

JEFFREY E. BRUNTON #2833
Office of Consumer Protection
235 South Beretania Street, Room 801
Honolulu, Hawaii 96813-2419
Telephone: (808) 586-2636

Attorney for Plaintiff

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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M. TANAKA
CJ FRK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of
Consumer Protection,

Plaintiff,

vs.

HAWAII AMERICAN UNIVERSITY,
INC., a Hawaii corporation; WORLD
EDUCATION, INC., a Nevada
corporation; LEROY H. GRAW; and
DAVID MCNARY

Defendants.

) CIVIL NO.01-1-2836-09 (GWBC)
) (Other Civil Action)

) FIRST AMENDED COMPLAINT AND
) SUMMONS

) Trial Date: None
) SCF Date: None

FIRST AMENDED 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

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Defendants.)	Trial Date: None
)	SCF Date: None
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FIRST AMENDED 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 the 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. Defendant Hawaii American University, Inc. ("HAU") is a Hawaii corporation.

4. Defendant Leroy H. Graw is a resident of the State of California.

5. Defendant David McNary is a resident of the State of California

6. Defendant World Education, Inc. is a Nevada corporation.

7. On March 9, 2000 Articles of Incorporation of HAU were filed with the Business Registration Division of the Department of Commerce and Consumer Affairs of the State of Hawaii.

8. HAU's articles of incorporation identify its mailing address or principal office address as Seven Waterfront Plaza, Suite 400, 500 Ala Moana Boulevard, Honolulu, Hawaii 96813.

9. In June of 2000, Defendant Graw informed the Business Registration Division of the Department of Commerce and Consumer Affairs of the State of Hawaii that ownership and management of HAU had changed. That letter indicates that Defendant Graw is the President, Secretary and one of two directors of HAU.

10. HAU maintains a website located at <http://www.hawamuniv.edu>. That uniform resource locator address is registered to HAU of Seven Waterfront Plaza, Suite 400, 500 Ala Moana Boulevard, Honolulu, Hawaii 96813.

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

12. Defendant Leroy H. Graw is not now and never has been accredited by a recognized accrediting agency or association recognized by the United States Secretary of Education.

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

14. HAU has a "presence" in the State of Hawaii as that term is used in Haw. Rev. Stat. §446E-1.

COUNT I
FAILURE TO CONTINUOUSLY MAINTAIN AN AGENT IN HAWAII

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

16. HAU has failed to continuously maintain an agent for service of process within the State of Hawaii as required by Hawaii Rev. Stat. § 446E-4(a).

COUNT II
FAILURE TO MAKE STATUTORY DISCLOSURES

17. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 16 as though fully set forth herein.

18. HAU failed to properly and adequately disclose in all catalogs, promotional materials, including its website, 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).

19. Each and every catalog, promotional material and/or written contract for instruction that failed to properly and adequately disclose the fact that HAU is and was 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).

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

COUNT III
FAILURE TO HAVE AN OFFICE LOCATED IN HAWAII

21. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 20 as though fully set forth herein.

22. HAU has failed to have an office located in Hawaii in violation of Hawaii Rev. Stat. §446E-5(d).

23. Violations of Hawaii Rev. Stat. § 446E-5(d) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT IV
FAILURE TO HAVE AN EMPLOYEE LOCATED IN HAWAII

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

25. HAU has failed to have an employee located in Hawaii in violation of Hawaii Rev. Stat. § 446E-5(d).

26. Violations of Hawaii Rev. Stat. § 446E-5(d) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT V
FAILURE TO HAVE TWENTY-FIVE HAWAII STUDENTS ENROLLED

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

28. HAU has failed to have twenty-five enrolled students in Hawaii in violation of Hawaii Rev. Stat. § 446E-5(d).

29. Violations of Hawaii Rev. Stat. § 446E-5(d) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT VI
ILLEGAL ACCEPTANCE OF PAYMENTS

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

31. HAU has had a continual "presence" in the State of Hawaii as that phrase is used in Hawaii Rev. Stat. § 446E-1 and § 446E-5 since at least January 24, 2000.

32. HAU has accepted or received tuition payments or other fees on behalf of students despite not being in compliance with all of the requirements of Hawaii Rev. Stat. Chap. 446E.

33. The acceptance of such payment(s) or fee(s) from each student constitutes a separate and independent violation of Hawaii Rev. Stat. §446E-5(e).

34. Violations of Hawaii Rev. Stat. § 446E-5(e) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT VII
SUGGESTIONS OF STATE LICENSING, APPROVAL OR REGULATION

35. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 34 as though fully set forth herein.

36. HAU has, in its catalogs and/or promotional materials indicated or suggested that the State of Hawaii licenses, approves of or regulates its operations. violation of Hawaii Rev. Stat. §446E-5(a).

37. Each and every catalog, promotional material and/or written contract for instruction that contains such a suggestion or indication constitutes a separate and independent violation of Hawaii Rev. Stat. § 446E-5(a).

38. Violations of Hawaii Rev. Stat. § 446E-5(a) constitute *per se* violations of Hawaii Rev. Stat. § 480-2(a).

COUNT VIII
DECEPTIVE REPRESENTATIONS

39. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 38 as though fully set forth herein.

40. HAU, through its catalog and other materials, has indicated or suggested that it Hawaii law requires the payment of certain fees, when in fact, no such requirement exists.

41. Each such misrepresentation constitutes a separate and independent violation of Hawaii Rev. Stat. § 480-2(a).

COUNT IX
DEFENDANT LEROY H. GRAW'S INDIVIDUAL LIABILITY

42. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

43. Defendant Leroy H. Graw actively or passively participated in the illegal activity and/or formulated, directed, supervised, participated in, benefited from, facilitated, controlled, knew and approved of, and committed or caused the commission of the various acts and practices described herein.

COUNT X
DEFENDANT DAVID MCNARY'S INDIVIDUAL LIABILITY

44. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 43 as though fully set forth herein.

45. Defendant David McNary actively or passively participated in the illegal activity and/or formulated, directed, supervised, participated in, benefited from, facilitated, controlled, knew and approved of, and committed or caused the commission of the various acts and practices described herein.

COUNT XI
DEFENDANT WORLD EDUCATION, INC.'S LIABILITY

46. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 45 as though fully set forth herein.

47. Defendant World Education, Inc. actively or passively participated in the illegal activity and/or formulated, directed, supervised, participated in, benefited from, facilitated, controlled, knew and approved of, and committed or caused the commission of the various acts and practices described herein.

COUNT XII
INJUNCTIVE RELIEF

48. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 47 as though fully set forth herein.

49. Unless Defendants are restrained and enjoined by this court from continuing to violate Hawaii Rev. Stat. Chap. 446E and § 480-2(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 Corporate Office Centers, their agents, employees, successors and assigns, directly or indirectly, individually or in concert with others, or

through any corporate or other device from providing voice mail, mail forwarding, or any other service to the Defendants.

3. Issue a temporary restraining order, preliminary injunction and permanent injunction directing the Business Registration Division of the Department of Commerce and Consumer Affairs of the State of Hawaii to dissolve, terminate, revoke and/or cancel all tradenames, trademarks, corporate registrations (including that for Hawaii American University, Inc.), certificates of authority held by or for the defendants.

4. Issue a temporary restraining order, preliminary injunction and permanent injunction enjoining the 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. Providing any post-secondary instructional programs or courses leading to a degree;
- b. Acting as or holding themselves out as a "college, academy, institute, institution, university" or anything similar thereto;
- c. Failing to comply with Hawaii Rev. Stat. Chap. 446E or § 480-2(a) in any particulars; and
- d. Owning or operating any business in the State of Hawaii, claiming to operate under the laws of the State of Hawaii, or having a

presence in Hawaii until all restitution, civil penalties and costs entered herein are fully satisfied.

5. Assess appropriate civil penalties against the defendants individually pursuant to Hawaii Rev. Stat. § 480-3.1 and enter judgment in favor of plaintiff accordingly.

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

7. Assess and award judgment in favor of plaintiff and against the defendants, for attorneys' fees, costs, costs of investigation, interest, and other expenses.

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

DATED: Honolulu, Hawaii, December 12, 2001.

JEFFREY E. BRUNTON
Attorney for Plaintiff

- b. Acting as or holding themselves out as a "college, academy, institute, institution, university" or anything similar thereto;
- c. Failing to comply with Hawaii Rev. Stat. Chap. 446E or § 480-2(a) in any particulars; and
- d. Owning or operating any business in the State of Hawaii, claiming to operate under the laws of the State of Hawaii, or having a presence in Hawaii until all restitution, civil penalties and costs entered herein are fully satisfied.

5. Assess appropriate civil penalties against the defendants individually pursuant to Hawaii Rev. Stat. § 480-3.1 and enter judgment in favor of plaintiff accordingly.

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7. Assess and award judgment in favor of plaintiff and against the defendants, for attorneys' fees, costs, costs of investigation, interest, and other expenses.

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

DATED: Honolulu, Hawaii, December 12, 2001.



JEFFREY E. BRUNTON
Attorney for Plaintiff