

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2015 JAN 26 PM 3:44

ALSTON HUNT FLOYD & ING  
Attorneys at Law  
A Law Corporation

PAUL ALSTON 1126-0  
ERIC G. FERRER 6828-0  
ZACH DIIONNO 9960-0  
1001 Bishop Street, 18<sup>th</sup> Floor  
Honolulu, Hawai'i 96813  
Telephone: (808) 524-1800  
Facsimile: (808) 524-4591

F. OTAKE  
CLERK

MURRAY T. S. LEWIS (*Pro Hac Vice*)  
LEWIS LAW FIRM  
6025 Atlas Place SW  
Seattle, Washington 98136  
Telephone: (206) 223-7008  
Facsimile: (206) 223-7009

Attorneys for Plaintiffs,  
Individually and on  
Behalf of All Those Similarly Situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVID GARNER; PATRICIA SMITH;  
ANDREA CHRISTIE; ALLEN KLITERNICK;  
KAREN SOUZA; JO JENNIFER  
GOLDSMITH; and DAVID HUDSON on behalf  
of themselves and all others similarly situated,

Plaintiffs,

vs.

STATE OF HAWAII, DEPARTMENT OF  
EDUCATION; JOHN DOES 1-5; JOHN DOE  
CORPORATIONS 1-5; ROE NON-PROFIT  
CORPORATIONS 1-5; AND ROE  
GOVERNMENTAL AGENCIES 1-5,

Defendants.

Civil No. 03-1-000305 (KKS)  
(CLASS ACTION)

**PLAINTIFFS' MOTION FOR:  
(1) SUMMARY JUDGMENT  
ESTABLISHING AMOUNT OF  
PLAINTIFFS' ENTITLEMENT TO  
HOURLY WAGES AND (2) INTEREST  
THEREON; MEMORANDUM IN  
SUPPORT OF MOTION;  
DECLARATION OF NANI LINDSEY;**

*[Caption continued on next page]*

Hearing Date: March 26, 2015

Hearing Time: 9:00 AM

Hearing Judge:  
Honorable Karl K. Sakamoto

ALLAN KLITERNICK; DAVID GARNER; JO JENNIFER GOLDSMITH; and DAVID HUDSON, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

KATHRYN S. MATAYOSHI, in her official capacity as Superintendent of Schools; DONALD G. HORNER, BRIAN J. DELIMA, WESLEY P. LO, KEITH AMEMIYA, CHERYL KA'UHANE LUPENI, KIMBERLY GENNAULA HAGI, NANCY JO YAMAKAWA BUDD, JIM D. WILLIAMS, CHARLENE CUARESMA, AND ANGELICA WAI SAM LAO, in their official capacity as members of the STATE OF HAWAII BOARD OF EDUCATION; DEPARTMENT OF EDUCATION, STATE OF HAWAII,

Defendants.

CIVIL NO. 05-1-00031 (KKS)

**EXHIBIT A; NOTICE OF HEARING  
and CERTIFICATE OF SERVICE**

**PLAINTIFFS' MOTION FOR: (1) SUMMARY JUDGMENT ESTABLISHING  
THE AMOUNT OF PLAINTIFFS' ENTITLEMENT TO HOURLY WAGES AND  
(2) INTEREST THEREON**

Plaintiffs hereby seek an order establishing their amount of their entitlement to hourly wages and interest thereon, pursuant to the Court's prior orders which established the Defendants' liability for these sums because there is no dispute regarding the amounts owed, as calculated by Plaintiffs' expert. .

This Motion is made pursuant to Hawai'i Rules of Civil Procedure Rules 7 and 56, and is based on the records and proceedings of this matter, and the attached Memorandum,

Declaration, exhibit, and all other evidence and arguments presented at or before the hearing on this Motion.

DATED: Honolulu, Hawai'i, 1/23



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PAUL ALSTON  
ERIC G. FERRER  
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MURRAY T.S. LEWIS

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Individually and on  
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

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WAI SAM LAO, in their official capacity as  
members of the STATE OF HAWAII BOARD  
OF EDUCATION; DEPARTMENT OF  
EDUCATION, STATE OF HAWAII,

Defendants.

Civil No. 03-1-000305 (KKS)  
(CLASS ACTION)

**MEMORANDUM IN SUPPORT OF  
MOTION**

CIVIL NO. 05-1-00031 (KKS)

## MEMORANDUM IN SUPPORT OF MOTION

### I. INTRODUCTION

Plaintiffs seek to have the Court confirm the amounts owed to class members for hourly wages and interest. After exhaustive work, Plaintiffs' expert (in collaboration with Defendants' expert) has calculated the precise amounts owed to each class member under this Court's prior rulings. The Defendants have no contrary evidence. Therefore, summary judgment should be entered in Plaintiffs' favor for the amounts calculated by Plaintiffs' expert.

### II. ARGUMENT

As explained in the attached Declaration of Nani Lindsey, the precise amount owed to each class member for interest and/or hourly wages has now been calculated. These calculations are the product of hundreds of hours of analysis which Ms. Lindsey performed in consultation with the State's expert, Stan Wachi. After much debate and discussion, Ms. Lindsey arrived at figures—drawn from the DOE's original payroll records—that reflect 100% of the unpaid back wages and 100% of the interest due thereon under H.R.S. § 103-10.

These are **not** settlement figures. They are, instead, the entire amount of the wages owed under the Court's prior rulings. There is no reason for treating these figures as the product of a compromise, for they are not. Rather, they represent the full extent of the Defendants' obligations.

The Defendants will offer no contrary figures or otherwise dispute these amounts (although they reserve their right to appeal). Summary judgment on damages should be entered forthwith.

**III. CONCLUSION**

Plaintiffs respectfully request that Court grant summary judgment in favor of the class members for the amounts reflected in Ms. Lindsey's declaration and the database appended thereto.

DATED: Honolulu, Hawai'i, 1/23/15



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PAUL ALSTON  
ERIC G. FERRER  
ZACH DiONNO  
MURRAY T.S. LEWIS

Attorneys for Plaintiffs,  
Individually and on Behalf of All  
Those Similarly Situated

## DECLARATION OF NANI LINDSEY

I, Nani Lindsey, declare as follows:

1. I make this in support of the efforts to determine the back wages owed by the Department of Education to its part-time teachers and employees.
2. I was retained in late 2011 by Paul Alston to determine the amounts owed by the Department of Education ("DOE") to its substitute teachers and part-time employees.
3. I was supplied computer payroll records maintained by the DOE. I have carefully reviewed those records under computerized analysis that is more effective than manual analysis.
4. My background qualifies me to conduct this analysis because, as my resume (Exhibit "A") shows, I have worked with complex databases for over 35 years. Based upon those experiences, among others, I have been hired by government agencies in Hawai'i to study many complex analytical problems involving computerized databases. I am familiar with similar computer systems and software used by the DOE for its payroll.
5. Since 2012, I have conducted my analysis in consultation with Stan Wachi, a CPA hired by the DOE to assess the same data and determine the amount of damages owed by the DOE. To date, I have devoted over 600 hours to this work.
6. I have used computerized database analyses of the DOE's payroll records (which show each pay period during the relevant years) to determine:
  - a. The back wages owed to persons who are members of the certified class in the so-called *Kawashima* case who worked only in hourly-paid part-time positions for the DOE from February 2004 to June 12, 2012 ("GROUP A").

- b. The back wages owed to substitute teachers members of the certified class in the so-called *Garner* and *Klitenick* cases who also worked for the DOE as part-time employees in hourly-paid positions during the period between November 8, 2000 and June 12, 2012 for their hourly work ("GROUP B").
  - c. The interest owed substitute teachers on account of the underpayment of per diem wages at the rate specified by law (the prime rate plus two percent, beginning 30 days after each miscalculated payroll check, according to the Plaintiffs' lawyers) ("GROUP C").
  - d. The interest owed to GROUP A and GROUP B at the same statutory rate.
7. I have conferred and compared analyses with Mr. Wachi for each of groups identified above.
8. Based upon my analyses of the payroll records, I have determined that the amounts owed to each of the groups described above (inclusive of the employee's share of Social Security and Medicare taxes) are:
- a. Wages to GROUP A: (*Kawashima*--hourly wages only) from February 20, 2004 to June 12, 2012: \$24,026,329.52
  - b. Wages to GROUP B (*Garner*-hourly wages only) from November 8, 2000 to June 12, 2012: \$6,789,175.21
  - c. Interest to GROUP A through December 31, 2014 (and continuing at the per diem rate of \$3,455.84, based upon the current prime rate plus 2%): \$8,990,458.68.
  - d. Interest to GROUP B though December 31, 2014 (and continuing at the per diem rate of \$976.53, based upon the current prime rate plus 2%): \$4,039,539.17.
  - e. Interest to GROUP C (*Garner*--per diem only) through May 31, 2013: \$9,367,881.43
9. Totaling these amounts, each group is owed the following:
- a. GROUP A (8(a) plus 8(c) wages plus interest): \$33,016,788.20.



b. GROUP B (8(b) plus 8(d) wages plus interest): \$10,828,714.38

c. GROUP C (8(e); interest only): \$9,367,881.43

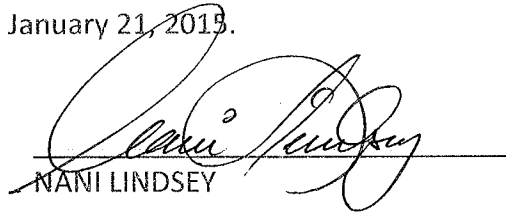
10. The payroll records provided by the DOE contain sufficient information to permit me to precisely calculate the amount owed (with or without the offsets) to each class member in each group. Attached as Exhibit "B", which is submitted under seal for the Court's inspection pursuant to the Parties' Stipulated Protective Order Regarding Confidential Material, is a CD containing the backpay and interest calculations for each class member in these class actions. This CD shows the calculations of wages for all class members in the pending class actions; this analysis was based directly upon the payroll records provided by the DOE and represented by the DOE to be complete and accurate. I analyzed the data and calculated the amounts owed by using commonly accepted analytical methods.

11. The analysis of the data was labor-intensive and time-consuming because there were numerous anomalies in the data. Through consultation with Mr. Wachi, the DOE, and the Attorney General's office, the database was finalized and, to the best of my professional judgment, it is complete and accurate.

12. In order to calculate the total benefit to the class members from the prosecution of the claims asserted against the State, the employer's share of FICA and Medicare taxes—totaling 6.2% and 1.45% of the back wages should be added to the numbers specified in Paragraph 8, above.

I declare the foregoing is true under penalty of perjury under the laws of the State of Hawai'i to the best of my knowledge and belief.

DATED: Honolulu, Hawai'i, January 21, 2015.

  
NANI LINDSEY

**QUALIFICATIONS:**

36 years in the computer industry.

President of Unique Computer Systems, Inc. a Hawaii Based Corporation (founded in 1980) and Manager of THE LANGE GROUP (dba). Current duties include design, development and implementation of mid-range to large scale database and application software for both the commercial market and Federal/State/Local government entities.

**ACADEMIC BACKGROUND:**

Graduated from The Kamehameha Schools,

B.S Information & Computer Science (Uof Hawaii),

M.S. Information & Computer Science (Uof Hawaii/Uof Oregon),

over 50% completion towards M.B.A. (Uof Hawaii).

**THE LANGE GROUP's Affiliations:**

Since 1993: IBM Business Partner - as an Authorized Application Specialist (AS), The Lange Group's specialty is concentrated on the RS/6000 product line; (since 2000) IBM Lotus Passport Advantage Partner with emphasis in Content Management (Imaging, e-commerce solutions)

Since 1994: HP Channel Partner - as an Independent Software Vendor (ISV), The Lange Group specialty is concentrated on the HP 9000 product line.

Since 1980: Wang Software Vendor - recognized by Wang Laboratories as an authorized software vendor whose primary territory is the state of Hawaii. The Lange Group worked very closely with the local Wang DSO (direct sales organization) and together was responsible for installing the majority of mid-range to large scale Wang computer systems in the state of Hawaii.

**SPECIALIZED TRAINING by major Manufacturers:**

LINUX	Red Hat / SUSE
IBM RS/6000	AIX/6000 Operating System AIX/6000 TCP/IP & Networking AIX/6000 System Administration
HP 9000	HP-UX System Administration for Multi-user Systems HP-UX Fundamentals of the UNIX System
INTEL	Microsoft Windows

**TECHNICAL EXPERTISE:**

Computers & Operating Systems:	MICROSOFT application integration, development & database tools IBM RS/6000 (AIX), Netware/6000 HP9000 (HP-UX), HP3000 (MPE), HP300 (AMIGO) MS-DOS, MS-Win9x, MS-NT, MS-XP, MS-Vista, Novell NetWare
Languages & Databases:	APPX, SPEED II, BASIC, POWER BUILDER, SQL, C, ACCESS, ORACLE, DB2, PROGRESS, PL/I, FORTRAN, dBASE IV, PASCAL, SNOBOL, ALGOL, LISP, ASSEMBLER

## **List of Recent Projects**

### **OFFICE OF THE PROSECUTING ATTORNEY – COUNTY OF HAWAII**

County of Hawaii

Hilo, Hawaii

Contact: Dale Ross

1<sup>st</sup> Deputy Prosecuting Attorney

Our involvement was to perform analysis on the existing manual workflow, then design and implement a working computerized system that will provide better tracking and management of the multitude of cases handled by the Hilo Prosecutor. Our tasks involved system analysis, design, development, implementation, testing, and training for the on-line HITs system which tracks all cases handled by the Hilo prosecuting attorneys and their support staff. Information regarding defendants, charges, events, notes, along with a multitude of management and operational reports such as the Victim Notification, Subpoena Generation, Complaints Generation & on-line filing, Automatic Disposition Letters, etc. Currently we are working with electronic transmission of pre Arrest/Charge xml data & HCPD documents to their Laserfiche Imaging System.

We have been engaged in various upgrades and enhancements to other agencies including consulting and development on the HIP - Horizontal Integration Project with Judiciary, integration with HCPD's new RMS, the Attorney General JJIS system and HCJDC's Arrest & Charged system integration.

### **ANIMAL QUARANTINE STATION**

Department of Agriculture

Honolulu, Hawaii

Contact: Helene Okamura

DPSA – Computer Services Section

Our involvement is support and service to several mission critical on the Red Hat Linux operating system, including configuration of printers and remote stations. Our task involved writing customized scripts to handle backups and other system functions either automatically or on-demand. Program modifications for customized forms to facilitate printing to the new printers were made, as well as end-user training and systems administration training. Ongoing work involving new program enhancements and pet microchip database.

The current contract involves major upgrades to the existing Animal Quarantine Stations custom program QAR Quarantine Accounts Receivable and QOP Quarantine Operations Program to integrate pet microchip data as primary IDs. This involves electronic interfaces to Department of Defense & Kansas State University test results and various other databases within the application.

## **List of Recent Projects continued**

### **TRAFFIC BRANCH**

Department of Transportation

Kapolei, Hawaii

Contact: Alvin Takeshita

Division Head

Our involvement was to perform analysis on the existing manual workflow, determine requirements and specifications, then design and implement a working computerized system that will provide better tracking and management of the multitude of major accidents reported by the Honolulu Police Department as well as keep track of the survey data of our roads and highways. Our tasks involved system analysis, design, development, implementation, testing, and training for the on-line Traffic Accident Reporting System (TAR), Traffic Data Survey System (TSD) and the Traffic Data Management System (TDMS). The State of Hawaii is the official keeper of major accident information and required to defend the State in legal action taken in the Attorney Generals Office. The reports provided are used by both the Legislature as well as the Federal Highways Administration in making budget and spending decisions. The survey system provides linear and quantity "count" data analysis as well as historical information to the Department to help with traffic flow decisions and road usage.

We currently are working on enhancements on their the IBM RS/6000 to enable remote access to other agencies at the county level including HPD and neighbor island counties. Ongoing work currently involves new management reporting and consulting involving a new design of the state's Accident Report, integration of county PD's to DOT's system for automatic updates and database normalization, and custom report writer for electronic transfers.

### **HAWAIIAN HOME LANDS**

State of Hawaii

Honolulu, Hawaii

Contact: Linda Inouye

DP Coordinator

Our current involvement is maintenance and support of their Red Hat Linux system, including operating system and APPX upgrades, configuration and provide System Administration training. We are also involved with consulting on their Linux system software and APPX mission critical applications to management. There are about 50 users online, and 2 developers. We are currently upgrading both their production and test servers operating system and other supporting application systems and scripts including custom applications for the various programs that they administer. Currently we are assisting in virtualization of their two main application servers.

EXHIBIT "B"

FILED UNDER SEAL  
PURSUANT TO STIPULATED  
PROTECTIVE ORDER REGARDING  
CONFIDENTIAL MATERIAL, FILED  
1/21/2005

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

DAVID GARNER; PATRICIA SMITH;  
ANDREA CHRISTIE; ALLEN KLITERNICK;  
KAREN SOUZA; JO JENNIFER  
GOLDSMITH; and DAVID HUDSON on behalf  
of themselves and all others similarly situated,

Plaintiffs,

vs.

STATE OF HAWAI'I, DEPARTMENT OF  
EDUCATION; JOHN DOES 1-5; JOHN DOE  
CORPORATIONS 1-5; ROE NON-PROFIT  
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WAI SAM LAO, in their official capacity as  
members of the STATE OF HAWAI'I BOARD  
OF EDUCATION; DEPARTMENT OF  
EDUCATION, STATE OF HAWAI'I,

Defendants.

Civil No. 03-1-000305 (KKS)  
(CLASS ACTION)

**NOTICE OF HEARING and  
CERTIFICATE OF SERVICE**

CIVIL NO. 05-1-00031 (KKS)

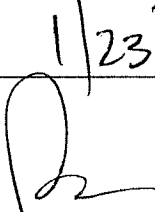
**NOTICE OF HEARING**

TO: HARVEY E. HENDERSON, JR., ESQ.  
WILLIAM J. WYNHOFF, ESQ.  
JAMES E. HALVORSON, ESQ.  
Deputy Attorneys General  
Department of the Attorney General  
State of Hawai'i  
465 South King Street, Room 300  
Honolulu, HI 96813

Attorneys for Defendant  
STATE OF HAWAII,  
DEPARTMENT OF EDUCATION

NOTICE IS HEREBY GIVEN that the above-identified Motion shall come on for hearing before the Honorable Karl K. Sakamoto, Judge of the above-entitled Court, in his courtroom in the Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813, at 9 o'clock A.m. on MARCH 26, 2015, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawai'i, 1/23/15

  
\_\_\_\_\_  
PAUL ALSTON  
ERIC G. FERRER  
ZACH DiIONNO  
MURRAY T.S. LEWIS

Attorneys for Plaintiffs,  
Individually and on Behalf of All  
Those Similarly Situated



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of the foregoing Motion was duly served on the above identified parties at their respective addresses via hand-delivery.

DATED: Honolulu, Hawai'i, 1/23/15



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PAUL ALSTON  
ERIC G. FERRER  
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