

Annex A

1. NCLF is a New York not-for-profit corporation incorporated in New York in 1991. NCLF, in its Internal Revenue Service (“IRS”) Form 990 for 2012, the most recent year on file with the OAG, states that its purpose is as follows:

To provide the cure for cancer and other life-threatening diseases throughout the world, and to insure that all persons, regardless of race, religion, ethnicity, gender, socioeconomic status or country of residence, have access to life-saving medical care.

2. During the Relevant Time Period, NCLF had its office in the basement of Respondent Zvi Shor’s residence in Brooklyn, New York. NCLF was registered for fundraising with the OAG Charities Bureau until its registration was cancelled by letter dated March 6, 2014, effective March 26, 2014.

3. Respondent Zvi Shor is the founder of NCLF. From NCLF’s beginning in 1991 until May 2010, Shor held the title of president. Shor submitted his resignation from that position in May 2010. Shor’s successor to the title of president was Yehuda Gutwein (“Gutwein”), a certified public accountant who had been NCLF’s accountant since 2003. Notwithstanding his resignation on paper, during the Relevant Time Period Shor continued to have day-to-day control of NCLF and continued to have a fiduciary duty to NCLF. Shor also uses the name “Steve Shor.” In 1994, Shor had his name legally changed to “Demetrie Bennett.” In 2000, he reverted his name to “Zvi Shor.” Shor resides in Brooklyn, New York.

4. Respondent Shlomo Shor is the vice president and a director of NCLF. Shlomo Shor is Shor’s son. Shlomo Shor, like his father, lacks any medical or scientific education, training or expertise. He owns a small construction company. Shlomo Shor joined NCLF at his father’s request. His participation in NCLF was limited to performing ministerial acts, such as signing

checks, forms, contracts and solicitations when Gutwein was not available. Shlomo Shor resides in Brooklyn, New York.

5. This Court may exercise personal jurisdiction over Respondents pursuant to § 301 of the CPLR because they reside in New York.

I. Misrepresentations in Solicitations

6. During the Relevant Time Period, NCLF solicited funds through its website, brochures, and fundraising scripts used by third party fundraisers and approved by Shor. As described below, certain NCLF solicitations advertised programs that NCLF no longer conducted, did not conduct, and/or conducted in a form that was a small fraction of what was advertised.

7. During the Relevant Time Period, Shor was fully aware of the content of the solicitations. Shlomo Shor signed off on certain solicitations without verifying their accuracy.

A. Misrepresentations about a “Make a Dream Come True” Program

8. NCLF’s promotional and solicitation materials publicized its “Make a Dream Come True” (“Make a Dream”) program, which claimed to grant the wishes of children with cancer, and requested donations for the program:

- i. Solicitation letters bearing Shor’s initials indicating approval and the date “2-8-12” list Make a Dream as a current NCLF program, describing it as “fulfilling the last wishes of children with cancer and leukemia.”

- ii. A script for professional telemarketers, bearing Shor's initials indicating approval and the date "2-8-12" instructs the caller to describe Make a Dream as granting "last wishes to dying children":

Hello...(wait) Mr./ Mrs. _____...(wait) (Good Morning/Good Afternoon/Good Evening)

This is (your name) calling on behalf of the National Children's Leukemia Foundation.

The reason for the call is the National Children's Leukemia Foundation is having their fundraiser. The National Children's Leukemia Foundation supports families affected by cancer, leukemia and other blood disorders and supports medical research for the cure. The NCLF also helps with cord blood banking at birth and grants **LAST WISHES** to dying children through their **Make-A-Dream-Come-True** program .

I'm calling in the hopes that these children can count on your support.

- iii. Another script for professional telemarketers, bearing Shor's initials indicating approval and the date "2-8-12" instructs the caller to ask past donors to make another donation, and to tell them that their money will be used in part for Make a Dream, "like last time":

Hello...(wait) Mr. / Mrs. [Last Name]...(wait)
(Good Morning, Good Afternoon, or Good Evening).

This is _____ calling on behalf of the National Children's Leukemia Foundation.

First off, I want to thank you so much for your wonderful support last time. It went a tremendous way in helping ease the pain and suffering of young children afflicted with leukemia or cancer.

Secondly, the NCLF is having their fund drive! The proceeds, like last time, will be used for Leukemia and Cancer Research, as well as the "Make A Dream Come True Program", which I'm sure you remember, Mr/Mrs _____, is a program that helps to fulfill the dreams of a child diagnosed with terminal cancer and leukemia.

- iv. A script for professional telemarketers dated September 19, 2012 stated that "the NCLF [Make a Dream] Program grants wishes to terminally ill children like trips to Disney World or meetings with celebrities or sports stars."
- v. A brochure bearing Shlomo Shor's signature, dated June 12, 2012, states that, through the program, "NCLF grants wishes and makes dreams come true for terminally ill children and their families."
- vi. On its website, NCLF claimed that through Make a Dream it "fulfills the wishes of young cancer patients, arranging family trips, tours, introductions to celebrities and other requests." NCLF invited children with cancer and their families to submit applications for their "dreams" to be fulfilled.
- vii. Thank-you letters from NCLF, dated April 9, 2012 and August 8, 2013 and bearing Shor's name and signature, sent to a foundation that made a grant to NCLF, stated that: "Each year, we provide a

variety of services, including granting wishes to terminally ill patients....”

9. In fact, during the Relevant Time Period, NCLF fulfilled only two “wishes” or “dreams”, paying for one laptop computer and one trip to Disneyworld. NCLF’s own financial statements do not report any expenditure for Make a Dream since its 2008 IRS 990, for fiscal year ending March 31, 2009. In that submission, NCLF reported spending only \$7,866 on the program.

10. NCLF did not list any expenditure for Make a Dream in any of the IRS 990s that it filed following the 2008 reporting year.

B. Misrepresentations about a Bone Marrow Registry

11. In its materials, NCLF persistently made claims about matching people in need of bone marrow transplants with bone marrow donors, and having or using a “bone marrow registry” or “database.” For example:

- i. As of March 21, 2013, the NCLF website advertised that: “Using a computerized database registry of potential bone marrow donors throughout the world, the NCLF can match a person in need of a bone marrow transplant with a possible bone marrow source. The international data base searches for a compatible bone marrow transplant donor and is updated daily.”
- ii. On July 16, 2014, the NCLF website included a page, at <http://www.leukemiafoundation.org/bone-marrow-research/>, that stated: “Using National and International databases of potential bone marrow donors throughout the world, the NCLF can match a person in need of a bone marrow transplant with a possible bone marrow source.”
- iii. Another brochure produced by NCLF and used during the Relevant Time Period, bearing Shlomo Shor’s signature and the date June 12, 2012, states that “Using a computerized international database registry, the NCLF assists patients in finding compatible donors.”
- iv. A Question & Answer (“Q&A”) document, produced by NCLF for use by its professional fundraisers, and bearing the date 2/6/12, states that NCLF has a “national bone marrow match program.” In

response to the question, “Where does my money go?”, the Q&A document instructed the fundraiser to say, “The funds raised with this drive will help support [among other programs] . . . patients who are in desperate need of transplants find matches through their [the NCLF’s] national bone marrow match program.” This document bears Shor’s signature and the notation that it was “Approved,” with the date 2-8-12. Shor testified under oath before OAG that the initials on this document were his.

- v. Solicitation letters used by a fundraiser, bearing Shor’s initials and the date “2-8-12”, list “Bone Marrow Donor Match” as among the programs “your [the donor’s] donation supports.”

12. Shor admitted in sworn testimony before the OAG that NCLF does not have, and never had, a registry or database of bone marrow donors. Consistent with Shor’s admission, all the financial documents produced to the OAG by NCLF and Shor for the Relevant Time Period showed no evidence of any NCLF expenditures having been incurred for bone marrow transplants.

13. Shor further testified that during the Relevant Time Period, NCLF’s activities relating to bone marrow were limited to his encouraging callers to become donors, referring people to their local blood bank, and forwarding names to other national registries. He stated that he did not have a record of how many such conversations had taken place. Shor also testified that NCLF did not have a list of blood banks to which it referred people, or any list of individuals whom it assisted in finding bone marrow matches.

C. Misrepresentations about Cord Blood Banking¹

14. During the Relevant Time Period, NCLF’s solicitations and promotional materials made claims that it was collecting and storing blood cells as part of its cord blood banking program. For example:

¹ Umbilical cord blood banking is the process of collecting and storing a baby’s umbilical cord stem cells for potential later medical use, particularly in the treatment of cancer.

- i. NCLF produced a document, distributed during the Relevant Time Period, titled “Cord Blood Banking Program”, which stated that “The NCLF is currently banking stem cells in cryo-preservation banks in liquid nitrogen at 200 degrees below zero Celsius.”
- ii. NCLF produced another one-page document about cord blood, distributed during the Relevant Time Period, which claimed that “the Umbilical Cord Bank is a successful program of the National Children’s Leukemia Foundation,” and that one of the NCLF’s activities is “storage of stem cells: collection and freezing of blood cells from babies’ umbilical cords.”

15. Nevertheless, when Shor was asked by the OAG to explain NCLF’s cord blood banking program, he testified that NCLF had never operated a facility that collected, stored, or banked cord blood.

16. According to its own records, during the Relevant Time Period, NCLF spent \$3400 to subsidize the cord blood banking of two women in a third party facility.

D. Misrepresentations about a Cancer Research Center

17. Shor and NCLF repeatedly made representations about NCLF having its own “Cancer Research Center,” staffed by “NCLF scientists.” For example:

- i. From approximately March 13, 2013 to January 17, 2014, the NCLF website contained the following text on its “Biomedical Research Program” page:

“NCLF Biomedical Cancer Research Center. The NCLF Research Center is staffed by leading scientists in the fields of molecular biology, stem cell biology, hematology and oncology, who work collaboratively to advance knowledge and develop innovative treatment technologies.”
- ii. A fundraising brochure bearing Respondent Shlomo Shor’s signature and the date “6-12-12” listed “Biomedical Cancer Research Center” as an NCLF program.

18. In 2012, Shor, along with a then-NCLF employee, made a presentation about NCLF in London, England. During the presentation, they displayed a PowerPoint slide that featured a photograph of an office building, said to be NCLF’s, and prominently bearing on its side the words “Biomedical Cancer Research Center.”

19. In fact, NCLF never established a research program that could be described as a cancer research center. During the Relevant Time Period, NCLF's spending on research consisted of an undetermined amount granted to a research university in Israel. In 2009, Shor directed the creation of an organization in Israel ("the Israeli Organization"). During the Relevant Time Period, Shor caused NCLF to transfer no less than \$655,000 in NCLF funds to the Israeli Organization. Despite repeated requests from OAG, Shor and NCLF failed to provide OAG with satisfactory and detailed proof showing how the \$655,000 was expended.

20. The Israeli Organization also purchased part of a floor of an office building in the town of Petach Tikvah, Israel. Shor testified that the property was intended to be developed into a research laboratory, but that no research was ever conducted there. When asked about the PowerPoint slide from Shor's presentation showing a picture of a building with a large sign stating "Biomedical Cancer Research Center," referred above, Shor admitted that the words had been digitally superimposed onto the photograph. No such words existed on the office building.

E. Misrepresentations about a Patent Application for Cure for Leukemia

21. NCLF, with Shor's approval, publicized the filing of the provisional patent application as if NCLF filed a patent application, for a "cure" or "lifesaving treatment" for leukemia. For example:

- i. In a fundraising script approved by Shor, fundraisers told prospective donors that "The Foundation's research team has just filed a patent application for a new cure for leukemia."
- ii. A fundraising script dated September 19, 2012 states that "The NCLF Research team has just filed a patent application for a new lifesaving treatment for leukemia."

22. In fact, NCLF had filed a provisional patent application for an experimental treatment protocol with the United States Patent and Trademark Office (“USPTO”),² and subsequently permitted that provisional patent application to expire. No full patent was ever filed.

II. Governance Failures and Inaccurate Filings with OAG³

23. NCLF repeatedly submitted forms and reports to the OAG that contained false information about NCLF’s board of directors, alleged board committees, internal policies, fundraising expenses, and audits.

24. NCLF submitted Forms 990 which listed from thirteen (13) to sixteen (16) directors on its board. However, the majority of the individuals listed in these forms did not serve as bona fide board members. Shor testified that he knew that certain individuals had no

² According to the USPTO, a *provisional* patent application is significantly different from a patent application. The USPTO website explains:

A provisional application for patent (provisional application) is a U.S. national application filed in the USPTO under [35 U.S.C. §111\(b\)](#). A provisional application is not required to have a formal patent claim or an oath or declaration. Provisional applications also should not include any information disclosure (prior art) statement since provisional applications are not examined. A provisional application provides the means to establish an early effective filing date in a later filed nonprovisional patent application filed under [35 U.S.C. §111\(a\)](#). It also allows the term "Patent Pending" to be applied in connection with the description of the invention. *See* <http://www.uspto.gov/patents-getting-started/patent-basics/types-patent-applications/provisional-application-patent> (last visited July 7, 2015).

³ NCLF’s Forms 990 were filed with the OAG as an attachment to its Char500 annual registration form. The Char500 requires certification by two individuals, each of whom, by their signature, certify “under penalties of perjury that we reviewed this report, including all attachments, and to the best of our knowledge and belief, they are true, correct and complete in accordance with the laws of the State of New York applicable to this report.” The 2008 Char500, which reports on NCLF’s fiscal year ending (“FYE”) March 31, 2009, was signed by Zvi Shor. On the Form 990, Shor’s name appears as President, and Gutwein is listed as the preparer. The 2009 Char500 (FYE March 31, 2010) was signed by Gutwein as “President” and Shlomo Shor as “Vice President,” and the 990 is signed by Yehuda Gutwein as Director and Shlomo Donn is listed as the preparer. There are two 2010 Char500 forms on file: one 2010 Char500 (FYE March 31, 2011) is signed by Shlomo Shor as Vice President and Gutwein as President and CFO; Gutwein signed the 990 as “President” and is listed as the preparer; a second 2010 Char500, filed with the OAG a few weeks after the initial version, is signed by Gutwein as President and Shlomo Shor as Vice President. The 2011 Char500 (FYE March 31, 2012) is signed by Gutwein as President and Shlomo Shor as Vice President; Gutwein is listed on the 990 as President and is listed as the preparer. The 2012 Char500 (FYE March 31, 2013) is signed by Shlomo Shor as Vice President and Yehuda Gutwein as CFO; the 2012 990 is signed by Gutwein as President, and Gutwein is listed as the preparer.

involvement with NCLF during the Relevant Time Period; some individuals were not aware that they were being listed as board members.

25. Shor was also aware that:

- i. During the Relevant Time Period, NCLF was reporting its fundraising costs in a manner that did not follow relevant accounting rules and caused NCLF to appear to spend less on fundraising and more on programs than it in fact did;
- ii. During the Relevant Time Period, NCLF submitted filings to the Charities Bureau that purported to be “independent audit reports” when in fact no bona fide audit was conducted;
- iii. During the Relevant Time Period, NCLF submitted filings to the Charities Bureau that claimed that NCLF had a compensation committee, when in fact no such committee existed.

Improper Awards to Shor of Back Pay, Compensation and Benefits

26. In early 2011, after stepping down as president, Shor presented Gutwein with a document titled “Employment & Compensation Agreement” (“Shor Employment Agreement”). This document included in its terms that: (1) Shor would serve as “Founder and Senior Advisor” for ten years, with an annual salary of \$134,804, with a guaranteed 4% increase each year; (2) upon retirement or even in the event that he was fired for cause, Shor would receive a lifetime pension, payable each year at a rate equal to either 79% or 85% of the average of his salary in the final two years of his employment, depending on his length of service; (3) medical insurance for life; and (4) \$612,844 allegedly owed for back pay.

27. The Shor Employment Agreement relies on a Board of Directors decision dated March 30, 2004 and an Independent Auditor's Report dated June 10, 2010 to justify the back pay to Shor. Shor did not provide adequate documentation to establish that these documents provide a legitimate basis for NCLF to have agreed to the terms in the Shor Employment Agreement.

28. Apart from his allegedly owed back pay, Shor, with Gutwein's acquiescence, granted himself compensation that was not approved by a bona fide board of directors, as required by New York law.

III. Shlomo Shor's Breaches of Fiduciary Duty

29. At some point in the mid to late 2000s, Shlomo Shor, at his father's request, became vice president and director at NCLF. Shlomo Shor testified before OAG that he did not recall when he became an NCLF officer and director, but documentary evidence, submitted by NCLF to OAG, indicate that this occurred in or about 2009.

30. Shlomo Shor testified that he was not familiar with the duties of a director, and that, had he known the duties, he might not have accepted the position.

31. At the time he became a board member, Shlomo Shor did not request or review any NCLF financial documents, audit reports, tax filings, contracts, board meeting minutes or documents relating to any organizational policies or procedures. He testified that he had never looked at NCLF's website.

32. Shlomo Shor signed NCLF's 2009, 2010, 2011, and 2012 CHAR500 annual registration forms filed with the OAG's Charities Bureau. He testified that he signed the forms without reviewing the substance of those forms, the Forms 990 attached thereto, and without asking for or receiving any information regarding their accuracy and completeness. He further testified that his general practice when signing registration forms on behalf of NCLF was to sign wherever his father or his father's secretary told him to sign.

33. Shlomo Shor's signature and initials appear on two fundraising contracts, one dated July 28, 2010, and one dated August 1, 2012. Shlomo Shor testified that he never communicated with any professional fundraisers and did not participate in the negotiations of any fundraising contract. When asked about the contract dated July 28, 2010, he further testified that he did not review the contract for its terms or to determine if the contract was in NCLF's best interest. As he testified: "My job was just to sign ... I just see it is a contract. There is a whole 50,000 papers [sic]. I am not a lawyer. I just see it says sign as vice president, and I sign." He also stipulated in sworn testimony that, for any contract with a fundraiser on which his signature appeared, he "signed the contract without reviewing its terms."

34. Shlomo Shor was not familiar with the programmatic details and budgetary allocations of NCLF's purported programs. He took no role in overseeing NCLF's finances, in setting any salaries, or in overseeing the conduct of the top officer of the organization.

35. In 2010, Shlomo Shor was added as a signatory to NCLF's checking account.

36. Shlomo Shor testified that he was added as a signatory because NCLF's nominal president, Gutwein, was not available to sign checks. Shlomo Shor testified that he signed checks without any knowledge regarding the appropriateness of the payments. He sometimes met his father in a car to sign numerous checks presented to him in bulk.

37. Shlomo Shor testified to OAG that he was not aware of NCLF's registration to solicit funds having been cancelled by OAG in 2014.

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