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STATE OF HAWAII
STATE ETHICS COMMISSION

Attorneys for Respondent
ROWENA AKANA

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,

Complainant,

vs.

ROWENA AKANA;

Respondent.

COMPL-C-15-00236

**RESPONDENT ROWENA AKANA'S
ANSWER TO HAWAII STATE
ETHICS COMMISSION'S
FURTHER STATEMENT OF
ALLEGED VIOLATIONS DATED
JULY 19, 2018; CERTIFICATE OF
SERVICE**

**RESPONDENT ROWENA AKANA'S ANSWER TO HAWAII STATE ETHICS
COMMISSION'S FURTHER STATEMENT OF ALLEGED VIOLATIONS
DATED JULY 19, 2018**

ROWENA AKANA ("Trustee Akana" or "Respondent"), through her undersigned counsel, hereby respectfully answers the Further Statement of Alleged Violations from the Hawaii State Ethics Commission ("Complainant") dated July 19, 2018 (the "Charges"). Subject to the denials and the affirmative defenses stated herein, ROWENA AKANA responds as follows:

1. Respondent admits the allegations in paragraphs 13, 14, 32, 33, 34, 35, 36, 37 and 38 of the Charges but admits no wrongdoing in connection with any of the admitted acts or occurrences.

2. Respondent denies the allegations in paragraphs 44, 45, 46, 47, 49, 50, 52, 53, 54, 56, 57, 59, 60, 62, 64, 65, 66, 68 and 69 of the Charges. In addition, certain of the allegations in these paragraphs are addressed below with further responses by the Respondent.

3. Respondent does not presently have information in her possession or knowledge or sufficient documentary evidence at her disposal sufficient to enable her to admit or deny the allegations in paragraphs 1 (first sentence), 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Charges, and, therefore, she denies same and leaves Complainant to its proof.

4. Respondent responds to the second sentence of paragraph 1 of the Charges as follows: the allegations therein merely summarize the contents of the Hawai'i State Constitution, and, therefore, she refers the Complainant and the Hearings Officer, Administrator or Judge to the document referenced, which speaks for itself, and leaves Complainant to its proof.

5. Respondent responds to the paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Charges as follows: the allegations therein merely summarize and or quote the contents of Hawai'i law, statute and/or administrative rules, and, therefore, she refers the Complainant and the Hearing Officer, Administrator or Judge to the laws, statutes and/or rules referenced, which speak for themselves, and leaves Complainant to its proof. Furthermore, said paragraphs state legal conclusions or statements or principles of law, statute or rule, and not facts within the Respondent's first-hand knowledge, to which Respondent is not required to respond.

6. Respondent is not required to respond to paragraphs 15, 16, 17, 39, 40, 41, 42,

44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 56, 57, 59, 60, 62, 64, 65, 66, 68 and 69 of the Charges because said allegations comprise and prematurely state legal conclusions and/or recitations of purported legal duties, principles or obligations imposed under law, statute or administrative rule, or recitations of OHA policy, and as a result, she denies same and leaves Complainant to its proof, in addition to certain of these allegations being specifically denied outright above in ¶ 2.

7. Respondent is not required to admit or deny the allegations in paragraphs 43, 48, 51, 55, 58, 61, 63 and 67 of the Charges because they merely repeat, reallege and incorporate prior paragraphs, but, nevertheless, she repeats, realleges and incorporates her responses to said prior paragraphs, in turn.

8. Respondent hereby requests a hearing before a neutral hearing officer to determine the lack of validity of the charges brought against her and to dismiss same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. The Charges fails to state a claim against the Respondent upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Complainant lacks subject matter jurisdiction over all of the claims and charges asserted in the Expenditures and Gifts Charges against Respondent relating to any OHA Trustee trust fund expenditures, because Complainant does not have jurisdiction over the discretionary spending accounts of the OHA Trustees, since such funds comprise “trust funds” and do not constitute “state funds,” and Complainant does not have jurisdiction over the former.

THIRD AFFIRMATIVE DEFENSE

3. Complainant’s claims are barred, in whole or in part, because Complainant lacks standing to bring the charges alleged.

FOURTH AFFIRMATIVE DEFENSE

4. Complainant's charges are barred and/or Complainant is not entitled to the relief sought due to the doctrines of laches and waiver.

FIFTH AFFIRMATIVE DEFENSE

5. Complainant's charges are barred, in whole or in part, in that they violate the Equal Protection clause and Rights of Citizens Clause of the Hawaii State Constitution because they single the Respondent out for alleged acts taken and/or expenditures made in her official capacity as an OHA Trustee that a large number of other OHA Trustees regularly engage in and consider proper, for which those OHA Trustees have not faced similar proceedings and charges, thereby subjecting the Respondent to an arbitrary exercise of Complainant's power and dissimilar treatment under the law.

SIXTH AFFIRMATIVE DEFENSE

6. Complainant's charges are barred, in whole or in part, in that they violate the Respondent's Equal Protection and Due Process rights and Rights of Citizens under the Hawaii State Constitution by singling the Respondent out for alleged wrongful acts taken in her official capacity as an OHA Trustee, for acts and expenditures that were previously *approved* by OHA, thereby subjecting the Respondent to an arbitrary exercise of Complainant's power and dissimilar treatment under the law, and constituting an overstepping of jurisdiction by Complainant into areas already regulated and intended to be regulated internally by OHA. Furthermore, regarding acts and expenditures that were *not approved* by OHA, Respondent reimbursed OHA for each and every such line item at the time of the review, so Complainant's charges either evidence a misunderstanding of the OHA process or seek to penalize Respondent for charges that she in good faith presented to OHA per standard policies and procedures and promptly paid upon being told to do so, begging the question of where and what is the violation

and similarly subjecting Respondent to an arbitrary exercise of Complainant's power and dissimilar treatment under the law, and constituting an overstepping of jurisdiction by Complainant into areas already regulated and intended to be regulated internally by OHA.

SEVENTH AFFIRMATIVE DEFENSE

7. Complainant's charges are barred, in whole or in part, in that they violate the Respondent's due process rights under the Hawaii State Constitution, as well as, the Cruel and Excessive Punishment Prohibition contained in the Hawaii State Constitution, by seeking fines and penalties against the Respondent that are excessive and grossly disproportionate to the underlying charges – such as seeking a \$1,000.00 fine in connection with an alleged expenditure violation in the amount of \$23.72 for food purchased to bring to an OHA pot-luck holiday party – thereby constituting an arbitrary exercise and abuse of Complainant's power and unconstitutional, excessive fines and punishment.

EIGHTH AFFIRMATIVE DEFENSE

8. Complainant's charges are barred, in whole or in part, by the doctrine of equitable estoppel.

NINTH AFFIRMATIVE DEFENSE

9. Complainant's charges re barred, in whole or in part, by the doctrines of unclean hands and persistent inequitable conduct.

TENTH AFFIRMATIVE DEFENSE

10. Complainant's charges are barred, in whole or in part, due to lack of causation.

ELEVENTH AFFIRMATIVE DEFENSE

11. Complainant's charges are barred, in whole or in part, due to improper motive on the part of the Complainant in that, upon information and belief, it is engaged in a wrongful plan and scheme to alienate, isolate and remove Respondent from her OHA Trustee position, in

collusion with a cabal of other OHA Trustees and related persons who have historically opposed Respondent due to her outspoken nature, demands for full transparency and activist pursuits.

TWELFTH AFFIRMATIVE DEFENSE

12. Complainant's charges are barred, in whole or in part, by statutes of limitations or by equivalent time limitations for Complainant to first bring charges.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Complainant's charges relating to expenditures are barred due to accord and satisfaction, in that a number of the charges alleged pertain to items that were already reimbursed to OHA by Trustee Akana per OHA's standard accounting procedures at the time, or shortly after the time, they were incurred, per OHA policy and practice.

FOURTEENTH AFFIRMATIVE DEFENSE

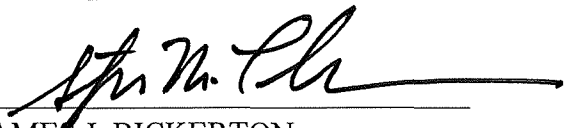
14. Respondent states her intention to rely on any other applicable affirmative defenses permitted under the Hawaii Rules of Civil Procedure, all statutes and laws and rules applicable to the Hawaii State Ethics Commission, other Hawaii statute, and other Hawaii case law, and Respondent will amend and/or supplement this Answer/Response if and when such defenses are determined to be applicable, and to seek relief from the courts of the state of Hawai'i.

WHEREFORE, Respondent ROWENA AKANA hereby respectfully prays as follows in response to the Charges:

- a. That she be granted a hearing before a neutral hearings officer to determine the invalidity of the charges against her and to dismiss the fines requested in connection therewith;
- b. That the Charges against her be dismissed with prejudice;
- c. That a finding of no wrongdoing on Respondent's part ensue;

- d. That no fines be levied against her;
- e. That, in the alternative, if any fines are to be levied against her for technical violations, such as for belated reporting, that they be nominal due to no wrongful intent, motive or wrongdoing, in the amount of \$1.00 or some other amount deemed reasonable but less than the maximum \$1,000;
- f. That she be awarded her reasonable attorneys' fees and costs incurred in defending against this frivolous and ill-motivated proceeding;
- g. For such other and further relief as the neutral Hearing Officer may deem just and proper.

DATED: Honolulu, Hawai'i, August 1, 2018.



JAMES J. BICKERTON
BRIDGET G. MORGAN
STEPHEN M. TANNENBAUM

Attorneys for Respondent
ROWENA AKANA

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a true and correct copy of the foregoing document – **RESPONDENT ROWENA AKANA’S ANSWER TO HAWAII STATE ETHICS COMMISSION’S FURTHER STATEMENT OF ALLEGED VIOLATIONS DATED JULY 19, 2018 (COMPL-C-15-00236)** – was duly served upon the following party at their last known address in the manner and on the date herein below indicated:

Daniel Gluck, Esq.
Virginia Chock, Esq.
HAWAII STATE ETHICS COMMISSION
1001 Bishop Street,
ASB Tower, Suite 970
Honolulu, HI 96813

Via Hand Delivery

DATED: Honolulu, Hawai‘i, August 1, 2018.



JAMES J. BICKERTON
STEPHEN M. TANNENBAUM
BRIDGET G. MORGAN

Attorneys for Respondent
ROWENA AKANA