Dated: February 21, 2018

KATHERINE DEGREGORIO



STATE OF New York )  
 ) ss.:  
COUNTY OF Kings )

On this 21 day of February, 2018, Katherine DeGregorio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned, a notary public in and for the State of New York, and acknowledged to me that he executed the within instrument by his signature on the instrument.

Andrea Arrigo  
Notary Public, State of New York  
No. 02AR6129396  
Qualified in Richmond County  
Commission Expires On June 20, 20 21

  
NOTARY PUBLIC