

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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H. MIYATA
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CLARENCE CHING and MARY MAXINE)	CIVIL NO. <u>14 - 1 - 1085 - 04</u> G W B C
KAHAULELIO,)	(Declaratory Judgment)
))
) Plaintiffs,)
) vs.) COMPLAINT FOR DECLARATORY AND
)) INJUNCTIVE RELIEF; SUMMONS
WILLIAM J. AILA JR. in his official capacity))
as Chairperson of the Board of Land and))
Natural Resources and state historic))
preservation officer, BOARD OF LAND))
AND NATURAL RESOURCES,))
DEPARTMENT OF LAND AND))
NATURAL RESOURCES,))
) Defendants.)

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

INTRODUCTION

1. As trustees of the State's ceded lands, the Department of Land and Natural Resources, the Board of Land and Natural Resources and William J. Aila Jr. (collectively "Defendants"), are obligated to protect and maintain these public trust lands. By failing to ensure compliance with the terms of its lease of ceded lands at the Pōhakuloa Training Area with the U.S. Government, however, the trustees have breached their trust duties. This complaint does **not** allege that the U.S. Government has violated the terms of its lease, but rather that the named

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.



Clerk, Circuit Court, First Circuit

Defendants have reason to believe that the lease terms may have been violated and have a trust duty to investigate and take all necessary steps to ensure compliance with lease terms.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims for relief in this action pursuant to HRS §§ 603-21.5, 603-21.9, and 632-1, and Article XI § 9 and Article XII §§ 4 and 7 of the Constitution of the State of Hawai`i. These claims are all based upon state law.

PLAINTIFFS

3. Plaintiff Clarence Ching is a Hawaiian and a resident of the State of Hawai`i.

4. Plaintiff Clarence Ching has been a resident of Hawai`i island since approximately 1992.

5. Plaintiff Clarence Ching is a descendant of the aboriginal people who, prior to 1778, inhabited, subsisted and exercised sovereignty in the area that now comprises the State of Hawai`i.

6. Plaintiff Clarence Ching is a direct descendant of Lonoikamakahiki, who was born in about 1663 and was an ali`i of Hawai`i.

7. Plaintiff Clarence Ching is a descendant of a line of ruling chiefs who had dominion over the entire island of Hawai`i, including Pōhakuloa.

8. Plaintiff Clarence Ching engages in native Hawaiian traditional and customary practices that originate in the traditional Native Hawaiian culture and community.

9. One of Plaintiff Clarence Ching's cultural practices is to walk in the footsteps of his ancestors, particularly on old trails.

10. Plaintiff Clarence Ching has hiked through and around the Pōhakuloa Training Area on multiple occasions.

11. Plaintiff Clarence Ching has hiked across the northern side of the Pōhakuloa Training Area along the old Saddle Road.

12. Plaintiff Clarence Ching engages in the traditional cultural practice of malama ʻāina of cultural sites within the Pōhakuloa Training Area.

13. In 1992, Plaintiff Clarence Ching hiked from sea level at Kukai`au to the summit of Mauna Kea, then across to and through the Pōhakuloa Training Area and down to Kīholo Bay.

14. Plaintiff Clarence Ching has participated in traditional and customary services at Pu`u Ka Pele within the Pōhakuloa Training Area.

15. Plaintiff Clarence Ching has visited other cultural sites within the Pōhakuloa Training Area.

16. Plaintiff Clarence Ching served on the Pōhakuloa cultural advisory committee for approximately ten years until August 2013.

17. Plaintiff Clarence Ching is a beneficiary of the ceded lands trust.

18. Plaintiff Mary Maxine Kahaulelio is a Hawaiian and a resident of the State of Hawai`i.

19. Plaintiff Mary Maxine Kahaulelio has been a resident of Hawai`i island since approximately 1999.

20. Plaintiff Mary Maxine Kahaulelio is a descendant of the aboriginal people who, prior to 1778, inhabited, subsisted and exercised sovereignty in the area that now comprises the State of Hawai`i.

21. Plaintiff Mary Maxine Kahaulelio is at least fifty percent native Hawaiian and is a beneficiary of the Hawaiian Home Lands Trust.

22. Plaintiff Mary Maxine Kahaulelio has been a Hawaiian Home Lands leasee,

living in Waimea since approximately 1999.

23. Plaintiff Mary Maxine Kahalelio's great great grandfather lived in Waimea.

24. Plaintiff Mary Maxine Kahalelio is a beneficiary of the ceded lands trust.

DLNR DEFENDANTS

25. Defendant Department of Land and Natural Resources (DLNR) is the state agency charged with managing and administering the public lands of the State pursuant to HRS § 26-15(b) and HRS chapter 171.

26. According to DLNR's own website, DLNR's mission is to "[e]nhance, protect, conserve and manage Hawaii's unique and limited natural, cultural and historic resources held in public trust for current and future generations of visitors and the people of Hawaii nei in partnership with others from the public and private sectors." (Emphasis added.)

27. Defendant Board of Land and Natural Resources (BLNR) heads DLNR pursuant to HRS § 26-15 and is an agency of the State of Hawai'i.

28. Defendant William J. Aila Jr. is the Chairperson of the BLNR.

29. Defendant William J. Aila Jr. is aware that military training activities have caused great damage to public land, natural resources and cultural sites in Hawai'i.

30. Defendants' main offices are in Honolulu.

PŌHAKULOA TRAINING AREA LEASE

31. On July 2, 1964, the Department of the Attorney General acknowledged, in a letter to the U.S. Corps of Engineers, the importance of restoration of the land at Pōhakuloa.

32. On August 17, 1964, the State of Hawai'i Department of Land and Natural Resources entered into a lease (State General Lease No. S-3849) with the United States of America for military purposes.

33. State General Lease No. S-3849 leased three parcels of land at Pōhakuloa to the U.S. Government for a sixty-five year term ending on August 16, 2029.

34. Paragraph 9 of State General Lease No. S-3849 requires the United States Government to “make every reasonable effort to . . . remove or deactivate all live or blank ammunition upon completion of a training exercise or prior to entry by the said public, whichever is sooner.”

35. Paragraph 14 of State General Lease No. S-3849 requires the U.S Government to “remove or bury all trash, garbage or other waste materials.”

36. Defendants are aware that there is a possibility that unexploded ordnance (UXO) and munitions and explosives of concern (MEC) litter the state-owned ceded land that is leased pursuant to State General Lease No. S-3849 to the U.S. Government.

37. On March 13, 2013, commenting on the possibility of cancelling State General Lease No. S-3849 and issuing a new lease, a DLNR staff member advised that “PTA should sweep the lands North of the saddle road for UXO and remove any UXO found at their expense to make the area safe for the public.”

38. A true and correct copy of the Final Environmental Impact Statement for Construction and Operation of an Infantry Platoon Battle Course at Pōhakuloa Training Area (March 2013) can be found at http://www.garrison.hawaii.army.mil/pta_peis/documents.htm.

39. Page ES-8 of the Final Environmental Impact Statement for Construction and Operation of an Infantry Platoon Battle Course at Pōhakuloa Training Area (March 2013) states: “Decades of using PTA as a training area have introduced a significant risk of encountering MEC/UXO. MEC/UXO is known to exist in the impact area and is expected to be encountered during range construction activities; but there is also a medium risk of finding MEC/UXO

outside the impact area.”

40. Among the type of weapons that have been used at Pōhakuloa Training Area are small arms, grenades, machine guns, shotguns, antitank weapons, howitzers, mortars, field artillery, air defense artillery, explosives, rockets, missiles, and weapons using ammunition containing depleted uranium.

41. Page 3-64 of the Final Environmental Impact Statement for Construction and Operation of an Infantry Platoon Battle Course at Pōhakuloa Training Area (March 2013) states, “Past and current activities at PTA have resulted in contamination of soil by explosives and other chemicals.”

42. The Army has applied to Nuclear Regulatory Commission for a license to possess Davy Crockett M101 spotting round depleted uranium on ranges at the Pōhakuloa Training Area

43. In January 2014, Defendants received a request from Plaintiff, through counsel, asking for all government records (including correspondence, inspection and monitoring reports and meeting notes) that show DLNR’s or BLNR’s efforts at ensuring compliance with the quoted sections of paragraphs 9 and 14 of State General Lease No. S-3849.

44. On or about January 23, 2014, Defendants responded that there are no government records responsive to the request.

45. Defendants do not know whether the U.S. Government has complied with paragraphs 9 and 14 of State General Lease No. S-3849.

46. Defendants have taken no concrete steps to investigate, monitor or ensure compliance with paragraphs 9 and 14 of State General Lease No. S-3849.

47. The State lands at the Pōhakuloa Training Area leased pursuant to State General Lease No. S-3849 are ceded lands.

COUNT 1
(Defendants' Breach of Trust)

48. Plaintiffs hereby reallege and incorporate by reference all the above allegations.

49. Defendants have trust responsibilities for the State lands at the Pōhakuloa Training Area leased pursuant to State General Lease No. S-3849.

50. As trustees, the Defendants are obligated to protect, care for, and maintain trust property, including the ceded lands at the Pōhakuloa Training Area leased to the U.S. Government.

51. As trustees, the Defendants must act as prudent landowners, and with respect to leased land, must act as a prudent landlord.

52. A trustee breaches its duty if it mismanages trust assets.

53. A trustee breaches its duty by allowing trust land to fall into ruin, be damaged, or be diminished in value.

54. Defendants were obligated to investigate the U.S. Government's compliance with the terms of State General Lease No. S-3849 and to take steps to ensure compliance.

55. Defendants have failed to fulfill their trust duties with respect to the ceded land leased pursuant to State General Lease No. S-3849.

56. Defendants failure to fulfill their trust obligations harms Plaintiffs' cultural, environmental and beneficial interests

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for relief as follows:

A. Declare that the Defendants breached their trust obligations by failing to ensure compliance with lease conditions of ceded land.

B. Order the Defendants to fulfill their trust duties with respect to the lands leased

pursuant to State General Lease No. S-3849.

C. Enjoin the Defendants from negotiating the extension of State General Lease No. S-3849 or entering into a new lease of the Pōhakuloa Training Area until the Defendants ensure that the terms of the existing lease have been satisfactorily fulfilled.

D. Provide for such other and further relief as the Court shall deem just and proper.

DATED: Honolulu, Hawaii, April 28, 2014.



DAVID KIMO FRANKEL
LEINAALA LEY
Attorneys for Plaintiffs Clarence Ching and
Mary Maxine Kahaulelio

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AND NATURAL RESOURCES,)	
DEPARTMENT OF LAND AND)	
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Defendants.)	

SUMMONS

STATE OF HAWAII

TO: THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to file with the court and serve upon Native Hawaiian Legal Corporation, Attorneys for Plaintiffs CLARENCE CHING and MARY MAXINE KAHAULELIO, whose address is 1164 Bishop Street, Suite 1205, Honolulu, Hawaii 96813, an Answer to the Complaint for Declaratory and Injunctive Relief which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service.

If you fail to make your answer to Plaintiffs CLARENCE CHING and MARY MAXINE KAHAULELIO Complaint for Declaratory and Injunctive Relief, which is herewith served upon you, within the twenty (20) day time limit, judgment by default will be taken against you for the

relief demanded in Plaintiffs CLARENCE CHING and MARY MAXINE KAHAULELIO's
Complaint for Declaratory and Injunctive Relief.

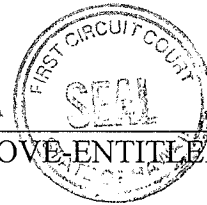
This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on
premises not open to the public, unless a judge of the district or circuit courts permits, in writing
on the summons, personal delivery during those hours.

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

APR 28 2014

DATED: Honolulu, Hawaii, _____.

N. MIYATA
CLERK OF THE ABOVE-ENTITLED COURT



In accordance with the Americans with Disabilities Act and other applicable state and federal
laws, if you require a reasonable accommodation for a disability, please contact the ADA
Coordinator at the First Circuit Court Administration Office at PHONE NO. 539-4333, FAX
539-4322, or TTY 539-4853, at least ten (10) working days prior to your hearing or appointment
date.