

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil
(Charitable/Nonprofit Violations)

Court File No. _____

In the Matter of Honor the Earth

**PETITION FOR ORDER
APPROVING ASSURANCE OF
DISCONTINUANCE**

The State of Minnesota, by its Attorney General, Keith Ellison, hereby petitions the Court, pursuant to Minn. Stat. §§ 8.31, subd. 2b, for an Order approving the attached, fully-executed Assurance of Discontinuance between the State of Minnesota, through its Attorney General, Keith Ellison, and Honor the Earth.

Dated: January 31, 2024

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota/s/ Chloe RaimeyCHLOE RAIMEY
Assistant Attorney General
Atty. Reg. No. 0398257445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 300-6863 (Voice)
(651) 296-7438 (Fax)
Chloe.Raimey@ag.state.mn.us

ATTORNEYS FOR STATE OF MINNESOTA

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil
(Charitable/Nonprofit Violations)

Court File No. _____

In the Matter of Honor the Earth

**ASSURANCE OF
DISCONTINUANCE**

WHEREAS, this Assurance of Discontinuance (“Assurance”) is entered into pursuant to Minnesota Statutes section 8.31, subdivision 2b, between the State of Minnesota, through its Attorney General, Keith Ellison (“State” or “AGO”) and Honor the Earth (“HTE” or “organization”);

WHEREAS, the AGO has authority to enforce Minnesota’s laws relating to charitable organizations, charitable trusts, and nonprofit corporations under state statutes and common law, including as *parens patriae*. See, e.g., Minn. Stat. §§ 8.31, 309.57, 317A.813, 501B.34, and 501B.40;

WHEREAS, Honor the Earth is a Minnesota nonprofit corporation organized under the Minnesota Nonprofit Corporation Act (“Act”), Minnesota Statutes chapter 317A, and is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). Honor the Earth’s registered office address is 607 Main Avenue, Callaway, MN 56521.

NOW THEREFORE, Honor the Earth hereby agrees to entry of an Assurance of Discontinuance with the following terms and conditions:

ALLEGATIONS

1. The AGO states and alleges as follows:
2. Honor the Earth was founded by Winona LaDuke and registered as a Minnesota nonprofit corporation under Minnesota Statutes chapter 317A in February 2012. Honor the Earth's governing documents state that its purpose is "to provide key educational resources and support to entities working to break the geographic and socioeconomic isolation of Native communities."
3. Ms. LaDuke served as the executive director of Honor the Earth until April 2023.
4. Ms. LaDuke also founded and served as an officer and/or director of Minnesota nonprofit corporations Anishinaabe Agricultural Institute ("AAI") and Akiing 8th Fire ("Akiing"). Prior to 2023, Honor the Earth partnered with AAI and Akiing via memoranda of understanding between the organizations.
5. According to its most recent tax return on Form 990 provided to the AGO, Honor the Earth received over \$7 million in contributions and grants in 2021. Ms. LaDuke was the only salaried officer or director listed, with a salary of \$88,564.
6. Although Honor the Earth's board met regularly and reviewed the organization's financial documents at a high level, the organization admitted in its responses to the AGO's interrogatories that, prior to 2023, "HTE generally lacked any systematic recordkeeping procedure to track HTE's transactions and their purposes" and that many transactions were approved "on an ad hoc basis via email, rather than by board resolution."
7. For example, according to Honor the Earth's accounting records, Ms. LaDuke frequently authorized transactions between Honor the Earth and her family members who worked for the organization for purposes that did not benefit the corporation, without board approval, and often without proper documentation. Several of Ms. LaDuke's family members were hired as employees or contractors for Honor the Earth, including Ms. LaDuke's daughter, two sons, and

sister. Prior to 2023, Ms. LaDuke authorized several interest-free loans to these family members to pay for their rent and other bills or large purchases such as vehicles. She also authorized reimbursements for expenses incurred by her family members without adequate documentation of how these expenses served Honor the Earth's charitable purpose.

8. Honor the Earth also failed to properly handle internal complaints of misconduct, exposing the organization to significant legal and financial liability. In April 2023, a jury in Becker County, Minnesota found Honor the Earth liable for sexual harassment and retaliation against a former employee, Margaret Campbell. The court ordered the organization to pay \$750,000 in damages, including punitive damages. *See Campbell v. Honor the Earth*, No. 03-CV-19-266 (Minn. Dist. Ct. Apr. 4, 2023).

9. In her February 2019 complaint, Ms. Campbell alleged that although she informed multiple board members of an Honor the Earth employee's sexual harassment of herself and others, including repeated complaints to Ms. LaDuke, the board took no action to investigate or remedy her allegations.

10. Documents produced by Honor the Earth show that Ms. LaDuke issued memoranda to the board dismissing additional complaints of sexual harassment and other misconduct within the organization without appropriate investigation.

11. Finally, Honor the Earth also failed to maintain its registration as a soliciting charity with the AGO. In 2017, Honor the Earth registered as a soliciting charity with the AGO under Minnesota Statutes chapter 309. Honor the Earth was required to file annual reports with the AGO, and was not allowed to solicit contributions unless it was properly registered. In October 2021, Honor the Earth's registration was withdrawn for failure to submit required annual reports. Despite this, Honor the Earth continued to solicit donations from Minnesotans.

12. The AGO alleges that the conduct generally described in this Assurance constitutes violations of, among other provisions, Minn. Stat. §§ 309.52–.53 (prohibiting charities from soliciting contributions without maintaining registration with the AGO), 309.54 (requiring accurate, detailed books and records); 317A.501 (requiring loans from nonprofit assets to be approved by board and prohibiting loans to related parties unless the loan “may reasonably be expected, in the judgment of the board, to benefit the corporation”), 317A.255 (requiring similar conditions for other transactions between nonprofits and related parties), 317A.251 (imposing fiduciary duties of loyalty and care on nonprofit directors), 317A.361 (imposing fiduciary duties of loyalty and care on nonprofit officers), 501B.41 (defining breach of trust).

13. Honor the Earth neither admits nor denies the allegations in this Assurance.

REMEDIAL ACTIONS

14. Honor the Earth cooperated fully with the AGO’s investigation on a voluntary basis.

15. In April 2023, just after a jury found Honor the Earth liable for sexual harassment and retaliation against Ms. Campbell, Ms. LaDuke resigned from Honor the Earth.

16. Since that time, Honor the Earth has adopted significant policies and procedures to improve compliance with Minnesota charities laws, including for record retention and destruction; use of nonprofit funds and credit cards; restricting, segregating, and tracking restricted funds; and prohibiting discrimination, harassment, and retaliation.

17. Honor the Earth has appointed two new board members and adopted a plan to replace all directors that served prior to April 2023 by the end of 2024.

18. None of Ms. LaDuke's family members remain employees or contractors of Honor the Earth, and the majority of Honor the Earth's staff and contractors have been replaced since Ms. LaDuke's resignation.

19. Honor the Earth has developed a long-term plan and taken initial steps toward terminating its relationship with Ms. LaDuke's other Minnesota nonprofit corporations, Akiing and AAI.

20. Honor the Earth has hired outside general counsel with experience counseling nonprofit corporations on compliance with Minnesota charities laws as well as a human resources consultant to assist in strengthening the organization's policies and procedures.

21. Honor the Earth's board passed resolutions changing the control of, and signatories on, its bank accounts to reflect the changes in governance, and replaced all credit cards with new accounts.

22. Honor the Earth hired a forensic accountant to complete a thorough audit of its finances.

INJUNCTIVE RELIEF

23. In addition to all other duties, powers, responsibilities, and obligations set forth under the Minnesota Nonprofit Corporation Act and the Charitable Trust Act, Honor the Earth's board of directors shall, to the extent not already completed, take the following actions within one year of the approval of this Assurance of Discontinuance by the Court:

- (a) Conduct a review of its articles of incorporation, bylaws, policies, and procedures, including but not limited to conflicts of interest, recordkeeping, financial controls, whistleblowing, and investigation of internal complaints of harassment, discrimination, and other unlawful conduct, and create and revise

such policies as it determines, within its reasonable judgment, is necessary to address deficiencies and protect Honor the Earth's assets and other interests;

- (b) Complete a thorough audit of the allegations in this Assurance and its own records, including financial documents dating back to at least 2020, and evaluate whether it is in the best interests of Honor the Earth to make any demands, pursue any legal claims, or take any other action against any individuals, including but not limited to claims for breaches of fiduciary duties against former officers and directors; and
- (c) Implement its plan to terminate its relationships with Akiing and AAI, including separating its assets, health benefits, and equipment from those of Akiing and AAI, and take board action prohibiting Honor the Earth from any affiliation with Winona LaDuke or other organizations with which she is affiliated going forward; and
- (d) Provide the AGO with an update and documentation as to its compliance with the terms of this Assurance of Discontinuance.

24. At all times, Honor the Earth shall:

- (a) Maintain and strictly comply with appropriate bylaws, policies, and procedures, and with Minnesota and federal law, including but not limited to fiduciary duties, conflict of interest requirements, loan approvals, and charitable solicitation registration and reporting requirements.
- (b) Regularly schedule and conduct board and committee meetings, keep unambiguous and accurate meeting minutes documenting the Board's adherence to and exercise of its written policies and any resolutions

approved at such meeting, have sufficient and appropriate knowledge of and familiarity with the operations and affairs of Honor the Earth, and act consistently with the fiduciary duties and other standards of conduct imposed on directors and officers of nonprofit organizations as set forth in applicable law, including the Nonprofit Corporation Act, the Charitable Trust Act, the Charitable Solicitation Act, and common law.

- (c) Properly file all IRS Form 990s and appropriate schedules with the IRS.
- (d) Ensure proper registration with the AGO as a soliciting charity or charitable trust pursuant to chapters 309 and 501B.
- (e) Ensure all directors and officers obtain sufficient training to apprise them of their duties under Minnesota and federal law.
- (f) Fully, completely, truthfully and promptly cooperate with the AGO relating to any AGO investigation, lawsuit, or future proceeding against any directors, officers, or any other parties relating to, or arising out of, the allegations set forth above, including but not limited to any investigation of other charities currently or formerly affiliated with Ms. LaDuke or Honor the Earth.
- (g) Upon the written request of the AGO, promptly provide accurate, true and complete information, documents, and data that the AGO, in its sole discretion, deems reasonably necessary to verify continuing compliance with such assurance.

GENERAL TERMS

25. Honor the Earth understands that, after the date of the approval of this Assurance by the Court, a violation of this Assurance may subject it to sanctions for contempt pursuant to

Minnesota Statutes section 8.31, and the AGO may thereafter, in its sole discretion, initiate legal proceedings against Honor the Earth for any and all violations of this Assurance.

26. Honor the Earth shall not state or imply, directly or indirectly, that the State of Minnesota or the AGO has approved of, condones, or agrees with any conduct, actions, or inactions by Honor the Earth.

27. Nothing in this Assurance shall relieve Honor the Earth of its obligations to comply with all applicable Minnesota and federal laws and regulations, and court or administrative orders and directives.

28. Honor the Earth, after having an opportunity to decide whether to and/or consult with counsel, knowingly, intelligently, and voluntarily waives its First Amendment rights to the extent, if at all, such rights are inconsistent with any of the terms of this Assurance.

29. If this Assurance is violated, Honor the Earth agrees that any statute of limitations, statute of repose, or other time-related defense applicable to the subject matters of the allegations in this Assurance, and any claims arising out of or relating thereto, are retroactively tolled from and after the date of this Assurance.

30. The person signing this Assurance for Honor the Earth warrants that its board of directors has authorized the person to execute this Assurance, that he or she executes this Assurance in an official capacity that binds Honor the Earth and its successors, and that Honor the Earth has been fully advised by its counsel or has voluntarily forgone such advisement before entering into the Assurance.

31. This Assurance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Assurance may be executed by facsimile or electronic copy in any image format.

32. This Assurance constitutes the full and complete terms of the agreement entered into by Honor the Earth and the AGO.

33. Service of notices or other documents required or permitted by this Assurance shall be served on the following persons, or any person subsequently designated by the parties to receive such notices, by mail and email at the addresses identified below:

As to the AGO:

Chloe A. Raimey
Assistant Attorney General, Charities Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1200
Saint Paul, MN 55101
Email: chloe.raimey@ag.state.mn.us

As to Honor the Earth:

Michelle M. Fox, General Counsel for Honor the Earth
Cedar Tree Native Law
2875 W Ray Road Suite 6-430 #38460
Chandler, AZ 85128
mfox@cedartree-nativelaw.com

34. The failure of a party to exercise any rights under this Assurance shall not be deemed to be a waiver of any right or any future rights.

35. This Assurance, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

36. Nothing in this Assurance shall be construed to limit the jurisdiction, power, or authority of the State of Minnesota or the AGO, except as expressly set forth herein in with regard to Honor the Earth.

37. The AGO shall have all powers and remedies specified by Minn. Stat. §§ 8.31, 309.553, 309.57, 317A.813, 501B.40, 501B.41, and all other authority otherwise available to it for purposes of investigating and remedying any violations of this Assurance.

38. Each of the parties participated in the drafting of this Assurance and agree that the Assurance's terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.


39. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Assurance, including that Honor the Earth shall promptly comply with any reasonable request from the AGO for information regarding verification of Honor the Earth's compliance with this Assurance.

40. The AGO may file this Assurance with the Court without further notice to Honor the Earth, and the Court may approve of and enter this Assurance *ex parte* and without further proceedings.

41. The Court shall retain jurisdiction of this matter for purposes of enforcing this Assurance, and all signatories hereto consent to the jurisdiction of the Court for the purposes of enforcing this Assurance.


KEITH ELLISON
Attorney General
State of Minnesota

Dated: Jan 30, 2024

By: 
Chloe Raimey (Jan 30, 2024 09:52 CST)
Chloe A. Raimey
Assistant Attorney General

HONOR THE EARTH

Dated: Jan 29, 2024

By: 
Paul DeMain (Jan 29, 2024 18:45 CST)
Paul DeMain, Board Chair
On behalf of Honor the Earth

ORDER

Having reviewed the terms of the foregoing Assurance of Discontinuance, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: _____
Judge of District Court

LET JUDGMENT BE ENTERED ACCORDINGLY.

MINNESOTA
JUDICIAL
BRANCH