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October 2, 2014

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Re: Letter issued pursuant to 13 C.F.R. § 124.1015.

Dear Ms. Lum:

I do not know to whom this letter should be directed, however, I request that you see that it gets in the proper hands.

#### I. GENERAL STATEMENT

I, Su Yong Yi ("Su Yong") was recently sued by Nan Inc. ("Nan") for allegations made by Patrick Shin ("Shin") along with the following other defendants: Su-Mo Builders, Inc. ("Sumo"), Sam Ho ("Ho") and my wife Maureen Yi ("Maureen") who had nothing to do with the operations of Sumo. Su Yong, Maureen, Ho and Sumo are referred to hereinafter jointly as the "Defendants." I have been advised by my legal counsel that 13 C.F.R. § 124.1015 of the SBA law exposes me to criminal penalties for failing to correct any continuing representations that you have made to the SBA that are no longer true, and to disclose conduct contrary to the SBA law, this letter is to meet my obligations under 13 C.F.R. § 124.1015.

As a short summary of this letter, I believe from this vantage point that Shin and Nan acted have acted contrary to the SBA law since executing a Mentor/Protégé Agreement in May 2006, in at least, but not limited to the following specifics: (a) enticing Sumo into a Mentor/Protégé agreement and subsequently three joint venture agreements with many project contracts for the sole purpose of taking advantage of Sumo and allowing Nan to participate on a continuing and fictitious basis in SBA 8(a) projects; (b) changing the participation of Nan and its profit percentage as called for in the joint venture agreements, contrary to the law and on the basis of misrepresentation made to Sumo by requiring that the split of work for Sumo be anywhere from 0% to 40%; Nan essentially took far more than the joint agreement allocation of 51-49%; (c) not satisfied with changing the profit margin, Nan then sought to insert a coefficient billing process, changing the percentage split, ordering set fees for no work and keeping improper books and billing the projects for improper expenses; (d) Nan also submitted false information to the SBA to perpetuate the fraud and used its house counsel in the process, specifically, Nan drafted the letter to the SBA claiming that Nan had fully performed all of its obligations under the Mentor/Protégé Agreement. As to the annual reports required by 13 C.F.R.

#### Exhibit "A"

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§ 124.520(g)(1), (e) Nan advised Sumo that questions relative to the Mentor/Protégé Agreement's requirements for annual reports had to be favorably answered in order for the work to continue, such reports prepared by Nan were false when made but met the requirements of Nan; (f) when Sumo objected to the changes that Nan made in the joint venture agreements, for example: (i) the splitting of proceeds, (ii) the division of the work as to the 8(a) projects, (iii) the changes in the handling of each of the projects, Nan advised Sumo, that there was no need to disclose the changes that Nan made and that Sumo should not communicate such information to the SBA; (g) after taking the cream of the projects and the lion's share of the profits contrary to the terms of the joint venture agreements, Nan now seeks to wipe out Sumo by filing a lawsuit, TRO and Motion for Preliminary Injunction ("PI Motion") seeking among other relief, the dissociation of Sumo from JVsII and III (hereinafter defined). In filing these actions, Nan misrepresented the facts, failed to disclose the sums taken by Nan, obtained a TRO on the false information without notice to Sumo and even went to the depths of sending the TRO to Sumo's bonding company seeking to further disable Sumo.

I will detail my claims and provide you with exhibits hereinafter and I am willing to meet with the SBA along with my counsel to provide greater detail to this letter. In any event the ten causes of action brought by Nan to carry out its objectives are set forth hereinafter, I believe that the claims made against Sumo and Sam Ho, myself and my wife were made in an effort to stop the truth from coming out:

**A. COUNT I - SUMO'S WRONGFUL DISSOCIATION FROM THE COMPANIES**

On the basis that Nan claims that: (i) Sumo willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under section 428-409; and (ii) Su-Mo is engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member; Nan is seeking to have Sumo removed as a member of JVI and JVII. Interestingly, Nan claims that Sumo also violated its obligations of good faith and fair dealing pursuant to HRS § 428-409(c); when in fact this covenant has been violated by Nan.

**B. COUNT II - FRAUDULENT TRANSFER**

This cause of action is based a loan from Nan to Sumo which was required, as Nan failed to allow Sumo to be paid its profit share or the required distributions as set forth in the joint venture agreements; or payments under the categories "reimbursables" or "coefficient payments" as created by Nan contrary to the joint venture agreements and the applicable SBA law. Furthermore, the loan is not documented as to the terms of payment as that matter was never discussed or agreed upon by the parties; Nan plays fast and loose with the facts and alleges an outstanding loan, without submitting the loan agreement, or any allegations as to when and how

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the loan amount was to have been paid off. In any event because Nan claims that as Sumo is delinquent on the loan, the distributions paid out in 2014 are fraudulent under HRS §§ 651C-4(a) and 651C-5 and voidable under HRS § §651C-7 & 8 and Nan is entitled to recover those distributions totaling \$1,674,669.30 from Su-Mo. **What Nan fails to mention is that those distributions which he claims were unilateral were but the 40% of the total distribution, and that the 60% share (\$2,415,456.76) was sent to Nan and which Nan has retained.** Furthermore, Nan claims that all such distributions were to be issued by dual signed checks, but never in the history of the three joint ventures has Nan ever required dual signed checks, and Nan contrary to the joint venture agreements, set up a method of payment without dual signed checks.

**C. COUNT III – CONSTRUCTIVE FRAUD**

This cause of action is based upon the same allegations: that Defendants took the unilateral distribution of \$1,674,669.30 without the consent and approval of Nan and that Nan therefore entitled to damages and other relief. As set forth such an allegation is not correct. Though Nan did not agree to have Sumo issue the check (\$1,674,669.30) to itself, such step was taken only after Nan changed the procedure and disallowed the issuances of the checks to Sumo for “reimbursables” and “coefficients” and such distribution was only done, when Sumo issued the 60% of the distribution to Nan (note that Nan ignored the 51/49% split) and required a 60/40% split contrary to the joint venture agreements. Nan has of course retained the 60% split which totaled \$2,415,456.76.

**D. COUNT IV - \$1.5 MILLION PERSONAL LIABILITY-STATUTORY**

Based upon the following section of the HRS § 428-407(a) provides:

**Liability for unlawful distributions.** (a) A member of a member-managed limited liability company or a member or manager of a manager-managed company who votes for or assents to a distribution made in violation of section 428-406, the articles of organization, a written operating agreement, or a signed record is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without violating section 428-406, the articles of organization, a written operating agreement, or a signed record if it is established that the member or manager did not perform the member's or manager's duties in compliance with section 428-409.

HRS § 428-406 provides:

**Limitations on distributions.** (a) A distribution may not be made if:

- (1) The limited liability company would not be able to pay its debts as they become due in the ordinary course of business; or

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(2) The company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

This is a blatant effort to scare the three individual defendants with individual liability, however, Shin should be more concerned as he is the person that altered the distribution agreements as to profits and losses as set forth in the joint venture agreements and who has retained the 60% 2014 distribution.

**E. COUNT V – CONTRIBUTION**

This cause of action is based upon the mistaken assumption that Nan has not violated any of the terms of the joint venture agreements. Nan and Shin are seeking contribution on bond losses.

**F. COUNT VI BREACH OF CONTRACT – EXPRESS AND IMPLIED**

This cause of action is based on the allegation that Su-Mo has not paid its loan back to Nan; however, again there are no executed loan agreement documents nor any specific terms which have been breached. Shin also alleged that Sumo breached the terms of the joint venture agreements.

**G. COUNT VII BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

Nan alleges that there is an applicable covenant of good faith and fair dealing among parties to a contract; basically we agree that such a covenant exists and our counterclaim alleges that Nan and Shin are in violation of this covenant.

**H. COUNT VIII UNJUST ENRICHMENT**

Nan claims that Sumo has received more than what it was entitled to; this is incorrect and no accounting has been provided consistent with the terms of the joint venture agreements.

**I. COUNT IX PUNITIVE DAMAGES**

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The Complaint alleges that "the conduct of Defendants was concerted, intentional, wanton, and willful and in conscious disregard for the rights of Nan"; for all of the reasons set forth above, we believe that the party liable for punitive damages will be Nan and Shin.

## II. MENTOR/PROTÉGÉ AGREEMENT

### A. FORMATION OF MENTOR-PROTÉGÉ RELATIONSHIP

On May 5, 2006, Su-Mo (as protégé) and Nan (as mentor) submitted a Proposed Mentor-Protégé Agreement ("MPA") to the SBA. See, Exhibit 1. The accompanying letter to Erlyne Lum (SBA Business Opportunity Specialist) outlines some of the areas where Nan, Inc. was to provide assistance to Su-Mo. See, Exhibit 2. These include bonding (Su-Mo only bondable up to \$200,000 in aggregate, whereas Nan bondable up \$200 million), staffing (Su-Mo only has four (4) personnel, whereas Nan has 45 Project Engineers, 50 Field Supervisors), and experience (Su-Mo's largest jobs were \$200,000 whereas Nan had exponentially more experience). This was drafted by Nan and Shin. Even though the MPA committed Nan to providing the bonding, Nan from 2006 consistently advised Sumo that unless it agreed with Nan's required changes, the projects could not be bonded.

It is clear that Nan was not qualified to perform 8(a) work. The MPA provides, *inter alia*, that Nan is an 8(a) graduate, has been profitable over the past two years, possesses good character, and has not been debarred from contracting with the Federal Government. The MPA further states that the alliance with Nan will benefit Su-Mo in the areas of "financial equity investments, loans, and joint ventures; accounting, management, technical, subcontracting, marketing, business planning, technology transfers, and human resources." Loans from Nan to Sumo were specifically contemplated. Under the MPA, Su-Mo and Nan agree to the following general terms:

1. Mentor will provide training and guidance.
2. Mentor will provide training in marketing to the Federal Government.
3. Mentor will provide assistance with bid preparation and training.
4. Mentor will assist in obtaining bonding.
5. Mentor will assist in preparing Certified Payroll.
6. Mentor will train in negotiations with major suppliers.
7. Mentor will assist in securing Prime Contracts under the 8(a) program and will provide subcontracting opportunities.

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8. Mentor will train in the payment of invoices and reporting.
9. Mentor will form joint ventures with protégé where most advantageous for both firms.
10. Both acknowledge that SBA must approve any changes to MPA in writing.
11. As required by 13 C.F.R. § 124.520(g)(1), both must provide an annual business plan to SBA including a detail of management and technical assistance received by Protégé firm, loans and/or equity contributions made to Protégé firm, subcontracts awarded to Protégé firm by Mentor, federal contracts awarded to any joint venture between them, and a narrative describing the success the Mentor's assistance has had in responding to the Protégé's needs.

The Mentor-Protégé Agreement between Nan and Su-Mo was mutually terminated, and a notice was sent to the SBA on April 9, 2012 which notes in part:

This correspondence is to respectfully inform the U.S. Small Business Administration (SBA) that Nan, Inc. (Nan) and Su-Mo Builders, Inc. (Su-Mo) have mutually agreed to terminate the Mentor-Protégé Agreement between the two firms.

**Nan is pleased that Su-Mo has flourished in becoming a successful company, which is now capable of independently performing all aspects of construction in project administration and execution. With this capacity, Su-Mo no longer requires the assistance from Nan as it looks to pursue future contracts independently.**

Nan would like to express its appreciation to the SBA for all its support toward the **successful mentor-protégé relationship**, ...

[Signed by Fooney Freestone for Nan, and Su Yong Yi for Su-Mo]

This letter was drafted by Nan and Freestone and was false when written in that Nan did not provide necessary training and did not provide the bonding unless Sumo submitted to changes that were contrary to the joint venture agreements and contrary to the wishes and basis upon which Sumo entered into the MPA. See, Exhibit 3. (Emphasis added). See also, September 1, 2011 letter from the SBA to Su-Mo in which the SBA states that it has reviewed the mentor-protégé relationship with Nan and has determined that Su-Mo continues to benefit from it. Exhibit 4. **This letter is also incorrect and that Su-Mo did not benefit from the Mentor/Protégé relationship, nor did Nan provide the support, training etal specifically called for in the MPA.**

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### III. SUMMARY OF THE APPLICABLE JOINT VENTURES AND PROJECTS

#### A. THE JOINT VENTURES/LLCS

After the MPA was approved, Nan and Su-Mo formed three entities to obtain federal construction contracts. The following facts are applicable: (i) Each JV has its own trade name which is registered with DCCA and SAM (System for Award Management). Each company also has its own Federal ID # and GET # and DUNS #. (ii) Su-Mo and Nan created these companies to pursue Federal contracts or projects. (iii) In order for Nan and Su-Mo to pursue the contracts or projects, the three joint ventures (JV) were created and subsequently JV agreements were signed between Su-Mo and Nan. **8(a) set aside contracts required SBA approval on Joint Venture Agreement to comply with SBA mentor protégé program which included bonding by Nan and again Nan required changes to its profit share and work share contrary to joint venture agreements and over the objections of Nan.** (iv) All of the companies were successful in winning major contracts or projects. (v) Some contracts were Multiple Award Construction Contract (MATOC or MACC). These contracts have many task orders.

##### 1. JVI:

The first entity formed was Su-Mo/Nan JV ("JVI"), a Hawaii general partnership. The partnership was registered with the DCCA on September 21, 2006; the JVI. Su-Mo apparently executed joint venture agreements ("JVAs") for each project contract awarded to the JVI. The following JVAs were entered for the following projects:

a. MACC project Number N62478-07-D-4007, 8(A) MULTIPLE AWARD CONSTRUCTION CONTRACT (MACC), Addendum #2 dated May 29, 2009, which was amended the September 7, 2006;

b. KPC project Number W912CN-08-D-0004, CONSTRUCTION INDEFINITE DELIVERY INDEFINITE QUANTITY (IDIQ) MULTIPLE AWARD TASK ORDER CONTRACT;

c. MATOC contract number (HLANG) W912J6-08-D-0014

##### 2. JVII

The second entity the parties formed is Sumo-Nan JV II LLC ("JV II") which refers to SUMO-NAN JV II, a Hawaii limited liability company. The following JVAs were entered for the following projects:

a. Project MULTIPLE AWARD TASK ORDER CONTRACT MATOC (COE), project number W9128A-09-D-0019

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b. Project Design-Build/Design-Bid-Build Multiple Award  
Construction Contract, MACC, project number N62478-11-D-4046

JVII was registered with the DCCA on August 13, 2009. Under the Articles of Organization, JV II is a manager-managed LLC and Su-Mo and Nan are listed as the original managers. See, Exhibit 5. Counsel to Nan stated that there is no operating agreement and no records of any meetings or business decisions. The JVAs that have been received to date are generally similar, but there are differences. As an example, the JV II JVA, effective as of July 20, 2009, contains the following terms, among others:

a. The purpose of JV II is to perform the construction contract for the Multiple Award Task Order Contract (MATOC), that Nan will provide expertise and guidance, and to advance Su-Mo to be "strong, self-sustaining, and a key player in the construction industry." Id. at 1.0.

b. That 51% of the JV shall be owned by Su-Mo, with Nan holding 49%. Id. at 2.0.

c. That Su-Mo shall serve as the Managing Venturer of the JV. Id. at 4.0.

d. That the parties shall form a Management Committee. And, that "[a]ll decisions, commitments, agreements, undertakings, understandings, or other matters pertaining to the Contract shall be agreed upon by the representatives, with Su-Mo controlling fifty-one percent (51%) of any vote, as compared to forty-nine (49%) for Nan." Id. at 5.0.

e. The following services for performance of the contract shall also be divided 51% Su-Mo, 49% Nan: Administration, Project Manager, Quality Control/Safety, Superintendent/Foreman and Field Labor. Id. at 6.0.

f. That not less than 51% of the net profits earned by the JV will be distributed to Su-Mo. Id. at 7.0.

g. That a bank account shall be established and shall require the signature of both parties for withdrawal purposes. Any party who incurs or pays a JV Expense is to be reimbursed from the JV bank account "upon production of appropriate receipts or records evidencing the Joint Venture expense." Id. at 8.0.

h. Appendix A to the JVA shows the equipment, facilities, and other resources provided by each party. It notes that "Bonding will be provided based upon Nan's financial status."

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i. **The accounting and administrative records of the joint venture will be kept in Su-Mo's office, unless approval to keep them elsewhere is granted by the SBA. What records have been kept as to the accounting and administration and have you turned them all over to KSG. Have the records all been kept at Su-Mo. [this is another question that you have not answered, we need this in order to file the answers and counterclaims]**

j. The **SBA must approve the JV II JVA prior to award of the contract and "all amendments to the approved Joint Venture shall be subject to prior approval by the SBA."** Id. at 24.0.

See, Exhibit 6.

### 3. JV III

The third joint venture entity formed by the parties is Sumo-Nan, LLC ("JVIII"). On **October 8, 2009**, the parties registered the Articles of Organization for JVIII with the DCCA. Under the Articles of Organization, JVIII is a manager-managed LLC and Su-Mo and Nan are listed as the original managers. See, Exhibit 7. The following JVAs were entered for the following projects

a. Project: ASOC WHEELER, FY10 MILCON PN YVEW 83003, UPGRADE AIR SUPPORT OPERATIONS CENTER (ASOC) COMPLEX, WHEELER ADMINISTRATION; project number W9128A-10-C-0004. Joint Venture Agreement effective as of January 8, 2010

b. Project: F22 HICKAM, project number W912J6-10-C-0001

c. Project: HMR UEP (Helemano), Construct 140PN Unaccompanied Enlisted Personnel Housing Facility (Barracks), Helemano Military Reservation, project number W9128A-11-C-0014. Joint Venture Agreement effective as of January 20, 2011.

d. Project: TAMC – WBR Brigade, WBR Brigade Complex PH7A, project number W9128A-11- C-0006. Joint Venture Agreement effective as of January 28, 2011

As with JV II, there is no operating agreement for JVIII and we have received no records of minutes confirming any management decisions of each of the JVAs or JVIII. As an example, the JVA for the ASOC project, effective as of January 8, 2010, contains the following terms, among others:

a. The purpose of JVIII is to submit a proposal for, and if selected to perform, the construction contract for the ASOC complex for the U.S. Army COE, that Nan will

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provide expertise and guidance, and to advance Su-Mo to be "strong, self-sustaining, and a key player in the construction industry." Id. at 1.0, 4.0.

b. That 51% of the joint venture shall be owned by Su-Mo, with Nan holding 49%. The following services for performance of the contract shall also be divided 51% Su-Mo, 49% Nan: Administration, Project Manager, Quality Control/Safety, Superintendent/Foreman and Field Labor. Id. at 8.0.

c. That Su-Mo shall serve as the Managing Venturer of the JV. Id. at 6.0. The agreement does not explain what authority or responsibility Su-Mo has as the Managing Venturer or how this differs from Su-Mo and Nan being names as managers on the Articles of Organization.

d. That the parties shall form a Management Committee. And, "[a]ll decisions, commitments, agreements, undertakings, understandings, or other matters pertaining to the Contract shall be agreed upon by the representatives, with Su-Mo controlling fifty-one percent (51%) of any vote, as compared to forty-nine (49%) for Nan." Id. at 7.0.

e. That not less than 51% of the net profits earned by the JV will be distributed to Su-Mo; losses shall be shared 51% Su-Mo, 49% Nan. Id. at 9.0.

f. That a bank account shall be established and shall require the signature of both parties for withdrawal purposes. Any party who incurs or pays a JV Expense is to be reimbursed from the JV bank account "upon production of appropriate receipts or records evidencing the Joint Venture expense." Id. at 11.0.

g. That Su-Mo and Nan agree to indemnify each other from "any and all losses of the Joint Venture that are in excess of such other Party's Percentage of Participation. Provided, however, that the provisions of this subsection shall be limited to losses that are directly connected with, or arising out of, the submission of the joint proposal and/or the performance of the Contract or the execution of any bonds or indemnity agreements in connection therewith, and shall not relate to or include any incidental, indirect or consequential losses that may be sustained or suffered by a Party." Id. at 10.0.

#### IV. SPECIFIC ACTIONS TAKEN BY NAN CONTRARY TO THE TERMS OF THE MPA AND THE JOINT VENTURE AGREEMENTS

With about the ability to fully audit or review the books and accounts, these figures are represented to be close approximations to the actual fact and based on the best information available to Sumo.

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A. JVI

As to this Joint Venture, Nan ignored the joint venture agreement and required the following payments: **You should note above that there were three project contracts awarded to this joint venture. The first project contract included 75 different projects; the second project contract included 47 different projects and the third project contract included 9 different projects.**

1. "Coefficient payments" of \$1,553,279.29 to Nan and \$1,157,601.58 to Sumo. There is no provision in any joint venture agreement that calls for "coefficient payments," however, Nan insisted that such payments had to be made and when demanded by Nan.

2. Nan then rather than following agreements, selected which contracts that it wished to keep and which should go to Nan and Nan then drafted subcontracts dividing the work which Sumo had to execute. By dividing the contracts in this fashion, the contract value of the contracts kept wholly by Nan totaled: \$42,523,916.00 ("Nan Contracts") of which it kept all profits; Nan then had Sumo keep certain contracts for itself and the contract value of these Sumo contracts totaled \$22,386,80 ("Sumo Contracts") of which Sumo got to keep all of its profits. Sumo had no say in which contracts could be retained by Nan and told Nan and Shin that such an allocation was contrary to the SBA rules and the joint venture agreements. Shin told Sumo that he would take care of the SBA and that Sumo was not under any circumstances to advise the SBA of this change.

3. Only as to the remaining contracts in JVI, which totaled \$24,238,683.47 did Nan allow the application of the 51-49% split in favor of Sumo.

Furthermore, Nan did not follow the terms of the joint venture agreements in that for each and every project performed under the three joint ventures, Nan did not let Sumo run the projects and each project was run by the Nan manager, Reggie Coballes. Also contrary to the joint venture agreements, Nan did not want dual signatures on any checks for any projects and no dual signed checks were ever issued.

B. JV III

As to this Joint Venture, Nan ignored the joint venture agreement and required the following payments. **You should note above that there were two project contracts awarded to this joint venture. The first project contract included 12 different projects; the second project contract included 54 different projects.**

1. "Coefficient payments" of \$560,927.84 to Nan to date and \$560,927,84 to date to Sumo.

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2. Nan then, rather than following the agreements, Nan again selected which contracts it wished to keep and which should go to Nan and Nan then drafted subcontracts dividing the work which Sumo had to execute. By dividing the contracts in this fashion, the contract value of the contracts kept wholly by Nan totaled: \$36,167,406.71 ("Nan Contracts - JVIII") of which it kept all profits. However, as to JVIII, Nan treated Sumo even worse and after having selected those contracts that it wished, none of the JVIII contracts were given to Sumo. Sumo had no say in that Nan received some \$36,000,000.00 in separate contracts and Sumo received nothing. Nan again told Nan and Shin that such an allocation was contrary to the SBA rules and the joint venture agreements. Shin told Sumo that he would take care of the SBA and that Sumo was not under any circumstances to advise the SBA of this change.

3. As to the remaining contracts in JVIII, which totaled \$45,669,406.00 in contract value, Nan first required Sumo to accept a 60/40 split in favor of Nan; however, when Nan decided that these contracts might not be profitable, Nan changed its mind and asked for a 51-49% split. Keep in mind that the split applied to both profit and loss. Sumo told Nan and Shin that such an allocation was contrary to the SBA rules and the joint venture agreements. Shin told Sumo that he would take care of the SBA and that Sumo was not under any circumstances to advise the SBA of this change.

### C. JV II

As to this Joint Venture, Nan ignored the joint venture agreement and required the following payments. You should note above that there were four project contracts awarded to this joint venture, each project contract had but one project.

1. "Coefficient payments" of \$750,068.86 to Nan to date and \$300,027.54 to date to Sumo.

2. Nan then rather than following agreements, Nan again selected which contracts it wished to keep and which should go to Nan, and Nan then drafted subcontracts dividing the work which Sumo had to execute. By dividing the contracts in this fashion. The contract value of the contracts kept wholly by Nan totaled: \$18,197,844.68 ("Nan Contracts - JVII") of which it kept all profits; Nan then had Sumo keep certain contracts for itself and the contract value of these Sumo contracts totaled \$9,502,009.23 ("Sumo Contracts - JVII") of which Sumo got to keep all of its profits. Sumo had no say in which contracts could be retained by Nan and told Nan and Shin that such an allocation was contrary to the SBA rules and the joint venture agreements. Shin told Sumo that he would take care of the SBA and that Sumo was not under any circumstances to advise the SBA of this change.

3. As to the remaining contracts in JVII, which totaled \$63,501,101.58 Nan insisted that Sumo allow Nan to take 60% of the profit and that Sumo take 40% of the project, to which Sumo objected to no avail. Again Nan told Nan and Shin that such an allocation to the

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60/40 split was contrary to the SBA rules and the joint venture agreements. Shin told Sumo that he would take care of the SBA and that Sumo was not under any circumstances to advise the SBA of this change.

Furthermore, Nan did not follow the terms of the joint venture agreements in that for each and every project performed under the three joint ventures, Nan did not let Sumo run the projects and each project was run by the Nan manager, Reggie Coballes. Also contrary to the joint venture agreements, Nan did not want dual signatures on any checks for any projects and no dual signed checks were ever issued.

#### **D. BOTTOM LINE**

By misrepresentations and deceit, changing contract terms and hiding information from the SBA, Nan participated in 8(a) work totaling \$262,666,754.03 for which it did not qualify and then not content to a split of profit and loss set at 51-49% in favor of Sumo, changed the terms to (a) add a coefficient payment, (b) change when payments for reimbursables were due, (c) took contracts out on subcontracts that Nan drafted and forced down Sumo's throat and (d) changed the profit percentages when it found such convenient. Sumo is filing a counterclaim against Nan seeking a complete accounting and payment from Nan for all profit based upon the actual terms of the joint venture agreements and damages for the delay in payments received.

#### **V. AWARDS OUTSIDE OF THE JVS**

##### **A. CHILD DEVELOPMENT CENTER - W9128A-09-C-0009**

The Child Development Center, Schofield Barracks, Solicitation No. W9128A-09-R-0005, Prime Contract No. W9128A-09-C-009 is not an 8(a) project. It is a small business set aside project. This project was **not** done under one of the Su-Mo/Nan joint ventures. Rather, Nan asked to prepare the proposal for this project which was a design-build project, including the technical proposal (design) and also sponsored the performance and payment bonds. Nan again used Sumo because this was a small business set aside project and submitted the proposal under Su-Mo's name. Su-Mo was a qualified Small Disadvantaged Business at the time and Su Yong was led to believe by Shin that this contract would be for Sumo. Su Yong agreed to submit the proposal (drafted entirely by Nan) under Su-Mo. Su-Mo was awarded this project for an initial contract price of \$10,300,000 sometime in October 2009. The problems started after the contract was awarded, Shin said he wanted Nan to do 100% of this project in exchange for a \$250,000 payment to Su-Mo. At first, Su Yong declined, but Patrick said it had to be done this way, even though Su Yong believed the contract with the owner required Su-Mo, as general contractor, to self-perform 15% of the work. Nan and Shin then prepared a subcontract with Su-Mo, as contractor and Nan, as subcontractor and required that Sumo execute it in the amount of \$10,050,000 (\$10,300,000 - \$250,000). The Prime contract with Government was effective Sept 24, 2009 and the Subcontract agreement with Nan effective Dec 22, 2009. Sumo advised Shin

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and Nan that this arrange was in violation of the SBA law and Shin advised Sumo that he would take care of the SBA and that Sumo was not to disclose the arrangement and the subcontract to the SBA.

## VI. THE COEFFICIENT AGREEMENT

At some point Nan (see above use of the coefficient payment in favor of Nan) wished to further change the allocation of profit and loss and drafted a Coefficient Agreement dated June 6, 2011, which provides for "coefficient" payments to each venturer, among other things (the "Coefficient Agreement"). The Coefficient Agreement specifically provides that it applies to JVIII's Contract No. W9128A WBR Brigade Complex, TAC (Tripler Army Medical Center) ("TAMC"). According to the documents provided by Su-Mo the Coefficient Agreement was never modified. Moreover, Su-Mo has no documentation that any coefficient agreement was entered into as to any JV or other project. The concept pushed by Nan initially, was that this coefficient was to be compensation applied to overhead expenses of the two joint venturers, Nan explained it this way, see email from Siri Newsham (Nan) to Su Yong, sent August 29, 2007 sent at 3:08 PM, which states as follows:

Hi Su Yong,

As we were talking about Price Co-efficient Factor (PCF), we think that it'd be a great idea if you could come up with the percentage for us for the use of Nan's management, equipments and resources. And then we can negotiate and discuss if the rate is reasonable.

Normally, the PCF covers office overhead expenses and is calculated as a percentage of gross contract revenue. The PCF allowable items include the following, but not limited to (please also refer to 48CFR Part 31 for additional info.):

- Accounting
- Advertising & promotion
- Alarm & securities
- Auto expenses
- Auto expenses – insurance
- Bank service charge
- Bonding expense
- Depreciation expense
- Equipment rentals
- Dues & subscriptions
- Employee benefits
- Employee health insurance
- Employee welfare

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Gas& oil expense  
GET  
Insurance expense (WC, GL, TDI)  
Legal services  
Licenses& permits  
Meeting& conferences  
Meals& entertainment  
Office equipment  
Office supplies  
Outside services  
PR Taxes  
Plans& Specs  
Postage& freight  
Property taxes  
Refuse& sanitation  
Rent  
Repair& maintenance  
Safety& training  
Salaries& wages  
Shop – repairs & maintenance  
Shop supplies  
Small tools  
Telephone/Cellphone  
Travel  
Utilities – Electricity & other

Please let me know if you have any questions or concerns. We think that the soonest we have this worked out, the better it is so that we can concentrate on job operations.

Sincerely,

Siri Newsham  
Nan, Inc.  
636 Laumaka Street  
Honolulu, HI 96819  
Tel: 808-842-4929

See, Exhibit 8.

Even though this agreement is dated 2011, Nan sought to introduce this method of billing the projects to the three joint ventures early on and did so. However, Nan then applied the percentages to the overall project contract sum varying the percentages that Nan took from 3.5 to

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11% or more against the project contract sum and not against any overhead costs. All of this was over the objection of Sumo. Sumo has not been able to locate any other executed coefficient agreements. Nan provided documentation of such agreements (when asked for explanations) as follows. For JVIII, the parties agreed that Su-Mo and Nan would each receive 2% coefficient payment for the Helemano project and there would be no coefficient payment on the TAMC (Tripler) project. See, email from Siriporn Newsham to Jimmy Miranda et al, sent September 21, 2012 at 4:54 PM. (Exhibit 9) This email also reflects that for JV II, on jobs that Su-Mo and Nan do together, the parties agreed to coefficient payments of Nan 2.5%, Su-Mo 1%. Id. (See below regarding discussion that for JV II, parties are doing Task Orders independently.) See also email from Su Yong to Sam Ho (working for Nan at the time) et al, sent on April 26, 2010 at 3:31 PM, which reflects that for Su-Mo/Nan JV ("JV I") MACC contract, an agreement for 6% coefficient to Nan and 2% coefficient to Su-Mo. See, Exhibit 10. To Sumo's knowledge none of these agreements were approved by SBA. Nan and Su-Mo billed the applicable joint venture for the coefficient payment. For example, where JV II billed the Owner \$988,062.04 on a project and Nan's coefficient was 2.5%, Nan billed JV II  $\$988,062.04 \times 2.5\% = \$24,701.55$ . See, Exhibit 11.

#### **VII. TERMINATION OF ASSOCIATION BETWEEN NAN AND SU-MO**

The last solicitation Nan proposed to Sumo was the \$300 or \$400MIL MACC project. This was to be the fourth joint venture and named: Sumo/Nan A Joint Venture. Shin proposed a contract that provided for the profit to be split 60% Nan and 40% Su-Mo. The proposal was rejected by Su Yong and Shin wrote a termination letter for this new joint venture and sent it to the SBA. Nan then teamed up with Aulii and their solicitation got rejected because Aulii had no past performance.

#### **VIII. CONFIRMATION BY SUMO CPAS**

In 2009, Su-Mo's outside accountant, Gilford Sato & Associates, noted in Su-Mo's financial statements the parties' failure to follow SBA regulations requiring Su-Mo to perform significant work on every joint venture contract. Although the accountant's notes refer to Su-Mo and Su-Mo / Nan JV contracts, the misconduct is of the same nature as occurred on JVI and JVIII's contracts.

Su-Mo and Su-Mo/ Nan JV are subject to SBA regulations related to the performance and administration of the 8(a) sole source and 8(a) competitive contracts. SBA regulations includes applicable percentage of work performed by the protégé (Su-Mo) and mentor (Nan) for each contract, the amount of work to be performed by the 8(a) partner in the joint venture on each contract, quarterly financial reporting requirements, and timely project-end profit and loss statements for completed contracts.

\* \* \*

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For the year ended December 31, 2009, Su-Mo was in compliance with general requirements. However, Su-Mo has selected jobs where it **appears that it is not performing a significant amount of the work on each contract. Refer to Note 15. In addition, Su-Mo did not submit timely quarterly financial statements and timely project-end profit and loss statements for completed contracts.**

\* \* \*

Su-Mo received an SBA 8(a) contract award of \$10,300,000, which was entirely subcontracted to Nan. As part of the subcontract agreement, Nan will pay Su-Mo a guaranteed payment of \$250,000, half to be paid upon fifty percent completion of the contract and the balance of income and comprehensive income for the year ended December 31, 2009. Refer to Note 8 for discussion related to SBA regulations.

Su-Mo / Nan JV were received an SBA 8(a) contract award of \$3,273,000, which was entirely subcontracted to Nan. As part of the subcontract agreement, Nan paid Su-Mo a guaranteed payment of \$108,748, which was reported under other income in the consolidated statement of income and comprehensive income for the year ended December 31, 2009.

See Exhibit 12.<sup>[2]</sup>

#### IX. HOUSE COUNSEL FOR NAN, PARTICIPATED IN COVERUP TO SBA

Sandra Kim, currently residing in San Francisco, then house counsel for Nan, participated in the drafting of the misleading and incorrect letters to the SBA, but way of an example, see her June 2010 email.

**From:** Sandra Kim [<mailto:skim@nanhawaii.com>]  
**Sent:** Friday, December 17, 2010 3:59 PM  
**To:** Ryan Nakaima; Sam Ho; Su Yong Yi  
**Cc:** Patrick Shin  
**Subject:** SBA Teleconference on Monday

FYI:

Just to let everyone know, Erlayne Lum (SBA) called me yesterday to reiterate a point she wanted to make sure she got across during our teleconference on Wednesday.

**She wanted to make sure that there was nothing in the letter that said that Sumo and Nan are performing Task Orders separately. She said she knows that our**

<sup>[2]</sup> The projects referred to in the accountant's note are the Child Development Center Schofield Barracks awarded on September 24, 2009. On this project Su-Mo received reimbursements totaling \$737,799 and a 5% fee; the Increase Traffic Flow on Bougainville Drive awarded on September 18, 2014.

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intention is good (Sumo to gain greater independence to ensure success after graduation), but that this arrangement doesn't sit well or look good as it appears that we are both just doing our own thing. I mentioned that Nan still provides assistance to Sumo in various other ways (i.e. equipment, bonding, personnel, etc.), and that Nan would step in the event that Sumo needed help. Nonetheless, she essentially said she didn't want to see the separate performance of the task orders in the letter.

**In actuality, since we are still providing Sumo with assistance in various ways, we perhaps should not mention this issue in the letter all together.**

Su Yong, please remember to call Michael Youth on Monday morning. Ask for a conference call that afternoon or after he had a chance to answer our questions. He's out Tuesday, so we need to talk to him on Monday, so that we can work on the letter Tuesday to submit on Wednesday when he returns.

In the meantime, I have already revised the letter and Add #2 per our discussion and will only need to address/add the issues to be resolved/clarified after talking with Michael.

**X. SBA CONFIRMED THAT ALL PROFITS SHOULD HAVE BEEN SPLIT 51% TO 49%**

In a June 20, 2012 email to Patrick Shin, the SBA confirmed that Su-Mo and Nan needed to split profit and losses 51/49 as required by the JVAs, **regardless of the percentage of work performed by each party.** Note that despite this letter, Nan still sought to alter the allocation of profit and loss and still added in payments to Nan not provided for in the joint venture agreements.

Hi Patrick,

I understand you have a question regarding how might the 8(a) joint venture partners (JV) address a situation where one partner is unable for whatever reason to perform a portion of its work as designated in the joint venture agreement (JVA). Assuming there is no issue with respect to the JV's managing venture and project manager, we realize that it is not always possible for the JV partners to perform all work as stated in the JVA.

Consequently, say it has been determined that Nan must perform additional work to support a contract and that work does not materially affect the percentage of work performed by each partner as required by the JVA. This would generally be acceptable as Nan is not being asked to

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perform the additional work without being reimbursed (cost+ reasonable overhead) and the work does not affect the managing venturer and project manager. Nevertheless, if the 8(a) firm has any concerns with respect to work performance, any portion of the JVA, or any amendment or agreement that could affect the JVA it must consult SBA prior to taking any action. Despite the additional work, profit or loss will continue to be attributed to each JV partner per the percentages stated in the JVA. Both partners therefore have a vested interest in each partner performing quality work, on time, and within budget as profit is shared per JVA percentage. Likewise, losses will be shared as well. Therefore, it does not benefit Nan to perform on-time and within budget while its partner incurs cost overruns that offset profit generated by Nan's performance.

See Exhibit 13 (emphasis added).

#### XI. LETTER OF OCTOBER 27, 2012

After creating a financial problems for Sumo, Nan then manipulated the situation and used the claim of a loan (provided for in the MPA) to send a letter dated October 27, 2012 to the SBA informing them of Su-Mo's financial troubles and that Nan would take the lead in project management and accounting duties. See Exhibit 14. Nan then took control of the Helemano and Tripler accounting going against SBA regulation; Su Yong claims that he agreed to make sure subs were paid and because Nan insisted to protect his bonding. As such, Nan currently controls the management and accounting for JVIII; although Su-Mo retains control over the accounting for JV II. Su-Mo believes Nan overcharged JVIII for equipment on the Tripler and Helemano projects. Furthermore, it is believed that Nan used this project to pay off personal obligations it owed to Helix.

Nan estimated the equipment charges for the Tripler project at \$390,129. See Exhibit 15 and Su-Mo claims Nan has billed JVIII \$638,244.00 for equipment. However, as to the Helemano project, Su-Mo has good evidence that Patrick took control of the negotiations with Helix, an electrical subcontractor, who made a claim for additional compensation and over paid the claim. Su-Mo believes Helix should have been paid no more than an additional \$150,000.00 while Nan, agreed to pay Helix an additional \$400,000 over and above what it was owed or a total of \$550,000.00 despite the protestations of his own project manager. The evidence that Nan used this project to pay its own obligations to Helix is based upon a report of Stan Sagum (Stan was the project manager for the Helemano Project, formerly a Nan employee who now works for Su-Mo). At the time of that he was the project manager for the Helemano Project, he was an employee of Nan.

Sam,

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As you know, there were so many issues relating to the settlement with Helix. Without going into great detail, my ballpark estimate of any settlement between the Su-Mo-Nan JV and Helix would have been in the area of about \$150,000 maximum. During the negotiations/meetings with Helix, Patrick took the role as "mediator" and navigated and mediated the negotiation and settlement conference. On several occasions, I stated our (Su-Mo-Nan) position in the execution of the Subcontract Agreement between contractor and subcontractor. A quick summary (excluding dollars) is as follows:

1. Electrical requirements for mechanical:
2. During the meetings, I rejected all of Helix's claims for additional compensation for having to provide electrical hook-ups and connections for mechanical if not shown on the electrical drawings. I told Patrick that we specifically included in the Subcontract with Helix, that their scope of work included the Mechanical drawings. He disagreed and stated that "if not shown on the electrical drawings, it is a change."
3. Overhead clearance for Cable Trays:
4. I specifically rejected Helix's claim for additional compensation for having to comply with the I3A requirements for clearances above the cable tray. Patrick disagreed that the responsibility was with Helix, as the specs were ambiguous.
5. Offsite electrical work:
6. Helix proceeded with their offsite electrical work, but installed the manholes and duct bank outside of the utility corridor. Therefore, the work performed was rejected by the Corps of Engineers. I supported the government's position as the installation was clearly outside of the utility corridor. Patrick did not agree and stated Helix should be compensated.
7. Fire Alarm Panel:
8. Helix, through their subcontractor Phoenix, submitted their FA panels as a Monaco due to their experience performing work for the Army. Phoenix is the manufacturer's Rep for King Fisher systems. After several submittals, Phoenix recognizes that the specs allowed King Fisher, and therefore resubmitted for King Fisher. Government responded stating that the Army required Monaco, and then Phoenix submitted a change order to go back to Monaco. I adamantly rejected, and was over ruled by Patrick, who approved that change order.

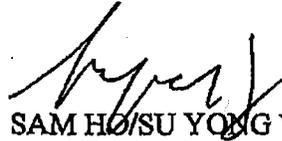
I can go into more detail tomorrow, but strongly believe Helix was over compensated, and expressed my concern to Sam Ho immediately after I received notice that Helix was over compensated, by at least \$400,000.

Thanks-Stan

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While we can provide additional information, this constitutes our notice required by 13 C.F.R. § 124.1015 to correct any earlier misstatements and to advise the SBA of the actions of Nan.

Very truly yours,



SAM HO/SU YONG YI

for

SU-MO BUILDERS, INC.