

STATE OF HAWAI'I

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:

FERDINAND C. JACOB;
GINA T. CARLOS; and
P.B.C. PRODUCTIONS, LLC,

Respondents.

) Case Nos. SEU-2012-009, SEU-2013-016,
) SEU-2014-014, SEU-2014-015, and
) SEU-2014-016

) PRELIMINARY ORDER TO CEASE AND
) DESIST AND NOTICE OF RIGHT TO
) HEARING

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

I. STATEMENT OF APPLICABLE STATUTORY LAW

Pursuant to the authority granted by Hawaii Revised Statutes (“**HRS**”) Chapter 485A, the rules and orders adopted thereunder, and other applicable authority, the Commissioner of Securities of the State of Hawai‘i (“**Commissioner**”), by and through the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawai‘i (“**SEB**”) has conducted a preliminary investigation into the activities of the above-named respondents to determine if they have engaged in or are about to engage in any act or practice constituting a violation of HRS Chapter 485A or any rule or order adopted thereunder.

Based on the information revealed during the investigation, the Commissioner has reasonable cause to believe that the above-named respondents have violated HRS Chapter 485A as follows:

II. STATEMENT OF JURISDICTION

The Commissioner has jurisdiction over this matter because it involves securities as defined in HRS § 485A-102.

III. PRELIMINARY FINDINGS OF FACT

1. Respondent Ferdinand C. Jacobe (“**Mr. Jacobe**”) is an individual who was a resident of the state of Hawai‘i at all relevant times herein.
2. Respondent Gina T. Carlos (“**Ms. Carlos**”) is an individual who was a resident of the state of Hawai‘i at all relevant times herein.
3. Respondent P.B.C. Productions, LLC (“**PBC Productions**”) was registered in the state of Hawai‘i as a limited liability company on October 1, 2010, with Mr. Jacobe as its manager.
4. Mr. Jacobe and PBC Productions (collectively, “**PBC Parties**”) are involved in the music and entertainment business in Hawai‘i, specializing in promoting live music concerts.
5. For over 20 years, Mr. Jacobe promoted himself as a successful concert promoter, an expert in the entertainment business, “the Filipino Tom Moffatt,” a deejay known as “DJ Fresh,” the voice of Filipino radio station KNDI, and as a networker with connections to famous Filipino entertainers.
6. Between January 2012 and June 2013, the PBC Parties promoted three concerts in Hawai‘i:
 - a. The Star Magic Tour Concert (“**First Concert**”), which took place on March 30, 2012, at the Waikiki Shell;
 - b. The Charice Pempengco Infinity Tour Concert (“**Second Concert**”), which took place on November 3, 2012, at the Neal S. Blaisdell Center; and
 - c. The Showtime Tour Concert (“**Third Concert**”), which took place on June 29, 2013, at the Neal S. Blaisdell Center.

7. To fund these concerts, Mr. Jacobe solicited more than 30 Hawai'i investors among the Hawai'i Filipino community directly or through Ms. Carlos whom Mr. Jacobe authorized to recruit potential investors as an "agent of PBC" in exchange for a 5% to 15% commission. Ms. Carlos was also an investor in Mr. Jacobe's concerts.

First Investment Program

8. One of the investors who Mr. Jacobe solicited directly was Investor One, an individual who was a resident of the state of Hawai'i at all relevant times herein.

9. In or around February 2012, Mr. Jacobe represented to Investor One that, if Investor One furnished funds to Mr. Jacobe to assist with paying for the upfront expenses of the First Concert, the PBC Parties would return Investor One's funds plus a 25% return within 14 business days of the concert date, guaranteed ("**First Investment Program**").

10. Between February 6, 2012 and February 25, 2012, in reliance on Mr. Jacobe's representations, Investor One furnished a total of \$50,000.00 for investment in the First Investment Program, believing that he would receive his principal and \$12,500.00 return within 14 business days of the First Concert.

11. On February 26, 2012, Mr. Jacobe executed a document titled "Investment Agreement" memorializing the terms of the parties' agreement.

12. Another individual ("**Investor Two**"), a resident of the state of Hawai'i at all relevant times herein, was solicited to invest in the First Investment Program by Ms. Carlos, who had previously assisted him with purchasing a home.

13. Specifically, in or around March 2012, Ms. Carlos represented to Investor Two that, if he furnished funds to Mr. Jacobe to assist with paying for the upfront costs of the First Concert,

the PBC Parties would return any invested funds plus a 10% return within 14 business days of the concert date.

14. At no point did any respondent disclose to Investor Two that Ms. Carlos was an “agent of PBC” and would receive a 5% to 15% commission on all funds she assisted with collecting for investment in the First Investment Program.

15. On March 28, 2012, two days before the First Concert took place, Investor Two met with Ms. Carlos and Mr. Jacobe at Ms. Carlos’ residence and furnished \$20,000.00 to Mr. Jacobe for investment in the First Investment Program in reliance on Ms. Carlos’ and Mr. Jacobe’s representations that he would receive \$22,000.00 within 14 business days of the concert date. Mr. Jacobe executed a document titled “Investment Agreement” memorializing the terms of Investor Two’s and the PBC Parties’ agreement.

16. Also around this time, Mr. Jacobe and Ms. Carlos collected another \$179,000.00 from at least 27 additional investors for investment in the First Investment Program. Like Investors One and Two, these additional investors received a document titled “Investment Agreement” and were guaranteed a certain percentage of returns on their investment within 14 business days of the concert date.

17. The PBC Parties received a total of \$249,000.00 from investors for investment in the First Investment Program. Therefore, in order to repay all First Investment Program investors’ principal investments alone, regardless of any promised return, the PBC Parties’ earnings from the First Concert had to total at least \$249,000.00.

18. On March 30, 2012, the First Concert took place as scheduled and yielded only \$129,185.00 in revenue. After costs were deducted, the PBC Parties’ earnings totaled just

\$61,075.12, which was \$187,924.88 short of the amount needed to repay the First Investment Program investors' principal investments.

19. The PBC Parties paid out \$103,400.00 in April 2012, paying some investors in full, including their promised returns, and some only in part, if at all. For instance, on April 6, 2012, the PBC Parties returned to Investor Two all \$22,000.00 of his promised funds, while on April 23, 2012, the PBC Parties returned only \$12,500.00 (of the \$62,500.00 owed) to Investor One.

20. Mr. Jacobe admitted to Investor One that the First Concert was unsuccessful in raising the profit needed to repay investors of the First Investment Program and that a future concert's proceeds were needed to repay Investor One.

Second Investment Program

21. In April 2012, Mr. Jacobe and Ms. Carlos solicited investors for the Second Concert including, again, Investor Two.

22. On April 30, 2012, Investor Two met with Mr. Jacobe at Ms. Carlos' residence, where Mr. Jacobe pitched the details of the Second Concert.

23. Mr. Jacobe assured Investor Two that this Second Investment Program would be as successful as the First Investment Program had been and then represented that, if Investor Two furnished funds to Mr. Jacobe to assist with covering the upfront expenses of the Second Concert, Investor Two would receive a 10% return within 14 business days of the concert date, guaranteed ("**Second Investment Program**").

24. At no time did any respondent disclose to Investor Two that the First Investment Program was not, in fact, successful and that the Second Concert's proceeds were needed to repay First Investment Program investors.

25. Between April 30, 2012, and June 20, 2012, in reliance on Mr. Jacobe's representations, Investor Two furnished a total of \$50,000.00 to Mr. Jacobe for investment in the Second Investment Program, expecting a repayment of \$55,000.00 by November 26, 2012.

26. On or about June 19, 2012, Mr. Jacobe executed a document titled "Investment Agreement," memorializing the terms of the parties' agreement, and a confidentiality agreement titled "PBC Production LLC Non-Disclosure Agreement." Ms. Carlos was described in the confidentiality agreement as an "AGENT[] of, P.B.C. Productions LLC, (Co-Discloser)" and signed the agreement as an "AGENT (Co-Discloser)."

27. From April 2012 to November 2012, Mr. Jacobe and Ms. Carlos collected another \$282,000.00 from 8 additional investors for investment in the Second Investment Program and immediately used some of these additional funds to repay investors of past concerts without the 8 additional investors' knowledge or consent.

28. The PBC Parties owed investors \$427,600.00 plus promised returns for the First Concert and Second Concert combined. Thus, the PBC Parties' earnings from the Second Concert had to total at least \$427,600.00 to simply repay the investors' principal investments in the First and Second Investment Programs.

29. On November 3, 2012, the Second Concert took place as scheduled and yielded only \$98,010.00 in revenue. After costs were deducted, the PBC Parties' earnings totaled just \$42,952.32, which was \$384,647.68 short of the amount needed to repay the First and Second Investment Programs' investors. The PBC Parties still did not have sufficient funds to repay First Investment Program investors and now did not have sufficient funds to repay Second Investment Program investors.

30. On November 26, 2012, Investor Two's principal and return were due, but Investor Two did not receive any money from the PBC Parties.

Third Investment Program

31. From about November or December 2012, the PBC Parties began soliciting investors for the Third Concert.

32. One of the investors who the PBC Parties solicited was Investor Three, an individual who was a resident of the state of Hawai'i at all relevant times herein.

33. On or about May 13, 2013, Mr. Jacobe, on behalf of PBC Productions, represented to Investor Three that, if she furnished funds to assist with covering the upfront costs of the Third Concert, the PBC Parties would return her funds plus a 15% to 40% return within a few days of the concert, guaranteed ("**Third Investment Program**").

34. Mr. Jacobe assured Investor Three that the Third Investment Program would be as successful as his First and Second Investment Programs had proven to be. At no time did Mr. Jacobe disclose to Investor Three that the past two investment programs were not, in fact, successful and that he needed the Third Concert's proceeds to repay investors from the two previous concerts.

35. Between about May 13, 2013, and June 24, 2013, in reliance on the PBC Parties' representations, Investor Three furnished a total \$100,000.00 to the PBC Parties for investment in the Third Investment Program.

36. On June 24, 2013, Mr. Jacobe executed a document memorializing the terms of the parties' agreement. This agreement was nearly identical to the agreement that Mr. Jacobe provided to Investors One and Two, except that this version of the agreement provided that the return would be due "in a timely manner . . . before or after the show" and was retitled "Loan

Agreement.” The “Loan Agreement” nevertheless detailed the terms of the PBC Parties’ sale of the investment program to Investor Three.

37. From December 2012 to June 2013, the PBC Parties collected another \$135,000.00 from at least 4 additional individuals for investment in the Third Investment Program.

38. In order to repay the principal investments of the investors of the First, Second, and Third Investment Programs (collectively, the “**Investment Programs**”), regardless of any promised return, the PBC Parties’ earnings from the Third Concert had to total at least \$519,647.68.

39. On June 29, 2013, the Third Concert took place as scheduled and yielded only \$126,318.00 in revenue. After costs were deducted, the PBC Parties’ earnings totaled just \$90,297.17, which was \$429,350.51 short of the amount needed to repay the Investment Programs’ investors.

40. By March 4, 2014, Investor Three still had not received any portion of her investment monies from the PBC Parties and filed a complaint with the SEB.

41. Shortly thereafter, Mr. Jacobe made various representations to Investor Three as to why the PBC Parties could not return her money, claiming, among other things, that he had been in the process of obtaining Investor Three’s funds through “financial institutions,” but could not obtain such funds until Investor Three formally withdrew her complaint from the SEB.

42. In total, the investors of the Investment Programs (collectively, “**Investors**”) furnished value in the amount of \$666,000.00 to Mr. Jacobe, Ms. Carlos, and PBC Productions (collectively, “**Respondents**”) for investment in the Investment Programs, but, to date, the PBC Parties have not repaid a combined total of \$527,600.00 to the Investors, regardless of any promised return.

43. Ms. Carlos, meanwhile, received payments totaling more than \$70,000.00, including \$31,000.00 “[f]or bringing in [an investor] and [Investor Two]” and for “Commission,” as Mr. Jacobe wrote on the checks, between April 2012 and November 2012 alone.

44. All of the capital furnished was at risk of suffering a loss if the PBC Parties’ enterprise failed.

45. None of the Investors were involved in the management of the PBC Parties’ business.

46. The Investment Programs were not properly registered with the State of Hawaii under HRS Chapter 485A

47. Ms. Carlos effected and attempted to effect the sale of the First and Second Investment Programs to some of the Investors on behalf of PBC Productions and was paid or given commission or other remunerations in connection with the sales, as evidenced by Ms. Carlos’ receipt of at least \$31,000.00 in commission. However, Ms. Carlos was not properly registered as an agent with the State of Hawaii under HRS Chapter 485A.

48. As the sole owner and managing member of PBC Productions, Mr. Jacobe occupied a position with PBC Productions with the responsibility and authority to determine and oversee PBC Productions’ business conduct. He signed each investment contract on PBC Productions’ behalf. Mr. Jacobe could have prevented PBC Productions from authorizing the offer and sale of the investment contracts to the Investors, but instead caused PBC Productions to facilitate the offer and sale of the investment contracts directly and/or through the agency of Ms. Carlos for a commission.

49. The Investors were induced to furnish capital into the Investment Programs by Mr. Jacobe's and/or PBC Productions' promises, guarantees, and/or representations that doing so would result in a valuable benefit to them beyond their initial values paid.

50. Specifically, Mr. Jacobe and/or PBC Productions made the following untrue statements of material fact and material omissions to the Investors in connection with the offer and sale of the investment contracts and, as a result of, but not limited to, the following misrepresentations and omissions, induced the Investors into investing with the PBC Parties:

a. The PBC Parties represented to First Investment Program investors, including Investor One, that if they invested in the First Investment Program, the PBC Parties would return any invested funds plus a 10% to 25% return within 14 business days of the First Concert date, guaranteed. To date, more than three years since the First Concert took place, many of the investors, including Investor One, have not received full payment of their investment monies.

b. The PBC Parties represented to Second Investment Program investors, including Investor Two, that if they invested in the Second Investment Program, the PBC Parties would return any invested funds plus interest within 14 business days of the Second Concert date, guaranteed. To date, more than two years since the Second Concert took place, many of the investors, including Investor Two, have not received full or any payment of their investment monies.

c. The PBC Parties represented to Second Investment Program investors, including Investor Two, that the Second Investment Program would be as successful as the First Investment Program had been. This statement was false. The First Investment

Program was not successful in raising the profit needed to repay all First Investment Program investors' principals, let alone any promised return.

d. The PBC Parties represented to Second Investment Program investors that funds furnished for investment in the Second Investment Program would be used to cover the upfront expenses of the Second Concert. However, some of the investors' funds were used by the PBC Parties to repay past investors directly.

e. The PBC Parties represented to Third Investment Program investors, including Investor Three, that if they invested in the Third Investment Program, the PBC Parties would return any invested funds plus interest "in a timely manner," guaranteed. To date, almost two years after the Third Concert took place, most of the investors, including Investor Three, have not received any payment of their investment monies.

f. The PBC Parties represented to Third Investment Program investors, including Investor Three, that the Third Investment Program would be successful, just as the First and Second Investment Programs had been. This statement was false. The First and Second Investment Programs were not successful in raising the profit needed to repay the investment monies of all First and Second Investment Programs' investors.

g. The PBC Parties represented to some of the Investors, including Investor Three, that the PBC Parties could not obtain their funds from "financial institutions" and return their investment monies until they formally withdrew their complaints against the PBC Parties from the SEB. This statement was false. The SEB's investigation into the PBC Parties did not have any bearing on whether or not Mr. Jacobe could obtain funds from any financial institution.

h. The PBC Parties failed to disclose to some of the Investors that their investment monies would not be returned by the promised deadline.

i. The PBC Parties failed to disclose to some of the Investors, including Investor Two, that Ms. Carlos was an “agent of PBC” and that she would be receiving a 5% to 15% commission on all funds she assisted with collecting for investment in any of the Investment Programs.

j. The PBC Parties failed to disclose to some of the Investors that the PBC Parties were substantially in debt to investors of past concerts and that the proceeds of future concerts were needed to repay past investors.

k. The PBC Parties failed to disclose to some of the Investors that a portion of their investment monies would be used immediately to repay past investors.

l. The PBC Parties failed to disclose to all of the Investors that the Investment Programs were required by law to be registered under HRS Chapter 485A but were not so registered.

m. The PBC Parties failed to disclose to all of the Investors that Ms. Carlos was required by law to be registered under HRS Chapter 485A as an agent of PBC Productions, but was not so registered.

51. In furtherance of the offer and/or sale of the investment contracts, The PBC Parties employed devices, schemes, or artifices to defraud the Investors and engaged in acts, practices, or courses of business to operate as a fraud or deceit upon the Investors, as evident in the acts described hereinabove.

III. PRELIMINARY CONCLUSIONS OF LAW

52. The matters contained in paragraphs 1 through 51, inclusive, are realleged and incorporated herein in their entirety.

53. The Investment Programs that Respondents sold to the Investors satisfied the elements of an investment contract insofar as:

- a. The Investors furnished value totaling \$666,000.00 to Respondents for investment in the Investment Programs;
- b. All of the capital furnished was at risk of suffering a loss if the PBC Parties' enterprise failed;
- c. The Investors were induced to furnish capital into the Investment Programs by Mr. Jacobe's and/or Ms. Carlos' promises, guarantees, and/or representations that doing so would result in a valuable benefit to them beyond their initial values paid; and
- d. None of the Investors were involved in the management of the PBC Parties' business.

54. Investment contracts constitute "securities" pursuant to HRS § 485A-102. Thus, the Investment Programs are "securities."

55. The Investment Programs were required to be registered under HRS Chapter 485A but were not registered in violation of HRS § 485A-301.

56. PBC Productions issued securities to the Investors and thus acted as an "issuer" as defined by HRS § 485A-102.

57. As the sole owner and managing member of PBC Productions, Mr. Jacobe caused PBC Productions to facilitate the offer and sale of the Investment Programs directly and/or

through the agency of Ms. Carlos. As such, Mr. Jacobe is personally liable for PBC Production's violation of HRS § 485A-301.

58. Ms. Carlos attempted to effect and did effect the sale of the First and Second Investment Programs to some of the Investors on behalf of PBC Productions and thus acted as an "agent" as defined by HRS § 485A-102.

59. Ms. Carlos was required to be registered as an agent under HRS Chapter 485A in compliance with HRS §§ 485A-402 and -406 when she offered to sell and sold the First and Second Investment Programs to some of the Investors.

60. Ms. Carlos was not registered as an agent under HRS Chapter 485A and thus violated HRS §§ 485A-402 and -406.

61. While offering or selling the Investment Programs, PBC Productions employed an unregistered agent in violation of HRS § 485A-402(d).

62. As the sole owner and managing member of PBC Productions, Mr. Jacobe could have prevented PBC Productions from employing an unregistered agent but instead caused PBC Productions to employ an unregistered agent. As such, Mr. Jacobe is personally liable for PBC Production's violation of HRS § 485A-402(d).

63. In connection with the offer and sale of the Investment Programs to the Investors, the PBC Parties employed a device, scheme, or artifice to defraud the Investors in violation of HRS § 485A-501(a)(1).

64. In connection with the offer and sale of the Investment Programs to the Investors, the PBC Parties made untrue statements of material fact and material omissions in violation of HRS § 485A-501(a)(2).

65. In connection with the offer and sale of the Investment Programs, the PBC Parties engaged in acts, practices, or a course of business that operated as a fraud or deceit upon the Investors in violation of HRS § 485A-501(a)(3).

IV. PRELIMINARY ORDER TO CEASE AND DESIST

NOW THEREFORE, pursuant to HRS § 485A-604, because of the foregoing findings and conclusions and/or because it appears 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 Investment Programs or any other security within, to, or from the state of Hawai‘i;

2. All contracts regarding the purchase or sale of the Investment Programs by Respondents to the Investors are hereby RESCINDED effective immediately. The PBC Parties, as well as Ms. Carlos as to those sales of Investment Programs for which she acted as an “agent,” shall REFUND to the Investors, and all similarly situated investors, all monies or other compensation paid, plus interest at the rate of ten percent (10%) per annum from the date of the investment to the date of the refund payment until fully paid, less any monies already refunded to the Investors. This payment shall be made within thirty (30) days of the date of the Commissioner’s final order (“**Final Order**”). Proof of said payments to the Investors shall be provided to the SEB within 30 days of the date of the Final Order;

3. In the event that either of the PBC Parties refunds the Investors as ordered in the previous paragraph, Ms. Carlos shall disgorge all amounts she received as commissions, compensation, or other remuneration for selling Investment Programs within thirty (30) days of such refund payment.

4. The PBC Parties shall be jointly and severally liable to pay the Business Registration Division, Department of Commerce and Consumer Affairs, State of Hawai'i a PENALTY in the sum of ONE HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) plus interest on the unpaid balance thereof at the rate of 10% per annum from the date of the Final Order until finally paid. Payment of this penalty shall be made by cashier's check or certified check made payable to the "Department of Commerce and Consumer Affairs Compliance Resolution Fund" and received by the Commissioner within 30 days of the date of the Final Order;

5. Ms. Carlos shall be liable to pay the Business Registration Division, Department of Commerce and Consumer Affairs, State of Hawai'i a PENALTY in the sum of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) plus interest on the unpaid balance thereof at the rate of 10% per annum from the date of the Final Order until finally paid. Payment of this penalty shall be made by cashier's check or certified check made payable to the "Department of Commerce and Consumer Affairs Compliance Resolution Fund" and received by the Commissioner within 30 days of the date of the Final Order;

6. Respondents are PERMANENTLY BARRED as agents, broker-dealers, investment advisers, and/or investment adviser representatives from the date of the Final Order and from applying for registration in the state of Hawai'i as agents, broker-dealers, investment

advisers, and/or investment adviser representatives under HRS § 485A or any successor statute from the date of the Final Order;

7. Respondents shall each be subject to a penalty of not more than FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) per violation of this preliminary order (“**Preliminary Order**”) or any order of the Commissioner pursuant to HRS § 485A-604 and any future violation of HRS Chapter 485A; and

8. The imposition of this Preliminary Order shall not preclude or prevent in any way the imposition of further sanctions or other actions against Respondents or any other party for past or future violations of HRS Chapter 485A or any other successor statute.

NOTICE OF RIGHT TO HEARING

YOU ARE HEREBY NOTIFIED that you may request a hearing on this matter within thirty (30) days after the date of service of this Preliminary Order pursuant to HRS § 485A-604. Your request must be in writing and addressed to the Office of Administrative Hearings (“**OAH**”) at:

Office of Administrative Hearings
Department of Commerce and Consumer Affairs
State of Hawai‘i
P.O. Box 541
Honolulu, Hawai‘i 96809

A copy of your request must be simultaneously served upon the Securities Enforcement Branch at:

Securities Enforcement Branch
Department of Commerce and Consumer Affairs
State of Hawai‘i
P.O. Box 40
Honolulu, Hawai‘i 96810

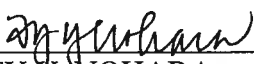
If a hearing is requested, it shall be scheduled within fifteen (15) business days after your written request has been received by OAH unless extended by the Commissioner for good cause. If OAH does not receive a written request for hearing within thirty (30) days after the date of service of this Preliminary Order and none is ordered by the Commissioner, this Preliminary Order shall become a final order of the Commissioner by operation of law pursuant to HRS § 485A-604(b).

You are hereby further notified that you may move the Commissioner to reconsider a final order within ten (10) days after receiving a final order pursuant to Hawaii Administrative Rules for Administrative Practice and Procedure § 16-201-23. 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 Hawai'i in the manner provided in HRS Chapter 91.

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

DATED: Honolulu, Hawai'i, JUN 17 2015.



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