

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Securities Act of Washington by:

5 MB NW Holdings, Inc.,
6 Speak Studios, Inc., and
Brandon Foote;

7 Respondents

Order No.: S-21-3228-23-SC01

STATEMENT OF CHARGES AND
NOTICE OF INTENT TO
ENTER ORDER TO CEASE AND DESIST,
TO IMPOSE FINES, AND TO CHARGE COSTS

8 THE STATE OF WASHINGTON TO:

9 **MB NW Holdings, Inc.**
Speak Studios, Inc.
10 **Brandon Foote**

11 **STATEMENT OF CHARGES**

12 Please take notice that the Securities Administrator of the State of Washington has reason to believe
13 that Respondents, MB NW Holdings, Inc., Speak Studios, Inc. and Brandon Foote have each violated the
14 Securities Act of Washington. The Securities Administrator believes those violations justify the entry of an
15 order against the Respondents to cease and desist from such violations and to charge costs pursuant to RCW
16 21.20.390, and, under RCW 21.20.395, to impose fines. The Securities Administrator finds as follows:

17 **TENTATIVE FINDINGS OF FACT**

18 **Respondents**

19 1. MB NW Holdings, Inc. ("MB NW") was a Washington corporation formed on August 4, 2020.
20 MB NW was administratively dissolved on January 5, 2022 for failure to file its annual report. MB NW was
21 formed to succeed Burnbutter Inc.
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1 2. Speak Studios, Inc. (“Speak Studios”) was a Washington corporation formed on August 10,
2 2020. Speak Studios was administratively dissolved on September 13, 2023 for failure to maintain a registered
3 agent. Speak Studios was formed to create studios at which podcasts would be recorded and produced.

4 3. Brandon Foote (“Foote”) is a resident of Meridian, Idaho. During the period relevant to this
5 Statement of Charges, Foote was a resident of Spokane County, Washington. Foote was the chief executive
6 officer of Burnbutter Inc., MB NW, and Speak Studios during the period relevant to this Statement of Charges.

7 *Related Entity*

8 4. Burnbutter Inc. (“Burnbutter”) was a Washington corporation formed on January 5, 2018.
9 Burnbutter was administratively dissolved on June 3, 2019 for failure to file its annual report with the
10 Washington Secretary of State’s office. Burnbutter was formed to manufacture and sell a food product called
11 Burn Butter.

12 *Brandon Foote’s Criminal History and Bankruptcy*

13 5. On September 18, 2020, the Prosecuting Attorney for Spokane County filed a five count
14 information against Foote. The information accused Foote of one count of first degree theft, one count of
15 second degree theft, two counts of first degree identity theft, and one count of second degree identity theft.
16 On November 3, 2021, Foote plead guilty to all five counts, and was ordered to pay a \$500 victim assessment.

17 6. On June 27, 2008, Foote filed for chapter 7 bankruptcy in United States Bankruptcy Court for
18 the Eastern District of Washington. On October 14, 2008, Foote received a standard discharge.

19 **Nature of the Conduct**

20 *Overview*

21 7. Over the course of 2020 and 2021, Foote sold at least \$50,000 in MB NW stock to at least one
22 investor, and at least \$300,000 Speak Studios stock to at least two investors. Foote also sold more than
23 \$900,000 worth of promissory notes issued by MB NW to an investor. These investors have lost all of their

1 investment funds. Further, Foote made subsequent offers of Speak Studios stock, stock options, and
2 convertible debt to these investors and to others.

3 *Offer and Sale of Securities of MB NW Holdings, Inc.*

4 8. In 2018, Foote incorporated Burnbutter with a partner to manufacture and sell Burn Butter.
5 During the summer of 2020, Foote met a Spokane resident (the “Investor”) as Foote was trying to rent
6 commercial space near the Investor’s. The two became friendly, and eventually learned that they both held
7 Burn Butter in high esteem. The Investor believed that Burn Butter cured his diabetes. Burn Butter is a food
8 product that, its proponents claim, assists the consumer in maintaining ketosis¹. At that time, Burn Butter was
9 available in more than three thousand stores.

10 9. Shortly after Foote met the Investor, Foote’s partner announced that he no longer wished to
11 work with Foote, and that he wished to be bought out. After buying out that partner’s interest, Foote offered
12 to bring the Investor into the Burn Butter business. In August 2020, Foote incorporated MB NW Holdings,
13 Inc. to replace the administratively dissolved Burnbutter, and to pursue the manufacture and sale of Burn
14 Butter with the Investor. Foote offered one half of MB NW’s stock, which the Investor purchased for \$50,000
15 on or around August 20, 2020.

16 10. Within one month of investing, the Investor began supporting MB NW with his personal funds
17 at Foote’s request. Between September 2020 and January 2021, the Investor reinvested in MB NW on at least
18 eighteen occasions to address MB NW’s short-term needs for capital. These investments totaled more than
19 \$900,000. Some of these investments were evidenced by unsecured promissory notes. Eight notes matured
20 in ninety days or fewer. Four notes matured at points ranging from 95 to 114 days. The notes provided for
21 interest between five and ten percent. Foote told the Investor that his first reinvestments were needed to fill
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23 ¹ Ketosis is a metabolic state in which the body burns fat for energy rather than glucose.

1 orders for Burn Butter received from Safeway and Albertson's. The need to fill customer orders was often
2 cited as the reason why MB NW needed more money from the Investor.

3 11. Despite the Investor's having purchased one half of MB NW's stock, Foote's conduct
4 restricted him to a passive role, as Foote denied the Investor access to MB NW's corporate and bank records.
5 Foote also instructed MB NW's lone employee not to interact with the Investor. The Investor eventually
6 became skeptical about the business, and began to ask for proof that MB NW had received orders for Burn
7 Butter. Foote directed MB NW's employee to repackage other companies' products to appear as MB NW
8 products to allay the Investor's concerns. Foote emphasized that the funds he was soliciting were needed to
9 help grow the business and that, as the holder of one half of the business's stock, the Investor would benefit
10 as well.

11 12. Foote withdrew a significant amount of the Investor's funds as cash. Between August 7, 2020
12 and December 29, 2020, Foote withdrew \$316,912 of the Investor's \$922,702.22 investment in cash. Foote
13 also transferred \$47,500 of the Investor's funds to an account in the name of Speak Studios, and made other
14 withdrawals totaling \$52,000 for the benefit of Speak Studios during that period.

15 *Offer and Sale of Securities of Speak Studios, Inc.*

16 13. In or around August 2020, Foote opened a studio where podcasts would be recorded and
17 produced in Spokane called Speak Studios. Foote's conception of Speak Studios would morph with time.
18 Initially, Foote wanted to open a first studio in Spokane and increase the number of studios using a business
19 model that was similar to franchising. Speak Studios' focus also changed to the development of software that
20 would be used in the podcast studio setting.

21 14. Speak Studios struggled financially from its inception. Foote originally sought to finance
22 Speak Studios through selling advertising, thinking that Spokane-area advertisers would want to support a
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1 young, local business. Shortly after Speak Studios began operations, Foote asked certain employees if they
2 knew anyone who might want to invest in Speak Studios.

3 15. As Speak Studios' financial condition began to deteriorate more quickly in early 2021, Foote
4 transitioned to securing funds from outside investors as a primary means to keep Speak Studios a going
5 concern. Foote told Speak Studios' employees that Speak Studios must find investors, and that they needed
6 to bring in investors to save their jobs. At or around this time, Foote began asking for gifts and loans from
7 Speak Studios' employees. Despite Speak Studios' worsening state, Foote made personal draws on Speak
8 Studios' account during this period. Between January 4, 2021 and June 30, 2021, Foote withdrew at least
9 \$112,349 from Speak Studios' accounts in cash. Cash withdrawals represented the largest expense for Speak
10 Studios over this period.

11 16. Foote held several meetings with small groups of potential investors in early 2021 at which he
12 offered Speak Studios stock. Foote cold-called persons whom Foote believed would be able to invest in Speak
13 Studios, and invited them to these meetings. At these meetings, Foote distributed materials that he had
14 directed two Speak Studios employees to create that contained profit projections. The projections were based
15 on how many podcasts Speak Studios could produce, how much advertising it could sell, and were based on
16 Speak's location in Spokane and a contemplated satellite location in Coeur d'Alene, Idaho. The materials
17 also stated that Speak generated no less than \$10,000 in recurring monthly income as it was experiencing the
18 financial struggles described above. Foote assembled the final version of the materials. Foote failed to
19 disclose, at these meetings or in the materials he distributed, the criminal information that had been filed in
20 September 2020 against him and his 2008 bankruptcy.

21 17. As further detailed below, Foote would ultimately sell at least \$300,000 worth of Speak Studios
22 stock to two investors. Foote and Speak Studios offered convertible debt and options on Speak Studios stock
23 to one of the investors as well.

Foote's Pursuit of Professional Athletes

Athlete #1

18. Foote pursued retired and active professional athletes as potential investors in Speak Studios. In or around November 2020, Foote contacted Athlete #1, a Washington resident, through Instagram, and stated that he wanted to create a podcast with Athlete #1. Foote invited Athlete #1 to a meeting at Speak Studio's office to discuss Foote's ideas in more detail, the specifics of making a podcast hosted by Athlete #1, and investing in Speak Studios. Foote discussed how much Speak Studios could earn producing and distributing the contemplated podcast. Foote did not provide a basis for these projections. Foote also provided a document that projected Speak's cash flows for three years to Athlete #1. The document presented four scenarios. In three of the four scenarios, Foote projected that Speak Studios would have positive net cash flows within six months. While the projections identified sources of revenue and expenses, the projections did not disclose the basis for the specific amounts given. As the meeting wound down, Foote solicited a \$250,000 investment after telling Athlete #1 that Speak Studios needed his investment to be able to achieve the profitability that Foote discussed, and to be able to produce the podcast with Foote. Motivated by the profit projections, Athlete #1 invested \$50,000 in Speak Studio stock on or around March 30, 2021.

19. Foote later unsuccessfully solicited Athlete #1 for investment in additional Speak Studios stock. Foote provided an "Investor Booklet" (the "Booklet") as part of this subsequent offer of stock to Athlete #1. Foote also included an offer of convertible promissory notes in the Booklet. These notes were part of a \$1.5 million offering, provided for six percent interest, and were to mature in March 2023. In the Booklet, Speak Studios stated that the primary use of investor funds would be to develop a "Speak Studio Application" for the "personal and home analytics industry." The Booklet also stated that Speak Studios would derive nearly all of its revenue from sales of these software applications. Despite this, Foote did not discuss the software applications with Athlete #1 prior to Athlete #1's investment.

1 20. The Booklet identified a high degree of dependence on Foote’s management skills and his
2 status as majority shareholder as risks. However, the Booklet did not discuss any relevant management
3 experience that Foote might have had.

4 21. Foote also offered options to Athlete #1 by enrolling him in Speak Studios’ “Equity Incentive
5 Plan,” which entitled Athlete #1 to purchase 20,000 shares of Speak Studios stock for \$.001 per share. Athlete
6 #1 did not purchase stock at the option price.

7 22. At no point during the solicitation of Athlete #1 described above, did Foote disclose his then-
8 ongoing criminal case or his bankruptcy. The Booklet also failed to make these disclosures.

9 Athlete #2

10 23. In May 2021, Athlete #2, a citizen and resident of Australia, purchased \$250,000 of Speak
11 Studios stock through his Australian limited corporation. Foote stated to Athlete #2 that Speak Studios was
12 to launch turnkey podcast studios throughout the United States. At or around the time that Athlete #2
13 purchased stock, he entered into an “Advisor Agreement” with Speak Studios. Under this agreement, Athlete
14 #2 agreed to dedicate a certain number of hours each month to work on behalf of Speak Studios, and to consult
15 with Speak Studios’ management. The agreement also obligated Athlete #2 to facilitate networking and
16 introductions of “strategic investors” on behalf of Speak Studios.

17 24. Prior to making his investment in Speak Studios, Athlete #2 received a copy of the “Investor
18 Booklet” (the “Second Booklet”), nearly identical to that received by Athlete #1. The Second Booklet stated
19 that Foote would exercise broad control over the use of the offering’s proceeds and that Speak Studios’
20 founders would control the day-to-day management of the company, notwithstanding the commitment that
21 Athlete #2 made to work on behalf of Speak Studios discussed above. The Second Booklet also stated that
22 the company intended to use the offering’s proceeds to “build the Company.” However, at least \$75,000 of
23 Athlete #2’s investment funds were used to repay an individual who had lent money to Speak Studios.

1 1. The offer and/or sale of stock and promissory notes by MB NW Holdings, Inc. described above
2 each constitutes the offer and/or sale of a security as defined in RCW 21.20.005(14) and (17).

3 2. The offer and/or sale of stock, convertible promissory notes, and stock options by Speak
4 Studios, Inc. described above each constitutes the offer and/or sale of a security as defined in RCW
5 21.20.005(14) and (17).

6 3. MB NW Holdings, Inc. has violated RCW 21.20.140, because, as set forth in the Tentative
7 Findings of Fact, MB NW Holdings, Inc. offered and/or sold securities for which no registration or claim of
8 exemption is on file with the Securities Administrator.

9 4. Speak Studios, Inc. has violated RCW 21.20.140, because, as set forth in the Tentative
10 Findings of Fact, Speak Studios, Inc. offered and/or sold securities for which no registration or valid claim of
11 exemption is on file with the Securities Administrator. Speak Studios failed to meet the requirements
12 necessary to claim the exemption available under Rule 506(b) of the Securities Act of 1933 and WAC 460-
13 44A-506 by engaging in general solicitation of investors and by failing to notice file the Form D with the
14 Securities Division.

15 5. Brandon Foote has violated RCW 21.20.040 by offering and/or selling said securities while
16 not being registered as a securities salesperson or broker-dealer in the State of Washington.

17 6. MB NW Holdings, Inc., Speak Studios, Inc., and Brandon Foote have each violated RCW
18 21.20.010, because, as set forth in the Tentative Findings of Fact, MB NW Holdings, Inc., Speak Studios,
19 Inc., and Brandon Foote each made untrue statements of material fact or omitted to state material facts
20 necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

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1 **NOTICE OF INTENT TO ORDER THE RESPONDENTS TO CEASE AND DESIST**

2 Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities
3 Administrator intends to order, pursuant to RCW 21.20.390(1), that MB NW Holdings, Inc., Speak Studios,
4 Inc., and Brandon Foote, and their agents and employees, shall each cease and desist from violations of RCW
5 21.20.010; that MB NW Holdings, Inc., Speak Studios, Inc., and their agents and employees, shall each cease
6 and desist from violations of RCW 21.20.140; and that Respondent Brandon Foote, and his agents and
7 employees, shall each cease and desist from violations of RCW 21.20.040.

8 **NOTICE OF INTENT TO IMPOSE FINES**

9 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of Law,
10 the Securities Administrator intends to order that:

- 11 a. Respondent MB NW Holdings, Inc. shall be liable for, and shall pay, a fine of \$15,000;
- 12 b. Respondent Speak Studios, Inc. shall be liable for, and shall pay, a fine of \$15,000;
- 13 c. Respondent Brandon Foote shall be liable for, and shall pay, a fine of \$15,000.

14 **NOTICE OF INTENT TO CHARGE COSTS**

15 Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law,
16 the Securities Administrator intends to order that Respondents, MB NW Holdings, Inc., Speak Studios, Inc.,
17 and Brandon Foote shall be jointly and severally liable for and shall pay the costs, fees, and other expenses
18 incurred in the administrative investigation and hearing of this matter, in an amount not less than \$10,000.

19 **AUTHORITY AND PROCEDURE**

20 This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject
21 to the provisions of Chapter 34.05 RCW. The Respondents may each make a written request for a hearing as
22 set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING
23 accompanying this Order. If a Respondent does not make a hearing request in the time allowed, the Securities

1 Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to
2 enter a permanent order to cease and desist as to that Respondent, to impose any fines sought against that
3 respondent, and to charge any costs sought against that Respondent.

4 Signed and Entered this 4th day of October 2024.



/s/

William M. Beatty
Securities Administrator

Approved by:

Presented by:

/s/

/s/

Brian J. Guerard
Chief of Enforcement

Edward R. Thunen
Financial Legal Examiner

Reviewed by:

/s/

Huong Lam
Financial Legal Examiner Supervisor