

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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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  
BUDD, CHARLENE CUARESMA,  
DONALD G. HORNER, BRIAN J. DE  
870148v2/8259-1

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

**STIPULATED ORDER ON  
PROVIDING NOTICE OF PENDENCY  
OF CLASS ACTION; EXHIBIT "A"**

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 HAWAI`I BOARD OF EDUCATION;  
DOE DEFENDANTS 1-10,

Defendants.

**STIPULATED ORDER ON PROVIDING NOTICE OF  
PENDENCY OF CLASS ACTION**

IT IS HEREBY STIPULATED, by and between all Parties to this action and through their respective counsel, and HEREBY ORDERED by the Court that the Notice of Pendency of Class Action and related allocation of costs shall proceed and be resolved as follows:

On August 14, 2006, the Court certified a "Class" of plaintiffs in this Class Action. Pursuant to Haw. R. Civ. P. Rule 23(c)(2), the identifiable "Class" members will be provided individual and published notices of the pending class action as provided herein. The individual and published notices will advise the "Class" members of the class action and their rights, as well as reference a website containing the complete "Notice of Pendency of Class Action" ("Class Action Notice") approved by the Court and a telephone number where the Class Action Notice can also be provided by mail upon request. A true and correct copy of the Class Action Notice is attached as Exhibit "A".

The Parties have further agreed that Plaintiff will, at her expense, mail the individual notice to persons who worked as part-time teachers and part-time employees for the DOE during the class period, which is from February 10, 2004 to June 14, 2012. The mailing shall be done no later than 30 days from the date when this Stipulation and the Class Action Notice are approved by and filed with the Court OR the date when the DOE provides Plaintiff's counsel with the names and addresses of the "Class" members, whichever is later. Plaintiff's counsel reserves the right to seek reimbursement from Defendants for all costs related to copying, preparing, and mailing the Class Action Notice to the "Class" members. Plaintiff's counsel will provide the DOE with a list of the names and addresses of the persons to whom it mails the notice upon completion of the mailing.

Plaintiff will publish, at her expense, a copy of the Class Action Notice in a Hawaii newspaper of general circulation.

The Parties have stipulated, and it is further ordered, that the individual and published notices will contain the following content:

**IMPORTANT NOTICE**

As a past or current part-time teacher and part-time employee, you are part of a class action lawsuit that is pending in the First Circuit Court in Honolulu. The lawsuit seeks back pay and related damages based upon allegations that the State of Hawai'i, Department of Education ("DOE") miscalculated your pay from February 2004 through June 2012. The DOE denies there is any merit to the lawsuit.

You have important rights with respect to the lawsuit. It is important that you review the information about this lawsuit that is available

at [www.hawaiiclassaction.com](http://www.hawaiiclassaction.com). If you have no access to the internet, or if you have trouble reading or understanding the information found there, you may request more information by calling (808) 524-1800.

You should know (a) the Court will exclude from the lawsuit any class member who requests to opt-out of the lawsuit within 30 days after the Class Notice was mailed to you; the opt-out procedures are explained on the website; (b) the judgment in the class action lawsuit, favorable or not, will include all class members who do not opt-out; and (c) any class member who does not opt-out may enter an appearance through separate counsel at his/her own expense. If you do not appear with your own lawyers or opt out of the class action lawsuit, your interests will be represented by the class counsel, who are:

Paul Alston and Eric Ferrer  
Alston Hunt Floyd & Ing, Honolulu, Hawai'i

Murray Lewis, Seattle, Washington

The stipulated content of the individual and published notices and the agreed methods of notice are sufficient under Haw. R. Civ. P. Rule 23(c)(2), which states that "the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through a reasonable effort." Here, addresses of some of the certified "Class" members are available to the parties. Therefore, the individual notice regarding the class action, which will be sent by mail and supplemented by the internet posting, is the best notice practicable under the circumstances. For those "Class" members whose address cannot be identified, publication of the Class Action Notice in the newspaper is the best alternative notices practicable under Haw. R. Civ. P. Rule 23(c)(2).

Furthermore, the individual and published notices contain the information required under Rule 23(c)(2) by advising the "Class" members of the pending class action and their rights, including the right to opt-out of the class action, the binding effect of the judgment on class members who are not excluded, and the right to enter a separate appearance of counsel. The individual and published notices also provide the "Class" members access to the full Class Action Notice through either the internet or, for those without internet access, through the mail upon request. The Plaintiffs will bear the responsibility and costs of mailing the Class Action Notice to the "Class" members who call to request a copy.

DATED: Honolulu, Hawai'i, JUN 10 2014


APPROVED AND SO ORDERED:


EDWIN C. NACINO



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

  
 \_\_\_\_\_  
 PAUL ALSTON  
 ERIC G. FERRER  
 MURRAY T.S. LEWIS (pro hac vice)  
 Attorneys for Plaintiff  
 DIANNE KAWASHIMA,  
 Individually and on Behalf of All Those  
 Similarly Situated

  
 \_\_\_\_\_  
 JAMES E. HALVORSON  
 WILLIAM J. WYNHOFF  
 HARVEY E. HENDERSON  
 Attorneys for Defendants

*Dianne Kawashima, et al. v. State of Hawai'i Department of Education, et al.*; Civil No. 06-1-0244-02); **STIPULATED ORDER ON PROVIDING NOTICE OF PENDENCY OF CLASS ACTION.**

Of Counsel:

ALSTON HUNT FLOYD & ING  
Attorneys at Law  
A Law Corporation

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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@ah.fi.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.hawaiiclassaction.com>
- By e-mail: [classaction@ahfi.com](mailto: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