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Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by the Executive )	CIVIL NO. _____
Director of the Office of Consumer )	(Other Civil Action)
Protection, )	
)	COMPLAINT AND SUMMONS
)	
Plaintiff, )	
)	
vs. )	
)	
)	
RUDY G. MARN; AMERICAN STATE )	
UNIVERSITY, a Hawaii non-profit )	
corporation aka ASU and dba HIGHER )	
EDUCATION RESEARCH INSTITUTE )	
aka HERI; JOHN DOES )	
1-20; DOE CORPORATIONS 1-10; )	
and DOE ENTITIES 1-10, )	
)	
)	
Defendants. )	
)	

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**COMPLAINT**

Plaintiff, for a cause of action against the above-named defendants,  
avers and alleges that:

## ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action brought by the Office of Consumer Protection of the state of Hawaii pursuant to Hawaii Rev. Stat. Chapters 446E, 480 and 487 seeking to enjoin defendants from engaging in certain acts or practices in violation of Hawaii's consumer protection laws and to obtain other and additional relief.

2. This court has subject matter jurisdiction over this case pursuant to Hawaii Rev. Stat. §§ 480-21 and 603-21.5.

3. The acts complained of herein occurred in the City and County of Honolulu, State of Hawaii.

4. Defendant Rudy G. Marn ("Marn") is and was at all times relevant herein a resident of the state of Hawaii.

5. Defendant American State University ("ASU") is a Hawaii non-profit corporation. It is also known as ASU and does business as the Higher Education Research Institute or HERI.

6. At all times relevant hereto, Marn has been the president, the corporate secretary and a director of ASU.

7. Defendants John Does 1-20, Doe Corporations 1-10, and Doe Entities 1-10 are defendants who have engaged in and/or participated and/or aided and/or assisted in and/or furnished the means for the violations described herein, and their true capacities, names and relationships with or responsibilities to or involvement with the named defendants are unknown to plaintiff at this time. Plaintiff has undertaken an investigation to determine the identities of the defendants described in this paragraph, but at this time, said identities have not been discovered.

8. ASU is not now and never has been accredited by a recognized accrediting agency or association recognized by the United States Secretary of Education.

9. HERI is not now and never has been accredited by a recognized accrediting agency or association recognized by the United States Secretary of Education.

#### **COUNT I**

##### **ASU'S FAILURE TO MAKE STATUTORY DISCLOSURES OF NON-ACCREDITATION**

10. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 9 as though fully set forth herein.

11. ASU is an "unaccredited institution" as that phrase is defined in Hawaii Rev. Stat. § 446E-1

12. ASU has failed to disclose in all catalogs, promotional materials and/or written contracts for instruction the fact that it is not fully accredited by any nationally recognized accrediting agency or association listed by the United States Secretary of Education in violation of Hawaii Rev. Stat. § 446E-2(a).

13. Each and every catalog, promotional material and/or written contract for instruction that failed to disclose the fact that ASU is not fully accredited by any nationally recognized accrediting agency or association listed by the United States Secretary of Education constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-2(a).

14. Violations of Hawaii Rev. Stat. § 446E-2(a) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

#### **COUNT II**

##### **HERI'S FAILURE TO MAKE STATUTORY DISCLOSURES OF NON-ACCREDITATION**

15. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 14 as though fully set forth herein.

16. HERI has failed to disclose in all catalogs, promotional materials and/or written contracts for instruction the fact that neither it nor ASU is not fully accredited by any nationally recognized accrediting agency or association listed by the United States Secretary of Education in violation of Hawaii Rev. Stat. § 446E-2(a).

17. Each and every catalog, promotional material and/or written contract for instruction that failed to disclose the fact that HERI and/or ASU is not fully accredited by any nationally recognized accrediting agency or association listed by the United States Secretary of Education constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-2(a).

18. Violations of Hawaii Rev. Stat. § 446E-2(a) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

### **COUNT III** **DECEPTIVE REPRESENTATIONS**

19. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 18 as though fully set forth herein.

20. As a routine part of their promotional program, defendants regularly send prospective customers a copy of a "Certificate of Good Standing" issued by the State of Hawaii's Department of Commerce and Consumer Affairs.

21. Although the "Certificate of Good Standing" merely shows that ASU has complied with the requirements of the Hawaii Nonprofit Corporation Act, Hawaii Rev. Stat. Chap. 415B, defendants disseminate with the intent of misleading prospective consumers into believing that the State of Hawaii licenses, approves, endorses or regulates its operations.

22. Each and every such "Certificate of Good Standing" disseminated to a prospective customer constitutes a separate and independent violation of Hawaii Rev. Stat. § 481A-3(a).

23. Additionally, each and every such "Certificate of Good Standing" disseminated to a prospective customer constitutes a separate and independent violation of Hawaii Rev. Stat. § 480-2(a).

**COUNT IV**  
**ACTIVE/PASSIVE PARTICIPATION IN ILLEGAL CONDUCT**

24. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 23 as though fully set forth herein.

25. Defendant Marn was, at the time of the acts complained of herein, an officer and/or director of ASU.

26. Defendant Marn was an active or passive participant in the conduct of ASU as set forth in the previous counts.

**COUNT V**  
**CONTROL OVER DECEPTIVE CONDUCT**

27. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 26 as though fully set forth herein.

28. At all times material hereto, Defendant Marn formulated, directed, supervised, participated in, benefitted from, facilitated, controlled, knew and approved of, and committed or caused the commission of the various acts and practices of ASU.

**COUNT VI**  
**INJUNCTIVE RELIEF**

29. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 28 as though fully set forth herein.

30. Unless defendants are restrained and enjoined by this court from continuing to violate Hawaii Rev. Stat. §§ 446E-2(a), 480-2(a) and 481A-3(a) in the manner described herein, they will continue to do so, irreparably harming and injuring the consuming public of the state of Hawaii.

WHEREFORE, plaintiff prays that this court:

1. Find, order, adjudge and declare that defendants' conduct, as alleged herein, violates the statutory provisions set forth above.

2. Issue a temporary restraining order, preliminary injunction and permanent injunction enjoining all defendants, their agents, employees, successors and assigns, directly or indirectly, individually or in concert with others, or through any corporate or other device from any of the following:

a. Publishing, printing or disseminating any catalogs, promotional materials and/or written contracts for instruction which fail to properly make the disclosures required by Hawaii Rev. Stat. § 446E-2(a).

b. Falsely representing in any manner, directly or by implication, that a Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs under Hawaii Rev. Stat. Chap. 415B indicates or implies that the State of Hawaii licenses, approves, endorses or regulates its operations.

c. Committing any further violations of Hawaii law of a nature similar to the violations alleged herein.

3. Assess appropriate civil penalties against each and all of the defendants individually pursuant to Hawaii Rev. Stat. § 480-3.1 and enter judgment in

favor of plaintiff accordingly.

4. Award any consumers injured by the aforementioned violations full restitution, including pre and post judgment interest, against all defendants, jointly and severally, pursuant to Hawaii Rev. Stat. § 487-14 and the court's inherent authority and enter judgment accordingly.

5. Assess and award judgment in favor of plaintiff and against all defendants, jointly and severally, for attorneys' fees, costs, costs of investigation, interest, and other expenses.

6. Award plaintiff such other relief as the court may deem just and equitable under the circumstances.

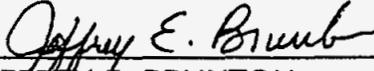
DATED: Honolulu, Hawaii, October 30, 1997.

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JEFFREY E. BRUNTON  
Attorney for Plaintiff

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