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5 *Counsel for Respondent for MAP International, Inc.*

6 **BEFORE THE**  
7 **ATTORNEY GENERAL OF CALIFORNIA**

9 In the Matter of the Order to Cease and  
10 Desist, Revocation of Charity Registration  
and Assessment of Penalties Against:

Case No. 2018-CT103136

11 **MAP INTERNATIONAL,**  
12  
13 Respondent.

**MAP INTERNATIONAL'S NOTICE OF  
APPEAL AND REQUEST FOR HEARING**

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16 **APPELLANT'S INFORMATION**

17 Pursuant to California Code of Regulations, Title 11, Section 999.6(c)(1), Respondent  
18 MAP International, Inc. states that its address is 4700 Glynco Parkway, Brunswick, Georgia,  
19 31525 and its registration number is CT 103136.

20 **BASIS OF APPEAL**

21 MAP International, Inc. ("MAP") timely appeals the First Amended Order to Cease and  
22 Desist; Notice of Revocation of Charity Registration and Notice of Assessment of Penalties  
23 dated March 12, 2018 (the "Amended C&D Order") in its entirety, and formally demands an  
24 evidentiary hearing before a fair and neutral administrative law judge pursuant to the provisions  
25 of Cal. Gov. Code §12591.1(e) and 11 CCR 999.6(c).<sup>1</sup>

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28 <sup>1</sup> For the avoidance of doubt, MAP also appeals the Order to Cease and Desist; Notice of Revocation of Charity Registration; and Notice of Assignment of Penalties dated March 7, 2018 (the "C&D Order"), if and to the extent that the C&D Order still has any force and effect. The reasons for MAP's appeal are the same as with the Amended C&D Order.

1           The following summarizes why the Amended C&D Order is wrong and should be  
2 vacated. This discussion is made without the benefit of discovery, identification of the Attorney  
3 General's lay and expert witnesses (if any) or the documents (if any) on which the Attorney  
4 General relies, and thus MAP expressly reserves the right to fully present its case and to dispute  
5 and rebut any and all assertions that the Attorney General may make, whether now or in the  
6 future. Subject to these qualifications, and expressly reserving all rights and remedies, MAP  
7 states as follows:

8           1.       Founded in 1954, MAP is a non-profit Christian organization that provides life-  
9 changing medicines and health supplies to people in need in the United States and in  
10 approximately 100 countries around the world. MAP serves all people, regardless of religion,  
11 gender, race, nationality, or ethnic background. Typically, rather than purchase or distribute  
12 medicines itself, MAP receives gifts-in-kind ("GIK") of medicines in the U.S. and donates them  
13 to third-party organizations in the U.S. who (with MAP's agreement concerning the destination)  
14 may distribute the medicines outside of the country or in the U.S. When MAP receives  
15 donations of medicines, they are normally stored in MAP's warehouse/distribution center in the  
16 U.S. for weeks or longer, given that MAP normally does not know when, where, and to whom  
17 the medicines will be distributed at the time when MAP receives the donations.

18           2.       The linchpin of the Amended C&D Order is the Attorney General's remarkable  
19 and demonstrably false contention that MAP's *audited* financial statements for the years of  
20 2012-2015 do not comply with generally accepted accounting principles ("GAAP") concerning  
21 the valuation of GIK of the medicines that are donated to MAP. According to the Attorney  
22 General, MAP ought to value the GIK of medicines using hypothetical market prices for each of  
23 the medicines in each of the 100 or so countries other than the U.S. where the Attorney General  
24 contends the medicines ultimately might be used. The Attorney General is wrong on both the  
25 facts and the law, and MAP has valued GIK of medicines correctly. Among other reasons, the  
26 Attorney General's contentions are belied by the fact that for each of the years in question,  
27 MAP's independent auditors gave their unqualified audit opinions that MAP's financial  
28

1 statements are fairly presented in accordance with GAAP in all material respects—i.e., including  
2 the valuation of GIK of medicines.

3 3. Nonetheless, based on the Attorney General’s faulty premise, the Attorney  
4 General (a) challenges the accuracy of MAP’s audited financial statements and MAP’s annual  
5 financial reports (Form RRF-1) and IRS Forms 990, which incorporate information from MAP’s  
6 audited financial statements; and (b) the Attorney General challenges the statements that MAP  
7 made in solicitation materials relating to program size and efficiency, which once again are  
8 based on the information in MAP’s audited financial statements. The Attorney General thus  
9 wrongly claims that MAP “violated” the provisions of the Supervision of Trustees and  
10 Fundraisers for Charitable Purposes Act (Cal. Gov. Code §12580, *et seq.*).

11 **MAP’s audited financial statements correctly apply GAAP to value GIK of medicines**

12 4. No dispute exists that MAP is required to comply with applicable California laws,  
13 including the California Business and Professional Code Section 17510.5(a): “The financial  
14 records of a soliciting organization shall be maintained on the basis of generally accepted  
15 accounting principles as defined by the American Institute of Certified Public Accountants, the  
16 Governmental Accounting Standards Board, or the Financial Accounting Standards Board.”

17 5. Likewise, no dispute exists that Cal. Gov. Code § 12586 (e)(1) required MAP to  
18 prepare “annual financial statements using generally accepted accounting principles that are  
19 audited by an independent certified public accountant in conformity with generally accepted  
20 auditing standards.”

21 6. GAAP guides certified public accountants and non-profit charities, as well as  
22 publicly-traded companies and privately-held companies, regarding how information should be  
23 presented in financial statements, including how to determine the value of GIK, such as GIK of  
24 medicines.

25 7. As one California federal court explained, “[g]enerally accepted accounting  
26 principles . . . are the standard metric by which courts determine whether accounting statements  
27 are false or misleading. GAAP is not a single-source accounting rulebook, but rather the  
28 conventions, rules, and procedures that define accepted accounting practice at a particular point

1 in time. There are many different GAAP sources, any number of which might present  
2 conflicting treatments of a particular accounting question.”<sup>2</sup>

3 8. Likewise, the Attorney General does not dispute that (a) MAP prepared financial  
4 statements for each of the years at issue (2012—2015); (b) for each of these years, MAP  
5 employed an independent firm of certified public accountants to audit those financial statements;  
6 (c) for each of these years, MAP’s independent auditors provided an unqualified audit opinion  
7 letter stating that the financial statements were fairly presented in accordance with GAAP in all  
8 material respects; and (d) for each of these years, MAP timely filed the required Form RRF-1’s  
9 and the required IRS Form 990’s.

10 9. Rather, in an effort to justify its position that MAP has somehow violated  
11 California law, the Attorney General disregards MAP’s audited financial statements, and then  
12 substitutes his own accounting “principles” and judgment in place of GAAP and the judgment  
13 and expertise that MAP’s certified public accountants applied. Whatever else one might say  
14 about the Attorney General’s accounting position, it is not based on “generally accepted”  
15 accounting principles, but rather is a novel position outside of GAAP and does not interpret or  
16 apply GAAP properly.

17 10. Compounding the Attorney General’s error, the Amended C&D Order is based  
18 on factual assertions that are demonstrably false and erroneous, including without limitation the  
19 following:

20 a. Contrary to the Amended C&D Order ¶ 4, U.S. pharmaceutical companies  
21 do *not* offer MAP large quantities of pharmaceuticals that are close to expiration. MAP’s  
22 typical GIK of medicines has an expiration date between six (6) and twelve (12) months  
23 from the date of the gift. Only in exceptional circumstances would MAP accept GIK of  
24 medicines with an expiration date of less than six (6) months, and only then if there is a  
25 clear and rapid distribution plan to meet an urgent health need. MAP understands that its  
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27  
28 <sup>2</sup> *In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132, 1175-76 (C.D. Cal. 2008) (citing *Shalala v. Guernsey Mem’l Hosp.*, 514 U.S. 87, 100, 101 (1995) and *Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the U.S. Financial Reporting System of a Principles-Based Accounting System*, at <https://www.sec.gov/news/studies/principlesbasedstand.htm>) (omitting internal quotation marks).

1 practice in this area is consistent with U.S. law, World Health Organization (WHO)  
2 standards, and the best industry practices regarding expiration dates.

3 b. Contrary to the Amended C&D Order ¶ 11, the claim that “at least the  
4 majority of the pharmaceuticals MAP received from U.S. pharmaceutical companies  
5 were prohibited from being distributed in the U.S.” is inaccurate. At all relevant times,  
6 MAP maintained an FDA wholesaler license, an FDA Distributor License, and pharmacy  
7 licenses in various states. With these licenses in hand, MAP either distributed the  
8 donated medicines to those in need within the U.S. or donated the medicines to other  
9 U.S.-based organizations for distribution outside of the United States. During the period  
10 at issue (2012—2015), less than half of the medicines donated to MAP were subject to  
11 donor preferences or contractual restrictions that the medicines should not be distributed  
12 in the U.S. And where the donor has expressed a preference to have the medicines  
13 distributed outside of the U.S., those restrictions are waived routinely, especially in the  
14 context of a U.S. natural disaster or other health emergency (*e.g.*, tornado, hurricane,  
15 outbreak, etc.).

16 11. The Attorney General’s contentions concerning the proper application of GAAP  
17 are likewise inaccurate, incomplete, and contrary to GAAP. At the hearing, MAP will prove  
18 these points through the testimony of accounting experts, among other proofs. For purposes of  
19 this Notice of Appeal, the following is a concise, non-exhaustive overview that highlights at least  
20 some of the key points and the Attorney General’s errors concerning GAAP:

21 a. GAAP requires (and the Attorney General appears not to dispute) that  
22 MAP must determine the value for GIK of medicines *when MAP receives the gift* and  
23 must recognize the value of the GIK in its accounting records at that time. The criteria  
24 that certified public accountants apply to determine the value of GIK as of the dates when  
25 the GIK are received are defined in GAAP, including various standards of the Financial  
26 Accounting Standards Board (“FASB”), among other sources.

27 b. The Attorney General contends that the “principal market” for the GIK is  
28 one of the criteria that must be determined. MAP agrees. But when he claims that the

1 U.S. is not the principal market for those donated medicines that have been designed for  
2 the U.S. market and approved by the Food and Drug Administration (“FDA”), simply  
3 because they may be destined for eventual distribution outside of the U.S., the Attorney  
4 General ignores or misapplies the generally accepted accounting principles (including,  
5 for example, the applicable FASB standards) that demonstrate that in almost all instances,  
6 the U.S. is the principal market for the GIK of medicines at issue here. Moreover, GAAP  
7 does not contain, reference, or apply the Attorney General’s novel concept of “the  
8 prohibited market.”

9 c. The Attorney General also misapplies GAAP (including, for example,  
10 applicable FASB standards) and ignores the facts regarding “access” to the principal  
11 market. There would seem to be little doubt that MAP—a U.S. entity with federal and  
12 state licenses who receives, stores, distributes, and donates medicines in the U.S.—has  
13 access to the principal market, the United States. Moreover, assuming for the sake of  
14 argument that MAP had no access to the U.S. market under the facts presented here,  
15 GAAP would require MAP to value the donated medicines from the perspective of a  
16 hypothetical entity that did have access.

17 d. The Attorney General misapplies GAAP where a donor expresses a  
18 preference to MAP or contractual restriction in the donor’s agreement with MAP that the  
19 donor’s GIK of medicines should be distributed outside of the United States. Contrary to  
20 the Attorney General’s position, these sorts of “entity restrictions” represent limitations  
21 on MAP as an “entity,” but do not change the intrinsic character of the medicines  
22 themselves. Thus, an entity restriction does not impact the value of the donated  
23 medicines.

24 **MAP’s solicitations materials and filings are accurate**

25 12. The Amended C&D Order erroneously contends that MAP’s solicitation materials  
26 and filings contain misrepresentations relating to program size and efficiency (i.e., the  
27 percentage of donations that reach those in need). In essence, the Attorney General claims that  
28 MAP overstates the value of the donated medicines because MAP does not follow the non-

1 generally accepted accounting principles that the Attorney General has formulated. Using  
2 similar reasoning, the Attorney General contends that MAP's statements about efficiency and  
3 MAP's correct reference to "total revenue" to refer to a combination of gifts in kind and cash  
4 contributions must also be misleading, despite the fact that the same usage for "total revenue" is  
5 required under I.R.S. form 990 and also used by Charity Navigator and other non-governmental  
6 watchdog organizations.

7 13. Once again, the Attorney General is incorrect. MAP's solicitation materials and  
8 filings are not unfair or deceptive, and they do not create any likelihood of confusion or  
9 misunderstanding in the minds of potential donors. As explained, MAP's accounting treatment  
10 of its GIK of medicines complies with GAAP, and the valuations of the GIK are proper. MAP  
11 follows industry standards and regulatory requirements in combining cash and gifts in kind  
12 contributions within "total revenue." Thus, the statements about MAP's program size and  
13 efficiency on its website, solicitation materials, and filings are clear and accurate.

#### 14 CONCLUSION

15 14. The Amended C&D should be vacated in its entirety. MAP has fully complied  
16 with California law, and the Attorney General's contrary assertions disregard the law and the  
17 facts.

18 **WHEREFORE**, Respondent MAP prays:

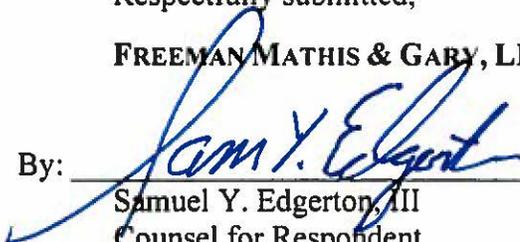
- 19 a) For a hearing to be held, after discovery, regarding the Attorney General's factual  
20 allegations and conclusions of law;
- 21 b) For a prehearing conference, at which time MAP may request an expedited  
22 hearing and may make additional pre-hearing motions to ensure a full, fair and  
23 complete hearing and record including, *inter alia*, that the hearing be bifurcated  
24 such that the first issue to be resolved is whether MAP's accounting complied  
25 with GAAP;
- 26 c) That the Amended C&D Order be vacated in full, including rescission of the  
27 Cease and Desist Order, rescission of the assessment of penalties, and denial of  
28 the revocation of MAP's charity registration;

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- d) That MAP be granted its costs, expert witness fees and costs and reasonable attorneys' fees associated with this action; and
- e) For such other relief as may be deemed just and proper.

DATED: April 11, 2018

Respectfully submitted,  
FREEMAN MATHIS & GARY, LLP

By:   
 Samuel Y. Edgerton, III  
 Counsel for Respondent  
 MAP International, Inc.

FREEMAN MATHIS & GARY, LLP

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 3030 Old Ranch Parkway, Suite 280, Seal Beach, California 90740.

On April 11, 2018, I served the following document described as:

**MAP INTERNATIONAL'S NOTICE OF APPEAL AND REQUEST FOR HEARING**

on the parties on the attached Service List as follows:

( ) **By U.S. Mail:** By placing the above-referenced document(s) in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Seal Beach, California, addressed as set forth on the attached Service List.

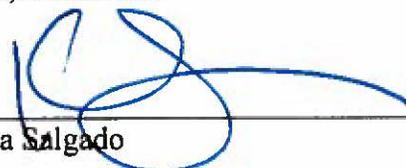
I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepared in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing an affidavit.

(X) **By Personal Service:** I caused such envelope to be delivered by hand to the individuals at the addresses listed on Service List.

(X) **By Email:** I caused all of the pages of the above-referenced document(s) to be sent to the recipient(s) on the attached Service List via electronic transfer (email) from cserrano@fmglaw.com. To the best of my knowledge, the transmission was complete.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED on April 11, 2018, at Seal Beach, California.

  
\_\_\_\_\_  
Karmella Salgado

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**SERVICE LIST**

*In the Matter of the Order to Cease and Desist, Revocation of Charity Registration and  
Assessment of Penalties Against: Map International  
Case No. 2018-CT103136*

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