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COMMISSION ON JUDICIAL CONDUCT

Before the
COMMISSION
on
JUDICIAL CONDUCT

In the Matter of the Investigation of	CONFIDENTIAL
DAVID L. FONG,	CJC No. 00-14
Judge, District Court of the First Circuit, State of Hawai'i	STIPULATION OF FACTS

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The Office of Disciplinary Counsel, Special Counsel to the Commission on Judicial Conduct ("Special Counsel"), by and through its Chief Disciplinary Counsel, Carole R. Richelieu, its Assistant Disciplinary Counsel, Geoffrey M. Kam, and its Special Assistant Disciplinary Counsel, Magali V. Sunderland, and David L. Fong, ("Judge Fong"), with the concurrence of his counsel, Michael J. Green, Esq. and David J. Gierlach, Esq., hereby stipulate and agree to the following as uncontested facts:

I. Background Information.

1. Judge Fong is married to Connie Y. Fong ("Ms. Fong"). Exhibit 3A.

EXHIBIT 12

2. Deborah Bakke ("Bakke") is Ms. Fong's sister and Judge Fong's sister-in-law. **Exhibit 3C.**

3. Robin Melchor ("Melchor") was Judge Fong's secretary from 1985-1995. Since termination of her employment, she has had no further relationship with Judge Fong but has worked with Ms. Fong in Liquor License Specialists. **Exhibit 3C.**

4. Judge Fong was admitted to the practice of law in the State of Hawai'i on September 21, 1973. He listed his business address as: 333 Queen Street, #801, Honolulu, Hawai'i 96813. **Exhibit 1A.**

5. Judge Fong was appointed and qualified as a part-time Judge of the District Court of the First Circuit, State of Hawai'i, on July 20, 1981.

6. The Hawai'i State Bar Association ("HSBA") Directories for 1978-1990 show Judge Fong's address as: Suite 801, Melim Building, 333 Queen Street. **Exhibits 1B-1O.** Judge Fong's registration statement for fiscal year 1989-1990 listed his business address as: Suite 801, Melim Building, Honolulu, Hawai'i 96813. **Exhibit 1X.**

7. From approximately 1991 to 1996, Judge Fong had an office at 818 Sheridan, Suite 200. *See* **Exhibits 1P-1T,** HSBA Directories 1991-1997. Ms. Fong owned the leasehold interest in the building at 818 Sheridan from 1991 to 1998. *See* § A.3 below.

Judge Fong's HSBA registration statements for 1995 and 1996 give his business address as: 818 Sheridan Street, Suite 200. **Exhibits 1Z and 1AA.**

8. Judge Fong was subsequently appointed and qualified as a full-time Judge of the District Court of the First Circuit, State of Hawai'i, on November 4, 1996. He then closed his practice at 818 Sheridan. **Exhibits 1V, 1W, 1BB, and 1CC.**

9. The Fongs' home address from 1989 to date is 2121-A Puowaina Drive. **Exhibits 1X and 2A-2S.**

II. <u>Disclosure Issues.</u>

10. Pursuant to RSCH 15(a), a judge shall file an annual financial disclosure statement. Failure to file a required disclosure statement, or filing an incomplete statement, could subject a judge to discipline. RSCH 15(c).

11. A judge must disclose his or her own financial interests and the financial interests of his or her spouse and any dependent children. RSCH 15(d). Canon 3(E)(2) of the Code of Judicial Conduct ("CJC") requires a judge to "keep informed" about his or her "personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household." Judge Fong had an obligation to comply with this Rule.

12. RSCH 15(d) sets out the financial interests that must be disclosed. The specific interests and correlative RSCH 15(d) subpart are discussed in detail at appropriate points in this stipulation.

A. <u>The Fongs' Businesses.</u>

Ms. Fong had several businesses which she actively operated during 1989-1999. Ms. Fong also owned a leasehold interest in a commercial building during that time.

A.1. <u>Athena Corporation.</u>

13. Judge Fong and Kent Uyemura ("Uyemura") incorporated Athena Corporation ("Athena") on December 1, 1986. Uyemura was the sole initial shareholder and also served as Athena's initial president, secretary, and treasurer. Judge Fong was Athena's initial vice-president. Judge Fong took no part in the daily operations of Athena nor did he "actively operate" this business. **Exhibits 5A and R-1.**

14. The original principal office of Athena was 333 Queen Street, Suite 801, which was also Judge Fong's office at the time. No Athena business, with the exception of the initial meeting of the shareholders, directors, and officers of the corporation, was conducted from Judge Fong's office. **Exhibit R-1;** *also compare* § I above and **Exhibit 5A.** Athena subsequently moved to 98-027 Hekaha Street, #14 (for the period 1989-1991) **(Exhibits**

5B-5D) then to 738 Ala Moana (1992-1998) (**Exhibits 5E-5J**). Athena's 1999 State and Federal returns state Athena's address as 2121-A Puowaina Drive, which is the Fongs' residence address. *Compare* § I above and **Exhibits 21.G.5 and 21.G.6.** This last address change occurred when Ms. Fong purchased Athena from Uyemura.

15. Athena's corporate exhibits for 1989-1997 did not reflect any changes in Athena's officers or directors. **Exhibits 5B-5I.**

16. In July of 1998, Ms. Fong purchased Athena Corporation for between $100,000.00-$150,000.00. **Exhibit 20.** Athena's 1998 corporate exhibit (filed November 29, 1999) shows that Ms. Fong had become Athena's president, vice-president, secretary, and treasurer. **Exhibit 5J.** Further, Ms. Fong filed Athena's federal and state corporate tax returns for 1998 and 1999. **Exhibits 21.G.5 and 21.G.6.** At the end of 1998, therefore, Ms. Fong was the owner and sole officer and director of Athena.

17. RSCH 15(d)(2) requires disclosure of the "amount and identity of every ownership or beneficial interest held during the disclosure period in any business incorporated, regulated, or licensed to carry on business in the State having a value of $5,000 or more or equal to ten percent of the ownership of the business." The Instructions for Financial Disclosure Statement

("Instructions") provide the following guidance to judges making disclosures:

> Under Rule 15(d)(2), you must report the amount and identity of every ownership or beneficial interest held by you, your spouse, or your dependent children in any business incorporated, regulated or licensed to carry on business in the State <u>where that interest has a value of $5,000 or more or is equal to 10% of the ownership of the business</u>. . . . If you, your spouse, or your dependent children are a shareholder, you must report the number of shares owned or the estimated market value of the stock as of the end of the disclosure year. [Emphasis added.]

Exhibit 2.

18. Judge Fong properly disclosed Ms. Fong's ownership interest in Athena. **Exhibit 20.**

19. RSCH 15(d)(3) requires disclosure of "[e]very officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office and the annual compensation.

20. Judge Fong properly disclosed his position as a vice-president of Athena on his 1989-1991 financial disclosure statements. **Exhibits 2A-2D.**

21. Judge Fong should have disclosed Ms. Fong's status as president, vice-president, secretary, treasurer, and director of Athena pursuant to RSCH 15(d)(3) on his 1998 and 1999 financial disclosure forms.

22. Judge Fong's 1998 and 1999 financial disclosure forms do not make said disclosures. **Exhibits 2O-2R.**

23. Judge Fong did not disclose Ms. Fong's status as president, vice-president, secretary, treasurer, and director of Athena as required by RSCH 15(d)(3).

A.2. C.Y.F. Investments Corporation.

24. Ms. Fong incorporated C.Y.F. Investments Corporation ("C.Y.F.") on July 2, 1991. She was the incorporator, the sole initial shareholder, and the initial president, vice-president, secretary, treasurer, and director. Judge Fong represented Ms. Fong in the incorporation of C.Y.F. **Exhibit 6A.**

25. C.Y.F.'s initial address was 333 Queen Street, Suite 801, Honolulu, Hawai'i 96813. **Exhibit 6A.** C.Y.F.'s corporate exhibits for 1991-1995 give C.Y.F.'s address as 818 Sheridan Street, Suite 200, Honolulu, Hawai'i 96813. **Exhibits 6B-6F.** Respondent's office for the period 1991-1996 was also located at 818 Sheridan Street, Suite 200, Honolulu, Hawai'i 96813. **Exhibits 1P-1T.**

26. During 1991-1995, Ms. Fong was listed as C.Y.F.'s president, vice-president, secretary, treasurer, and director. **Exhibits 6B-6F.**

27. On July 19, 1996, Ms. Fong transferred all of her stock in C.Y.F. to Myong Hee Kim. **Exhibit 6J.** Later that year,

Ms. Fong acquired the assets of Tengu, Inc., as part of a settlement agreement and sold the assets to C.Y.F. *See* § C.2 below.

28. From 1991-1996, Ms. Fong was the sole shareholder of C.Y.F., which did business for 1 year (1991-1992) after which its activities were reversed and attributed to Ms. Fong individually. **Exhibit R-2.** Judge Fong should have reported Ms. Fong's shareholder status in C.Y.F. between 1991 and 1996.

29. Further, the date that Ms. Fong transferred her stock in C.Y.F. to Myong Hee Kim should also have been disclosed pursuant to RSCH 15(d)(2).

30. Ms. Fong was also the president, vice-president, secretary, treasurer, and director of C.Y.F. from 1991-1996. Those relationships should have been disclosed pursuant to RSCH 15(d)(3).

31. Judge Fong's financial disclosure statements for 1991-1996 did not disclose Ms. Fong's interest in C.Y.F, the date she transferred her interest in C.Y.F., and her fiduciary relationships with C.Y.F. **Exhibits 2D-2L.** Judge Fong should have known that C.Y.F. existed and of Ms. Fong's relationship to C.Y.F.

32. Judge Fong did not disclose Ms. Fong's ownership in C.Y.F. and the date that she transferred her interest in C.Y.F. as required by RSCH 15(d)(2) and RSCH 15(d)(3).

A.3. Building at 818 Sheridan.

33. As mentioned above, on December 23, 1991, but effective November 1, 1991, C.Y.F. purchased, via Agreement, 818 Sheridan from Security Construction, Inc. ("Security"). The Agreement obligated Security to sell and C.Y.F. to buy Security's leasehold interest in 818 Sheridan for $282,000.00, to be paid $100,000.00 in cash at closing with the remainder paid in installments. **Exhibit 7A.**

34. The Agreement conditioned the sale upon Security obtaining the consent of the lessor, George F. Schnack ("Schnack"), and provided that C.Y.F. could enter upon and take possession of the property and enjoy the use, rents, issues, and profits thereof for so long as C.Y.F was not in default under any of the terms of the Agreement. **Exhibit 7A.**

35. Schnack's consent was not obtained at the time Security and C.Y.F. entered into the Agreement.

36. Pursuant to the Agreement, on or about December 23, 1991, C.Y.F. and/or Ms. Fong paid Security $100,000.00. Judge Fong represents that these funds came from the proceeds from the sale of two dress shops Ms. Fong owned during the 1980's (Selona's and Classic Collections). **Exhibit 3C.**

37. Also pursuant to the Agreement, on or about November 1, 1991, C.Y.F. began paying the monthly lease payments on the

property at 818 Sheridan Street to Security. Security in turn paid the lease payments to Schnack. These payments were $11,196.57 per month, or $134,358.84 per year. **Exhibit 3C.**

38. On January 6, 1992, C.Y.F. and Ms. Fong entered into an Assignment of Agreement for the Sale of the Leasehold Interest to the Property at 818 Sheridan Street, Honolulu, Hawai'i ("Assignment"). **Exhibit 7B.** The Assignment assigned C.Y.F.'s interest in the Agreement to Ms. Fong. Judge Fong avers that C.Y.F.'s interest was transferred to Ms. Fong based on the advice of their CPA. **Exhibit 3A.**

39. During 1992-1998, Ms. Fong leased units in 818 Sheridan to various tenants, yielding the following gross incomes and net incomes/losses:

Year	Gross Income	Annual Net Income/Loss
1992	$242,909	$< 3,547>
1993	343,806	79,002
1994	456,560	< 9,860>
1995	488,798	12,590
1996	444,145	< 7,750>
1997	463,108	10,139
1998	0	< 7,871>

Exhibits 21B.1, 21B.3, 21C.1, 21C.3, 21D.1, 21E.1, and 21F.1.

40. On January 26, 1998, Ms. Fong sold 818 Sheridan for $550,000, for a reported gain of $299,454. **Exhibit 21F.1.**

41. Judge Fong states that he did not report Ms. Fong's acquisition of the property at 818 Sheridan Street until March 1, 1995 (when Judge Fong filed his Financial Disclosure Statement (Short Form) for 1994) for the following reasons:

> a. The Agreement of Sale was never recorded, and therefore to the best of my [Judge Fong's] knowledge, it did not convey equitable title or any interest to my wife [Ms. Fong].
>
> b. At the time the Agreement of Sale was executed, the fee owner [Schnack] was not informed that an Agreement of Sale was being contemplated, nor did the fee owner consent to the Agreement of Sale between Security Construction, Inc., and my wife, Connie Y. Fong. Since consent by the fee owner is required by the master lease, I believe that my wife or myself acquired no beneficial interest in the property.
>
> c. The sole shareholder of Security Construction, Inc., was owned by a long-time family friend and client who wanted to sell his interest in the leasehold property. He approached my wife to see if she was interested in taking over the lease and buy out his interest. My wife agreed to do so, with the understanding that the Agreement of Sale would not be recorded and title to the leasehold property would not pass to my wife until she completely satisfied the terms and conditions of the Agreement of Sale.
>
> d. The fee owner of the property recognized the Lessee to be Security Construction,

Inc. (as evidenced by the Agreement Re Lease Rental dated February 11, 1994, a copy of which is enclosed herewith).

e. The Agreement of Sale was satisfied in October 1994, and consent to the assignment of lease from Security Construction, Inc., to my wife, Connie Y. Fong, was perfected and filed on or about October 17, 1994 (copy of which is enclosed herewith). Upon acquiring a legal interest in the leasehold property, I reported it on my financial disclosure for the year 1994.

f. At no time was it ever my intention not to disclose any financial interest we had in the building. Since the Agreement of Sale was not recorded and the fee owner had not consented to the Agreement, I did not feel that we had a legitimate beneficial interest to disclose the proposed purchase until we had completely satisfied the conditions of the Agreement of Sale.

Exhibit 3A.

42. RSCH 15(d)(5) requires disclosure of "[t]he tax map key number and street address, if any, and the value of any real property in the State in which the person holds an interest whose value is $10,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration."

43. RSCH 15(d)(5) therefore requires disclosure of any interests (worth $10,000 or more) in Hawai'i real property, including but not limited to ownership interests.

44. Hawai'i law recognizes that a purchaser under an agreement of sale acquires an interest in property tantamount to ownership. *See* Bank of Hawai'i v. Horwoth, 71 Haw. 204, 211 (1990).

45. Further, while all parties concerned recognized that the ultimate conveyance of the lease from Security to C.Y.F. and Ms. Fong required Schnack's consent, Security and Fong certainly treated the Agreement as creating an enforceable contract between them. Also, Judge Fong and Ms. Fong reported the income derived from 818 Sheridan on their income tax returns from 1991-1998. **Exhibits 21B.1, 21B.3, 21C.1, 21C.3, 21D.1, 21E.1, and 21F.1.**

46. Thus, whether or not Ms. Fong had acquired a legal ownership interest in 818 Sheridan, she had acquired some interest in 818 Sheridan and that interest should have been disclosed pursuant to RSCH 15(d)(5).

47. Judge Fong, relying on his interpretation of the disclosure requirements, did not disclose Ms. Fong's interest in 818 Sheridan from 1991-1993. **Exhibits 2D-2F.** Judge Fong did disclose the interest in his 1994 financial disclosure statement.

48. Judge Fong's analysis of when ownership arises under an Agreement of Sale was incorrect. Based on that analysis, he did not disclose Ms. Fong's interest in 818 Sheridan on his 1991-1993 financial disclosure statements as required by RSCH 15(d)(5).

A.4. Liquor License Specialists, Inc.

49. Ms. Fong and Melchor incorporated Liquor License Specialists, Inc. ("Specialists") on September 5, 1996. Ms. Fong was listed as president, treasurer, and director. Melchor was listed as vice-president, secretary, and director. Specialists had an initial subscription of 100 shares, of which Ms. Fong owned 51 shares and Melchor owned 49. Judge Fong prepared the corporation documents for Ms. Fong and Melchor in the incorporation of Specialists. **Exhibit 8A.**

50. Specialists' address during 1996-1997 was 818 Sheridan Street, Suite 200, Honolulu, Hawai'i 96814. **Exhibits 8B-8C.** Respondent's office until November 3, 1996 was also located at 818 Sheridan Street, Suite 200, Honolulu, Hawai'i 96814. *See* § I above.

51. Specialists' 1998 annual corporate exhibit listed its address as: 738 Ala Moana Boulevard, Honolulu, Hawai'i 96813. **Exhibit 8D.** 738 Ala Moana Boulevard was also the address for Athena, the Hawai'i corporation owned by Ms. Fong. *See* § A.1. above.

52. Specialists' 1999-2000 annual corporate exhibits listed its address as: 94-752 Kupohi Street, Waipahu, Hawai'i 96797, which is also listed as Melchor's residence address. **Exhibits 8E and 8F.**

53. According to Specialists' 1996-2000 annual corporate exhibits, Ms. Fong was listed as Specialists' president, treasurer, and director. **Exhibits 8B-8F.**

54. Specialists represented various liquor related businesses in their dealings with the Honolulu Liquor Commission.

55. Pursuant to RSCH 15(d)(2), Judge Fong should have disclosed Ms. Fong's ownership interest in Specialists.

56. Pursuant to RSCH 15(d)(3), Judge Fong should have disclosed Ms. Fong's fiduciary relationships in Specialists.

57. Judge Fong did not report Ms. Fong's ownership interests or fiduciary positions in Specialists in his original 1996-1998 financial disclosure statements. **Exhibits 2K, 2M, and 2O.**

58. Promptly after this non-disclosure was brought to his attention, on April 28, 2000, Judge Fong filed an amended 1996 financial disclosure statement that disclosed Ms. Fong's ownership interests and fiduciary positions in Specialists. **Exhibit 2L.** On May 24, 2001, Judge Fong filed an amended 1998 financial disclosure

statement that disclosed Specialists' change of address from 818 Sheridan to 738 Ala Moana. **Exhibit 2P.**

59. Judge Fong initially failed to disclose Ms. Fong's ownership interest in Specialists as required by RSCH 15(d)(2).

60. Judge Fong initially failed to disclose Ms. Fong's fiduciary relationships in Specialists as required by RSCH 15(d)(3).

B. Skippy's Liquor & Grocery.

Skippy's Liquor & Grocery ("Skippy's") is a convenience store located at 152 North Pauahi Street.

B.1. Debcon Corporation.

61. Ms. Fong and Bakke incorporated Debcon Corporation ("Debcon") on June 25, 1990. Ms. Fong was listed as president, secretary, and director. Bakke was listed as vice-president, treasurer, and director. Debcon had an initial subscription of one hundred shares, of which Ms. Fong owned fifty shares and Bakke owned fifty shares. Judge Fong drafted the documents for Ms. Fong and Bakke for the incorporation of Debcon. **Exhibit 9A.**

62. On March 20, 1991, at a Special Meeting of the Stockholders, Board of Directors and Officers of Debcon Corporation, Ms. Fong resigned as Director, President, and Secretary and Bakke was elected to serve as President and

Secretary. At the same time, Ms. Fong's fifty shares of Debcon stock were cancelled and reissued to Bakke. **Exhibit 9D.**

63. At about that time, Bakke had negotiated the purchase of Kang's Groceries and Liquor, a liquor store located at 152 North Pauahi Street, including the store's liquor license. Judge Fong agreed to escrow the transfer of the business from the seller, Thomas Tae Kang, to Debcon. **Exhibit 9E.**

64. Judge Fong represented Debcon in its efforts to obtain a temporary liquor license and to transfer the existing liquor license from Kang to Debcon. **Exhibits 9F and 9G.**

65. In May 1991, the Liquor Commission granted the transfer of the liquor license and also approved a change in trade name from Kang's Grocery Liquor to Skippy's Liquor and Grocery. **Exhibit 9L.**

66. Pursuant to RSCH 15(d)(2), Judge Fong should have disclosed Ms. Fong's ownership interest in Debcon on his 1990 and 1991 financial disclosure statements. Also pursuant to RSCH 15(d)(2), Judge Fong should have disclosed Ms. Fong's transfer of Debcon to Bakke on his 1991 financial disclosure statement.

67. Pursuant to RSCH 15(d)(3), Judge Fong should have disclosed Ms. Fong's fiduciary relationships in Debcon on his 1990 and 1991 financial disclosure statements.

68. Judge Fong's 1990 and 1991 statements do not make the aforementioned disclosures. **Exhibits 2C and 2D.** Judge Fong has not amended his statements to make said disclosures.

69. Judge Fong did not disclose Ms. Fong's ownership interest in Debcon as required by RSCH 15(d)(2).

70. Judge Fong did not disclose Ms. Fong's transfer of her interest in Debcon to Bakke as required by RSCH 15(d)(2).

71. Judge Fong did not disclose Ms. Fong's fiduciary relationship to Debcon as required by RSCH 15(d)(3).

B.2. Events Following Purchase by Bakke and <u>Prior to Sale to Waterlily Investment, Inc.</u>

72. From 1991-1996, Judge Fong represented Debcon dba Skippy's in various liquor commission matters. *See* **Exhibits 9H-9J.**

73. In October 1995, Bakke sold Debcon to Su Chong Maxwell ("Maxwell") for $90,000.00. **Exhibits 9K-9M.** Maxwell was the principal of Maxwell, Inc., a corporation that was at that time purchasing a bar at 818 Sheridan, #102. *See* § D below. Judge Fong had drafted incorporation papers for Maxwell, Inc. in March of 1995. **Exhibit 17B.** In this transaction, however, Maxwell acquired Debcon in her own name.

74. In July of 1996, Debcon (then owned by Maxwell) sold Skippy's to Y. Nishio, Inc. for $77,500.00. **Exhibits 9N-9Q.** Judge Fong acted as escrow in this transaction. **Exhibits 9Q, 9R, and R-3.**

75. In May 1997, Melchor bought Y. Nishio for $77,500.00. **Exhibits 9S and 9T.** Melchor had ceased working for Judge Fong in 1996 when he became a full-time judge, but was still involved with Liquor License Specialists. **Exhibit 3C.**

76. In April of 1999, Melchor sold the assets of Y. Nishio, Inc., to Waterlily Investment, Inc. ("Waterlily") for $200,000.00. **Exhibit 9U.** Specialists represented Waterlily in its dealings with the Liquor Commission, including the transfer of the liquor license from Y. Nishio, Inc. to Waterlily. **Exhibits 9V-9Y.**

B.3. <u>Waterlily Investment, Inc.</u>

77. On July 21, 1998, Helen Kim Yoo (aka Helen Kim, referred to herein as "Yoo"), incorporated Waterlily Investment, Inc. ("Waterlily"). **Exhibit 10A.**

78. On or about April 12, 1999, Ms. Fong loaned $400,000.00 to Waterlily Investment, Inc. ("Waterlily") and Yoo. **Exhibits 10E and R-4.**

79. The debt was memorialized by a promissory note for $400,000.00, with payments of $8,000.00 per month plus interest at 7% per annum on the unpaid principal, payments to commence on May 15, 1999. **Exhibit 10E.**

80. The loan was secured by a Security Agreement dated April 12, 1999, but effective April 15, 1999, executed by Waterlily and giving Ms. Fong a security interest in "the assets of the

business known as 'Skippy's Liquor & Grocery' a business situate at 152 North Pauahi Street, Honolulu, HI." **Exhibit 10E.** The loan was also secured by a stock pledge agreement.

81. One month later, Waterlily and Yoo defaulted on the May 15, 1999 payment. Ms. Fong notified Waterlily and Yoo of the breach and exercised her option to declare the entire principal balance due. **Exhibits 10E and R-4.**

82. Ms. Fong, Waterlily, and Yoo settled the case on or about July 13, 1999 pursuant to a Stipulation for Entry of Judgment which was filed on that date. In the Stipulation, Waterlily and Yoo admitted the allegations of the complaint and agreed to the following relevant relief:

1) entry of judgment in the amount of $400,000.00 together with interest thereon at a rate of 10% per annum from and after May 15, 1999 until the judgment is paid and full;

2) Waterlily would "make every effort to promptly sell or otherwise dispose of the assets of Skippy's liquors," with proceeds of the sale being used to satisfy the judgment;

3) transfer of all of the shares of Waterlily corporate stock and all of the assets of Skippy's Liquor and Grocery to Ms. Fong; and

4) appointment and authorization of Ms. Fong to act as attorney in fact for Yoo in Yoo's capacity as a shareholder, officer, and director of

> Waterlily, with full power and authority, without restriction and with the understanding that any act by Ms. Fong to protect her interests would not be considered a breach of any fiduciary duty to Waterlily.

Exhibit 10I. The filed Judgment simply awarded Ms. Fong $400,000.00, with no interest provision, jointly and severally against Waterlily and Yoo. **Exhibit 10J.**

83. Ms. Fong did not acquire "legal" ownership interests in Waterlily, because paragraph 3 of the Stipulated Judgment was never exercised.

84. Under Hawai'i law, a power of attorney creates an agency relationship, Smith v. U.S, 113 F.Supp. 702 (USDC Haw. 1953), and agents are fiduciaries, Baron v. Bryant, 556 F.Supp. 531 (USDC Haw. 1983). Indeed, "an agent in respect to the subject matter of his agency must exercise the utmost good faith in the furtherance and advancement of the interests of his principal," and, "as to matters within the scope of their duty, cannot assume positions antagonistic to their employer's interest." Stout v. Laws, 37 Haw. 382, 392 (1946). *See also* Kunewa v. Joshua, 83 Haw. 65, 72 (ICA 1996) ("attorney in fact is bound to act for the benefit of his principal and must avoid where possible that which is detrimental unless expressly authorized"); and Texeira v. Texeira, 40 Haw. 631, 637 (1954).

85. By acquiring a power of attorney to act for Waterlily, Ms. Fong, whether intended or not, also entered into a fiduciary relationship with Waterlily.

86. Pursuant to RSCH 15(d)(3), Judge Fong should have disclosed Ms. Fong's power of attorney for Waterlily on his 1999 and 2000 financial disclosure statements.

87. Judge Fong did not make the aforementioned disclosures and did not amend his disclosure statements. **Exhibits 2Q-2S.**

88. Judge Fong did not disclose Ms. Fong's power of attorney as required by RSCH 15(d)(3).

89. In August of 1999, the Judgment was released and discharged as to Yoo individually in order to allow Yoo to obtain a loan. **Exhibits 10L and 10M.** It is unknown whether Yoo thereafter actually obtained a loan, but the judgment was refiled as an Amended Judgment on September 13, 1999. **Exhibit 10M.**

90. No satisfaction of judgment has been filed in this matter and Ms. Fong remains at least nominally a judgment creditor of Waterlily. **Exhibit 10N.**

91. Pursuant to RSCH 15(d)(6), Judge Fong should have disclosed Ms. Fong's creditor interest in Waterlily on his 1999 and 2000 financial disclosure forms. RSCH 15(d)(6) requires disclosure

of "every creditor interest in an insolvent business held during the disclosure period having a value of $5,000.00 or more."

92. Judge Fong's 1999 and 2000 financial disclosure statements do not disclose Ms. Fong's creditor interest in Waterlily. **Exhibits 2Q-2S.**

93. Judge Fong's failure to disclose Ms. Fong's creditor interest in Waterlily violated RSCH 15(d)(6), unless Waterlily was not insolvent. Waterlily was an ongoing concern but was back in rent payments and therefore insolvent by definition.

94. Pursuant to RSCH 15(d)(2), Judge Fong should have disclosed Ms. Fong's ownership interest in Waterlily on his 1999 and 2000 financial disclosure statements.

95. Judge Fong's 1999 and 2000 financial disclosure statements do not make the aforementioned disclosures. Judge Fong did not amend his statements to make said disclosures. **Exhibits 2Q-2S.**

C. Exchange of Tengu, Inc. and New Pacific, Inc. Liquor Licenses.

96. This section involves an in exchange of liquor licenses between two hostess bars. On January 26, 1996, Tengu, Inc. ("Tengu"), and New Pacific, Inc. ("New Pacific"), agreed to exchange their respective liquor licenses, with no monetary consideration between the parties and contingent on the transfer of the liquor licenses and the consent of the landlords. **Exhibit 11A.**

C.1. <u>818 Sheridan, #101 (1992-1996).</u>

97. As discussed above, C.Y.F. acquired the leasehold interest in 818 Sheridan in December of 1991. On January 6, 1992, C.Y.F. assigned its interest to Ms. Fong. § A.2 above.

98. Through a DROA submitted to the Liquor Commission on January 30, 1992, Ms. Fong, ostensibly in her capacity as President of C.Y.F., offered to lease an unspecified portion of 818 Sheridan to Delilah Lounge, Inc ("Delilah"). **Exhibit 12A.**

99. Delilah was incorporated two weeks earlier, on January 17, 1992. Judge Fong represented Delilah Lounge's incorporator, Un Hui Kim. Delilah's initial office was 818 Sheridan, Honolulu, Hawai'i 96814. **Exhibit 12B.**

100. Judge Fong continued to represent Delilah in its dealings with the Liquor Commission. **Exhibits 12C-12E.**

101. On April 22, 1992, Delilah's application was granted and a Dispenser General License (Category Nos. 3 and 4) was issued to Delilah. **Exhibit 12F.**

The descriptions for Categories 3 and 4 are as follows:

> Category No. 3 - A premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by Commission rules.
>
> Category No. 4 - A premises in which employees or entertainers are compensated to sit with patrons whether or not the employees or entertainers are consuming nonalcoholic beverages while in the company of such patrons pursuant to Commission rules.

Exhibit 12F.

102. Delilah and C.Y.F. entered into a sublease on May 8, 1992 (the "May 8 Sublease"). This lease was signed by Ms. Fong and Un Hui Kim in her capacity as president of Delilah, and was notarized by Melchor. It was filed with the Liquor Commission on July 24, 1992. **Exhibit 12G.**

103. Judge Fong then continued to represent Delilah in its dealings with the Liquor Commission. **Exhibits 12H-12P** (a representative sampling of services rendered by Judge Fong to Delilah). His representation continued even when the ownership of Delilah changed. **Exhibits 12H, 12I, 12L, and 12M.**

104. On January 19, 1995, Judge Fong represented Yong Sang Kim in the formation of a corporation called New Pacific, Inc. **Exhibit 12Q.**

105. In February of 1995, New Pacific bought the bar at 818 Sheridan Street, #101 from Delilah. Judge Fong prepared a Bill of Sale, Assignment of Sublease and Consent. **Exhibits 12R and 12S.**

106. The Sublease that was assigned was not the May 8, Sublease, but was instead a sublease purportedly executed on July 1, 1992 (the "July 1 Sublease"). The July 1 Sublease was, however, signed by Suk Cha Paek, allegedly in her capacity as President of Delilah. **Exhibit 13B.2.**

107. Paek, however, did not acquire her shares of Delilah until July 24, 1992 and the Liquor Commission did not approve

Paek's acquisition of those shares and assumption of the Delilah's presidency until August 11, 1992. **Exhibits 12H and 12I.**

108. The Liquor Commission referenced the July 1 Sublease for the purposes of its Licensing Investigative Report on the license transfer. **Exhibit 12U.**

109. The terms of the May 8 Sublease and July 1 Sublease are essentially identical.

110. Judge Fong undertook to represent New Pacific in its dealings with the Liquor Commission, including the sale of its business to Tengu, Inc. **Exhibits 12X-12Z.**

C.2. Tengu, Inc.

111. On or about February 9, 1996, but effective February 9, 1996, New Pacific assigned all of its right, title, and interest in the premises to Tengu, Inc. ("Tengu") via an Assignment of Sublease. **Exhibit 13B.4.** Ms. Fong consented to the Assignment via a Consent to Assignment of Sublease. **Exhibit 13B.5.**

112. On February 9, 1996, Ann Youngsun Webster ("Webster"), the President, Director and sole shareholder of Tengu, appointed Ms. Fong as her attorney-in-fact for the purpose of protecting Ms. Fong's status as a creditor of Tengu. **Exhibit 13C.**

113. Tengu soon defaulted on its obligations under the sublease. **Exhibit 13B.** On or about July 1, 1996, Ms. Fong sent

Tengu a written notice of default and demand for payment and cure of said defaults. **Exhibit 13B.6.**

114. As of July 5, 1996, Tengu owed Ms. Fong $52,148.38 for unpaid rent and other charges due and owing. **Exhibit 13B.** Ms. Fong filed a Complaint for Summary Possession and Related Relief against Tengu on July 11, 1996. **Exhibit 13B.**

115. Ms. Fong was therefore suing a corporation, Tengu, over which she had actual control via a power of attorney, which she held to protect her creditor status in Tengu.

116. On or about July 19 and 20, 1996, a Default Judgment and a Judgment for Possession were filed against Tengu, and a Writ of Possession was issued. **Exhibits 13D and 13E.**

117. On August 30, 1996, Tengu and Ms. Fong settled their dispute. In the settlement, Tengu assigned and/or transferred all of its assets contained at 818 Sheridan #101, including but not limited to the liquor license for the premises. In turn, Ms. Fong released Tengu from all claims to rent due under the sublease and/or any judgments entered in Civil No. 1RC96-6065. **Exhibit 13G.**

118. Ms. Fong, therefore, was a creditor of Tengu from approximately Spring of 1996 until August 30, 1996. Tengu had failed to make its rent payments and was therefore "insolvent" by definition, within the meaning of RSCH 15(d)(6). As discussed above, RSCH 15(d)(6) requires disclosure of creditor interests "held during" the disclosure period.

119. Thus, pursuant to RSCH 15(d)(6), Judge Fong should have disclosed Ms. Fong's creditor interest in Tengu on his 1996 financial disclosure form.

120. Judge Fong's 1996 financial disclosure statement, both as originally filed and as amended, did not disclose Ms. Fong's creditor interest in Tengu. **Exhibits 2K and 2L.**

121. Because the settlement agreement gave Ms. Fong the right to take possession of and dispose of the corporate assets, she thereby became the owner of Tengu's assets.

122. On August 6, 1998, three weeks before the matter was officially settled, Ms. Fong wrote to the Liquor Commission as attorney-in-fact for Tengu's President to state that Tengu had no objection to issuance of a temporary liquor license to C.Y.F. **Exhibit 13L.**

123. Indeed, Ms. Fong, assisted by Judge Fong, had already transferred Tengu's assets to C.Y.F. Ms. Fong had no interest in C.Y.F. at this time. **Exhibits 6J and 13H-13K.** Judge Fong notes that Tengu had agreed to turn over its assets to Ms. Fong and that she was entitled to "take possession and dispose of the assets either in her own name or in the name of a designee in full satisfaction of all amounts due and owing by Tengu." **Exhibit 3A.**

124. Judge Fong argues that Ms. Fong's sale of the assets of Tengu was merely a "disposal of the assets pursuant to the

Settlement Agreement between Tengu, Inc., and my wife." **Exhibit 3A.** While true as far as it goes, Judge Fong's characterization of the transaction ignores the fact that Tengu had surrendered all incidents of ownership to the assets of the business to Ms. Fong and that Ms. Fong had sold the assets to another corporation.

125. Ms. Fong therefore had an ownership or other beneficial interest in Tengu within the meaning of RSCH 15(d)(2) that should have been disclosed on Judge Fong's 1996 financial disclosure form. The date of Ms. Fong's transfer of the assets of Tengu to C.Y.F. was a transaction that should also have been reported under RSCH 15(d)(2).

126. Judge Fong's 1996 financial disclosure statement, as originally filed and as amended, did not disclose Ms. Fong's interest in the assets of Tengu nor did it disclose Ms. Fong's transfer of Tengu's assets. **Exhibits 2K and 2L.**

127. Judge Fong did not disclose Ms. Fong's ownership interest in Tengu and her subsequent transfer of that interest as required by RSCH 15(d)(2).

128. As noted previously Ms. Fong held a power of attorney, dated February 9, 1996, from Webster, individually and as President, Director, and sole shareholder of Tengu. The power of attorney was never revoked by Webster. As such Ms. Fong held a fiduciary position "in" Tengu that should have been disclosed.

129. In particular, Judge Fong should have disclosed Ms. Fong's power of attorney with Tengu on his 1996-1999 financial disclosure statements.

C.3. <u>1344 Kona Street. (1991-1996).</u>

130. Prior to its move to 818 Sheridan, Tengu had operated a bar at 1344 Kona Street from at least 1991. **Exhibits 14D and 14E.** Tengu was incorporated in 1970. **Exhibit 14A.** Webster became Tengu's president, secretary, treasurer and director in 1991. **Exhibits 14B and 14C.**

C.4. <u>New Pacific.</u>

131. In approximately July of 1996, New Pacific acquired the liquor license for 1344 Kona Street from Tengu and changed the name of the business to Juliana of Honolulu. **Exhibit 14E.**

132. On September 12, 1996, Ms. Fong agreed to loan New Pacific $300,000.00. **Exhibit 15A.** The loan was evidenced by a promissory note, a UCC financing statement, and a stock pledge agreement that made Ms. Fong a pledgee of fifty shares of New Pacific stock. Judge Fong prepared all of these documents. **Exhibits 15A.1, 15A.2, and 15A.3.**

133. The Note did not charge interest and was due and payable in full on or before September 11, 1997, or upon sale or other disposition of the assets of the corporate stock of New

Pacific, whichever occurred first. It was secured by 50% of the issued and outstanding shares of stock of New Pacific and by:

> All of the assets of the business presently known as "Juliana of Honolulu", situate at 1344 Kona Street, Honolulu, Hawai'i, including but not limited to the furniture, office equipment, audio equipment, business machines, video equipment, computers, vehicles, equipment, fixtures, trade fixtures, tools, inventory, checking accounts, savings accounts, accounts receivable, maintenance contracts, the liquor inventory, the liquor license issued to NEW PACIFIC, INC., and all other tangible and intangible property owned or acquired by NEW PACIFIC, INC., for the nightclub business presently known as "Juliana of Honolulu", in the future.

Exhibit 15A.1.

134. It was also purportedly secured by New Pacific's interest in a November 13, 1996 lease to ground floor space at 1349 Kapiolani Boulevard. **Exhibits 15A.1 and 15A.1.1.** The Note is therefore purportedly secured by a lease that was not in existence when the Note was signed.

135. Thereafter, between October 1, 1996, and December 31, 1996, Ms. Fong allegedly loaned an additional $215,637.54 to Y.S. Kim, C.C. Kim, and New Pacific, also for the purposes of operating Juliana. Each of the parties agreed that Y.S. Kim, C.C. Kim, and New Pacific were each jointly and severally liable to repay the additional loan and that the additional loan was subject to the same terms as the original note, including due date and security. **Exhibit 15A.**

136. Thus, by the end of 1996, Ms. Fong had loaned $515,637.54 to the business.

137. In a 1997 complaint to collect on Ms. Fong's loan, her attorneys alleged that a partnership existed. **Exhibit 11A.**

138. Judge Fong denies that there was a partnership agreement and states that such a characterization was a "legal strategy" adopted by Ms. Fong's attorneys. **Exhibit 3A.**

139. Ms. Fong's attorneys alleged that on or about May 17, 1997, Y.S. Kim, C.C. Kim, and New Pacific breached a partnership agreement and their fiduciary duties to Ms. Fong by "expelling" Ms. Fong from Juliana. **Exhibit 15A.**

140. Based on this alleged breach, Ms. Fong accelerated the Note and demanded immediate payment. **Exhibit 15A.5.** Whether or not that was a valid acceleration, New Pacific and Y.S. Kim did default on the loan on September 11, 1997 when they failed to pay the amount due.

141. Ms. Fong, through her attorneys, filed an Amended Complaint for Breach of Partnership Agreement and Fiduciary Duty on October 23, 1997. **Exhibit 15A.**

142. The defendants entered into a Stipulation for Entry of Judgment and a Stipulated Judgment, both of which were filed on January 23, 1998. **Exhibit 15B.** The Stipulated Judgment gave Ms. Fong a $475,637.54 judgment in her favor, plus interest accruing at

12% per annum from and after September 13, 1997 until paid in full. **Exhibit 15D.** The Stipulation for Entry of Judgment (as distinguished from the Stipulated Judgment) also gave Ms. Fong the future right to acquire ownership of all of the corporate stock of New Pacific, a right which was never exercised. **Exhibit 15B.**

143. Pursuant to the Stipulated Judgment, the defendants were required to attempt to sell the "partnership business," either by selling the assets of the business, or by selling the New Pacific shares.

144. No writ of Execution has been issued and no satisfaction of judgment has ever been filed in this matter. **Exhibit 15M.**

145. In September of 1998, Y.S. Kim was able to negotiate a sale of New Pacific. The buyer, Doosun Yoo ("Doosun"), agreed to pay $600,000.00 for New Pacific, payable $200,000.00 at closing and $400,000.00 plus interest at 8% per annum fully amortized over three years (36 monthly installments @ $12,534.55 per month for three years). **Exhibit 15E.**

146. In satisfaction of the Stipulated Judgment held by Ms. Fong, Ms. Fong, Y.S. Kim, and Doosun, agreed that Ms. Fong would be entitled to the $400,000.00 plus interest as described in the preceding paragraph. **Exhibit 15E.**

147. Y.S. Kim also appointed Ms. Fong as "Attorney-in-Fact or as his agent with all of the powers thereto to execute any

and all documents and take any and all actions to revoke and/or transfer the liquor license from Buyer to any entity of her choice in the event Buyer defaults herein or upon failure of Buyer to perform any of the covenants and conditions herein or under the Lease." **Exhibit 15E.**

148. Doosun granted Ms. Fong a security interest in the "shares" (presumably of New Pacific), to secure the unpaid balance of the purchase price and other obligations under the stock purchase agreement. Doosun was also to execute a stock pledge agreement in favor of Ms. Fong as further security. **Exhibit 15E.**

149. No satisfaction of judgment has been filed in this matter and Ms. Fong therefore remains a judgment creditor of New Pacific.

150. Pursuant to RSCH 15(d)(6), Judge Fong should have disclosed Ms. Fong's creditor interest in New Pacific on his financial disclosure forms from 1997 to the present.

151. Judge Fong's financial disclosure statements for 1997 to the present did not disclose Ms. Fong's creditor interest in New Pacific. **Exhibits 2M-2S.**

152. Pursuant to RSCH 15(d)(3), Judge Fong should have disclosed Ms. Fong's power of attorney with New Pacific on his financial disclosure statements from 1998 to the present.

D. 818 Sheridan #102.

153. C.Y.F. was the managing agent of and had acquired an equitable interest in the leasehold interest for 818 Sheridan in December of 1991. On January 6, 1992, C.Y.F. assigned its interest to Ms. Fong. *See* § A.3 above.

154. In approximately August of 1991, Ms. Fong, ostensibly in her capacity as President of C.Y.F., offered to sell Y.K.H., Inc. ("Y.K.H.") a lease to an unspecified portion of 818 Sheridan for $100,000.00. **Exhibit 16A.**

155. Y.K.H. was incorporated three weeks earlier, on July 24, 1991. Judge Fong represented Y.K.H.'s incorporator, Yong Ki Her ("Her"). Y.K.H.'s initial office was 818 Sheridan, Honolulu, Hawai'i 96814. **Exhibit 16B.**

156. Judge Fong continued to represent Y.K.H. in its dealings with the Liquor Commission. On November 27, 1991, Y.K.H.'s application was granted and a Dispenser General License (Category Nos. 3 and 4 - Live Entertainment, Recorded Music, and Hostess) was issued to Y.K.H. **Exhibits 16C-16F.**

157. At the time the license was issued, C.Y.F. had not actually acquired the leasehold interest to 818 Sheridan.

158. In April of 1992, Y.K.H. entered into a sublease with C.Y.F., despite the fact that C.Y.F. had assigned its interest to Ms. Fong three months previously. **Exhibit 16G.**

159. Judge Fong continued to represent Y.K.H. in various Liquor Commission matters. **Exhibits 16F-16L** (a representative sampling of services rendered by Judge Fong to Y.K.H.).

160. In late 1994, Y.K.H. sold its assets to Donna's Lounge, Inc.

D.1. Donna's Lounge, Inc.

161. Donna's Lounge, Inc. ("Donna's Lounge") was incorporated on November 6, 1991. **Exhibit 16M.** Judge Fong represented the incorporators, Donna Lynn Kim, Hae Sook Chon, and Kyoung Sook Chang.

162. It is unclear whether Judge Fong represented either Donna's Lounge or Y.K.H. in the transaction between the two. He did prepare Minutes of Special Meeting of the Stockholders, Board of Directors and Officers of Donna's Lounge, Inc., a Bill of Sale, and an Assignment of Sublease and Consent. **Exhibits 16N-16P.** Judge Fong may have represented Ms. Fong in this transaction as well.

163. On or about November 16, 1994, but effective December 1, 1994, Y.K.H. assigned all of its right, title, and interest in 818 Sheridan, #102 by an Assignment of Sublease and Consent to Donna's Lounge. **Exhibit 16P.**

164. Judge Fong then represented Donna's Lounge in its application for transfer of liquor license. The transfer was approved on March 8, 1995. **Exhibits 16Q and 16R.**

165. Donna's Lounge defaulted on its obligations under the Sublease by failing and refusing to pay rent and other charges required under the Sublease. **Exhibits 16T and 16U.**

166. As a result of the defaults, Ms. Fong served Donna L. Kim, the President of Donna's Lounge, written notice of default and demand for payment and cure of said defaults. **Exhibits 16T, 16T.3, and 16U.**

167. Donna's Lounge did not cure the defaults and remained in default of the Sublease. On August 16, 1995, Ms. Fong sued Donna's Lounge and claimed $13,371.29 in damages. **Exhibit 16T.**

168. On March 7, 1996, judgment was entered for $13,413.04. **Exhibit 16V.** No satisfaction of judgment has been filed in this matter. **Exhibit 16S.**

169. Thus, by 1994, Ms. Fong had become a creditor of Donna's Lounge and by March 7, 1996, Ms. Fong had become a judgment creditor of Donna's Lounge.

170. Pursuant to RSCH 15(d)(6), Judge Fong should have disclosed Ms. Fong's creditor interest in Donna's Lounge on his financial disclosure forms from 1994 to the present.

171. Judge Fong's financial disclosure statements for 1994 to 2000 did not disclose Ms. Fong's creditor interest in Donna's Lounge. **Exhibits 2G-2S.**

172. Judge Fong did not disclose Ms. Fong's creditor interest in Donna's Lounge as required by RSCH 15(d)(6).

D.2. Maxwell, Inc.

173. Even though judgment was eventually entered against Donna's Lounge in March of 1996, Donna Kim was already transferring the bar in September of 1995 to Maxwell, Inc. **Exhibit 17A.** Judge Fong had represented Su Chong Maxwell in the incorporation of Maxwell, Inc. in March of 1995. **Exhibit 17B.** *See also* § B.2 above (regarding Maxwell's acquisition of Skippy's Liquor).

174. Judge Fong also represented Maxwell, Inc. in the transfer of the liquor license for the premises and a request for zoning clearance. **Exhibits 17C-17F.** Judge Fong also prepared the sublease between Ms. Fong and Maxwell, Inc. **Exhibit 17F.**

175. Maxwell, individually and as President, Director and sole shareholder of Maxwell, Inc., gave Ms. Fong a power of attorney dated February 21, 1996. The power of attorney was prepared by Judge Fong. **Exhibit 17G.** The purpose of the power of attorney was to serve as security to preserve the liquor license.

176. The power of attorney authorized Ms. Fong to conduct the corporate business, to act as president of the corporation, and also convey or otherwise dispose of her principal's interests in the corporations. **Exhibit 17G.**

177. Maxwell, assisted by Specialists, sold Maxwell, Inc. in 1998. **Exhibit 17H-17K.** Maxwell, Inc. was involuntarily dissolved on November 19, 1998. **Exhibit 17L.**

178. Specialists, Maxwell, Inc.'s new owners, and the Liquor Commission were apparently unaware that Maxwell, Inc. had been dissolved, as they all treated Maxwell, Inc. as a continuing entity. *See, e.g.*, **Exhibit 17M.**

179. Notwithstanding Maxwell, Inc.'s continuing *de facto* existence, Ms. Fong's power of attorney from Maxwell expired when Maxwell, Inc. was sold in March of 1998.

180. Therefore, pursuant to RSCH 15(d)(3), Judge Fong should have disclosed Ms. Fong's power of attorney with Maxwell, Inc. on his 1996-1998 financial disclosure statements.

E. Miscellaneous Disclosure Issues.

181. Ms. Fong incorporated Su-Con Investment Corporation ("Su-Con") on October 13, 1995. Ms. Fong was listed as president, secretary, and director. Suk Cho ("Cho") was listed as vice-president, treasurer, and director. Su-Con had an initial subscription of one hundred shares, of which Ms. Fong owned fifty-one shares and Cho owned forty-nine shares. Judge Fong represented Ms. Fong in the incorporation of Su-Con. **Exhibit 18A.**

182. Su-Con's address from 1995-1997 was 818 Sheridan, #200, which was also Judge Fong's address until November, 1996.

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Exhibits 18A-18D. Su-con's address for 1998 was 738 Ala Moana Boulevard, which was Athena's address. **Exhibit 18E.**

183. Su-Con's 1995-1998 corporate exhibits stated that Su-Con was inactive during those years. **Exhibits 18B-18E.** As of August 11, 2002, Su-Con had not filed exhibits for any year after 1998. **Exhibit 18F.** It had not, however, been involuntarily dissolved (**Exhibit 18F**), so Ms. Fong was still a shareholder and a fiduciary of a business, albeit an inactive one.

184. Pursuant to RSCH 15(d)(2), Judge Fong should have disclosed Ms. Fong's ownership interest in Su-Con on his financial disclosure statements for 1995 to present.

185. Judge Fong's 1995-2000 statements do not make the aforementioned disclosures. Judge Fong has never amended his statements to make said disclosures. **Exhibits 2I-2S.**

186. Judge Fong did not disclose Ms. Fong's ownership interest in Su-Con as required by RSCH 15(d)(2).

187. Judge Fong did not disclose Ms. Fong's fiduciary relationship to Su-Con as required by RSCH 15(d)(3).

E.2. <u>Sun Kyu Lounge and Loan to Song He Hong.</u>

188. On June 4, 1996, Ms. Fong sued Sun Kyu Cocktail, Inc. ("Sun Kyu") and Sun Kyu Chung ("Chung") to recover amounts allegedly due on defaulted loans totaling $70,000.00. The case was titled <u>Connie Y. Fong v. Sun Kyu Cocktail, Inc., et al.</u>, Civil No.

96-2293-06 (Circuit Court of the First Circuit, State of Hawai'i). **Exhibit 19A.**

189. In the complaint, Ms. Fong also asserted Sun Kyu owed Song He Hong ("Hong") $100,000.00 and that Hong had assigned $50,000.00 of that amount to Ms. Fong for at least partial satisfaction of a debt owed by Hong to Ms. Fong. **Exhibit 19A.**

190. According to Judge Fong, Ms. Fong was allegedly acting on behalf of "a sister who lives in California" and that while Sun Kyu, Chung, and Hong owed Ms. Fong's sister money, suit was filed in Ms. Fong's name because she was "here" in Hawai'i, the sister is handicapped (polio) and travel is difficult for her. **Exhibit 3D and R-6.**

191. On or about June 17, 1996, Sun Kyu and Chung, *pro se*, stipulated to a judgment in which Ms. Fong obtained Sun Kyu's stock, its assets, and a monetary judgment of $74,868.19. **Exhibit 19B.**

192. A Notice of Entry of Stipulated Judgment as Against Defendants Sun Kyu Cocktail, Inc. and Sun Kyu Chung was filed on June 21, 1996. **Exhibit 19C.** A writ of Execution was issued on March 18, 1997. **Exhibit 19D.** The writ of Execution has not been returned and no satisfaction of judgment has ever been filed in this matter. **Exhibit 19E.**

193. While the validity of the judgment is suspect because it was obtained under apparently false pretenses, as a facially valid judgment it gives Ms. Fong a creditor interest in Sun Kyu, at least sufficient to warrant disclosure under RSCH 15(d)(6). There is no evidence Judge Fong was involved in any of the legal proceedings brought "under apparently false pretenses".

194. Pursuant to RSCH 15(d)(6), Judge Fong should have disclosed Ms. Fong's creditor interest in Sun Kyu on his financial disclosure forms from 1996 to the present.

195. Judge Fong's financial disclosure statements for 1996 to the present did not disclose Ms. Fong's creditor interest in Sun Kyu. **Exhibits 2K-2S.**

E.3. Fong v. Revele Productions.

196. In July of 1993, Ms. Fong sued Revele Productions, Inc. ("Revele"), Danny Ertel, and Donald Ertel for summary possession and back rent in a case titled Connie Y. Fong v. Revele Productions, Inc., Danny Ertel, and Donald Ertel, Civil No. 1RC93-5769 (District Court of the First Circuit, Honolulu Division, State of Hawai'i). **Exhibits 20A and 20B.**

197. Revele Productions, Inc. ("Revele") ran a bar called Classic Cats at 818 Sheridan, #100. Danny and Donald Ertel were the officers and directors of Revele. **Exhibits 20C, 20D, and 24A.**

198. At a hearing on the lawsuit, Danny Ertel appeared on behalf of all defendants and stipulated that Ms. Fong was entitled to possession of the premises. **Exhibit 20A.** A monetary judgment for $34,426.57 was entered on October 8, 1993 against Revele and Danny Ertel. **Exhibit 20B.** The judgment remains outstanding. **Exhibit 20A.**

199. Pursuant to RSCH 15(d)(6), Judge Fong should have disclosed Ms. Fong's creditor interest in Revele on his financial disclosure forms from 1993 to the present.

200. Judge Fong's financial disclosure statements for 1993 to 2000 did not disclose Ms. Fong's creditor interest in Revele. **Exhibits 2F-2S.**

201. Judge Fong's failure to disclose Ms. Fong's creditor interest in Revele violated RSCH 15(d)(6).

III. Improper Associations.

202. Special Counsel has also considered whether the nature of Ms. Fong's business and financial relationships, separate and distinct from Judge Fong's own failure to disclose those relationships, is ground for discipline of Judge Fong.

203. Specifically, the couple's involvement with hostess bar businesses was the initial subject of the newspaper articles that prompted this investigation. **Exhibits 4A-4D.**

A. 818 Sheridan, #100.

204. Having successfully evicted Revele from 818 Sheridan, #100, Ms. Fong offered to lease the space to Water Lily Restaurant & Lounge, Inc. ("Water Lily") in late 1993. **Exhibit 24A.** Water Lily was incorporated on December 6, 1993 by Young Hae Yi ("Yi"). Judge Fong represented Yi in the incorporation of Water Lily. **Exhibit 24B.**

205. Judge Fong represented Water Lily in its dealings with the Liquor Commission. **Exhibits 24C-24F.** On March 23, 1994, the Liquor Commission approved Water Lily's application for a liquor license. Water Lily obtained a Dispenser General license (category nos. 3 and 4 - live entertainment, recorded music, and hostess.) **Exhibit 24F.** Judge Fong continued to represent Water Lily in its dealings with the Liquor Commission. **Exhibits 24J-24M.** In particular, Judge Fong represented Water Lily at hearings on the prostitution violations relevant to this case. *See* § C.3 below for detailed discussion.

206. In December 1995-March 1996, Water Lily sold the bar at 818 Sheridan, #100, along with the liquor license for the premises, to National Restaurant & Lounge, Inc. ("National"). **Exhibits 24O-24V.** National was incorporated on December 21, 1995 by Young Ran Yi. Judge Fong represented Young Ran Yi in the incorporation of National. **Exhibit 24N.**

207. Judge Fong then represented National in the transfer of Water Lily's liquor license. **Exhibits 24P-24V.** It is unknown whether Judge Fong represented Water Lily or Ms. Fong in this transaction.

B. Prostitution at New Secret.

208. Beginning in November 1994, the Liquor Commission received a series of complaints (November 1 and 4, 1994, June 30, 1995, and August 2, 1995) alleging that prostitution was taking place in New Secret. New Secret was Water Lily's trade name and the name of the bar at 818 Sheridan Street, #100. **Exhibits 24H, 24I, 25A.1, 25A.2, 25B.1, and 25B.2.**

209. The matters were referred to the Honolulu Police Department, which conducted its own investigations (on November 21, 1994 and July 19, 1995) into prostitution at New Secret. The investigations resulted in HPD incident report nos. 94/491-025, 94/491-024, 95/301-702. **Exhibits 25A.3 and 25A.5.**

210. The arrests arising out of the November 21, 1994 investigations resulted in additional notoriety for then-State Senator Milton Holt, who would allegedly be a "material defense witness" for one of the defendants. The matter received some attention in the press. **Exhibit 25A.4.** The Liquor Commission then initiated violation proceedings against Water Lily, based on the police reports, *See* Liquor Commission Violation/Investigative

Report Nos. LCV 95-098 (November 21, 1994 arrests) and LCV 95-437 (July 19, 1995 arrest), **Exhibits 25A and 25B**, respectively. Judge Fong represented Water Lily in the Liquor Commission hearing on LCV 95-098 and LCV 95-437. **Exhibits 25A.6.**

211. Thus, Judge Fong was aware of alleged criminal activity occurring at New Secret on at least two occasions.

C. Associating with "Unsavory Characters."

212. A judge is subject to discipline for, among other things, "conduct that brings the judicial office into disrepute" or "conduct that constitutes a violation of the Code of Judicial Conduct." RSCH 8.5(a)(4), (5). Canon 2 of the Code of Judicial Conduct states: "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." Section A of Canon 2 states: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The commentary to Canon 2 states:

> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

> The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

213. In the Thursday, July 6, 2000 Star-Bulletin Article, Judge Fong is quoted as saying "I was never notified of any kind of illegal activity. Nobody ever inquired of me. I was never aware of anything illegal." **Exhibit 4A.**

214. Judge Fong, however, represented the bars at 818 Sheridan on numerous liquor code violations. **Exhibits 12J, 12K, 12N, 12X, 12Y, 16J-16L, and 24J-24M.** More significantly, he also represented New Secret on its prostitution charges. **Exhibits 25A.6 and 25B.4.**

215. Judge Fong is highly respected within the Hawai'i State Judiciary as is reflected by his election and service as President of the Hawai'i State Trial Judges Association from November 1999 to November 2001. **Exhibit R-7.**

216. Judge Fong performed his duties ably and conscientiously during the time he served as a per diem judge and a district judge. **Exhibit R-7.**

DATED: Honolulu, Hawai'i, July 24 2003.

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