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Attorney General of Hawaii

JAMES F. NAGLE #1548
Deputy Attorney General
Presiding Officer
Department of the Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

STATE OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL

MARK J. BENNETT
ATTORNEY GENERAL,

Petitioner,

vs.

MJ888M PRODUCTIONS, INC.

Respondent.

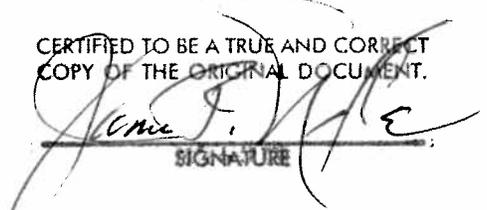
Docket No. 2008-1

ATTORNEY GENERAL'S FINAL ORDER;
CERTIFICATE OF SERVICE

ATTORNEY GENERAL'S FINAL ORDER

On July 25, 2008 the duly appointed Presiding Officer filed his findings of fact, conclusions of law, and recommended order ("recommended order") and hand-delivered that document to the parties. The parties were subsequently provided an opportunity to file exceptions or agreement with the recommended order, or partial exceptions and agreement, and written argument. On August 8, 2008, Petitioner filed Petitioner's Statement of Partial Exceptions to the Presiding Officer's Findings of Fact, Conclusions of Law, and Recommended

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COPY OF THE ORIGINAL DOCUMENT.


SIGNATURE

Order. Also on August 8, 2008, Respondent filed its Response to Presiding Officer's Findings of Fact, Conclusions of Law, and Recommended Order. Thereafter, copies of the recommended order and the foregoing documents filed by the parties ("post-hearing documents") were submitted to the Attorney General.

Upon personal review of the recommended order, the post-hearing documents, the written arguments, and any portions of the record of these proceedings cited by the parties, the Attorney General adopts the Presiding Officer's recommended order as the Attorney General's final order. Accordingly, the Attorney General finds and concludes that Respondent committed sixteen violations of HRS chapter 467B, as detailed in the recommended order. For those violations, the Attorney General orders that:

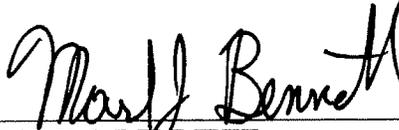
(1) Respondent's Hawaii registration as a professional solicitor is suspended effective immediately for a period of ninety (90) days;

(2) Respondent shall pay an administrative penalty in the total amount of TWELVE THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$12,100.00), determined in accordance with the recommended order as follows:

- (a) For the first offense (Count 1), Respondent shall be fined the sum of \$100;
- (b) For the second through the fifth offenses (Counts 3, 5, 11, and 12), Respondent shall be fined the sum of \$500 each, i.e. \$2,000;
- (c) For the sixth through the ninth offenses (Counts 13, 15, 18, and 19), Respondent shall be fined the sum of \$750 each, i.e., \$3,000; and
- (d) For the tenth through the sixteenth offenses (Counts 20, 21, 22, 23, 24, 25, and 26), Respondent shall be fined the sum of \$1,000 each, i.e., \$7,000;

(3) Respondent's registration shall not be renewed until the fine is paid.

DATED: Honolulu, Hawai'i, August 29, 2008.

A handwritten signature in black ink, appearing to read "Mark J. Bennett". The signature is written in a cursive style and is positioned above a horizontal line.

MARK J. BENNETT
Attorney General

2008 JUL 25 PM 2:07

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PRESIDING OFFICER'S FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER; CERTIFICATE
OF SERVICE

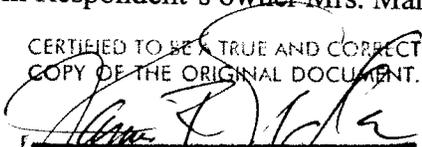
PRESIDING OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. PROCEDURAL BACKGROUND.

This is an enforcement action brought by the Attorney General ("Petitioner") pursuant to Hawaii Revised Statutes ("HRS") chapter 467B (solicitation of funds from the public) against Respondent MJ888M Productions, Inc. ("Respondent"). Respondent is a professional solicitor registered and regulated under that chapter.

As part of Petitioner's investigation in this matter, Deputy Attorney General Hugh R. Jones ("DAG Jones") took sworn testimony via interview from Respondent's owner Mrs. Mary

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Jean Castillo-Barkley (“Mrs. Castillo-Barkley”) on two occasions, January 3, 2008¹ (“Interview Castillo-Barkley 1/3/2008”) and March 3, 2008² (“Interview Castillo-Barkley 3/3/2008”). DAG Jones also took sworn testimony via interview from Patrick D. Egge³, the President of the Hawaii nonprofit corporation Most Wanted Law Enforcement Organization, on February 20, 2008 (“Interview Egge”).

This action began on March 31, 2008, when DAG Jones on behalf of Petitioner sent a letter (“3/31/2008 Letter”) by registered mail to both the Respondent and Mrs. Castillo-Barkley, alleging that the Respondent had committed at least 25 separate violations of HRS chapter 467B. In the 3/31/2008 Letter’s Exhibit “A”, the Petitioner proceeded to summarize those alleged violations. Also, in that letter the Petitioner proposed, *inter alia*, to suspend the Respondent’s professional solicitor license until June 30, 2008, to impose a \$25,000 administrative penalty, to subject a license renewal by Respondent on July 1, 2008, to a six-month probationary period, and for the Respondent to cease and desist from any further charitable solicitation.

On or about April 3, 2008, Respondent, through its attorney Michael Jay Green (“Attorney Green”), filed a notice of appeal regarding the 3/31/2008 Letter. Respondent requested a contested case hearing on this matter. Respondent’s registration was not suspended, pending the outcome of this contested case.

Thereafter, on April 18, 2008, the Petitioner filed a Notice of Hearing, Pre-hearing Conference, and Appointment of a Hearing Officer (“Notice of Hearing”). In that document the

¹ This interview can be found at Bates Nos. 0001 through 0046. The Petitioner has submitted as exhibits 548 pages of documents and sworn testimonies (and exhibits to the testimonies), which have been given Bates numbers. Unless otherwise specified, for purposes of clarity the Presiding Officer will hereinafter refer to all of Petitioner’s exhibits by the applicable bates number (“Bates No.”).

² This interview can be found at Bates Nos. 0285 through 0300.

³ This interview can be found at Bates Nos. 0322 through 0350.

Petitioner recognized the Respondent's filing of a notice of appeal; set the contested hearing for March 27, 2008 at 9 a.m.; noted that the hearing would be conducted per the Department's administrative rules; affixed a copy of the 3/31/2008 Letter and its attachment as an exhibit; appointed Deputy Attorney General James Nagle ("Presiding Officer") to serve as the Hearings Officer; directed the Presiding Officer to conduct a prehearing on May 6, 2008, commencing at 9 a.m.; and noted that a party may retain counsel. That "Notice of Hearing" was served on all of the parties via certified mail, return receipt requested, by April 21, 2008.

Also on April 18, 2008, the Presiding Officer filed and served on all of the parties a Notice of Prehearing Matters, advising the parties of matters to be discussed at the prehearing conference set for May 6, 2008. Thereafter, by agreement of counsel, the prehearing conference was re-set to May 14, 2008.

On May 14, 2008, the Presiding Officer conducted the pre-hearing conference in accordance with § 5-1-47(a) of the Hawaii Administrative Rules ("HAR") of the Department of the Attorney General. Petitioner was represented by DAG Jones. Respondent's owner, Mrs. Castillo-Barkley, was present in person with Respondent's legal counsel, Attorney Green. The parties were directed to file and exchange all hearing exhibits on or before May 20, 2008. Subsequently, the Presiding Officer did receive the parties' exhibits on May 20, 2008. A Pre-hearing Order, filed and served on the parties on May 20, 2008, noted the above matters.

On May 23, 2008, Petitioner filed a document entitled Attorney General's Hearing Brief ("Petitioner's Hearing Brief"). Included along with that document were a declaration signed by DAG Jones and an affidavit signed by Joseph Self, a special investigator with the Investigations Division of the Department of the Attorney General. Attached to Mr. Self's affidavit were exhibits "A" and "B". Respondent did not file a hearing brief.

The contested case in this matter came on for hearing on May 27, 2008. DAG Jones appeared for the Petitioner. Attorney Green did not appear for the Respondent. Respondent's owner, Mrs. Castillo-Barkley, appeared on behalf of the Respondent, advised the Presiding Officer that Attorney Green was in trial, and requested a continuance of the hearing. The Respondent, in requesting a continuance, did not comply with HAR § 5-1-51 because it failed to file a motion requesting the continuance before the hearing.

DAG Jones proposed to agree to a continuance of the hearing, subject to certain conditions and Respondent, by Mrs. Castillo-Barkley, agreed to the conditions. (Transcript of Proceedings dated May 27, 2008, at pages 8 through 11.) Accordingly, the Presiding Officer agreed to continue the hearing date and directed the parties to have their attorneys confer and decide upon a firm date within the near future for the rescheduled contested case hearing.

On May 28, 2008, the Presiding Officer received an e-mail from Mr. Jones, who also copied the Attorney Green on the e-mail. In that e-mail Mr. Jones noted that the attorneys were unable to agree upon a firm date for the contested case hearing. As a result, the Presiding Officer, on May 29, 2008, issued an Order Rescheduling Hearing resetting the contested case hearing in this matter for Friday, June 13, 2008, commencing at 9 a.m. at Hale Auhau, 425 Queen Street, Honolulu, Hawaii. The parties were advised that the foregoing date shall be a firm hearing date setting. If counsel for either party cannot make this hearing, counsel was advised to obtain substitute counsel or alternatively to comply with HAR § 5-1-51. Otherwise, the hearing shall proceed as scheduled, with or without counsel for each of the parties.

This contested case matter came on for hearing on June 13, 2008. That hearing was conducted pursuant to HRS chapter 91 and subchapter 3 of HAR chapter 5-1. Petitioner was represented by DAG Jones. Respondent's owner, Mrs. Castillo-Barkley, appeared with a new

attorney for the Respondent – Attorney Denise M. Hevicon. Immediately prior to the hearing, counsel for each of the parties met to determine if they could narrow and/or agree to the issues in this matter. While referencing the Petitioner’s Hearing Brief, the parties were able to summarize the charges, with Respondent admitting to some of the charges and disagreeing to other charges, thereby facilitating the hearing. In essence, the parties agreed that there were twenty-six alleged violations, Respondent admitted to fourteen of these violations and contested the other 12 alleged violations. Transcript of Hearing held on June 13, 2008 (hereinafter “6/13/2008 Transcript”) at pages 7 through 11; Respondent MJ888M Production, Inc.’s Post-Hearing Brief (hereinafter “Respondent’s Post-Hearing Brief”) at pages 4 through 16; and Attorney General’s Post-Hearing Brief (“Petitioner’s Post-Hearing Brief”) at pages 5-19. The charges and the admissions and denials to charges shall be discussed in detail later herein. Prior to the hearing, Respondent refined the exhibits that it wished to use, adding an exhibit, and designating Exhibits “A” through “F,” and also discarding some of the exhibits previously submitted to the Presiding Officer. Petitioner did not object to the changes in exhibits.

On June 13, 2008, the hearing was conducted by the Presiding Officer pursuant to HRS chapters 91 and 467B. At the hearing Petitioner called only the Respondent’s owner, Mrs. Castillo-Barkley, as a witness. There was no cross-examination of that witness by Respondent and Respondent provided no live testimony.

During that hearing, the parties agreed to submit into evidence Petitioner’s Exhibits (Bates numbers 0001 through 0548), the affidavit of Joseph Self with exhibits, the declaration of DAG Jones, and the Respondent’s exhibits “A” through “F.” 6/13/2008 Transcript at pages 5-6. DAG Jones requested the Presiding Officer to take official notice, in accordance with HAR § 5-1-49(i), of footnotes 13 and 15 discussed in the Petitioner’s Hearing Brief. 6/13/2008 Transcript

at pages 24-25. The parties agreed on the record to file post-hearing briefs with the Presiding Officer by the close of the day on June 27, 2008, and to address their positions and objections as to the charges more fully therein. 6/13/2008 Transcript at pages 25-26.

The Presiding Officer advised that parties that, after reviewing the parties' post-hearing briefs, the Presiding Officer would prepare a recommended order that would contain findings of fact and conclusions of law. The parties agreed that, upon receipt of that recommended order, the parties would have fifteen days to submit to the Presiding Officer exceptions, agreement, or partial exceptions and agreement regarding the recommended order. 6/13/2008 Transcript at pages 25-26.

Petitioner's Post-Hearing Brief and Respondent's Post-Hearing Brief were submitted on June 26 and June 27, 2008, respectively. Having reviewed and considered the evidence and arguments of counsel presented at the hearing and in the post-hearing briefs, together with the entire record of this proceeding, the Presiding Officer hereby renders the following findings of fact, conclusions of law, and recommended order.

II. FINDINGS OF FACT ("FOF").

Petitioner has alleged various statutory violations of HRS chapter 467B, as detailed hereinafter.

1. Respondent is registered as a professional solicitor with the Department of the Attorney General under HRS chapter 467B. Bates Nos. 0529-30 and 0536-0539. Mary Jean Castillo-Barkley is the Respondent's sole owner. Interview Castillo-Barkley on 1/3/2008 at Bates Nos. Nos. 0005, 0007-08.

A. Counts 1-6: Failure to Timely File Campaign Reports.

2. Petitioner has alleged that Respondent, on multiple occasions, has filed untimely financial reports for three charitable organizations in violation of HRS §§ 467B-2.5 (financial reports) and 467B-9(j) (prohibited acts). 3/31/2008 Letter at pages 3-4. Respondent's sole owner, Mrs. Castillo-Barkley, admitted in sworn testimony that she's had trouble filing timely financial reports with the Department of the Attorney General. Interview Castillo-Barkley 1/3/2008 at Bates Nos. 0007-8 and 0014.

3. Pursuant to the requirements of HRS § 467B-12 (filing requirements), the Respondent filed copies of contracts with the following three charitable organizations: Most Wanted Law Enforcement Organization ("Most Wanted"), see Interview Castillo-Barkley on 1/3/2008 at Bates Nos. 0009, 0017, and 0544-0548 and Interview Egge at Bates Nos. 0353-0356; Mother Earth Foundation Environmental Charities ("Mother Earth"), see Interview Castillo-Barkley 1/3/2008 at Bates Nos. 0009-0016 and 0048-0050; and the Hawaii Police Athletic Federation ("Hawaii Police"), see Interview Castillo-Barkley on 1/3/2008 at Bates Nos. 0009 and 0532-0535.

A-I. Counts 1 & 2: Untimely Filing For Most Wanted - Alleged Violations of HRS §467B-2.5(a) & 467B-9(j).

4. Respondent admitted that it had failed to timely file a report for Most Wanted in violation of HRS § 467B-2.5(a).⁴ 6/13/2008 Transcript at page 7; Respondent's Post-Hearing Brief at page 6; and Petitioner's Post-Hearing Brief at page 5. Respondent denied any violation of HRS § 467B-9(j). 6/13/2008 Transcript at pages 7-9.

⁴ For all of the violations herein that are not admitted by the Respondent, Respondent concedes that the Petitioner has presented evidence which meets its burden of proof and thus Respondent is not contesting those counts. Respondent's Post-Hearing Brief at page 5.

5. Respondent's contract with Most Wanted, dated February 5, 2006, and an amended contract with Most Wanted dated March 5, 2006, was filed with the Attorney General. Bates Nos. 0544-0548, Interview Egge at Bates Nos. 0330-0331, and 0353-0356, respectively.

6. Although the report was due within a year, the Respondent filed the required report with the Attorney General on March 14, 2007, more than one year after the commencement of the solicitation campaign.⁵ 6/13/2008 Transcript at page 7 and Bates Nos. 0358).

A-II. Counts 3 & 4: Untimely Filing for Mother Earth - Alleged Violations of HRS §467B-2.5(a) & 467B-9(j).

7. Respondent admitted that it had failed to timely file a report for Mother Earth in violation of HRS § 467B-2.5(a). 6/13/2008 Transcript at pages 8-9; Respondent's Post-Hearing Brief at page 6; and Petitioner's Post-Hearing Brief at page 5. Respondent denied any violation of HRS § 467B-9(j). 6/13/2008 Transcript at pages 7-9.

8. Respondent's Exhibit "A" demonstrates that the Mother Earth fundraising agreement ended on December 31, 2005.⁶ The fourth page of Respondent's Exhibit "A" shows that the Respondent filed the solicitation campaign report, dated April 10, 2006, on April 13, 2006, which was more than ninety days after the solicitation campaign was completed.

A-III. Counts 5 & 6: Untimely Filing for Hawaii Police - Alleged Violations of HRS §467B-2.5(a) & 467B-9(j).

⁵ Both Petitioner and Respondent acknowledge that the date the report was filed was actually March 14, 2007, not March 14, 2008 as stated in Petitioner's Hearing Brief at page 6. 6/13/2008 Transcript at page 7 and Respondent's Post-Hearing Brief at page 6, respectively.

⁶ We note that there was some initial confusion between the parties as to the actual Mother Earth fundraising agreement, its period of viability, and whether Respondent had filed any reports regarding that agreement. Interview Castillo-Barkley 1/3/2008 at Bates Nos. 0009-16 and 0048-50 and Declaration of Hugh Jones at ¶ 7, filed with the Attorney General's Hearing Brief, filed May 23, 2000. However, based upon the Respondent's submission of the four-page Exhibit "A", that confusion appears to have been cleared up.

9. Respondent admitted that it had failed to timely file a report for Hawaii Police in violation of HRS § 467B-2.5(a). 6/13/2008 Transcript at page 9 and Respondent's Post-Hearing Brief at pages 4-6; Interview Castillo-Barkley 1/3/2008 at Bates No. 0027 and Bates No. 0176; and Petitioner's Post-Hearing Brief at page 5. Respondent denied any violation of HRS § 467B-9(j). 6/13/2008 Transcript at pages 7-9.

10. Respondent had a contract with the Hawaii Police that was effective July 12, 2006. Bates Nos. 0532-0535. The contract was a one year contract. Bates No. 533 at section 5.A. By letter dated October 15, 2007, the Respondent was advised by DAG Jones that it had failed to timely file a financial report, that was due one year after the commencement of the solicitation campaign. Bates No. 0526-0527.

11. An incomplete financial report was filed on October 25, 2007 and was returned to the Respondent because it did not contain an attachment itemizing all expenses incurred in the campaign. Bates No. 0522-0524. A complete report was later filed by Respondent's CPA on or about November 27, 2007. Bates No. 0521a-0521c.

B. Counts 7 & 8: Most Wanted As Sponsor of Magazine – Alleged Violations of HRS §§ 467B-9(c) and 467B-9(k).

12. Petitioner alleges that the Respondent has violated both HRS §§ 467B-9(c) and 467B-9(k) by misleading prospective donors into believing that Most Wanted sponsors Hawaii's Most Wanted Magazine, when that is not the fact. 3/31/2008 Letter at page 4; Petitioner's Hearing Brief at pages 7-9; and Petitioner's Post-Hearing Brief at pages 14-16.

13. Respondent's callers use certain business pitches, i.e. "scripts", when telephoning prospective business or residential donors. Respondent's telemarketing business and residential scripts for Most Wanted have the callers state that Most Wanted "is a local nonprofit organization that *sponsors* Hawaii's Most Wanted Magazine." (Emphasis added; Interview

Castillo-Barkley 1/3/2008 at Bates Nos. 0035-36 and Bates Nos. 0181 (business pitch), and 0182 (residential pitch)). Potential donors were told over the phone by Respondent's employees and independent contractors that "[w]e (Most Wanted) are going on a manhunt by publishing Hawaii's Most Wanted Magazine (HMW)." (Bates Nos. 0181-82).

14. A copy of the Hawaii's Most Wanted magazine is found at Bates Nos. 0051-0170. (Interview Castillo-Barkley 1/3/2008 at Bates Nos. 0017). The Respondent and its owner publish that magazine, not Most Wanted⁷. (Interview Castillo-Barkley 1/3/2008 at Bates Nos. 0007 and 0017). Hawaii's Most Wanted Magazine is a trade name owned by the Respondent's owner, Mrs. Castillo-Barkley (Interview Castillo-Barkley 1/3/2008 at Bates No. 0025 and Bates Nos. 0173-74). She described the publication under oath as "my baby" (Interview Castillo-Barkley 1/3/2008 at Bates No. 0037). Respondent used the name of MWLEO to sell advertising, which is in turn used to publish the magazine and, after payment of other expenses including the Respondent's solicitor's fee, the MWLEO receives a very small amount of money. Bates No. 0358-0360.

15. Respondent was under contract with Most Wanted to raise funds to produce a magazine. Bates No. 0020. Patrick Egge, Most Wanted's president, wrote a letter on May 30, 2008, highlighting the fact that Respondent and Most Wanted were separate companies, stating that Most Wanted wouldn't be able to disburse grants of \$13,000 without Respondent's help. Respondent's Exhibit "F." Furthermore the contract between the Respondent and Most Wanted provides that the Respondent shall publish the magazine for Most Wanted, stating that the

⁷ Respondent is a subchapter S corporation owned by Mrs Castillo-Barkley. Interview Castillo-Barkley 1/3/2008 at Bates Nos. 0007-0008. Most Wanted is a separate domestic nonprofit corporation. Bates No. 0171.

“Producer (Respondent) shall produce one publication on behalf of the Sponsor (Most Wanted).”

Bates Nos. 0544-0548.

C. Count 9: Confirmation Letters Respondent Sent to Prospective Most Wanted Donors – Alleged Violation of HRS § 467B-9(k).

16. The Petitioner alleges that Respondent’s written confirmation letters for Most Wanted’s prospective donors (Bates No. 0183) contain Most Wanted’s Federal Employer Tax ID Number (“federal identification number”) which, when combined with the statement in the letter that that Most Wanted is "a local nonprofit organization," has the tendency or capacity to mislead donors into believing that their contribution is tax deductible when such is not the case.

3/31/2008 Letter at pages 4/5.

17. Patrick D. Egge, Most Wanted’s current president, stated under oath that the deductibility of a donation plays a large role in a donor's decision to donate funds to charitable organizations. Interview Egge at Bates Nos. 0341 and 0346. Minutes of an October 2007 board meeting of Most Wanted reveal that this issue was expressly discussed and that potential donors should be told that Most Wanted just applied for a tax exemption and donations may not be deducted until the exemption is granted. Bates Nos. 0455. Mr. Egge did not know whether Most Wanted was granted tax exempt status so that donations would be tax deductible. Interview Egge at Bates No. 0337. Mr. Egge testified that the "ball got dropped" in submitting an application for exempt status to the IRS. Interview Egge at Bates Nos. 0337-0338.

18. Most Wanted has not in fact obtained an exemption ruling, giving it tax deductible status, from the IRS under §501(c)(3).⁸ (The Presiding Officer takes official notice

⁸ The Petitioner, at 6/13/2008 Transcript at pages 24-25, at Petitioner’s Hearing Brief at page 10, footnote 13, and in Petitioner’s Post-Hearing Brief at page 16, footnote 10, asked the Presiding Officer to take official notice (per H.A.R. § 5-1-49(i)), that Most Wanted is not included in the IRS's Publication 78, *Cumulative List of Organizations described in Section 170(c) of the*

of this fact per HAR § 5-1-49(i)). There is nothing in either of the Respondent's solicitation scripts that caution a potential donor about the deductibility of the donation. Bates Nos. 0181-82.

19. The scripts for the Most Wanted fundraising (Bates Nos. 0181 and 0182) demonstrate that the confirmation letter with Most Wanted's federal identification number (Bates No. 0183) was sent to the donors only after the "business or residential pitch" had been made to the prospective donor and the donation had been confirmed. Once the donor had agreed to give money to Most Wanted, then the confirmation would be mailed to the donor. Bates Nos. 0181-0183.

D. Count 10: Receipts Respondent Sent to Prospective Most Wanted Donors Stating That Most Wanted Was Publisher of the Magazine – Alleged Violation of HRS § 467B-9(k).

20. Petitioner alleges that Respondent sent deceptive statements that Most Wanted "published" Hawaii's Most Wanted Magazine in receipts to donors, when that is not the case, in violation of HRS § 467B-9(k). Interview Castillo-Barkley 1/3/2008 at Bates Nos. 0035-0036 and 0183.

21. The February 5, 2006 contract between Most Wanted and Respondent shows that the parties were involved with a joint publishing agreement. Bates No. 0544-0548. Charles "Chuck" Cordill, the prior president of Most Wanted who was replaced by Mr. Egge, wrote an

Internal Revenue Code of 1986, which is a list of organizations eligible to receive tax-deductible charitable contributions. See <http://www.irs.gov/app/pub-78/searchFromResults.do?nameSearchTypeStarts=true&names=most+wanted+law+enforcement&nameSearchTypeAll=false&city=&state=HI&country=USA&deductibility=all&dispatchMethod=search&searched.nameSearchTypeStarts=false&searched.names=most+wanted+law+enforcement&searched.nameSearchTypeAll=false&searched.city=&searched.state=HI&searched.country=USA&searched.deductibility=all&searched.sortColumn=name&searched.indexOfFirstRow=0&searched.isDescending=false&submitName=Search>

introduction as the Associate Editor of the Most Wanted Magazine. Bates No. 0057 and Interview Castillo-Barkley 3/3/2008 at Bates No. 0327.

E. Counts 11-17: Alleged Violations of HRS §§ 467B-1, 467B-9(i), and 467B-12(a) Because Seven Individuals Failed to Register as Professional Solicitors.

22. Petitioner alleges Respondent committed seven violations of HRS §§ 467B-1, 467B-9(i) and 467B-12(a) because seven individuals acted as professional solicitors for Respondent without the requisite registration with the department, to wit, Jose Maldonado (Count 11), John Murray (Count 12), Jason Sanchez (Count 13), Lianne Orikasa (Count 14), Sophia Rodriques (Count 15), Philip Imperial (Count 16), and Joey Manuel (Count 17). 3/31/2008 Letter at pages 6-7.

23. Respondent admitted that it failed to register Jose Maldonado (Count 11), John Murray (Count 12), Jason Sanchez (Count 13), and Sophia Rodriques (Count 15) with the department as required by law; Respondent denied that it failed to register Lianne Orikasa (Count 14), Philip Imperial (Count 16), and Joey Manuel (Count 17) in accordance with law. 6/13/2008 Transcript at pages 9-10; Respondent's Post-Hearing Brief at pages 6-7 and 14-15; and Petitioner's Post-Hearing Brief at page 5, 8-9.

24. Respondent's Solicitation Campaign/Event Financial Report (Bates No. 0521B-0521C) revealed and the testimony showed that the Respondent had paid commissions to six independent contractors to do phone solicitations: Jose Maldonado, John Murray, Jason Sanchez, Lianne Orikasa, Sophia Rodriques, and Philip Imperial. Interview Castillo-Barkley 3/3/2008 at Bates Nos. 0288-0289 and Bates No. 302; Petitioner's Hearing Brief at pages 11-12.

25. None of the seven individuals, involved with Counts 11-17, have been registered with the Attorney General's Office.⁹ (Note: the Presiding Officer takes official notice of these facts per HAR § 5-1-49(i)).

26. As to Lianne Orikasa (Count 14) and Philip Imperial (Count 16), the Respondent has submitted Form W-2 Wage and Tax Statements for 2007 listing them as Respondent's employees. Respondent's Exhibits "C" and "B", respectively. Petitioner has conceded that Lianne Orikasa and Philip Imperial were employees and not independent contractors. Petitioner's Post-Hearing Brief at page 8. Also, no evidence was presented to confirm that Lianne Orikasa and Philip Imperial solicited charitable contributions for percentage compensation.

27. Although Respondent's owner identified Joey Manuel (Count 17) as an independent contractor, she also testified that Joey Manuel sometimes did courier work and that a courier is not an independent contractor. Interview Castillo-Barkley 3/3/2008 at Bates Nos. 0288-89 and Bates No. 0302.

28. Petitioner failed to identify Joey Manuel as one of the independent contractors hired to do professional solicitations both in the letter setting forth the allegations herein and in the Petitioner's hearing brief. 3/31/2008 Letter at page 6 and Petitioner's Hearing Brief at pages 11-12. Petitioner attempted to add Joey Manuel's name at the hearing to the list of solicitors that were not properly registered by the Respondent. 6/13/2008 Transcript at page 10.

F. Counts 18-20: Alleged Violations of HRS § 467B-2.5 (a) Regarding Custody and Control of Funds.

⁹ The Petitioner, at 6/13/2008 Transcript at pages 24-25, at Petitioner's Hearing Brief at page 12, footnote 15, asks the Presiding Officer to take official notice (per H.A.R. § 5-1-49(i)) of this fact. See http://hawaii.gov/ag/charities/quicklinks/regist_pro_solic/DOC009.PDF See also DAG Jones Decl. at ¶ 11.

29. Respondent admitted that it maintained and administered the respective accounts for Most Wanted, Hawaii Police, and Mother Earth and had control of the withdrawals from these accounts in violation of HRS § 467B-2.5(a). 6/13/2008 Transcript at page 10.

30. Respondent's contracts with Most Wanted, the Hawaii Police, and the Mother Earth, on file with the Department of the Attorney General (FOF at ¶ 3), all provide that all checks from the account of each of these charities shall contain dual signatures, one signature being that of the Respondent. (For Most Wanted, Bates Nos. 0544-0548, 353-0356, for Mother Earth Bates Nos. 0048-0050, and for Hawaii Police, Bates Nos. 0532-0535).

31. Respondent's owner admitted under oath that she is authorized to handle the account for Most Wanted. Bates No. 0295.

G. Counts 21-24: Alleged Violations of HRS § 467B-9(n) Regarding The Use of Persons Disqualified By Means of Conviction.

32. Petitioner alleges that Respondent used the following persons as employees or independent contractors, despite the fact that they were disqualified by criminal conviction per HRS § 467B-9(n): Korey Fonseca (Count 21), Patrick Flood (Count 22), Curtis Pagaduan (Count 23), and Jose Maldonado (Count 24). 3/31/2008 Letter at page 7.

33. Respondent admitted that it had violated HRS § 467B-9(n) relative to Korey Fonseca (Count 21) and Patrick Flood (Count 22) but denies any violations as to Curtis Pagaduan (Count 23) and Jose Maldonado (Count 24). 6/13/2008 Transcript at pages 10-11; Respondent's Post-Hearing Brief at pages 8-9 & 15-16; and Petitioner's Post-Hearing Brief at page 5.

34. The Respondent employed Kory Fonseca and Patrick Flood. Interview Castillo-Barkley 3/3/2008 at Bates Nos. 0289-90 and Bates No. 0302).

35. Mr. Fonseca has 4 felony convictions for Burglary, Drug Paraphernalia, Promoting a Dangerous Drug III and Unauthorized Control of a Propelled Vehicle (Bates Nos. 0500-04) and Mr. Flood has one felony conviction and other theft convictions in Washington and Alaska (Bates Nos. 462-63). Affidavit of Joseph Self, attached to the Petitioner's Hearing Brief at ¶¶ 2-4 ("Affidavit of Joseph Self").

36. Curtis Pagaduan (Count 23) was an employee and solicitor for Respondent and had four felony convictions in Hawaii. Interview Castillo-Barkley 3/3/2008 at Bates No. 0289-90 and Bates No. 0302, and 457-458; and Affidavit of Joseph Self at ¶¶ 2-4.

37. Respondent hired Mr. Pagaduan as a trainee before doing a background check. 6/13/2008 Transcript at pages 18-19.

38. As to Jose Maldonado (Count 24), Respondent's owner admitted in sworn testimony that the independent contractor and solicitor, Jose Maldonado, had a prior conviction but she thought it was for some kind of domestic disturbance. Interview Castillo-Barkley 3/3/2008 at Bates No. 0296-0297. The public access rap sheet substantiates that Jose Maldonado had multiple convictions, one of which was a misdemeanor conviction for theft. Bates No. 0312.

39. Respondent testified that Mr. Maldonado provided Respondent with an incorrect social security number and that Respondent only learned about his criminal conviction after it was brought to Respondent's attention by DAG Jones. Interview Castillo-Barkley 3/3/2008 at Bates Nos. 296-297.

40. However, when Respondent's owner typed in Mr. Maldonado's name without the social security number his criminal record appeared. Interview Castillo-Barkley 3/3/2008 at Bates No. 0297.

H. Counts 25-26: Failure to Make Required Disclosures Per HRS §§ 467B-1.5.

41. Respondent admitted to Counts 25 and 26, that it had failed to make the required disclosures in violation of HRS § 467B-1.5. 6/13/2008 Transcript at page 11 and Respondent's Post-Hearing Brief at pages 9-10; and Petitioner's Post-Hearing Brief at page 5.

42. The receipt given to donors regarding Most Wanted by Respondent (Bates Nos. 36 and 0183) does not contain the information required by either HRS section 467B-1.5(1) or (2).

I. Conclusion.

43. To the extent any of the Findings of Fact as stated may also be deemed to be Conclusions of Law, they shall also be considered Conclusions. In the same way, to the extent any of the following Conclusions of Law as stated may be deemed to be Findings of Fact, they shall also be considered Findings.

III. CONCLUSIONS OF LAW.

1. HRS chapter 467B regulates the solicitation of funds from the public. Pursuant to HRS chapter 467B, and HRS § 467B-9.7 in particular, the Petitioner has jurisdiction to pursue administrative enforcement of that chapter and invoke penalties.

2. Petitioner, as the party initiating these proceedings via its 3/31/2008 Letter, has the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. HRS § 91-10(5). Whenever it is stated herein that Petitioner has proven, sustained, or failed to sustain its burden of proof, that applicable burden is by a preponderance of the evidence.

A. Counts 1, 3, and 5: Respondent Admits and Petitioner Has Proven that Respondent Violated HRS § 467B-2.5(a) as to Most Wanted, Mother Earth, and Hawaii Police.

3. HRS § 467B-2.5(a) provides, in relevant part, that:

Within ninety days after a solicitation campaign or event has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional solicitor shall file with the attorney general a financial report for the campaign, including gross revenue and an itemization of all expenses incurred.

HRS § 467B-2.5(a).

- 4 HRS § 467B-9(j) provides, in relevant part, that:

No person shall fail to file the information and statements required by this chapter or fail to provide any information demanded by the attorney general pursuant to this chapter in a timely manner.

HRS § 467B-9(j).

5. As to Count 1, although the Respondent is not contesting this count and admits that the report was not timely filed in contravention of HRS § 467B-2.5(a) (FOF ¶ 4), the record also demonstrates that there was sufficient evidence to meet the Petitioner's burden regarding this allegation. Respondent's contract with Most Wanted began on February 5, 2006, and was amended on March 5, 2006. Bates Nos. 0544-0548; Interview Egge at Bates Nos. 0330-0331, and 0353-0356, respectively.

6. HRS § 467B-2.5(a) required that the Respondent file a financial report regarding Most Wanted with the Attorney General "on the anniversary of the commencement of a solicitation campaign lasting more than one year" or by February 5, 2007. The Respondent did not file the required report with the Attorney General until March 14, 2007, more than one year after the commencement of the solicitation campaign. 6/13/2008 Transcript at pages 7 & 8 and Bates Nos. 0358. As a result, Petitioner has proven that Respondent failed to timely file the financial report regarding Most Wanted in violation of HRS § 467B-2.5(a).

7. As to Count 3, although the Respondent is not contesting this count and admits that the report was not timely filed in contravention of HRS § 467B-2.5(a) (FOF ¶¶ 7 & 8), the

record also demonstrates that there was sufficient evidence to meet the Petitioner's burden regarding this allegation.

8. Respondent's Exhibit "A" demonstrates that the Mother Earth fundraising agreement ended on December 31, 2005. Thus, per HRS §§ 467B-2.5(a), Respondent was required to file the financial report for that campaign within ninety days after a solicitation campaign has been completed, or in this case by March 31, 2006.

9. The fourth page of Respondent's Exhibit "A" shows that the Respondent filed the solicitation campaign report, dated April 10, 2006, on April 13, 2006. As a result, Petitioner has proven that Respondent failed to timely file the financial report regarding Mother Earth in violation of HRS § 467B-2.5(a).

10. As to Count 5, although the Respondent is not contesting this count and admits that the report was not timely filed in contravention of HRS § 467B-2.5(a) (FOF ¶ 9), the record also demonstrates that there was sufficient evidence to meet the Petitioner's burden regarding this allegation.

11. Respondent had a contract with the Hawaii Police that was effective July 12, 2006. Bates Nos. 0532-0535. The contract was a one year contract. Bates No. 533 at section 5.A. Per HRS § 467B-2.5, a financial report was due to be filed with the Attorney General 90 days after the end of the solicitation campaign, i.e., on October 12, 2007. By letter dated October 15, 2007, the Respondent was advised by DAG Jones that it had failed to timely file a financial report. Bates No. 0526-0527.

12. An incomplete financial report was untimely filed on October 25, 2007 and was returned to the Respondent because it did not contain an attachment itemizing all expenses incurred in the campaign (Bates No. 0522-0524). A complete report was later filed by

Respondent's CPA on November 25, 2007 (Bates No. 0521a-0521c), forty-plus days after its statutory due date. As a result, Petitioner has proven that Respondent failed to timely file the financial report regarding Hawaii Police in violation of HRS § 467B-2.5(a).

13. Thus, Respondent's admissions to these charges, as well as the facts and analyses contained in paragraphs 2 through 11 of the FOF, demonstrate that the Petitioner has proven that the Respondent failed to timely file reports for Most Wanted (Count 1), Mother Earth (Count 3), and Hawaii Police (Count 5), each in violation of HRS § 467B-2.5(a).

B. Counts 2, 4, and 6: Petitioner Has Failed to Prove that Respondent Violated HRS §462B-9(j) as to Most Wanted, Mother Earth, and Hawaii Police.

14. The parties disagree as to whether Counts 2, 4, and 6 constitute three violations of HRS §467B-9(j). 6/13/2008 Transcript at pages 7-9. Petitioner alleges that the same facts, contained in Counts 1, 3, and 5, not only constitute violations of HRS § 467B-2.5(a) but also constitute respectively three additional violations of HRS §467B-9(j). Petitioner's Post-Hearing Brief at page 18. Respondent refutes Petitioner's position and replies that this would cause double punishment for the same single act. Respondent's Post-Hearing Brief at pp. 10-11.

15. Despite Petitioner's argument that these acts in Counts 1, 3, and 5, per the facts contained in FOF ¶¶ 4 through 11, are separate offenses that may be separately charged, these acts do not amount to separate violations per HRS § 467B-9(j) as to Counts 2 (Most Wanted), 4 (Mother Earth), and 6 (Hawaii Police).

16. HRS § 467B-2.5(a) imposes an affirmative duty to file a report within a certain time. HRS §467B-9(j) is the prohibition for a solicitor's failure to follow HRS chapter 467B and provides, in relevant part that "[n]o person shall fail to file the information and statements required by this chapter . . ." Thus HRS §467B-9(j) is not a stand alone violation, as it requires a failure to follow the requirements of another part of HRS chapter 467B. In this instance, that

failure is the Respondent's admitted delinquency regarding the untimely filing of the reports in Counts 1, 3, and 5, within the time specified in HRS § 467B-2.5(a).

17. Because Respondent has already admitted to three violation of HRS § 467B-2.5(a), and because at most the facts for Counts 1, 3, and 5 would coalesce into three charges of violating both HRS § 467B-2.5(a) and HRS §467B-9(j), the Presiding Officer finds that the Petitioner failed to sustain its burden to prove separate violations of HRS §467B-9(j) regarding Counts 2, 4, and 6.

C. Counts 7 & 8: Petitioner Has Failed to Prove that Respondent Violated HRS §§ 467B-9(c) and 467B-9(k) by Identifying Most Wanted As The Sponsor of A Magazine.

18. HRS § 467B-9(c) provides:

- (c) No person, in connection with any solicitation or sale, shall misrepresent or mislead anyone by any manner, means, practice, or device whatsoever, to believe that the solicitation or sale is being conducted on behalf of a charitable organization or that the proceeds of the solicitation or sale will be used for charitable purposes, if that is not the fact.

19. 467B-9(k) provides:

- (k) No person shall employ in any solicitation or collection of contributions for a charitable organization, any device, scheme, or artifice to defraud or obtain money or property by means of any false, deceptive, or misleading pretense, representation, or promise.

20. Petitioner alleges that the Respondent has violated both HRS §§ 467B-9(c) and 467B-9(k) by misleading prospective donors into believing that Most Wanted sponsors Hawaii's Most Wanted Magazine, when that is not the fact. 3/31/2008 Letter at page 4; Petitioner's Hearing Brief at pages 7-9; and Petitioner's Post-Hearing Brief at pages 14-16. Petitioner argues that "Most Wanted does not in fact 'sponsor' Hawaii's Most Wanted Magazine. Most Wanted

does not have any legal interest in this publication and it does not own the trade name” for that magazine. Petitioner’s Hearing Brief at page 9 and Petitioner’s Post-Hearing Brief at page 15.

21. In support of this allegation, in relevant part, Petitioner points out that Respondent’s telemarketing business and residential scripts for Most Wanted state that Most Wanted “is a local nonprofit organization that *sponsors* Hawaii’s Most Wanted Magazine.” (Emphasis added; Interview Castillo-Barkley 1/3/2008 at Bates Nos. 0035-36 and Bates Nos. 0181 (business pitch), and 0182 (residential pitch)). Potential donors were told over the phone by Respondent’s employees and independent contractors that “[w]e (Most Wanted) are going on a manhunt by publishing Hawaii’s Most Wanted Magazine (HMW).” Bates Nos. 0181-82. A copy of the Hawaii’s Most Wanted magazine is found at Bates Nos. 0051-0170. (Interview Castillo-Barkley 1/3/2008 at Bates Nos. 0017). The Respondent and its owner publish that magazine, not Most Wanted. (Interview Castillo-Barkley 1/3/2008 at Bates Nos. 0007 and 0017). Hawaii’s Most Wanted Magazine is a trade name owned by the Respondent’s owner, Mrs. Castillo-Barkley. Interview Castillo-Barkley 1/3/2008 at Bates No. 0025 and Bates Nos. 0173-74. She described the publication under oath as “my baby.” Interview Castillo-Barkley 1/3/2008 at Bates No. 0037. Respondent used the name of MWLEO to sell advertising, which is in turn used to publish the magazine and, after payment of other expenses including the Respondent’s solicitor’s fee, the MWLEO receives a very small amount of money. Bates No. 0358-0360.

22. The Respondent, in part, argues that Most Wanted “does receive funds which are used for a charitable purpose for law enforcement support. AG’s Bates No. 0020-21.” Respondent’s Post-Hearing Brief at page 12. The evidence also shows that Respondent was under contract with Most Wanted to raise funds to produce a magazine. Bates No. 0020. Patrick

Egge, Most Wanted's president, wrote a letter on May 30, 2008, stating that Most Wanted wouldn't be able to disburse grants of \$13,000 without Respondent's help. Respondent's Exhibit "F." Furthermore the contract between the Respondent and Most Wanted provides that the "Producer (Respondent) shall produce one publication on behalf of the Sponsor (Most Wanted)." Bates Nos. 0544-0548.

23. The word "sponsor" has been defined to mean "one that finances a project or an event carried out by another person or group, especially a business enterprise that pays for radio or television programming in return for advertising time."¹⁰ (Emphases added.)

24. The fact that the Respondent owns, controls, and carries out the publication of the magazine does not demonstrate that Most Wanted did not "sponsor" or finance the magazine. Based upon the foregoing facts in and definition of "sponsor," it appears that Most Wanted did in fact sponsor or finance the publication of the magazine. In fact, the Petitioner appears to agree with this point when it argued that "Respondent uses the name of Most Wanted to sell advertising, which is in turn used to publish the magazine, after payment of other expenses, including the Respondent's solicitor's fee, the Most Wanted receives a very small amount of money (Bates No. 0358-0360)." Petitioner's Post-Hearing Brief at page 15. Thus, the Petitioner has failed to sustain its burden as to Counts 7 and 8 to show that the Respondent violated HRS §§ 467B-9(c) and 467B-9(k).

D. Count 9: Petitioner Has Failed to Prove that Respondent Violated HRS § 467B-9(k) by Sending Confirmation Letters to Most Wanted's Prospective Donors.

25. The Petitioner alleges that Most Wanted's written confirmation letters sent to prospective donors (Bates No. 0183) misled donors into believing that their contribution is tax

¹⁰ The American Heritage[®] Dictionary of the English Language, Fourth Edition. Copyright © 2000 by Houghton Mifflin Company.

deductible when such is not the case. 3/31/2008 Letter at pages 4-5; Petitioner's Hearing Brief at pages 9-10; and Petitioner's Post-Hearing Brief at pages 16-17.

26. In support of its position that the Respondent misled Most Wanted's donors in believing that their donations would be tax deductible, the Petitioner has cited to the following facts. Mr. Egge, the current president of Most Wanted, stated under oath that the deductibility of a donation plays a large role in a donor's decision to donate funds to charitable organizations. Interview Egge at Bates Nos. 0340-41 and 0346. Minutes of an October 2007 board meeting of Most Wanted reveal that this issue was expressly discussed and that potential donors should be told that Most Wanted just applied for a tax exemption and donations may not be deducted until the exemption is granted. Bates Nos. 0455. Mr. Egge did not know whether Most Wanted was granted tax exempt status such that donations would be tax deductible. Interview Egge at Bates No. 0337. He stated that the "ball got dropped" in submitting an application for exempt status to the IRS. Interview Egge at Bates Nos. 0337-0338. Most Wanted has not in fact obtained an exemption ruling, giving it tax deductible status, from the IRS under §501(c)(3). (Note: the Presiding Officer takes official notice of the evidence referred to in FOF ¶ 18 and here, per HAR § 5-1-49(i)). There is nothing in either of the Respondent's solicitation scripts that caution a potential donor about the deductibility of the donation. Bates Nos. 0181-82.

27. The Respondent replies that the Petitioner is relying, in part, upon the minutes of an October 2007 Most Wanted board meeting, even though the Respondent has not performed fundraising for Most Wanted since August of 2006. Bates No. 0465. Also, the Respondent argues that there's no evidence presented that anyone was deceived by the statements of the federal tax identification number and the non-profit status of Most Wanted. Respondent's Post-Hearing Brief at page 13.

28. The scripts for the Most Wanted fundraising (Bates Nos. 0181 and 0182) demonstrate that the confirmation letter with Most Wanted's federal identification number (Bates No. 0183) was sent to the donors only after the "business or residential pitch" had been made to the prospective donor and the donation had been confirmed. Once the donor had agreed to give money to Most Wanted, then the confirmation would be mailed to the donor. Bates Nos. 0181-0183. Thus, per the foregoing scripts, the donors would have agreed to give money to Most Wanted after knowing about Most Wanted's non-profit status but before knowing about the federal identification number. Therefore, Petitioner has failed to show that, by including information in the confirmation letter as to the federal identification number, the Respondent misled donors into believing that the donations were tax deductible.

E. Count 10: Petitioner Has Failed to Prove that Respondent Violated HRS § 467B-9(k) by Sending Receipts to Prospective Most Wanted Donors Stating that Most Wanted Was the Publisher of A Magazine.

29. This count concerns the allegation that Respondent sent receipts to donors that contained the deceptive statement that Most Wanted "published" Hawaii's Most Wanted Magazine, when that is not the case, in violation of HRS § 467B-9(k). Interview Castillo-Barkley 1/3/2008 at Bates Nos. 0035-0036 and Bates No. 0183; Petitioner's Hearing Brief at pages 10-11; and Petitioner's Post-Hearing Brief at pages 17.

30. Respondent counters that a review of the February 5, 2006 contract between Most Wanted and Respondent shows that there is a joint publishing agreement contained therein. Bates No. 0544-0548. Charles "Chuck" Cordill, the prior president of Most Wanted, wrote an introduction as the Associate Editor of the Most Wanted Magazine. Bates No. 0057 and Interview Castillo-Barkley 3/3/2008 at Bates No. 0327. Respondent argues that this comports with the understanding of the parties that there was a joint publishing agreement and counteracts

the allegation that the solicitation of funds for the purpose of publishing Most Wanted Magazine was simply a front in order to perpetuate a deception. Respondent's Post-Hearing Brief at page 14.

31. Based upon Most Wanted's involvement as a joint publisher of the magazine per the benefit publication agreement (Bates Nos. 0544 - 0548) and the fact that Most Wanted was a sponsor of the magazine (paragraphs 18 to 24 of the Conclusions of Law, supra), the statement that Most Wanted "published" Hawaii's Most Wanted Magazine was not deceptive. Thus there was no violation by Respondent of HRS § 467B-9(k) and Petitioner has failed to prove Count 10.

F. Counts 11, 12, 13, and 15: Respondent Admitted and Petitioner Has Proven that Respondent Violated HRS §§ 467B-1, 467B-9(i), and 467B-12(a) by Failing to Register Certain Persons as Professional Solicitors; Counts 14, 16, and 17: Petitioner Has Failed to Prove that Respondent Violated HRS §§ 467B-1, 467B-9(i), and 467B-12(a) by Failing to Register Certain Persons as Professional Solicitors.

32. Professional solicitors are required to register with the Department of the Attorney General under HRS § 467B-12(a), which provides that "[e]very . . . professional solicitor, prior to any solicitation, shall register with the department. . ."

33. Section 467B-1, Hawaii Revised Statutes defines "professional solicitor", in relevant part, as meaning:

"any person who, for a financial or other consideration, solicits contributions in this State for a charitable organization, or any person with whom the professional solicitor independently contracts to solicit for contributions. A person who is otherwise a professional fundraising counsel shall be deemed a professional solicitor if the person's compensation is related to the amount of contributions received. The term does not include a bona fide volunteer. The term includes a salaried officer or employee of a charitable organization if the salaried officer or employee of the charitable organization receives percentage compensation . . ."

HRS § 467B-1 (emphases added).

34. HRS § 467B-9(i) provides that “[n]o person shall aid, abet, or otherwise permit any persons to solicit contributions from persons in the State unless the person soliciting contributions has complied with the requirements of this chapter.”

35. Petitioner alleges that seven individuals acted as professional solicitors without the requisite registration with the department, to wit, Jose Maldonado (Count 11), John Murray (Count 12), Jason Sanchez (Count 13), Lianne Orikasa (Count 14), Sophia Rodriques (Count 15), Philip Imperial (Count 16), and Joey Manuel (Count 17). 3/31/2008 Letter at pages 6-7; Petitioner’s Hearing Brief at page 11-12; and Respondent’s Post-Hearing Brief at pages 5, and 8-9.

36. Respondent admitted that it failed to register Jose Maldonado (Count 11), John Murray (Count 12), Jason Sanchez (Count 13), and Sophia Rodriques (Count 15) with the department as required by law; Respondent denied that it failed to register Lianne Orikasa (Count 14), Philip Imperial (Count 16), and Joey Manuel (Count 17) in accordance with law. 6/13/2008 Transcript at pages 9-10; Respondent’s Post-Hearing Brief at pages 6-7 and 14-15; and Petitioner’s Post-Hearing Brief at page 5, 8-9.

37. Although the Respondent is not contesting Counts 11, 12, 13, and 15 and admits that these individuals failed to register as professional solicitors as required by HRS §§ 467B-1, 467B-9(i), and 467B-12(a), the record also demonstrates that there was sufficient evidence to meet the Petitioner’s burden regarding these counts.

38. As to all of the applicable counts mentioned herein, except Count 17 dealing with Joey Manuel, Petitioner alleged that Respondent’s Solicitation Campaign/Event Financial Report (Bates No. 0521B-0521C) revealed that the Respondent had paid commissions to third parties. The Petitioner cited Respondent’s owner’s testimony to the effect that for 2006 and 2007 the

Respondent paid six independent contractors to do phone solicitations and states that these persons were Jose Maldonado, John Murray, Jason Sanchez, Lianne Orikasa, Sophia Rodriques, and Philip Imperial. Interview Castillo-Barkley 3/3/2008 at Bates Nos. 0288-0289 and Bates No. 302; Petitioner's Hearing Brief at pages 11-12. None of these individuals have been registered with the Attorney General's Office. (FOF ¶ 25.) Petitioner asserts that these facts represent six separate violations of HRS §§ 467B-1, 467B-9(i), and 467B-12(a).

39. Based upon the foregoing facts, Petitioner has proven that Respondent failed to register Jose Maldonado (Count 11), John Murray (Count 12), Jason Sanchez (Count 13), and Sophia Rodriques (Count 15) as required by HRS §§ 467B-1, 467B-9(i), and 467B-12(a).

40. As to Lianne Orikasa (Count 14), Philip Imperial (Count 16), and Joey Manuel (Count 17), the Respondent denies the allegations and states that they were employees of the Respondent. Respondent's Post-Hearing Brief at page 7. Also, as to Lianne Orikasa (Count 14), Philip Imperial (Count 16), the Respondent has submitted Form W-2 Wage and Tax Statements for 2007 listing them as Respondent's employees. Respondent's Exhibits "C" and "B", respectively. Additionally, Petitioner has conceded that Lianne Orikasa and Philip Imperial were employees and not independent contractors. Petitioner's Post-Hearing Brief at page 8. Finally, no evidence was presented to confirm that Lianne Orikasa and Philip Imperial solicited charitable contributions for percentage compensation. Based upon the foregoing facts, Petitioner has failed to prove that, as to Lianne Orikasa (Count 14), Philip Imperial (Count 16), Respondent violated HRS §§ 467B-1, 467B-9(i), and 467B-12(a).

41. As to Joey Manuel (Count 17), Respondent's owner identified him as a independent contractor. (Interview Castillo-Barkley 3/3/2008 at Bates Nos. 0288-89 and Bates No. 0302). Also at the hearing Petitioner argued that the use of Joey Manuel as an independent

contractor to solicit funds was a violation of HRS § 467B-9(i). 6/13/2008 Transcript at page 10 and Petitioner's Post-Hearing Brief at page 6.

42. However, Petitioner failed to initially identify Joey Manuel as one of the independent contractors hired to do professional solicitations. 3/31/2008 Letter at page 6; Petitioner's Hearing Brief at pages 11-12. Respondent's owner also testified that Joey Manuel sometimes did courier work and that a courier is not an independent contractor. Interview Castillo-Barkley 3/3/2008 at Bates No. 0289 and Respondent's Post-Hearing Brief at page 15, citing to Bates No. 0289.

43. Based upon the foregoing, there is a question of fact whether Joey Manuel did work as a professional solicitor or merely worked as a courier. Because the Petitioner failed to identify Joey Manuel as one of the independent contractors hired to do solicitations either in its initial letter citing to the solicitor violations (3/31/2008 Letter at page 6) or in the Petitioner's Hearing Brief at pages 11-12, Petitioner's identification of Mr. Manuel on the day of the hearing (6/13/2008 Transcript at page 10) failed to comply with due process¹¹. Respondent did not have sufficient notice that it would need to defend on a charge involving Mr. Manuel. Consequently, Petitioner has failed to prove that the Respondent's use of Joey Manuel as an independent contractor to professionally solicit funds was a violation of HRS § 467B-9(i).

G. Counts 18 - 20: Petitioner Has Proven that Respondent Violated HRS § 467B-2.5(a) Regarding Custody and Control of the Accounts of Most Wanted, Mother Earth, and Hawaii Police.

44. HRS § 467B-2.5(c), HRS provides:

¹¹ In the Petitioner's Post-Hearing Brief at pages 18-19, the Petitioner, citing to the 6/13/2008 Transcript at pages 19-23, argues that Respondent owner's surprise testimony at the hearing that she aided the solicitation of funds by her former husband, Brian Henry, a revoked solicitor, constituted an additional violation of HRS chapter 467B. For the same due process reason, because Respondent did not have sufficient notice that it would need to defend on a charge involving Mr. Henry, the Presiding Officer does not find that Petitioner has proven that charge.

Each contribution in the control or custody of the professional solicitor, in its entirety and within five days of its receipt, shall be deposited in an account at a bank or other federally insured financial institution, which shall be in the name of the charitable organization. The charitable organization shall maintain and administer the account and shall have sole control of all withdrawals. (Emphasis added).

HRS § 467B-2.5(c) (emphasis added).

45. Respondent admitted that it maintained and administered the respective accounts for Most Wanted, Hawaii Police, and Mother Earth and had control of the withdrawals from these accounts in violation of HRS § 467B-2.5(a). 6/13/2008 Transcript at page 10; Respondent's Post-Hearing Brief at pages 5 & 8; and Petitioner's Post-Hearing Brief at page 5.

46. Although the Respondent is not contesting this count and admits it, the record also demonstrates that there was sufficient evidence to meet the Petitioner's burden regarding these allegations. Respondent's contracts with Most Wanted, the Hawaii Police, and the Mother Earth, on file with the Department of the Attorney General (FOF at ¶ 3), all provide that all checks from the account of each of these charities shall contain dual signatures, one signature being that of the Respondent. (For Most Wanted, Bates Nos. 0544-0548, 353-0356; for Mother Earth Bates Nos. 0048-0050; and for Hawaii Police, Bates Nos. 0532-0535). Respondent's owner admitted under oath that she is authorized to handle the account for Most Wanted. Bates No. 0295. As a result, Petitioner has proven that Respondent maintained and administered the respective accounts for Most Wanted, Hawaii Police, and Mother Earth and had control of all withdrawals in violation of HRS § 467B-2.5(a).

H. Counts 21 Through 24: Respondent Violated HRS § 467B-9(n) By Using Persons Disqualified by Means of Conviction.

47. HRS § 467B-9(n), HRS makes the following a prohibited Practice:
(n) No person shall act as a professional solicitor if the person, any officer, any person with a controlling interest therein, or any person the

professional solicitor employs, engages, or procures to solicit for compensation, has been convicted by any federal or state court of any felony, or of any misdemeanor involving dishonesty or arising from the conduct of a solicitation for a charitable organization or purpose.

HRS § 467B-9(n) (emphases added).

48. Petitioner alleges that Respondent used the following persons as employees or independent contractors, despite the fact that they were disqualified by conviction per HRS § 467B-9(n): Korey Fonseca (Count 21), Patrick Flood (Count 22), Curtis Pagaduan (Count 23), and Jose Maldonado (Count 24). 3/31/2008 Letter at page 7 and Petitioner's Hearing Brief at pages 13-14.

49. Respondent admitted that it had violated HRS § 467B-9(n) relative to Korey Fonseca (Count 21) and Patrick Flood (Count 22) but denied any violations as to Curtis Pagaduan (Count 23) and Jose Maldonado (Count 24). 6/13/2008 Transcript at pages 10-11; Respondent's Post-Hearing Brief at pages 8-9 & 15-16; and Petitioner's Post-Hearing Brief at page 5.

50. Although the Respondent is not contesting and admitted to Counts 21 and 22, regarding Korey Fonseca and Patrick Flood, respectively, the record also demonstrates that there was sufficient evidence to meet the Petitioner's burden to show violations as to HRS § 467B-9(n) for Counts 21 and 22.

51. The Respondent employed Kory Fonseca and Patrick Flood. (Interview Castillo-Barkley 3/3/2008 at Bates Nos. 0289-90 and Bates No. 0302).

52. Mr. Fonseca has 4 felony convictions for Burglary, Drug Paraphernalia, Promoting a Dangerous Drug III and Unauthorized Control of a Propelled Vehicle (Bates Nos. 0500-04) and Mr. Flood has one felony conviction and other theft convictions in Washington and Alaska (Bates Nos. 462-63). Affidavit of Joseph Self, attached to the Petitioner's Hearing

Brief at ¶¶ 2-4 (“Affidavit of Joseph Self”). These facts establish that Petitioner has proven that Respondent violated HRS § 467B-9(n) as to Counts 21 and 22.

53. Petitioner also alleges that Respondent used Curtis Pagaduan (Count 23) and Jose Maldonado (Count 24) as employees or professional solicitors, despite the fact that they were disqualified per HRS § 467B-9(n). 3/31/2008 Letter at page 7 and Petitioner’s Hearing Brief at pages 13-14.

54. The evidence shows that Mr. Pagaduan was an employee and solicitor for Respondent and had four felony convictions in Hawaii. Interview Castillo-Barkley 3/3/2008 at Bates No. 0289-90; Bates Nos 0302 and 457-458; and Affidavit of Joseph Self at ¶¶ 2-4.

55. Respondent argues that Curtis Pagaduan was only briefly employed and that he was terminated when his criminal record was discovered. Respondent’s Post-Hearing Brief at page 16, citing to Exhibit “D” and 6/13/2008 Transcript at pages 18-19. However, the hearing transcript shows that Respondent concedes that it hired Mr. Pagaduan as a trainee before doing the background check. 6/13/2008 Transcript at pages 18-19. The foregoing facts show that Petitioner has proven that Respondent employed Curtis Pagaduan, who had four felony convictions, in violation of HRS § 467B-9(n).

56. As to Jose Maldonado (Count 24), Respondent’s owner admitted in sworn testimony that the independent contractor and solicitor, Jose Maldonado, had a prior conviction but she thought it was for some kind of domestic disturbance. Interview Castillo-Barkley 3/3/2008 at Bates No. 0296-0297. The public access rap sheet substantiates that Jose Maldonado had multiple convictions, one of which was a misdemeanor conviction for theft. Bates No. 0312.

57. Respondent counters that Mr. Maldonado provided Respondent with an incorrect social security number, that Respondent only learned about his criminal conviction after it was

brought to Respondent's attention by DAG Jones, and that she didn't knowingly violate the statute and relied upon the wrong information supplied by Mr. Maldonado. Interview Castillo-Barkley 3/3/2008 at Bates Nos. 296-297.

58. Petitioner replies that the prohibited practice cited in HRS § 467B-9(n) does not require that the solicitor's actions be intentional or knowing, as it is a strict liability violation.

59. Additionally, evidence provided by Respondent's owner's own testimony demonstrate that when she typed in Mr. Maldonado's name without the social security number his criminal record appeared, so a false social security number would not have prevented Respondent from obtaining that record. Interview Castillo-Barkley 3/3/2008 at Bates No. 0297. The foregoing facts show the Petitioner has proven that Respondent employed Jose Maldonado, who had a misdemeanor theft conviction¹², in violation of HRS § 467B-9(n).

I. Counts 25-26: Respondent Admitted and Petitioner Has Proven that Respondent Failed to Make Required Disclosures Per HRS §§ 467B-1.5.

60. HRS § 467B-1.5 provides:

A professional solicitor who makes an oral solicitation by telephone, door-to-door, or otherwise shall furnish to each contributor, prior to collecting or attempting to collect any contribution, a written confirmation of the expected contribution, containing the following information clearly and conspicuously:

- (1) The full legal name, address, and telephone number of the individual professional solicitor who directly communicated with the contributor; and
- (2) A disclosure that the contribution is not tax-deductible, if applicable, or, if the professional solicitor maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the professional solicitor maintains is tax-deductible.

HRS § 467B-1.5.

¹² A theft conviction involves a form of stealing, which is a dishonest act. See e.g., HRS § 708-830.

61. Respondent admitted Counts 25 and 26, that it had failed to make the required disclosures in violation of HRS § 467B-1.5. 6/13/2008 Transcript at page 11 and Respondent's Post-Hearing Brief at pages 9-10; and Petitioner's Post-Hearing Brief at page 5.

62. Although the Respondent is not contesting this count and admits that the report was not timely filed in contravention of HRS § 467B-2.5(a), the record also demonstrates that there was sufficient evidence to meet the Petitioner's burden regarding this allegation. The receipt given to donors regarding Most Wanted by Respondent (Bates Nos. 36 and 0183) does not contain the information required by either HRS section 467B-1.5(1) or (2). Thus, Petitioner has proven that Respondent violated HRS §§ 467B-1.5(1) and 467B-1.5(2).

J. Conclusion.

63. Paragraphs 2 through 62 of the Conclusions of Law above demonstrate that the Respondent intentionally or knowingly violated HRS chapter 467B on sixteen separate occasions and that the Petitioner has proven Count Nos. 1, 3, 5, 11, 12, 13, 15, 18, 19, 20, 21, 22, 23, 24, 25, and 26.

64. Respondent's violations aforesaid subject Respondent to administrative enforcement and penalties per HRS § 467B-9.7.

65. Respondent's actions aforesaid also subject Respondent to the enforcement and penalty provisions of HRS § 467B-9.7, whereby the Attorney General may, *inter alia*, refuse to register, revoke, place on probation, or suspend the registration of any professional solicitor.

66. To the extent any of the foregoing Conclusions of Law as stated may also be deemed to be Findings of Fact, they shall also be considered Findings of Fact. In the same way, to the extent any of the foregoing Findings of Fact as stated may be deemed to be Conclusions of Law, they shall also be considered Conclusions of Law.

IV. RECOMMENDED ORDER.

Based upon the facts and analyses set forth above, the Presiding Officer recommends that the Attorney General find and conclude: (a) that the Respondent committed sixteen violations of HRS chapter 467B; and (b) that the Petitioner has failed to sustain its burden as to the ten remaining alleged violations. Based upon the conclusions that Respondent has violated HRS chapter 467B, the Presiding Officer recommends that, pursuant to HRS §§ 467B-9.7, the Attorney General:

(1) Suspend the Respondent's Hawaii registration as a professional solicitor effective immediately for a period of ninety (90) days;

(2) Impose upon the Respondent an administrative penalty in the total amount of TWELVE THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$12,100.00), determined as follows:

(a) For the first offense (Count 1), Respondent shall be fined the sum of \$100;

(b) For the second through the fifth offenses (Counts 3, 5, 11, and 12), Respondent shall be fined the sum of \$500 each, i.e. \$2,000;

(c) For the sixth through the ninth offenses (Counts 13, 15, 18, and 19), Respondent shall be fined the sum of \$750 each, i.e., \$3,000; and

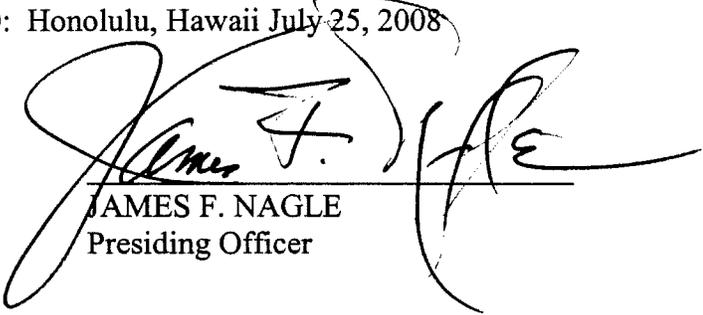
(d) For the tenth through the sixteenth offenses (Counts 20, 21, 22, 23, 24, 25, and 26), Respondent shall be fined the sum of \$1,000 each, i.e., \$7,000;

(3) Respondent's registration shall not be renewed until the fine is paid; and

(4) In accordance with the parties' agreement (6/13/2008 Transcript at pages 25-26), upon receipt of this recommended order, the parties shall have fifteen days to submit to the

Presiding Officer exceptions, agreement, or partial exceptions and agreement and written argument thereon regarding this recommended order.

DATED: Honolulu, Hawaii July 25, 2008



A handwritten signature in black ink, appearing to read "James F. Nagle", is written over a horizontal line. The signature is stylized and cursive.

JAMES F. NAGLE
Presiding Officer

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing PRESIDING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER was served on the following persons by Hand-Delivery on July 25, 2008.

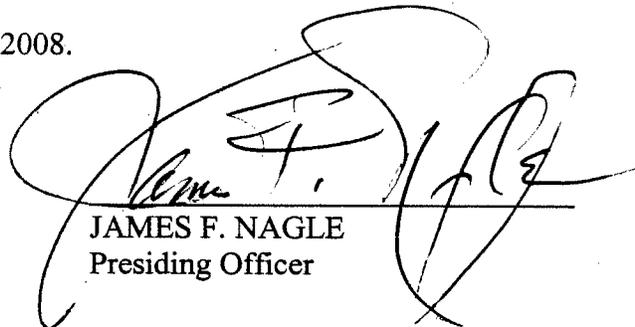
By Hand-Delivery
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By Hand-Delivery
HUGH R. JONES, ESQ.
KRISTIE K. CRUZ CHANG
425 Queen Street
Honolulu, Hawaii 96813

(Attorneys for Petitioner
Mark J. Bennett)

DATED: Honolulu, Hawaii, July 25, 2008.



JAMES F. NAGLE
Presiding Officer