

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:	)	Case No.: SEU 2015-033
	)	
SHEILA TURNER-SOUZA, BURT L. SOUZA,	)	
RICH’S DAILY GRINDS & BAGEL CO., LLC,	)	PRELIMINARY ORDER TO CEASE
f/k/a Rich’s Daily Grinds & Bagel Co., Inc., and	)	AND DESIST AND NOTICE OF RIGHT
RICH’S KONA COFFEE CO., INC. f/k/a	)	TO HEARING
Royale Coffee & Bagel Co., Inc.,	)	
	)	
Respondents.	)	
	)	
_____	)	

PRELIMINARY ORDER TO CEASE AND DESIST AND NOTICE OF  
RIGHT TO REQUEST A HEARING

I. STATEMENT OF APPLICABLE STATUTORY LAW

Pursuant to the authority granted by Chapter 485A of the Hawaii Revised Statutes (“HRS” or “Chapter”), the rules and orders adopted thereunder, and other applicable authority, and based on the preliminary investigation of the activities of Respondents Sheila Turner-Souza (“Turner-Souza”), Burt Souza a/k/a “Coach” Souza (“Souza”), Rich’s Daily Grinds & Bagel Co., LLC f/k/a Rich’s Daily Grinds and Bagel Co., Inc. (“Rich’s”) and Rich’s Kona Coffee Co., Inc. f/k/a Royale Coffee & Bagel Co., Inc. (“Royale”) (collectively “Respondents”), the Commissioner of Securities of the State of Hawaii (“Commissioner”) believes that the above-named Respondents have engaged in, or are about to engage in, an act, practice, or course of business constituting a violation of this Chapter or a rule adopted or order issued under this chapter and/or have materially aided, are materially aiding or are about to materially aid an act, practice, or course of business

constituting a violation of this Chapter or a rule adopted or order issued under this Chapter, and finds as follows:

## II. STATEMENT OF JURISDICTION

The Commissioner has jurisdiction under HRS Chapter 485A as this matter involves the sale of alleged unregistered securities and/or unlawful securities activities in the State of Hawaii, *to wit*, the sale of unregistered securities and the sale of securities through the making of untrue statements of material fact or the failure to state material facts necessary to make the statements made, in light of the circumstances they were made, not misleading.

## III. PRELIMINARY FINDINGS OF FACT

### The Parties

1. Respondent Turner-Souza is a resident of the State of Hawaii.
2. Respondent Souza is a resident of the State of Hawaii. Upon information and belief, Respondent Souza is the husband of Respondent Turner-Souza.
3. Respondent Rich's is a Hawaii limited liability company formed on October 9, 2009.
4. Respondent Royale was a Hawaii limited liability company that was formed on December 20, 2012 and dissolved on May 19, 2014.
5. At all times relevant hereto, Respondent Turner-Souza and Respondent Souza were the managing members and/or directors of Respondent Rich's and Respondent Royale and their respective predecessor entities, and Respondent Rich's and Respondent Royale were the alter egos of Respondent Turner-Souza and Respondent Souza.

### The Prior Action Against Respondent Turner-Souza

6. In 2008, the Commissioner brought an administrative cease and desist proceeding against Respondent Turner-Souza (the “Prior Action”)<sup>1</sup> alleging, *inter alia*, that Respondent Turner-Souza sold unregistered securities, *to wit*, viatical settlements, to investors in the State of Hawaii, that she was not registered as a broker-dealer, salesperson, investment adviser or investment adviser representative at the time of such sales, and that she committed securities fraud in connection with such sales.

7. On February 9, 2010, Respondent Turner-Souza entered into a Consent Order (the “2010 Consent Order”) settling the Prior Action.

8. Pursuant to the 2010 Consent Order, Respondent Turner-Souza was permanently enjoined from selling *any* securities in the State of Hawaii and was permanently barred and enjoined from applying for registration in the State of Hawaii and/or engaging in the business of a broker-dealer, salesperson, agent, investment adviser and/or investment adviser representative.

9. The 2010 Consent Order also imposed an \$80,000.00 administrative penalty on Respondent Turner-Souza, \$72,500.00 of which was suspended by the Commissioner “on the condition that Respondent [Turner-Souza] conform her conduct to the requirements of the laws of the State of Hawaii and comply with all terms of this [2010] Consent Order as stated.”

10. Finally, in the Consent Order, Respondent Turner-Souza agreed that any future violations of the Consent Order would result in a civil penalty against her of up to \$50,000.00 per violation. As is set forth below, Respondent Turner-Souza has breached the terms of the 2010 Consent Order on multiple occasions.

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<sup>1</sup> Case SEU-2004-090.

**Investor A**

**First Investment**

11. At all times relevant hereto, Investor A was a resident of the State of Hawaii.
12. Investor A responded to a Craig's List advertisement seeking a "partner for coffee shop" on April 1, 2011.
13. Investor A was subsequently contacted by Respondent Turner-Souza and Respondent Souza.
14. Respondent Turner-Souza and Respondent Souza represented to Investor A that if he made a \$10,000.00 investment, "For your \$10K, your early monthly investment checks will double your return in 24 mos."
15. On April 11, 2011, Investor A entered into a "Partnership Agreement" pursuant to which Investor A agreed to make a \$10,000.00 investment to become a "private investor" in Respondent Rich's.
16. At the time of his investment, Respondent Rich's operated a coffee shop at Schofield Barracks in Wahiawa, Hawaii, and was allegedly considering locations in Kaneohe, Hawaii and at Hickam Airforce Base, Hawaii.
17. In exchange for his investment, Investor A was to receive a four percent "investment return" from the Schofield Barracks location, and a four percent "investment return" from each of the Kaneohe and Hickam Air Force Base locations once they began operations.
18. The Partnership Agreement gave Investor A the right to terminate the partnership upon thirty days' notice to Respondent Rich's.

19. The Partnership Agreement contained a “guarantee” provision stating that if Investor A terminated the partnership, he would be entitled to a refund of his \$10,000.00 investment and would be entitled to keep any interest or profit payments that he had received prior to termination.

20. On April 11, 2011, Investor A wrote a \$10,000.00 check against his account at Chase Bank to Respondent Rich’s to pay for his investment. This check was deposited into Respondent Rich’s account at American Savings Bank on April 15, 2011.

### **Second Investment**

21. On October 21, 2011, Respondent Souza solicited Investor A to invest in a second coffee shop location at Bellows Air Force Base.

22. On October 27, 2011, Investor A entered into a second Partnership Agreement to make an additional \$10,000.00 investment in Respondent Rich’s.

23. The second Partnership Agreement referred to Investor A’s total \$20,000.00 investment in Respondent Rich’s and stated that he would have a total ten percent ownership interest in the company.

24. The second Partnership Agreement provided that Investor A would receive ten percent monthly profit distributions, commencing ninety days after the second Partnership Agreement was executed, or by the end of January 2012.

25. The second Partnership Agreement permitted any partner to terminate the partnership upon written request.

26. Unlike the first Partnership Agreement, the second Partnership Agreement did not contain a “guarantee” clause guaranteeing that Investor A’s investment would be refunded upon termination.

27. The second Partnership Agreement also contained an integration clause stating that “The terms and conditions set forth herein constitute the entire agreement between the parties.”

28. Upon information and belief, one of the purposes of the second Partnership Agreement was to deprive Investor A of the benefits of the guarantee he enjoyed under the first Partnership Agreement.

29. On October 28, 2011, Investor A wrote a \$10,000.00 check against his account at Chase Bank to Respondent Rich’s to pay for his second investment. The memo line on this check stated “Investment/Bellows.” This check was deposited into Respondent Rich’s account at American Savings Bank on October 28, 2011.

30. Pursuant to both the first and second Partnership Agreements, Respondent Turner-Souza and Respondent Souza were required to provide Investor A with monthly reports regarding the operations of Respondent Rich’s. However, these reports were always late, and when Investor A would ask about the reports, he was given a series of excuses, usually relating to Respondent Turner-Souza’s allegedly poor health.

31. In or about July 2012, Investor A decided to terminate his investment in Respondent Rich’s.

32. Investor A only received approximately \$2,000.00 back from his total \$20,000.00 investment, including two payments of \$500.00 each that were received on August 19, 2013 and November 12, 2013.

33. Investor A has therefore realized a loss of approximately \$18,000.00 in connection with his investments.

### **Investor B**

34. At all times relevant hereto, Investor B was a resident of the State of Hawaii.

35. In May 2011, Investor B responded to a Craig's List advertisement seeking investors in a coffee shop located at Schofield Barracks.

36. After Investor B responded to the advertisement, he was contacted by Respondent Turner-Souza.

37. On or about May 13, 2011, Investor B entered into a "Partnership Agreement" indicating that in exchange for a \$30,000.00 investment, Investor B acquired a twenty percent interest in Respondent Rich's and would be entitled to twenty percent of the profits from Respondent Rich's existing Schofield Barracks location and proposed new locations at NEX-PH, Wheeler AFB and Pearl Harbor.

38. The May 13, 2011 Partnership Agreement indicated that Respondent Rich's was obligated to "maintain adequate accounting records on a cash basis of accounting," and that it had retained the services of a CPA.

39. Investor B was supposed to receive monthly profit distributions from Respondent Rich's. On September 15, 2011, Investor B received one check for \$562.50. On October 17, 2011, Investor B received a check for \$506.30. In 2012, Investor B received profit distribution

checks from Respondent Rich's, but these checks were sporadic and very small. Respondent Turner-Souza made numerous excuses for why Investor B's profit distributions were not received on a timely basis.

40. In July 2012, Investor B asked that his investment in Respondent Rich's be converted into a loan, as Respondent Turner-Souza represented he would be able to do.

41. On July 27, 2012, Investor B entered into a "Dissolution of Partnership Agreement" prepared by Respondent Turner-Souza. This document acknowledged that as of the date of execution, Investor B had received profit payments of \$2,630.34.

42. The "Dissolution of Partnership Agreement" indicated that Respondent Rich's would repay the balance of Investor B's \$30,000.00 investment in monthly repayments to Investor B in an unspecified amount. The agreement stated that these repayments would begin on September 15, 2012.

43. Investor B received a \$1,000.00 payment on September 30, 2013.

44. Since September 30, 2013, Investor B has not received any payments from Respondent Rich's.

45. Investor B has therefore realized a \$26,369.66 loss in connection with his \$30,000.00 investment.

### **Investor C**

46. At all times relevant hereto, Investor C was a resident of the State of Hawaii.

47. In January 2013, Investor C responded to a Craig's List advertisement seeking investors in a coffee shop to be operated by Respondent Royale.

48. At the time, Respondent Turner-Souza and Respondent Souza were advertising two different investment options, one for a \$10,000.00 investment and one for a \$25,000.00 investment. The \$10,000.00 investment option was for a five percent interest in Respondent Royale.

49. In an email to Investor C dated January 8, 2013, Respondent Souza represented that Respondent Royale was seeking funding to acquire three coffee shops in Pearl Harbor in locations previously operated by Seattle's Best Coffee, LLC. The first location was in the main mall at the NEX-PH, and was supposed to open on January 14, 2013. The second and third locations were supposed to be located elsewhere within Pearl Harbor and were supposed to open on January 21, 2013.

50. In another email to Investor C, Respondent Souza represented that based upon a \$10,000.00 investment, Investor C's monthly profit distribution would "average out between \$1,000-\$1,350 according to the verified figures from NEX," which works out to between twenty and sixty-two percent per year.

51. Respondent Souza also represented to Investor C that "Your first check will begin Feb. 21, and consecutively thereafter," and that "Our CPA [will] provide [you with] monthly P&L's . . . ."

52. Investor C met with Respondent Turner-Souza and Respondent Souza on January 9, 2013.

53. Based upon Respondent Turner-Souza and Respondent Souza's representations, and acting upon Respondent Turner-Souza and Respondent Souza's instructions, Investor C purchased a \$10,000.00 cashier's check made payable to Respondent Royale and gave the check

to Respondent Turner-Souza and Respondent Souza to become an investor in Respondent Royale.

54. On January 14, 2013, Investor C entered into a “Partnership Agreement” to acquire a five percent interest in Respondent Royale.

55. On January 25, 2013, a friend of Investor C was walking past the location of the proposed coffee shop in the main mall at NEX-PH and noticed a sign stating that “Green Beans Coffee” would be opening there soon.

56. When Investor C asked Respondent Turner-Souza and Respondent Souza about this, Respondents informed him that the NEX-PH had leased the space to a mainland competitor.

57. At Respondent Turner-Souza’s and Respondent Souza’s urging, Investor C agreed to permit his investment to be used by Respondent Royale to open a coffee kiosk at the Holomoku Mini Mart at NEX-PH, instead of the original main mall location.

58. On January 31, 2013, Respondent Souza sent Investor C an email assuring him that “your investment is guaranteed return.”

59. Investor C began to complain about delays in opening the kiosk at the Holomoku Mini Mart at NEX-PH.

60. On April 2, 2013, Respondent Turner-Souza and Respondent Souza sent Investor C a “Revised Partnership Agreement” for Respondent Royale with an effective date as of April 15, 2013, indicating that instead of operating a coffee shop in the main mall at NEX-PH, Respondent Royale would be operating a kiosk at the Holomoku Mini Mart at NEX-PH.

61. The Revised Partnership Agreement stated that Investor C was to be “maintained as a silent partner” in Respondent Royale.

62. The Revised Partnership Agreement also stated that Investor C could terminate the partnership on thirty days' notice to Respondent Royale.

63. On April 19, 2013, Investor C decided to terminate his investment in Respondent Royale and demanded the return of his \$10,000.00 investment by May 30, 2013.

64. To date, Investor C has received a single \$3,000.00 payment from Respondent Turner-Souza and Respondent Souza, which unbeknownst to Investor C, was funded with an investment from Investor D.

65. Respondent Turner-Souza and Respondent Souza provided Investor C with a series of post-dated \$500.00 checks, but the first of these checks bounced and Investor C did not attempt to deposit any of the remaining checks.

66. Investor C has therefore realized a \$7,000.00 loss on his \$10,000.00 investment.

### **Investor D**

#### **First Investment**

67. At all times relevant hereto, Investor D was a resident of the State of Hawaii.

68. On or about July 29, 2013, Investor D responded to a Craig's List advertisement placed by Respondent Turner-Souza and Respondent Souza entitled "Partner/Private Investor -- \$25 (K-NEX-PH)." This advertisement related to an investment in a coffee kiosk operated by Respondent Royale located at the Holomoku Mart, at the Navy Exchange, at Pearl Harbor ("NEX-PH").

69. On August 3, 2013, Investor D received an email from Respondent Souza. In his email, Respondent Souza stated that Respondent Turner-Souza and Respondent Souza operated a very successful coffee shop at Schofield Barracks, and that they had recently taken over a

location at the NEX-PH from Seattle's Best Coffee, LLC. Respondent Souza suggested a meeting between and among Respondent Turner-Souza and Respondent Souza and Investor D at the NEX-PH.

70. Investor D met with Respondent Turner-Souza and Respondent Souza at the NEX-PH later that day. During the meeting, Respondent Turner-Souza and Respondent Souza provided Investor D with a "Royale Coffee & Bagel Co. Strategic Business Plan" describing their proposed investment. The business plan contained pro-forma projections for the NEX-PH coffee kiosk, which far exceeded the actual performance of the Schofield Barracks coffee shop already operated by Respondent Turner-Souza and Respondent Souza. In addition, the business plan touted Respondent Turner-Souza as a "hard working professional" with ten years of experience in the coffee business, and attached a copy of Respondent Turner-Souza's and Respondent Souza's personal financial statements as of 2013. The business plan also advertised that Royale had retained the services of a CPA.

71. Investor D decided to invest in the NEX-PH coffee kiosk based upon Respondent Turner-Souza's and Respondent Souza's representations and the business plan.

72. On August 5, 2013, Investor D entered into a "Business Partnership Agreement" with Respondent Royale, in which he became a "silent partner" in Respondent Royale with a ten percent ownership interest, in exchange for \$25,000.00. The Business Partnership Agreement provided that it was terminable by Investor D on thirty days' notice to Respondent Royale, and that if Respondent Royale was unable to pay back Investor D's \$25,000.00 upon termination, the investment would be converted into a fourteen percent term loan. The Business Partnership

Agreement required Respondent Royale to “maintain adequate accounting records on a daily basis” and again stated that Respondent Royale had retained a CPA.

73. On August 5, 2013, Investor D wrote Check No. 1035 in the amount of \$25,000.00 to Respondent Rich’s against his account at USAA Federal Savings Bank. The memo in the memo line of this check read “investment.”

74. On August 6, 2013, Respondent Turner-Souza and Respondent Souza deposited Investor D’s check into an account in Respondent Rich’s name at American Savings Bank. Respondent Turner-Souza and Respondent Souza were the authorized signatories on Respondent Rich’s account. Immediately prior to this deposit, the balance in the account was \$28.24. Immediately following the deposit, the balance in this account was \$25,028.24.

75. By August 30, 2013, the balance in the account was \$4,332.92. In addition to business expenses, Respondent Turner-Souza and Respondent Souza used a substantial portion of Investor D’s \$25,000.00 investment to pay personal expenses, including gardening expenses, home association dues, personal loan payments, car repair bills and dental bills.

76. A portion of Investor D’s \$25,000.00 investment was also used to make payments to other investors. On August 19, 2013, Respondent Turner-Souza and Respondent Souza used a portion of Investor D’s funds to make a \$500.00 payment to Investor A, and on August 19, 2013, they used a portion of Investor D’s funds to make a \$3,000.00 payment to Investor C.

### **Second Investment**

77. Investor D made a second investment in Respondent Royale in September 2013 in the amount of \$40,000.00. This investment was supposed to be used to invest in a food truck business to be operated by Respondent Royale on Kapiolani Boulevard in Honolulu.

78. On September 30, 2013, Investor D entered into a second “Business Partnership Agreement” with Respondent Royale. This agreement was substantially similar to the first “Business Partnership Agreement,” but indicated that Investor D had an increased twenty percent ownership interest in Respondent Royale and that he would be entitled to a twenty percent (20%) profit participation, ten percent from the NEX-PH location and ten percent from the Kapiolani location. Like the prior agreement, the second Business Partnership Agreement specified that Investor D was to be a “silent partner.”

79. The second Business Partnership Agreement also stated that it was terminable by Investor D upon thirty days’ notice to Respondent Royale, and that if Respondent Royale was unable to repay Investor D’s investment in full upon termination, the investment would be converted into a fourteen percent term loan.

80. The second Business Partnership Agreement also required Respondent Royale to “maintain adequate accounting records on a daily basis” and stated that Respondent Royale had retained a CPA.

81. Investor D paid for this second investment in three tranches. On September 26, 2013, Investor D wired \$10,000.00 from his account at USAA Federal Savings Bank to Respondent Rich’s account at American Savings Bank. On September 30, 2013, Investor D obtained a \$15,000.00 cashier’s check payable to Rich’s against his account at Hawaii USA Federal Credit Union, which was deposited into Respondent Rich’s account at American Savings Bank on the same day. Finally, on September 30, 2013, Investor D wired an additional \$15,000.00 from his account at USAA Federal Savings Bank to Respondent Rich’s account at American Savings Bank.

82. On September 25, 2013, immediately prior to the receipt of Investor D's \$40,000.00 investment, the balance in Respondent Rich's American Savings Bank account was \$37.66. On September 30, 2013, following the receipt of Investor D's \$40,000.00 investment, the closing balance in this account was \$36,220.57.

83. Between September 30, 2013 and November 30, 2013, Respondent Turner-Souza and Respondent Souza spent a substantial portion of the \$40,000.00 received from Investor D on personal expenses, including, *inter alia*, restaurants, mortgage payments, phone bills, auto payments, home owner association dues, water bills, electric bills, insurance premiums, dental bills, and veterinary bills.

84. Respondent Turner-Souza and Respondent Souza also used a portion of Investor D's \$40,000.00 investment to pay back other investors. On October 10, 2013, they used a portion of Investor D's \$40,000.00 investment to make a \$1,000.00 payment to Investor B, and on November 12, 2013, they used a portion of Investor D's \$40,000.00 investment to make a \$500.00 payment to Investor A.

85. Respondent Turner-Souza and Respondent Souza depleted Investor D's entire \$40,000.00 investment by the end of November 2013. On October 31, 2013 – one month after Investor D's \$40,000.00 investment – the balance in Respondent Rich's bank account was \$4,969.31. By November 30, 2013, the ending bank account balance was \$503.86.

86. In early November 2013, Respondent Turner-Souza and Respondent Souza advised Investor D that Respondent Royale had decided not to go forward with the food truck project at the Kapiolani location and suggested switching Investor D's \$40,000.00 investment to the Schofield Barracks coffee shop. (By this time, the bulk of Investor D's \$40,000.00

investment had already been spent, so there was really nothing left to transfer to the Schofield Barracks location). Investor D agreed to this proposal and requested that Respondent Turner-Souza and Respondent Souza provide him with a revised Business Partnership Agreement reflecting the changed purpose of his investment.

87. On January 2, 2014, Investor D was walking past the coffee kiosk at NEX-PH and saw that it was shut down. When he asked Respondent Souza for an explanation, Respondent Souza informed Investor D that Respondent Royale's lease had been terminated by its landlord.

88. Pursuant to the first and second Business Partnership Agreements, Respondent Turner-Souza and Respondent Souza were required to provide Investor D with monthly reports regarding the operations of Respondent Royale. However, these reports were always late, and when Investor D would ask about the reports, he was given a series of excuses.

89. In January 2014, after he still had not received a financial report for November 2013, Investor D asked to communicate directly with Respondent Royale's accountant. On January 9, 2014, Respondent Turner-Souza finally sent Investor D the November 2013 monthly report. Respondent Turner-Souza also sent Investor D a memo advising him – for the first time – that even though Respondent Royale had a CPA, the CPA was not involved with preparing financial statements and that they were prepared by Respondent Turner-Souza. Respondent Turner-Souza also told Investor D that “Our CPA and attorney will not advise you or discuss the corporation, because only the President or CEO acts on its behalf. They will refer you back to the President.” Respondent Turner-Souza also threatened Investor D that it might be a breach of a non-disclosure agreement if he were to discuss Respondent Royale's business with any third parties, including Respondent Royale's accountant. In her

memo to Investor D, Respondent Turner-Souza nonetheless sought to reassure Investor D by stating that she and Respondent Souza “are recognized in business, with high business ethics and standards.”

90. On March 3, 2014, Investor D officially gave Respondent Royale a thirty-day notice of his intention to terminate his Business Partnership Agreements with Respondent Royale, as he was entitled to do under those agreements, and requested the return of his investments.

91. On March 5, 2014, Respondent Turner-Souza rejected this request, stating that because Respondent Royale’s coffee kiosk at NEX-PH had closed down, it had no further obligation to Investor D and that his investments were simply “lost.”

92. Investor D received only two payments in connection with his investments: a payment of \$34.94 from Respondent Royale on January 7, 2014, and a payment of \$65.00 from Respondent Rich’s on March 22, 2014.

93. Investor D has therefore realized a loss of \$64,900.09 in connection with his \$65,000.00 investment.

#### Partnership Interests are Securities

94. The partnership interests in Respondent Rich’s offered and sold to Investor A and Investor B by Respondent Turner-Souza and Respondent Souza are investment contracts under HRS § 485A-102 because:

- (a) Investor A and Investor B furnished value, other than services, to Respondent Rich’s;

- (b) Investor A's and Investor B's investments were subject to the risks of Respondent Rich's enterprise;
- (c) Investor A's and Investor B's furnishing of value to Respondent Rich's was induced by representations by Respondent Turner-Souza and Respondent Souza which gave rise to a reasonable understanding that a valuable benefit would accrue to Investor A and Investor B as a result of the operation of Respondent Rich's enterprise; and
- (d) Investor A and Investor B did not receive the right to exercise practical and actual control over the management of Respondent Rich's enterprise in a meaningful way.

95. The partnership interests in Respondent Royale offered and sold to Investor C and Investor D by Respondent Turner-Souza and Respondent Souza are investment contracts under HRS § 485A-102 because:

- (a) Investor C and Investor D furnished value, other than services, to Respondent Royale;
- (b) Investor C's and Investor D's investments were subject to the risks of Respondent Royale's enterprise;
- (c) Investor C's and Investor D's furnishing of value to Respondent Royale was induced by representations by Respondent Turner-Souza and Respondent Souza which gave rise to a reasonable understanding that a valuable benefit would accrue to Investor C and Investor D as a result of the operation of Respondent Royale's enterprise; and

- (d) Investor C and Investor D did not receive the right to exercise practical and actual control over the management of Respondent Royale's enterprise in a meaningful way.

96. The partnership interests in Respondent Royale and Respondent Rich's offered and sold by Respondent Turner-Souza and Respondent Souza are therefore "Securities" under HRS 485A-102.

Registration of Securities

97. The Securities were not registered with the Commissioner under HRS § 485A-301.

Misrepresentations and/or Omissions by Respondents

98. Respondent Turner-Souza and Respondent Souza made untrue statements of material fact and/or failed to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, as follows:

- (a) Respondent Turner-Souza and Respondent Souza failed to disclose to Investors A, B, C or D that Respondent Turner-Souza had been barred from selling securities in the State of Hawaii;
- (b) Respondent Turner-Souza and Respondent Souza touted their business acumen and their alleged success as businessmen and provided Investor D with a business plan containing personal financial statements, but failed to disclose to Investors A, B, C or D that Respondent Turner-Souza was about to file, or had recently filed, for personal bankruptcy;
- (c) Respondent Turner-Souza and Respondent Souza falsely stated to Investor D that his investment would be used for the corporate purposes of

Respondent Royale, and that his investment would be transferred to Respondent Rich's, when in fact, Investor D's funds were used to pay personal expenses of Respondent Turner-Souza and Respondent Souza and to make payments to Investors A, B and C;

- (d) Respondent Turner-Souza and Respondent Souza represented to Investor D and Investor C that Respondent Royale would "maintain adequate accounting records on a daily basis" and that Respondent Royale had retained a CPA, and Respondent Souza represented to Investor C that "we have a CPA to guarantee our work" and that Respondent Royale's CPA would provide Investor C with "monthly P&L's", but failed to disclose that Respondent Royale's CPA was not involved in the preparation of the monthly profit and loss statements, and that such statements were prepared by Respondent Turner-Souza herself; and
- (e) Respondent Turner-Souza and Respondent Souza sold investments in Respondent Rich's to Investor A and Investor B without disclosing that Respondent Rich's had a large unpaid tax liability.

99. Respondent Turner-Souza and Respondent Souza employed devices, schemes and/or artifices to defraud in connection with the sale of securities, and engaged in acts, practices or courses of conduct that operate or would operate as a fraud or deceit upon persons, in connection with the offer, sale or purchase of a security, by soliciting an investment in Respondent Royale from Investor D without the intention of using the funds obtained from

Investor D for the purpose of funding Respondent Royale's operations, and by using such funds for personal expenses and to pay Investors A, B and C.

IV. PRELIMINARY CONCLUSIONS OF LAW

100. The facts and allegations in paragraphs 1 through 99, inclusive, are realleged and incorporated herein as if set forth verbatim.

101. Respondent Turner-Souza and Respondent Souza sold partnership interests in the State of Hawaii on six occasions (twice to Investor A, once to Investor B, once to Investor C and twice to Investor D).

102. The partnership interests in Respondent Royale and Respondent Rich's sold by Respondent Turner-Souza and Respondent Souza are securities under HRS § 485A-102 ("Securities").

103. Each separate sale of Securities constituted a violation of Section 2 of the 2010 Consent Order, which barred Respondent Turner-Souza from selling any securities within the State of Hawaii.

104. The Securities were not registered with the Commissioner as required by HRS § 485A-301.

105. Respondents each committed violations of HRS Chapter 485A, as follows:

- (a) Violations of HRS § 485A-301 for not registering the Securities with the Commissioner;
- (b) Violations of HRS § 485A-501(a)(1) for employing devices, schemes, and/or artifices to defraud, in connection with the offer, sale, or purchase of a security;

- (c) Violations of HRS § 485A-501(a)(2) for making untrue statements of material fact in connection with the offer, sale, or purchase of a security and/or failing to disclose or omitting material facts in connection with the offer, sale, or purchase of a security necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (d) Violations of HRS § 485A-501(a)(3) for engaging in acts, practices or courses of business that operate or would operate as a fraud or deceit upon persons, in connection with the offer, sale, or purchase of a security.

V PRELIMINARY ORDER TO CEASE AND DESIST

NOW THEREFORE, pursuant to HRS § 485A-604, because of the aforementioned findings and/or because it appears that Respondent Turner-Souza has violated the 2010 Consent Order and that Respondents may engage in further acts or practices in violation of HRS Chapter 485A, and/or because it is found that this action is necessary and in the public interest for the protection of investors, IT IS HEREBY ORDERED that:

- (1) Respondents shall CEASE AND DESIST from making any offer to sell, solicitation to purchase, sale of and/or transfer of the above-described securities, or any other security, within, to or from the State of Hawaii;
- (2) All contracts regarding the purchase or sale of the aforesaid securities by Respondents to any investor are hereby RESCINDED effective immediately;
- (3) Respondents shall make RESTITUTION to the investors as follows:

- (a) to Investor A, the sum of EIGHTEEN THOUSAND AND NO/100 DOLLARS (\$18,000.00),
- (b) to Investor B, the sum of TWENTY-SIX THOUSAND THREE HUNDRED SIXTY- NINE AND 66/100 DOLLARS (\$26,369.66),
- (c) to Investor C, the sum of SEVEN THOUSAND AND NO/100 DOLLARS (\$7,000.00),
- (d) to Investor D, the sum of SIXTY-FOUR THOUSAND NINE HUNDRED AND 09/100 DOLLARS (\$64,900.09),

plus interest at the rate of ten percent ten percent per annum from the date of each investment to the date of the restitution payment until fully paid. Respondents shall pay the restitution within thirty days of the date of the Commissioner’s Final Order (the “Final Order”). Proof of said payments to the investors shall be provided to the Securities Enforcement Branch within thirty days of the date of the Final Order;

(4) Respondents shall DISGORGE any and all profits made by Respondents from, related to, or arising from the use of the investor’s monies;

(5) The Respondents shall jointly and severally pay the State of Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division, a CIVIL PENALTY in the sum of THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) under HRS § 485A-604 plus interest on the unpaid balance thereof at the rate of ten percent per annum from the date of the Final Order until finally paid. Payment of this civil penalty shall be made by cashier’s check, bank draft, money order or certified check made payable to the “Department of Commerce and Consumer Affairs, Compliance Resolution Fund” and delivered to the Securities

Enforcement Branch at 335 Merchant Street, Suite 205, Honolulu, Hawaii 96813 within thirty days of the date of the Final Order;

(6) Respondent Turner-Souza shall pay the State of Hawaii an additional CIVIL PENALTY in the amount of SEVENTY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$72,500.00) under Section 5 of the 2010 Consent Order, representing the suspended portion of the CIVIL PENALTY assessed in connection with the Prior Action, plus interest on the unpaid balance thereof at the rate of ten percent per annum from the date of the Final Order until finally paid. Payment of this civil penalty shall be made by cashier's check, bank draft, money order, or certified check made payable to the "Department of Commerce and Consumer Affairs, Compliance Resolution Fund" and delivered to the Securities Enforcement Branch at 335 Merchant Street, Suite 205, Honolulu, Hawaii 96813 within thirty days of the date of the Final Order;

(7) Respondents are PERMANENTLY BARRED from acting as an issuer, an agent, a broker-dealer, investment adviser, and/or investment adviser representative from the date of the Final Order and from applying for registration in the State of Hawaii as an issuer, an agent, broker-dealer, investment adviser and/or investment adviser representative from the date of the Final Order;

(8) Each Respondent shall be subject to a civil penalty of not more than FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) per violation for each and every violation of this preliminary order ("Order") or any order of the Commissioner, pursuant to HRS § 485A-604, plus ten percent interest from the date of any such future violation of HRS Chapter 485A; and

(9) The imposition of this Order shall not preclude or prevent in any way the imposition of further sanctions or other actions against Respondents or any other party for violations of the Acts.

NOTICE OF RIGHT TO HEARING

YOU ARE HEREBY NOTIFIED that pursuant to HRS § 485A-604, as applicable, you may request a hearing on this matter within thirty days of the date of this Order. Your request must be in writing and addressed to: Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawaii, 335 Merchant Street, Suite 100, Honolulu, Hawaii 96813.

A copy of your written request for a hearing must be simultaneously served upon the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii, 335 Merchant Street, Suite 205, Honolulu, Hawaii 96813. If a hearing is requested, it shall be scheduled within fifteen business days after your written request has been received by the Office of Administrative Hearings unless extended by the Commissioner for good cause.

If no written request for hearing is received by the Office of Administrative Hearings and none is ordered by the Commissioner, this Order shall become the Final Order of the Commissioner by operation of law pursuant to HRS § 485A-604(b).

You are hereby further notified that pursuant to Section 16-201-23 of the Hawaii Administrative Rules for Administrative Practice and Procedure, you may within ten days after receiving a Final Order move the Commissioner to reconsider the Final Order. Your motion shall be filed with the Commissioner and shall state specifically what points of law or facts the

Commissioner has overlooked or misunderstood together with brief arguments on the points raised.

Additionally, pursuant to HRS § 485A-609, you may file an appeal with the Circuit Court of the First Circuit of the State of Hawaii in the manner provided in Chapter 91, HRS.

You have the right to retain legal counsel, at your own expense, for all stages of these proceedings.

**NOV 25 2019**

DATED: Honolulu, Hawaii, \_\_\_\_\_



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TY Y. NOHARA  
Commissioner of Securities  
Department of Commerce and Consumer Affairs  
STATE OF HAWAII