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1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2007 DEC -5 PM 3: 04

B. TERACKA  
CLERK

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<br>on behalf of all others similarly situated, | ) | CIVIL NO. 07-1-0730-04 SSM               |
|   | ) | (Class Action)                           |
|   | ) |  |
| Plaintiff,  | ) | <b>PLAINTIFF'S SUPPLEMENTAL</b>          |
| vs.   | ) | <b>SUBMISSION IN SUPPORT OF</b>          |
|   | ) | <b>PLAINTIFF'S MOTION FOR CLASS</b>      |
| HAWAII ESCROW & TITLE, INC.; DOE  | ) | <b>CERTIFICATION AND FOR</b>             |
| DEFENDANTS 1-50,  | ) | <b>APPROVAL OF CLASS NOTICE AND</b>      |
|   | ) | <b>DISSEMINATION PLAN; EXHIBITS "1"-</b> |
| Defendants.   | ) | <b>"2"; CERTIFICATE OF SERVICE.</b>      |
|   | ) |  |
|   | ) | HEARING DATE: December 17, 2007          |
|   | ) | HEARING TIME: 10:00 a.m.                 |
|   | ) | JUDGE: Honorable Sabrina S. McKenna      |
|   | ) |  |
|   | ) |  |
|   | ) |  |

PLAINTIFFS' SUPPLEMENTAL SUBMISSION IN SUPPORT OF PLAINTIFF'S MOTION  
FOR CLASS CERTIFICATION AND FOR  
APPROVAL OF CLASS NOTICE AND DISSEMINATION PLAN

Plaintiff Cynthia Nakamura, individually and on behalf of all others similarly situated,  
hereby attaches *Defendant Hawaii Escrow and Title Inc.'s First Supplementary Response to  
Plaintiff's Second Request for Answers to Interrogatories* dated July 23, 2007, (Exhibit "1") for  
the Court's consideration in conjunction with Plaintiff's upcoming *Motion for Class*

*Certification And For Approval Of Class Notice And Dissemination Plan* (“Motion”). Plaintiff has had no opportunity to corroborate these figure or complete the HRCP Rule 30(b)6 Deposition which was previously ordered due to Defendant’s obstruction in this regard, and refusal to comply with this Court’s prior orders, which is the subject of Plaintiff’s separate motion. In addition and despite repeated attempts to complete this discovery crucial to the instant Motion, Defendant has ignored Plaintiff’s two prior requests and not even provided the courtesy of an acknowledgment of receipt. (Exhibit “2”)

While Defendant’s Supplementary Response provides some information, the information provided is not complete and, to a large extent, unintelligible. However, in Defendant’s Supplementary Response, Defendant concedes that for the time period between January 1, 2001 and December 30, 2002, “approximately 1497 transactions involved customers who were paying off a residential mortgage and who were charged a recordation fee for the release.” (Exhibit “1”, p. 3) Defendant then goes onto admit of those, “there were about 900 transactions in which Hawaii Escrow retained a collective total of \$23,569.30 in “Recordation Fees” for releases which it did not record.” *Id.* Thus, for the 2001-2002 time period, Defendant was charging the fee but not paying it in roughly 60% of the transactions.

Hawaii Escrow did not review the files predating January 1, 2001, or the files after December 30, 2002 to determine additional class members who may have been subject to these unfair and deceptive dealings. As set forth previously, Plaintiffs’ position is that the Statute of Limitations could not begin to run until the discovery of the wrong or the “occurrence”, which could not possibly have been before August, 2004, when the fee was actually misappropriated and embezzled. Since Plaintiffs have also asserted a fraudulent concealment claim, this would invoke the six years statute of limitations under HRS §657-20. Thus, with Defendant having

only provided two years of information as to their practices in this regard, it is safe to assume that the class size of 900 which they have admitted to will be exponentially larger, once all of the information is produced.

Defendant acknowledges that there is no threshold number necessary to satisfy the numerosity requirement of HRCP 23(1). Defendant now has also admitted that it charged at least 900 consumers the "Recordation Fee" at issue in this case, but did not pay any such fee. Defendant's only defense in opposition to Plaintiff's Motion was that Plaintiff failed to give an exact number and that under Wright and Miller "mere speculation as to the number of parties involved is not sufficient to satisfy the rule".

Even if the class were no larger than those 900 members involved in the 2001-2002 transactions which Defendant identified, class certification would be appropriate under Life of the Land v. Burns. *Life of the Land v. Burns*, 59 Haw. 244, 254, 580 P.2d 405, 411 (1978) (numerosity satisfied with as few as 13); *see also Life of the Land v. Land Use Commission*, 63 Haw. 166, 182, 623 P.,2d 431, 444 (1981) (numerosity requirement satisfied by 150 individuals). Defendant cannot contradict its own admission. Thus, Plaintiffs would urge this court to grant Plaintiff's Motion.

DATED: Honolulu, Hawaii, December 5, 2007.

  
\_\_\_\_\_  
JOHN F. PERKIN  
BRANDEE J. K. FARIA

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



Dated: Honolulu, Hawaii, July 23, 2007.



---

BRANDEE J. K. FARIA

Of Counsel:

BAYS DEEVER LUNG  
ROSE & HOLMA

KARIN L. HOLMA 5207-0

Attorney at Law  
A Law Corporation

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Telephone: (808) 523-9000

Attorneys for Defendant  
HAWAII ESCROW & TITLE, INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

|                                       |   |                                  |
|---------------------------------------|---|----------------------------------|
| CYNTHIA NAKAMURA, individually        | ) | CIVIL NO. 07-1-0730-04 (SSM)     |
| and on behalf of all others similarly | ) | (Class Action)                   |
| situated,                             | ) |                                  |
|                                       | ) | DEFENDANT HAWAII ESCROW & TITLE, |
| Plaintiff,                            | ) | INC.'S FIRST SUPPLEMENTARY       |
|                                       | ) | RESPONSE TO PLAINTIFF'S SECOND   |
| vs.                                   | ) | REQUEST FOR ANSWERS TO           |
|                                       | ) | INTERROGATORIES DATED JULY 23,   |
| HAWAII ESCROW & TITLE, INC.; DOE      | ) | 2007                             |
| DEFENDANTS 1-50,                      | ) |                                  |
|                                       | ) |                                  |
| Defendants.                           | ) |                                  |
|                                       | ) |                                  |

DEFENDANT HAWAII ESCROW & TITLE, INC.'S  
FIRST SUPPLEMENTARY RESPONSE TO PLAINTIFF'S  
SECOND REQUEST FOR ANSWERS  
TO INTERROGATORIES DATED JULY 23, 2007

Defendant HAWAII ESCROW & TITLE, INC. ("Hawaii Escrow"), by and  
through its attorneys, Bays Deaver Lung Rose & Holma, supplements its responses to Plaintiff

CYNTHIA NAKAMURA's Second Request for Answers to Interrogatories dated July 23, 2007,  
as follows:

I. GENERAL RESPONSES AND OBJECTIONS

1. Hawaii Escrow objects to all interrogatories to the extent they call for work product or attorney-client privileged communications.

2. Hawaii Escrow objects to all interrogatories to the extent they request documents not within the present possession, custody, or control of Hawaii Escrow.

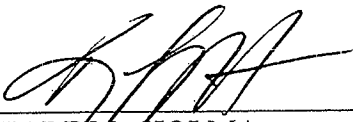
3. Hawaii Escrow objects to all interrogatories to the extent that they request information that is already within the knowledge of Plaintiffs.

4. Hawaii Escrow's discovery and investigation into this matter is continuing and the responses set forth herein do not preclude the further discovery and development of evidence or the presentation thereof at trial. Hawaii Escrow also reserves its right to supplement its answers.

II. SPECIFIC RESPONSES AND OBJECTIONS

Subject to the general response and objections set forth in Part I above, Hawaii Escrow supplements its responses to the number paragraphs of the Request.

DATED: Honolulu, Hawaii, December 4, 2007

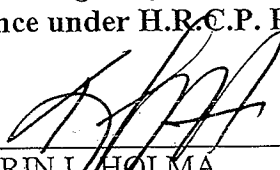
  
\_\_\_\_\_  
KARIN L. HOLMA  
CRAIG Y. IHA  
Attorneys for Defendant  
Hawaii Escrow & Title, Inc.

## INTERROGATORIES

1. Provide the number of transactions between August 30, 1996 and present wherein Hawaii Escrow customers paid off or otherwise satisfied their residential mortgages and were charged a "Recordation Fee."

### ANSWER:

Hawaii Escrow objects to this interrogatory on the grounds that it is not reasonably calculated to lead to admissible evidence under H.R.C.P. Rule 26.

  
\_\_\_\_\_  
KARIN L. HOLMA  
CRAIG Y. IHA  
Attorneys for Defendant  
Hawaii Escrow & Title, Inc.

Without waiving any of the above general and specific objections, Hawaii Escrow responds as follows: Hawaii Escrow has records of 2616 escrow transactions between January 1, 2001 and December 30, 2002. Hawaii Escrow examined all 2616 files and found that 749 of those transactions were cancelled, and approximately 370 transactions did not involve the payoff of a prior mortgage. The approximately 1497 remaining transactions involved customers who were paying off a residential mortgage and who were charged a recordation fee for the release. Of those transactions, Hawaii Escrow recorded the release in approximately 600 transactions. Thus, there were about 900 transactions in which Hawaii Escrow retained a collective total of \$23,569.30 in "Recordation Fees" for releases which it did not record. See "Release of Mortgage Status" Spreadsheet, attached hereto, which provides details on each escrow transaction between January 1, 2001 and December 30, 2002.

Hawaii Escrow also prepared a report on all escrow transactions involving a "Recordation Fee," for which the release was not filed until after April 23, 2003. Hawaii Escrow discovered 53 such transactions, including Cynthia Nakamura's transaction. Of the 53 transactions, Hawaii Escrow retained approximately \$1500 in "Recordation Fees" for releases which it did not record. See "Release of Mortgage (Lender)" Spreadsheet, attached hereto, which provides details on each escrow transaction involving a "Recordation Fee," when the release was recorded by a third party after April 23, 2003.

Hawaii Escrow next prepared a report showing all escrow transactions involving a "Recordation Fee," for which Hawaii Escrow recorded the release after April 23, 2003. In a few of these transactions, Hawaii Escrow charged for multiple releases and only recorded a single release. Thus, of the 52 transactions covered by Spreadsheet 3, Hawaii Escrow retained \$450 in "Recordation Fees" for releases it did not record. See

“Release of Mortgage (HET)” Spreadsheet, attached hereto.

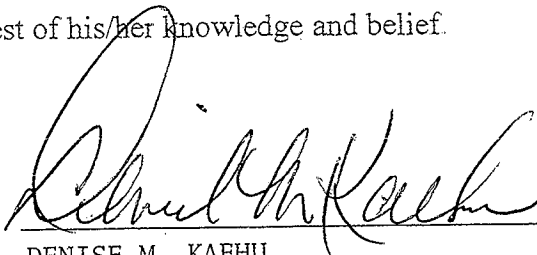
Finally, in the process of preparing these reports, Hawaii Escrow discovered that 197 escrow files were missing. Hawaii Escrow is in the process of determining whether the relevant contents of the files can be ascertained.

VERIFICATION


STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

DENISE M. KAEHU, being first duly sworn on oath,

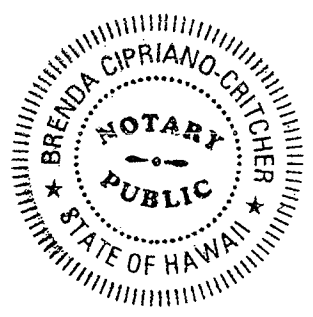
deposes and states that the foregoing Answers to the Second Request for Answers to Interrogatories are true and correct to the best of his/her knowledge and belief.

  
DENISE M. KAEHU

Subscribed and sworn to before me  
this 4 day of December, 2007.

  
Name of Notary: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

BRENDA CIPRIANO-CRITCHLER  
My commission expires: 10/2/2009



**Brandee J. K. Faria**

**From:** Brandee J. K. Faria [bjkfaria@mail.perkinlaw.com]  
**Sent:** Tuesday, December 04, 2007 3:30 PM  
**To:** 'Karin L. Holma'  
**Subject:** FW: Nakamura v. Hawaii Escrow

Ms. Holma: I would appreciate a response to my attached November 16, 2007 email or, at minimum, acknowledgement of receipt.

*Brandee J. K. Faria, Esq.*  
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Davies Pacific Center  
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Honolulu, Hawai'i 96813  
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**From:** Brandee J. K. Faria [mailto:bjkfaria@mail.perkinlaw.com]  
**Sent:** Friday, November 16, 2007 3:46 PM  
**To:** 'Karin L. Holma'  
**Subject:** Nakamura v. Hawaii Escrow

Karin: While it is impossible for us to finalize our HRCF 30(b)6 depo notice at this juncture w/o the benefit of the ordered discovery, I attach for your reference a draft which we will finalize after receipt of your discovery/report on Monday. As you know, we are on a short fuse to complete our discovery/due diligence as our Motion for Class Cert has a quickly approaching December hearing date. Thus, please advise as to the availability for you and the designated Hawaii Escrow representative(s) to testify as to the identified subject areas. Again, I am providing you this preliminarily with the caveat that we may need to supplement or otherwise modify this notice, depending upon what we receive on Monday.

*Brandee J. K. Faria, Esq.*  
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12/5/2007

**EXHIBIT 2**

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12/5/2007

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. )  
)  
)  
)  
)  
\_\_\_\_\_ )

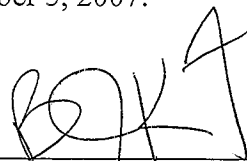
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served on the below-named party at his respective address by hand delivery on the date of filing.

KARIN HOLMA, ESQ.  
LORI N. TANIGAWA, ESQ.  
Bays Deaver Lung Rose & Holma  
Alii Place, Suite 1600  
1099 Alakea Street  
Honolulu, HI 96813

Attorneys for Defendant  
HAWAII ESCROW & TITLE, INC.

DATED: Honolulu, Hawaii, December 5, 2007.

A handwritten signature in black ink, appearing to be 'BKF' with a large 'A' written above the 'F'. The signature is written over a horizontal line.

---

BRANDEE J.K. FARIA  
GEORGE W. VAN BUREN  
ROBERT G. CAMPBELL  
Attorneys for Plaintiff  
CYNTHIA NAKAMURA, individually and on  
behalf of all others similarly situated