

FIRST CIRCUIT COURT
STATE OF HAWAII
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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DIANNE KAWASHIMA, individually
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

STATE OF HAWAII, DEPARTMENT
OF EDUCATION; KATHRYN
MATAYOSHI, in her official capacity
as Superintendent of Schools; KEITH
AMEMIYA, NANCY JO-YAMAKAWA

Civil No. 06-1-0244-02 (ECN)
(Class Action)

**NOTICE OF PENDENCY OF CLASS
ACTION**

BUDD, CHARLENE CUARESMA,
DONALD G. HORNER, BRIAN J. DE
LIMA, KIMBERLY GENNAULA HAGI,
ANGELICA WAI SAM LAO, WESLEY
P. LO, CHERYL KA`UHANE LUPENUI,
COL. WILLIAM MORRISON and
JAMES D. WILLIAMS, in their official
capacities as members of the STATE
OF HAWAII BOARD OF EDUCATION;
DOE DEFENDANTS 1-10,

Defendants.

NOTICE OF PENDENCY OF CLASS ACTION

**TO: All Part Time Teachers and Part Time Employees Who Were
Employed by the State of Hawai`i, Department of Education from
February 10, 2004 to June 14, 2012.**

I. WHY YOU SHOULD READ THIS NOTICE

Your rights may be affected by the class action lawsuit known as *Dianne Kawashima v. State of Hawaii, Department of Education, et. al.*, Civil No. 06-1-0244-02 (ECN), in the Circuit Court of the First Circuit, State of Hawai`i (referred to in this notice as the "Class Action").

Pursuant to Haw. R. Civ. P. Rule 23, notice of this Class Action is being provided by individual bulk mailing to all "Class" members (collectively "class members") identified in the personnel records of the State of Hawai`i, Department of Education ("DOE"). A one page summary of the Notice of the Class Action is also being provided by publication in a newspaper of general circulation in Hawai`i. This Notice describes: (1) the nature of the claims in

this Class Action, (2) how to participate or exclude yourself from the “Class” and (3) how to protect your rights.

If you know of other persons who may be a class member, please show them this Notice.

II. THE CERTIFIED CLASS

On August 14, 2006, the Court certified a group, or “Class” in this Class Action, which is defined as:

All persons employed by the State of Hawai`i Department of Education, who were paid according to the pay rates for Part-Time Teachers, with or without a differential (excluding the class members in *Garner v. State of Hawai`i*, Civ. No. 03-1-0305 and *Klitternick v. Hamamoto*, Civ. No. 05-1-0031) at any time within the applicable statute of limitations.

PLEASE READ THIS NOTICE CAREFULLY

III. THE LITIGATION

This Class Action involves a “Class” of persons who were employed by the DOE as part time teachers and/or part time employees who were paid on an hourly basis under DOE School Code Regulation 5203 (“Regulation 5203”) starting February 10, 2004.

On February 10, 2006, the Plaintiff, on behalf of similarly situated part time teachers and part time employees employed by the DOE, filed a lawsuit against the DOE and certain other Defendants to recover back pay for the DOE’s alleged violation of Haw. Rev. Stat. § 302A-624(e), and related

Regulation 5203. The Complaint, as amended, alleges that the DOE failed to pay the class members the correct hourly rate of pay, thereby violating the class members' employment contracts.

The Defendants deny the above claims but the trial Court has ruled that the DOE violated the class members' contract rights and that the class members are entitled to recover back pay for all amounts underpaid for hourly work from February 10, 2004 through June 14, 2012 (when the DOE adopted rules governing pay rates for hourly work). The Defendants intend to appeal this ruling. The Court has also denied Plaintiff's Motion seeking to recover pre-judgment interest on the amount of back pay. Plaintiffs intend to appeal this ruling.

IV. DETERMINING WHETHER YOU ARE A CLASS MEMBER

To be a class member, you must have been employed by the DOE as a part time teacher and/or part time employee who was paid on an hourly basis under Regulation 5203 with or without a differential between February 10, 2004 and June 14, 2012.

V. REMAINING IN OR EXCLUDING YOURSELF FROM ("OPTING OUT") THE CLASS ACTION

A. Staying in the Class Action

If you are a class member, you do not need to do anything to remain in the Class Action. You will be legally bound by all proceedings, orders, and judgments entered in connection with the Class Action, whether

favorable or unfavorable. You will be represented by the Plaintiff and Class Counsel for purposes of this Class Action.

If the Plaintiff becomes unable to adequately represent the "Class" for any reason, another named plaintiff may be appointed to represent you.

B. Excluding Yourself From the Class Action/"Opting Out"

You may choose not to be class member and not to participate in this Class Action. You may retain your own attorney and take legal action on your own or in combination with others. You must "opt out" to exclude yourself from this Class Action litigation. If you exclude yourself from the Class Action, you will not be bound by court orders or judgments entered in connection with this Class Action. If you "opt out", you will not receive any payments or benefits that may be awarded in the Class Action.

If you wish to opt out and not participate in this Class Action, please send written notice of that intent to Class Counsel, whose addresses are below.

A request to "opt out" and to be excluded from the class must contain your: (1) legal name, (2) address(es), (3) telephone number, (4) a clear written request to be excluded from the class, (5) the case number reference, which is *Dianne Kawashima, Individually and on behalf of all others similarly v. State of Hawaii, Department of Education; et al.*, Civil No. 06-1-0244-02 (ECN), and (6) the request must be signed by you.

You may use the attached "Request for Exclusion" form. Any request to "opt-out" of the Class Action must be received by Plaintiff's counsel within 30 days after the notice was mailed to you in order to be effective.

C. Motions To Intervene

If you have any reason to believe your interests differ from the interests of other class members, you may, at your own expense, file a motion to intervene in this Class Action. Any motion to intervene should be filed in the Circuit Court for the First Circuit before the Honorable Edwin C. Nacino, Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813.

Copies of motions should be served on (1) the Class Counsel, whose addresses appear below, and (2) the counsel for the Defendants: WILLIAM WYNHOFF, ESQ. and JAMES E. HALVORSON, ESQ., whose address is Office of the Attorney General, State of Hawai'i, 465 South King Street, Room 300, Honolulu, Hawai'i 96813.

VI. PLAINTIFF AND HER COUNSEL

To act on behalf of the class members for the purposes of the Class Action, the Court has appointed Plaintiff and Class Counsel, as follows:

PAUL ALSTON
ERIC G. FERRER
ALSTON HUNT FLOYD & ING
1001 Bishop Street, 18th Floor
Honolulu, Hawai'i 96813
Telephone: (808) 524-1800
Email: classaction@ahfi.com

MURRAY T.S. LEWIS (*pro hac vice*)
Lewis Law Firm
701 Fifth Avenue, Suite 6550
Seattle, Washington 98104

Please address any correspondence other than the "opt-out" notice regarding the Class Action to ALSTON HUNT FLOYD & ING, and include the reference "RE: *Dianne Kawashima v. State of Hawaii, Department of Education*, Civil No. 06-1-0244-02 (ECN)," to enable the attorneys to know what it concerns. Please include in such correspondence your legal name, e-mail address, telephone number, mailing address, or other contact information.

VII. ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE'S STIPEND

Class Counsel have not and will not receive any payment for their services in prosecuting the Class Action, and will not be reimbursed for out-of-pocket costs, unless the class members receive a benefit from the lawyers' efforts.

If Plaintiff's counsel obtain any compensation for you -- by settlement, judgment or otherwise-- they will ask the Court to (1) reimburse them for all of the costs they paid or incurred on behalf of the class, (2) award them (a) attorneys' fees equal to 25% of the total amount of the benefit obtained (damages and other economic benefits plus any court-awarded fees and costs) that is created through the litigation or settlement, and (b) general excise tax, and (3) request stipend awards or reimbursements for the Class

Representative as expenses to be deducted from the common fund, if any.

Class members will not be personally liable for any attorneys' fees or expenses of Plaintiff's counsel or the stipend awards or reimbursements for Class Representative.

VIII. HOW TO GET MORE INFORMATION

- By Internet: <http://www.hawaii.classaction.com>
- By e-mail: classaction@ahfi.com
- Telephone: 808-524-1800
- Fax: 808-524-4591

PLEASE DO NOT TELEPHONE OR SEND CORRESPONDENCE TO THE COURT REGARDING THIS NOTICE. NOTHING IN THIS NOTICE IS TO BE INTERPRETED AS ANY COMMENT BY THE COURT REGARDING THE MERITS OF THE CLASS ACTION.

DATED: _____, 2014.

BY ORDER OF THE CIRCUIT COURT
FOR THE FIRST CIRCUIT OF HAWAII
THE HONORABLE EDWIN C. NACINO

**REQUEST FOR EXCLUSION FROM THE CLASS ACTION/
"OPT OUT" FORM**

Dianne Kawashima. v. State of Hawai'i, Department of Education, et al.
Civil No. 06-1-0244-02 (ECN)

LEGAL NAME: _____

(Please do not use aliases or nicknames; include the name under which you received general assistance)

ADDRESS: _____

(Please include all addresses at which you receive mail)

E-Mail Address: _____

(if applicable)

TELEPHONE
NUMBER(S): _____

(Please include all numbers at which you can be contacted)

I wish to be excluded from the "Class" certified in the above named Class Action. I understand that it is my duty to find my own attorney to represent me and protect my rights as related to the claims in this Class Action. I will seek other legal assistance and advice.

Signature

If you do not wish to be part of the Class and will retain your own attorneys, please fill out this form and mail it to:

ALSTON HUNT FLOYD & ING
(Re: *Kawashima v. DOE*, 8259-1)
1001 Bishop Street, 18th Floor
Honolulu, Hawai'i 96813