

from Defendants' false statements and false claims in violation of Hawai'i Revised Statutes ("HRS") § 661-21 et seq. The violations arise out of Defendants knowingly making, using, or causing to be made or used false records or statements to the State of Hawai'i in order to reduce or forego payment of rental fees and utilities charges that Defendants and Doe Entity Defendants actually owe to the State of Hawai'i for the use of public school facilities, knowingly concealing or knowingly and improperly avoiding or decreasing obligations to pay money to the State of Hawai'i, being the beneficiaries of inadvertent submissions of false claims to the State of Hawai'i, and failing to disclose the false claims to the State within a reasonable period of time after discovery of the false claims, and conspiring to commit any of the foregoing violations of HRS § 661-21.

2. As required by HRS § 661-25(b), Relators shall promptly serve on the State of Hawai'i, through the Office of the Attorney General of the State of Hawai'i, a written disclosure of substantially all material evidence and information related to the complaint. This written disclosure statement is supported by material evidence known to Relators at their filing and establishing the existence of Defendants' false claims. Because the statement includes attorney-client communications and work product of Relators' attorneys, and is submitted to the Attorney General in his capacity as potential co-counsel in the litigation, the Relators understand and expect this disclosure to be confidential.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this actual controversy under HRS § 661-21 and HRS § 603-21.5 since the amount in controversy, exclusive of interest, fees and costs exceeds the amount of \$20,000.

4. The First Circuit Court of the State of Hawai‘i is the proper venue for this action pursuant to HRS § 603-36 because the claim for relief arose in the City and County of Honolulu and both Plaintiff the State of Hawai‘i and Relators and Defendants are domiciled and do business in the City and County of Honolulu, State of Hawai‘i.

II. PARTIES

5. Relators are citizens of the United States and residents of the City and County of Honolulu, State of Hawai‘i from 1992 to the present. Relators bring this action based on their direct, independent, and personal knowledge and also on information and belief.

6. Relators are original sources of this information to the State of Hawai‘i. Relators have direct and independent knowledge of the information on which the allegations are based and have voluntarily provided the information to the Attorney General of the State of Hawai‘i before filing an action under HRS § 661-21 which is based on the information.

7. The State of Hawai‘i is the rightful owner of all public school buildings, facilities and grounds, and has enacted a regulation that all public school buildings, facilities, and grounds shall be available for general recreational purposes and for public and community use whenever these activities do not interfere with the normal and usual activities of the school and its pupils. Title 8, Chapter 39 of the Hawai‘i Administrative Rules (“HAR”) further provides that users of public school buildings, facilities, and grounds who are organizations, groups, or individuals who do not belong to Type I or Type II category, including churches, private schools, universities, business enterprises, special interest classes, and other individuals, organizations, or activities utilizing school facilities and charging a fee or tuition, or collecting a donation or offering, shall be assessed hourly rental fees and service charges for utilities, based on actual use.

8. Under HAR §8-39-7(d), persons renting public school facilities for events which involve large crowds or greater risk of injury to participants due to the type of activity are required to carry general liability coverage in the amount of \$1,000,000 per incident of personal injury.

9. Under HAR §8-39-7(f), persons renting public school facilities for carnivals, fairs, and other large activities “shall provide and pay for the installation of necessary electrical service lines and meters” and “[c]onnection of electrical lines to a school’s system shall be prohibited.”

10. Defendant New Hope International Ministries is and has been a domestic non-profit corporation registered to do business in the State of Hawai‘i. Defendant New Hope International Ministries does business as the following churches: (a) Defendant Oahu South Foursquare Church and/or New Hope Oahu; (b) Defendant Hawai‘i Kai Community Foursquare Church and/or New Hope Hawai‘i Kai; and (c) Defendant New Hope Christian Fellowship Kapolei and/or New Hope Kapolei.

12. Defendant One Love Ministries is and has been a domestic nonprofit corporation registered to do business in the State of Hawai‘i at all times pertinent hereto.

13. Defendant Calvary Chapel Central Oahu is and has been a domestic nonprofit corporation registered to do business in the State of Hawai‘i at all times pertinent hereto.

14. Defendants Doe Entities 1-50 (hereinafter “Doe Entity Defendants”) are legally registered domestic nonprofit corporations and/or business entities in the City and County of Honolulu, the County of Maui, the County of Hawai‘i, or the County of Kauai, State of Hawai‘i, at all times pertinent hereto, who have knowingly made use, or caused to be made or used, false records or statements to conceal, avoid, or decrease rental obligations and/or service charges for

utilities to the State of Hawai‘i, or are individuals who are the beneficiaries of an inadvertent submission of a false claim to the State of Hawai‘i, who discovered the falsity of the claim and failed to disclose the false claim within a reasonable time after discovery of the false claim. Doe Entity Defendants are individuals whose true identities and capacities are as yet unknown to the Relators and their counsel, despite diligent inquiry and investigation, and who acted herein as described more particularly below, or who ordered, directed, ratified, approved, or conspired with others to violate Chapter 39 of HAR and/or HRS § 661-21, and who in some manner or form not currently discovered or known to the Relators and their counsel may have contributed to or be responsible for monies owed to the State of Hawai‘i not being paid by, or collected from, those entities who used buildings, facilities, and grounds of public schools. The true names and capacities of the Doe Entity Defendants will be substituted as they become known. Relators pray for leave to certify the true names, identities, capacities, activities and/or responsibilities of Doe Entity Defendants when, through further discovery in this case, the same are ascertained. Relators have made a good faith effort to identify said Doe Entity Defendants prior to filing the complaint, including investigating activities of users of public school buildings, facilities, and grounds, conducting research on the Internet, and reviewing documents and records.

15. John Does 1-60 and Jane Does 1-60 (hereinafter “Doe Individual Defendants”) are individuals whose true identities and capacities are as yet unknown to Relators and their counsel, who have knowingly made use, or caused to be made or used, false records or statements to conceal, avoid, or decrease rental obligations and/or service charges for utilities to the State of Hawai‘i, or are individuals who are the beneficiaries of an inadvertent submission of a false claim to the State of Hawai‘i, who discovered the falsity of the claim and failed to disclose the false claim within a reasonable time after discovery of the false claim. Doe

Individual Defendants include but are not limited to persons in the employ of the State of Hawai'i who arranged for or facilitated or permitted the unpaid use of State property by the named Defendants. These Doe Individual Defendants are individuals whose true identities and capacities are as yet unknown to the Relators and their counsel, despite diligent inquiry and investigation, and who acted herein as described more particularly below, or who ordered, directed, ratified, approved, or conspired with others to violate Chapter 39 of HAR and/or HRS § 661-21, and who in some manner or form not currently discovered or known to the relators and their counsel may have contributed to or be responsible for monies owed to the State of Hawai'i not being paid or collected by users who rented buildings, facilities, and grounds of public schools. The true names and capacities of the Doe Individual Defendants will be substituted as they become known. Relators pray for leave to certify the true names, identities, capacities, activities and/or responsibilities of Doe Individual Defendants when, through further discovery in this case, the same are ascertained. Relators have made a good faith effort to identify said Doe Individual Defendants prior to filing the complaint, including investigating activities of users of public school buildings, facilities, and grounds, conducting research on the internet, and reviewing documents and records.

III. FACTS COMMON TO ALL COUNTS

16. In December 2011, Relators began an independent investigation into whether or not churches using public schools for their religious services or other events were paying the full and proper amounts in rental fees and utilities charges as required under Title 8, Chapter 39 of the HAR ("Chapter 39"), and as set forth in the Department of Education ("DOE") Fee Schedule Worksheet ("Fee Schedule") and in the DOE Standard Practices Document No. SP 6110: Use of School Buildings, Facilities, and Grounds ("Standard Practices"). True and correct copies of

Chapter 39, the Fee Schedule, the Standard Practices, the Superintendent's Memorandum, and the Board of Education's Accountability Policy are attached hereto as "Exhibits 1-5" and are incorporated herein by reference as though fully set forth.

17. Relators first sought to obtain copies of all existing "current contracts or agreements" between churches and Hawai'i public schools by submitting a request for public information to the DOE Superintendent under the Uniform Information Practices Act ("UIPA") or HRS § 92F. In February 2012, Relators obtained 542 form "BO-1 Application[s] for Use of School Buildings, Facilities or Grounds" that had been made, presented, and used by 189 churches to request and reserve the use of facilities at 137 public schools. Relators' thorough review of these BO-1 Applications combined with Relators' investigation of actual use of the State properties by the churches indicated that many of the churches may not be paying the full and proper amounts in rental fees and utilities charges as established under Chapter 39.

18. Since BO-1 Applications represent only the use *claimed* by the various churches, discovery and verification of the *actual* use required Relators to investigate sources external to these government records. Therefore Relators began a rigorous, yearlong, church-by-church, boots-on-the-ground investigation, involving on-site surveillance and/or on-line research; wherein Relators have discovered significant discrepancies between the small number of hours Defendants claimed or reported on their BO-1 Applications and the relatively large number of hours these same churches have been observed or have admitted using school facilities.

19. By comparing the Defendants' claimed use with their actual use, Relators were able to calculate the amounts in unpaid rental fees and utilities charges. Relators have calculated that the Defendants currently owe the State of Hawai'i **more than \$5.6 million** for unpaid or underpaid rental fees and utilities charges over the past six years. HAR §8-39-5 stipulates that

rental fees and utilities charges shall be calculated to "recover costs" that the schools incur when its buildings and facilities are rented, including the administrative costs in renting the school's buildings and facilities. The DOE's Fee Schedule states: "The charges include the 25% fee for administrative costs." Based upon the Defendants' actual use exceeding their claimed use of school facilities, the costs to the school have not been paid. Relators provided 2,242 Bates numbered pages of evidence and other information in their written disclosure statement to the Attorney General.

20. Defendants and Doe Entity Defendants have routinely underrepresented their intended and actual use of Hawai'i public school buildings, facilities, grounds, and parking lots, and as a direct and proximate result have avoided paying several millions of dollars to the State of Hawai'i as hourly rental fees and/or utilities charges that they owed based upon their actual use. Copies of each Defendants' BO-1 forms representing claimed use of public schools for the 2011-2012 school year are attached hereto as "Exhibit 6(a) – 6(e)" and are incorporated herein by reference as though fully set forth.

21. Copies of documentation evidencing the amounts Defendants actually paid to the State of Hawai'i for the 2011-2012 school year are attached as "Exhibit 7(a) - 7(e)" and are incorporated herein by reference as though fully set forth.

22. Copies of some of the documentation and records evidencing the actual use by Defendants of public school buildings, facilities, and grounds are attached as "Exhibit 8(a) – 8(e)" and are incorporated herein by reference as though fully set forth. Evidence of Defendants' actual use of public school buildings, facilities and grounds includes, but is not limited to, webpages from Defendants' websites stating the dates and times for members to show up to help set up before services, photographs showing the times Defendants first arrive to set up for their

services, and when they leave, photos depicting the number of attendees at the services and the lighting, sound, and production equipment, news articles, and emails and letters between Defendant's representatives and school or Department of Education officials acknowledging Defendants' actual use exceeds their stated use of public schools.

23. Spreadsheets itemizing what each Defendant actually used, the amount of rental fees and utilities charges that would be due based upon actual use, the amount each of the Defendants, and the amount of the underpayment is attached hereto as "Exhibit 9(a) – 9(e)" and is incorporated herein by reference as though fully set forth.

24. Although Defendants' religious services and events are attended by as many as one thousand people, and in some cases, by as many as eight to ten thousand people each weekend, according to BO-1 Applications, it does not appear that Defendants were required to obtain general liability insurance, albeit their events involved large crowds, and albeit that there is a risk of personal injury at these events. Defendants have avoided paying insurance premiums that they should have paid, and have put the State of Hawai'i and its taxpayers at risk of being held liable as the landowner in the event of personal injury at one of Defendants' events held on public school property.

25. Relators also learned during their investigation that Defendants' consumption of electricity and other utilities, such as water and sewer, is excessive, based upon the large number of attendees each weekend, the use of air-conditioned facilities, as well as lighting, sound, and production equipment for religious services that are broadcast on television or streamed over the Internet. Relators also observed that Defendants connected electrical lines to the school's system, which is prohibited by HAR §8-39-7(f), and have not provided or paid for the installation of separate electrical service lines and meters. Relators allege that Defendants have

cost the State of Hawai‘i several thousand dollars each month as a result of their excessive use of electricity, water consumption and sewer usage at public schools.

26. As taxpayers and concerned citizens, Relators seek legal regress to recover all underpaid and unpaid rental fees and service charges for utilities that are due to the Department of Education, State of Hawai‘i, and each of the individual affected schools and districts.

27. By falsely representing the length of time of their actual use of public school buildings, facilities and grounds, and/or by failing to disclose the full extent of their actual use of public school buildings, facilities, Defendants, Doe Entity Defendants, and Doe Individual Defendants knowingly misled the State of Hawai‘i into accepting payment for rental fees and service charges for utilities that was substantially less than the actual amounts Defendants and Doe Entity Defendants owed, and knowingly concealed and/or knowingly and improperly avoided or decreased Defendants’ and Doe Defendant Entities’ obligations to pay money to the State of Hawai‘i.

27. By failing to pay the rental fees and utilities charges that were actually owed, by failing to obtain general liability coverage, and by connecting electrical lines to the school’s system, Defendants and Doe Entity Defendants were the beneficiaries of intentional and/or inadvertent submissions of false claims to the State of Hawai‘i.

COUNT I

(Violation of HRS § 661-21(a)(6) “Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State” by Defendants, Doe Entity Defendants, and Doe Individual Defendants)

28. Relators re-allege and incorporate the allegations in paragraphs 1 through 27 as if fully set forth herein.

29. Defendants, Doe Entity Defendants, and Doe Individual Defendants knowingly made, caused to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly concealed, or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the State for the full and proper rental fees and utilities charges owed to the State of Hawai‘i.

30. Defendants’ course of conduct violates Chapter 39 of HAR and/or HRS § 661-21.

31. The State of Hawai‘i, unaware of the falsity of the claims and/or statements made by Defendants, Doe Entity Defendants, and Doe Individual Defendants, and in reliance on the accuracy thereof, accepted substantially less monies as payment of rental fees and service charges for utilities from Defendants, Doe Entity Defendants, and Doe Individual Defendants than was actually owed.

COUNT II

*(Violation of HRS § 661-21(a)(7) “Is a beneficiary of an inadvertent submission of a false claim to the State, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim”
by Defendants and Doe Entity Defendants*

32. Relators re-allege and incorporate the allegations of paragraphs 1 through 31 as if fully set forth herein.

33. Defendants and Doe Entity Defendants used public school buildings, facilities, and/or grounds, and incurred obligations to pay rental fees and service charges for utilities in accordance with Chapter 39.

34. Defendants and Doe Entity Defendants are the beneficiaries of inadvertent submissions of false claims to the State of Hawai‘i, who subsequently discovered the falsity of

the claims, and failed to disclose the false claims to the State of Hawai‘i within a reasonable time after discovery of the false claims.

35. The State of Hawai‘i, unaware of the falsity of the claims and/or statements made by Defendants and Doe Entity Defendants, and in reliance on the accuracy thereof, accepted substantially less monies as payment of rental fees and utilities charges from Defendants and Doe Entity Defendants than Defendants and Doe Entity Defendants actually owed based on their actual usage of public school buildings, facilities, and grounds, and was damaged to the extent that the rental fees and utilities charges received were substantially less than the amount that was due.

COUNT III

(Violation of HRS § 661-21(a)(8) “Conspires to commit violations of HRS § 661-21(a)(6) and/or § 661-21(a)(7)” by Defendants, Doe Entity Defendants, and Doe Individual Defendants

36. Relators re-allege and incorporate the allegations of paragraphs 1 through 35 as if fully set forth herein.

37. Defendants, Doe Entity Defendants, and Doe Individual Defendants combined, conspired, and agreed together to knowingly make, cause to be made or used, a false record or statement material to an obligation of Defendants and Doe Entity Defendants to pay or transmit money or property to the State, or knowingly concealed, or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the State for the full and proper rental fees and utilities charges owed to the State of Hawai‘i and/or are the beneficiaries of inadvertent submissions of false claims to the State of Hawai‘i, who subsequently discovered the falsity of the claim, and failed to disclose the false claim to the State within a reasonable time

after discovery of the false claim, and committed other overt acts set forth above in furtherance of that conspiracy, all in violation of HRS § 661-21.

PRAYER FOR RELIEF

WHEREFORE Relators respectfully request this Court to enter judgment against Defendants, Doe Entity Defendants, and Doe Individual Defendants, as follows:

- (a) That the State of Hawai'i be awarded damages in the amount of three times the damages sustained by the State of Hawai'i because of the false claims and fraud alleged within this Complaint, as HRS § 661-21 provides;
- (b) That civil penalties of not less than \$5,500 and not more than \$11,000 be imposed for each and every false claim that defendants presented to the State of Hawai'i;
- (c) That pre- and post-judgment interest be awarded, along with reasonable attorneys' fees, costs, and expenses which the Relators necessarily incurred in bringing and pressing this case;
- (d) That the Court grant permanent injunctive relief to prevent any recurrence of the violations of HRS § 661-21 for which redress is sought in this Complaint;
- (e) That the Relators be awarded the maximum amount allowed to them pursuant to HRS § 661-21 *et seq.*; and
- (f) That this Court award such other and further relief as it deems proper.

DATED: Honolulu, Hawaii, March 21, 2013.



JAMES J. BICKERTON

STEPHANIE L. MARN

Attorneys for Relators MITCHELL KAHLE and
HOLLY HUBER

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

THE STATE OF HAWAII,
Ex. Rel.

MITCHELL KAHLE and HOLLY
HUBER

Plaintiffs,

v.

NEW HOPE INTERNATIONAL
MINISTRIES dba Oahu South Foursquare
Church and/or New Hope Oahu, Hawai'i
Kai Community Foursquare Church
and/or New Hope Hawai'i Kai, and New
Hope Christian Fellowship Kapolei and/or
New Hope Kapolei; ONE LOVE
MINISTRIES; CALVARY CHAPEL
CENTRAL OAHU; DOE ENTITIES 1 -
50; JOHN DOES 1-50; and JANE DOES
1-50,

Defendants.

) CIVIL NO. _____

)

) **FILED UNDER SEAL PURSUANT TO HRS**
) **§ 661-25(b)**

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) **DEMAND FOR JURY TRIAL**

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DEMAND FOR JURY TRIAL

Relators, on behalf of themselves and the State of Hawai'i, demand a jury trial on all
claims alleged herein.

DATED: Honolulu, Hawaii, March 21, 2013.



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HOLLY HUBER

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NEW HOPE INTERNATIONAL

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Kai Community Foursquare Church

and/or New Hope Hawai'i Kai, and New

Hope Christian Fellowship Kapolei and/or

New Hope Kapolei; ONE LOVE

MINISTRIES; CALVARY CHAPEL

CENTRAL OAHU; DOE ENTITIES 1 -

50; JOHN DOES 1-50; and JANE DOES

1-50,

Defendants.

) CIVIL NO. _____

) (Other Civil Action)

) FILED UNDER SEAL PURSUANT TO HRS

) § 661-25(b)

) SUMMONS

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to file with the court and serve upon Relators' attorneys, Bickerton Lee Dang & Sullivan, whose address is 745 Fort Street, Ste. 801, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Pursuant to Rule 4(b) of the Hawaii Rules of Civil Procedure, this summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, MAR 22 2013

N. ANAYA

CLERK OF THE ABOVE-ENTITLED COURT

