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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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Attorneys for Plaintiff

CYNTHIA NAKAMURA,
individually and on behalf
of all others similarly situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CYNTHIA NAKAMURA, individually and on behalf of all others similarly situated,)	CIVIL NO. 07-1-0730-04 SSM
)	(Class Action)
)	
Plaintiff,)	PLAINTIFFS' PRETRIAL STATEMENT;
vs.)	CERTIFICATE OF SERVICE
)	
HAWAII ESCROW & TITLE, INC.; DOE)	
DEFENDANTS 1-50,)	
)	
Defendants.)	No trial date set.
)	

PLAINTIFFS' PRETRIAL STATEMENT

Plaintiff CYNTHIA NAKAMURA, individually and on behalf of all others similarly situated ("Plaintiff Class"), hereby submits Plaintiffs' Pretrial Statement pursuant to Rule 12(b) of the Rules of the Circuit Court of the State of Hawai'i.

I. BACKGROUND FACTS

Plaintiff brings this action on her behalf and also on behalf of other similarly situated Hawai'i consumers who have been injured by Defendant, HAWAII ESCROW & TITLE, INC.'s unfair and deceptive trade practices more specifically described in the Complaint. Plaintiff seeks damages for disgorgement, injunctive relief, treble and/or punitive damages, prejudgment interest, and attorneys' fees and costs.

The claims in this action include (1) Unfair and Deceptive Trade Practices, (2) Unjust Enrichment, (3) Injunctive Relief and (4) Breach of Fiduciary Duty. As discovery proceeds, Plaintiffs may amend Plaintiffs' Complaint to add additional claims.

Plaintiffs' original *Complaint* was filed on April 24, 2007. On July 27th, 2007 Plaintiffs filed the *First Amended Complaint* in the above-entitled class action against *Defendant Hawaii Escrow & Title, Inc.* Plaintiff filed this action individually and on behalf of a class of similarly situated consumers. To date Plaintiff has filed two requests for answers to interrogatories dated July 9th and July 23rd. Defendant refused to provide substantive answers in either of *Plaintiffs' Request for Answers to Interrogatories* filed on August 8th and October 4th. On August 16th, 2007 Plaintiff received Defendant's Motion for Summary Judgment, which was later denied by the court of November 7th, 2007. Plaintiff filed a *Notice of Rule 30(b)(6) HRCF Deposition of Hawaii Escrow & Title, Inc.* on August 28th. This required Plaintiff's filing of a *Motion to Compel* filed on October 12, 2007. Defendant did not produce the discovery ordered, which resulted in Defendant's filing of a *Motion to Enforce* the earlier order granting in part and denying in part *Plaintiff's Motion to Compel*

On July 23rd of 2007 Plaintiff filed a *Motion for Class Certification and for Approval of Class Notice and Dissemination Plan*. Given Defendant's repeated failure to produce its

designated HRCP Rule 30(b)6 representative, this Court has now reset *Plaintiff's Motion for Class Certification* to February, 2008.

Plaintiffs intend to demonstrate the Defendant's acts violate a number of Hawai'i laws. The assertion in Plaintiffs' Complaint and Amended Complaint is that Hawaii Escrow charged Plaintiff for the recordation fee for the Release of Mortgage, but 1) did not pay the government the release fee, 2) did not account to Plaintiff for this, 3) commingled the money with its own, and 4) did not return the money to Plaintiff. Finally, Defendant's deception and fraudulent labeling of the \$25 charge as a governmental fee for recording the Release of Mortgage constituted fraudulent concealment of the existence of the Nakamura's and the putative class's cause of action, in violation of HRS §657-20. Defendant claims to have discontinued this practice in 2003. However Defendant has produced no evidence thereof and so these are all considered continuing obligations and violations.

If successful on Plaintiffs' claim of Unfair and Deceptive Trade Practices, Plaintiffs would be entitled to treble damages (three times the amount of their actual damages) plus attorneys' fees and costs. If successful as to Plaintiffs' claim of Breach of Fiduciary Duty Plaintiffs will be entitled to disgorgement by Defendant of all escrow fees paid, which in most instances was at least \$500. In Plaintiffs' complaint, Plaintiff also seeks injunctive relief to prohibit this defendant from continuing to defraud Hawaii consumers.

II. ADMITTED FACTS

The following facts are admitted:

1. Defendant admits that it charged Plaintiff for recording the release of mortgage, it did not pay the fee to record the release of mortgage, it kept the money for itself, and never returned the money to Plaintiff.

2. Defendant admits that as an escrow agent and depository, it has a fiduciary duty to the parties to the escrow.

3. Defendant admits that Hawaii Escrow has records of 2,616 escrow transactions between January 1, 2001 and December 30, 2002.

4. Defendant admits that 1,497 of the 2,616 transactions involved customers who were paying off a residential mortgage and who were charged a recordation fee for the release.

5. Defendant admits that there were about 900 transactions between January 1, 2001 and December 30, 2002 in which Hawaii Escrow retained a collective total of \$ 23,569.30 in "Recordation Fees" for releases which it did not record.

6. Defendant admits that there were 53 transactions involving a "Recordation Fee" in which the release was not filed until after April 23, 2003 including Cynthia Nakamura's transaction.

7. Defendant admits that out of the 53 transactions, Hawaii Escrow retained approximately \$1,500 in "Recordation Fees" for releases which it did not record.

8. Defendant admits that of all the escrow transactions involving a "Recordation Fee," for which Hawaii Escrow recorded the release after April 23, 2003, a few were charged for multiple releases when Hawaii Escrow only recorded a single release.

III. CLAIMS FOR RELIEF

1. Unfair and Deceptive Trade Practices in violation of Haw. Rev. Stat. Chapter 480.

2. Unjust Enrichment

3. Injunctive Relief

4. Breach of Fiduciary Duty

IV. NON-EXPERT WITNESS

1. CYNTHIA NAKAMURA, c/o Perkin & Faria LLLC, 814 Bishop Street, Suite 2000; Honolulu, Hawaii 96813, will testify regarding liability and damages.

2. DENISE M. KAEHU, President, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.

3. BRENDA CIPRIANO, Vice President, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.

4. ANNIE SALVIEJO, Escrow Manager, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.

5. JIN YU, Escrow Officer, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.

6. LINDA BEISEL, Escrow Officer, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.

7. VALERIE RANON, Assistant, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.

8. CHERRY ARIS, Assistant, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.

9. SHERYL KAJIYAMA, Assistant, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.

10. JAYNA GUALDARAMA, Assistant, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.

11. BRYE WATANABE, Assistant, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
12. RODEL CALUMPIT, Title Department Supervisor, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
13. PERLA LLAGAS, Title Officer, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
14. DENNIS DAILEY, Title Officer, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
15. KE'ALI'I KINNEY, Title Officer, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
16. KEIKO TATSUMI, Accounting Manager, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
17. TERI MARTINS, Accounting, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
18. WENDY GANIKO, Accounting, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
19. GWEN TAYLOR, Order Desk/File Control, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
20. GLORIA GARCIA, Order Desk/File Control, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.

21. KAMANA SHIPLEY, Sales Manager, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
22. LEWIS MUSGRAVE, Marketing & Sales, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
23. EVA KANAHELE, Projects and Timeshare Manager, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
24. OPHELIA PAUSO, Assistant, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
25. KAWENA NAKATANI, Assistant, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
26. MAGGIE LLECES, Special Services Manager, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
27. FRAN ADAMS, Special Services, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
28. MOMI LORICO, Recording Supervisor, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
29. KEVIN MORTENSEN, Assistant, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
30. KAYLEEN KAMAKELE, IT Manager, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.;

31. SHYLA SANTOS, Receptionist, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
32. JANE BALIARES, Word Processing Manager, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
33. EMILY BURGESS, Typist, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
34. JUDY SALVADOR, Typist, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
35. ALMARIE NAVA, Typist, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
36. CHERONDA LEWIS, Typist, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
37. MISTY BROWN, Messenger Service, c/o Karin L. Holma Esq., 1099 Alakea Street, Suite 1600; Honolulu, Hawaii 96813, will testify regarding liability and damages.
38. Custodian of records for the BUREAU OF CONVEYANCES will testify regarding liability and damages.
39. Plaintiffs reserve the right to name any custodian of records and rebuttal witnesses that are deemed necessary to the presentation of Plaintiffs' case.
40. Plaintiffs reserve the right to name additional witnesses whose identities may be revealed through further discovery.
41. Plaintiffs reserve the right to name and/or call non-expert witnesses

identified by any other party or listed in any other party's final naming of witnesses and/or pretrial or responsive pretrial statement and any amendments thereto.

V. EXPERT WITNESS

1. At this time, Plaintiffs have not yet identified expert witnesses who are expected to be called at trial.

2. Plaintiffs reserve the right to identify relevant expert witnesses at a later time, if necessary.

3. Plaintiffs reserve the right to name all expert witnesses designated by any and all parties to this action.

4. Plaintiffs reserve the right to name any rebuttal expert witnesses that are deemed necessary to the presentation of Plaintiffs' case.

5. Plaintiffs reserve the right to name additional expert witnesses whose identities may be revealed as the case continues.

6. Plaintiffs reserve the right to identify or call expert witnesses identified by any other party or listed in any and all parties' final naming of witnesses and/or pretrial and/or responsive pretrial statements and any amendments thereto.

VI. FACE-TO-FACE MEETING

Plaintiffs' counsel met with Defendants' counsel on December 17, 2007 to discuss the subjects outlined in H.R.C.C. Rule 12(b).

VII. ALTERNATE DISPUTE RESOLUTION

Both parties are agreeable to alternative dispute resolution.

DATED: Honolulu, Hawaii, December 19, 2007.



JOHN FRANCIS PERKIN
BRANDEE J. FARIA

Attorneys for Plaintiffs
CYNTHIA NAKAMURA, individually and on
behalf of all others similarly situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CYNTHIA NAKAMURA, individually and) Civil No. 07-1-0730-04 SSM
on behalf of all others similarly situated,) (Class Action)
)
Plaintiff,) **CERTIFICATE OF SERVICE**
vs.)
)
HAWAII ESCROW & TITLE, INC.; DOE)
DEFENDANTS 1-50,)
)
Defendants.)
_____)

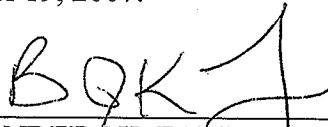
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon the following parties on the date of filing:

KARIN HOLMA, ESQ.
LORI N. TANIGAWA, ESQ.
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Honolulu, HI 96813

Attorneys for Defendant
HAWAII ESCROW & TITLE, INC.

DATED: Honolulu, Hawaii, December 19, 2007.



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