

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 14, 2021

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Enforcement Action for Unauthorized Encroachments and Commercial Activities on State Lands, Hawaii Administrative Rules Chapter 13-221, and Hawaii Revised Statutes, Section 171-6, against Chris Sanger and Duke's Lagoon LLC at Duke Kahanamoku Beach, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portions of 021.

PURPOSE:

Enforcement action for unauthorized encroachments and commercial activities on State lands pursuant to Hawaii Administrative Rules and Hawaii Revised Statutes against Chris Sanger and Duke's Lagoon LLC (collectively "Respondents") at Duke Kahanamoku Beach, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portions of 021.

LEGAL REFERENCE:

Subsections 171-6(12) and (15), Hawaii Revised Statutes (HRS), and Sections 13-221-3 and 35, Hawaii Administrative Rules (HAR), as amended.

BACKGROUND:

Duke Kahanamoku Beach is located between Fort DeRussy Beach and the Duke Kahanamoku Lagoon at the western end of Waikiki, and further identified by TMK (1) 2-1-037:021. See map attached as **Exhibit A**. In July 2012, Hilton Hawaiian Village LLC (HHV) obtained a 15-year beach concession agreement¹ from the Board to conduct commercial beach activities specified in the agreement, including rental of beach chairs and umbrellas.

¹ A copy of the beach concession agreement is attached to the DOCARE report attached as Exhibit D-2. The concession agreement allows the concessionaire to set up a 14'x14' stand to rent beach equipment including chairs and umbrellas on the Duke Kahanamoku Beach. The concessionaire is not allowed to preset chairs or umbrellas or perform surf instructions on the beach. HHV does not set up such stands but instead stores and rents its equipment from its private hotel lands.

Though rental of beach chairs and umbrellas is allowed under the concession agreement, the concessionaire is not allowed to preset beach chairs or umbrellas on the beach before customers have rented the items.

Regardless of the method in which items are rented, e.g. online or in-person, placing of any beach umbrellas and chairs is only allowed when a customer is present at the time such beach chairs and umbrellas are placed on the beach (whether by the customer themselves or the customer with the assistance of the vendor for the customer's immediate use). Once the customer stops using the umbrellas and chairs, the items are to be removed from the beach by the vendor.

Complaints

In the summer of 2019, Land Division (LD) received complaints from HHV regarding unauthorized commercial activities on the subject beach. HHV identified the responsible party as Chris Sanger (Sanger) who owns and operates a business called Duke's Lagoon LLC inside the adjacent Ilikai Tower. Sanger and Duke's Lagoon LLC had been warned and asked to cease and desist any unauthorized commercial activities on State lands. See letter dated August 27, 2019 attached hereto as **Exhibit B**.

In March 2021, LD received complaints from HHV regarding presetting of beach umbrellas and chairs and unauthorized commercial activities (rental of beach chairs and umbrellas) by Sanger on Duke Kahanamoku Beach.

In addition, HHV's counsel sent a letter dated March 24, 2021 (**Exhibit C**) enclosing photos regarding Sanger's unauthorized activities on the beach.

LD requested the Division of Conservation and Resources Enforcement (DOCARE) to conduct an investigation regarding the complaints and LD staff participated in the investigation on two days. DOCARE documented its investigation in its reports attached to the submittal.

Staff Investigation

During the investigation conducted in March 2021, HHV supplemented its complaint to DOCARE by providing additional photos of umbrellas on the beach. Some umbrellas were apparently seen unused in the photos.

On March 29, 2021, around 6:40 am, DOCARE observed that a stack of beach chairs and umbrellas were loaded from a truck parked in the adjacent Ala Wai Harbor parking lot which stalls are intended for harbor and ocean recreation users, and not commercial operation.² Staff understands Sanger then carts the chairs and umbrellas from the parking lot to the sidewalk and rolls them mauka toward the HHV hotel site.

² Staff understands the Division of Boating and Ocean Recreation is also evaluating any permit and rule violations in relation to the intended uses of the parking area as discussed at the Board's meetings of 5/23/2008 and 1/8/2020.

Around 7:00 am, Sanger was seen digging the sand to set up beach umbrellas. Although a few customers were observed using the umbrellas at around 7:08 am, the majority of customers began using the remaining umbrellas between 8:10 am to 9:00 am.

On March 30, 2021, Sanger was again seen setting up the beach chairs and umbrellas around 7:00 am, and the umbrellas were not in use by customers until an hour later around 8:00 am.³

On April 9, 2021, around 7:45 am, DOCARE observed that there were 18 beach chairs on the subject beach. Beach umbrellas were also seen placed between the beach chairs. No customers were seen occupying the beach chairs. DOCARE told Sanger that the presetting of beach chairs and umbrellas on the State beach was a violation, that Sanger had to remove the items from the beach immediately and that he could face possible fines from the Board. In addition to the report attached as **Exhibit D-1**, DOCARE also took a video [DOCARE-040921] of the site on that morning which can be downloaded from the following link <https://dlnr.hawaii.gov/ld/videos-4-28-2021/>.⁴

Further, reports prepared by DOCARE for investigations conducted during the month of March 2021 are also attached as **Exhibits D-2** and **D-3**.

On April 14, 2021, the Department sent the Respondents a demand (**Exhibit E**) to cease and desist all unauthorized activities on State lands.

On April 16, 2021, LD received email from HHV's counsel (**Exhibit F**) attaching videos of Sanger's activities on the beach. The videos [HHV-01 to 04-041621] can be downloaded from <https://dlnr.hawaii.gov/ld/videos-4-28-2021/>.

On the beach, there is a concrete walkway which is under a term, non-exclusive easement issued by the Board to HHV for beach sidewalk. Immediately makai of the beach sidewalk is the hotel private property. In the video, a stack of beach chairs was seen near the sidewalk, which is considered an unauthorized encroachment.

Staff now brings the violations for unauthorized commercial activities and encroachments on State lands to the Board for disposition.

3 Sometime in late March and early April before the 9th, Respondent Chris Sanger called Administrator Tsuji to complain about Barry Cheung and DOCARE targeting his operations. Upon inquiry from Administrator Tsuji, Chris Sanger denied presetting chairs or umbrellas on the beach and said he only takes chairs out with a guest present and ready to use the chair. Sanger also denied any type of surf instruction on the beach. Sanger claimed to know the DLNR rules on the beach and stated he's been operating on Waikiki beaches for many years.

4 Administrator Tsuji immediately called Chris Sanger after the April 9th incident, but Sanger did not return the call until the following week. When Sanger finally did return Administrator Tsuji's call, he did not deny the chairs and umbrellas were unoccupied as clearly shown in DOCARE's video but stated he did not "pop" or open the umbrellas. Administrator Tsuji advised Sanger he will have the opportunity to provide that excuse or justification to the Land Board.

Section 13-221-3, HAR, provides: “Any person violating this chapter for which a penalty is not otherwise provided shall be fined not more than \$500 per day and shall be liable for administrative costs and damages incurred by the department”.

Section 13-221-35, HAR, provides: “No person shall engage in commercial activities of any kind without a written permit from the board or its authorized representative”. Commercial activity is defined to include activities whose area of operation is outside the boundaries of the unencumbered State lands. HAR Section 13-221-2, as amended.

Subsection 171-6(12), HRS states the Board may “[b]ring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:

- (A) Be fined not more than \$1,000 a day for the first offense;
- (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;
- (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
- (D) Assume such costs as may result from adverse effects from such restoration; and
- (E) Be liable for administrative costs incurred by the department and for payment of damages . . .”

LD considers presetting of beach chairs and umbrellas without any authorization an illegal encroachment. Staff recommends the Board find the Respondents in violation of Section 13-221-35, HAR and Subsection 171-6(12), HRS and impose fines against the Respondents jointly and severally. Further staff recommends that the Board assess two sets of fines against the Respondents for each of two encroachments that consist of the presetting of the beach chairs and umbrellas on the beach area, and the storage of commercial equipment near the sidewalk. Staff believes that treating each encroachment individually is appropriate because the Respondents utilized two separate areas of public lands simultaneously to conduct its unauthorized commercial activity. In addition, staff recommends the Board order the reimbursement of administrative costs (including staff time and fringe benefits) shown in **Exhibit G** related to this enforcement action pursuant to Subsection 171-6(15), HRS.⁵

⁵ HRS 171-6(15) authorizes the Board to set, charge, and collect reasonable fines for violation of **this chapter [i.e., Chapter 171] or any rule adopted thereunder** and expressly provides that any remedies provided for in this paragraph are cumulative in addition to any other remedies allowed by law. Staff submits that the cumulative remedies language of HRS 171-6(15) should be interpreted broadly to be consistent Act 215 (SLH 2008) and the legislative findings “that in recent years, there has been an increase in the intentional violations of and blatant disregard for state natural resource laws” and “increasing penalties for civil violations of the State’s natural resource laws is an effective means of deterring unlawful behavior by imposing serious consequences for such violations. The purpose of this Act is to increase civil penalty fine amounts for violations on public lands and to clarify penalties for encroachment on public lands.” See generally, *Plia’a 400 LLC v. Board of Land and Natural Resources, et al.*, 128 Haw. 497 (2012), unpublished decision.

RECOMMENDATION: That the Board fine Respondents in the amount of \$62,000.00 plus award administrative costs in the sum of \$3,242.30, jointly and severally as follows:

1. Impose a fine against Chris Sanger and Duke's Lagoon LLC jointly and severally in the amount of **\$500** for a single offense (April 9, 2021 violation) of unauthorized commercial activity on State lands in violation of Section 13-221-35, HAR.
2. Impose a fine against Chris Sanger and Duke's Lagoon LLC jointly and severally in the amount of **\$1,000** for a first offense of unauthorized encroachment (for placing the chairs and umbrellas on the beach on April 9, 2021) on State lands pursuant to Section 171-6(12), HRS.
3. Impose a fine against Chris Sanger and Duke's Lagoon LLC jointly and severally in the amount of **\$1,000** for a first offense of unauthorized encroachment (for storing commercial equipment (beach chairs/umbrellas) near the sidewalk on State lands on April 9, 2021) pursuant to Section 171-6(12), HRS.
4. Based on the evidence presented in HHV's video of April 16, 2021, impose a fine against Chris Sanger and Duke's Lagoon LLC jointly and severally in the amount of \$500 per day from the day after DOCARE's warning on April 9 to April 16, 2021 (date of HHV's complaint and video), (7 days for a total of **\$3,500**) for unauthorized commercial activity on State lands in violation of Section 13-221-35, HAR.
5. Based on the evidence presented in HHV's video of April 16, 2021, impose a fine against Chris Sanger and Duke's Lagoon LLC jointly and severally in the amount of \$4,000 per day for a second encroachment offense for placing the chairs and umbrellas on the beach after DOCARE's warning on April 9 to April 16, 2021 for a total of **\$28,000**, for unauthorized encroachment on State lands in violation of Subsection 171-6(12), HRS.
6. Based on the evidence presented in HHV's video of April 16, 2021, impose a fine against Chris Sanger and Duke's Lagoon LLC jointly and severally in the amount of \$4,000 per day for a second encroachment offense for storing commercial equipment (beach chairs/umbrellas) near the sidewalk on State lands from the day after DOCARE's warning on April 9 to April 16, 2021 for a total of **\$28,000**, for unauthorized encroachment on State lands in violation of Subsection 171-6(12), HRS.
7. Find Chris Sanger and Duke's Lagoon LLC jointly and severally liable for the administrative costs associated with administrative work related to this enforcement action described above, pursuant to Subsection 171-6(15), HRS, as itemized below and as shown on attached Exhibit G:

DOCARE Officer:	\$2,358.13
DOCARE Chief:	\$368.52
District Land Agent:	<u>\$515.65</u>
Total Costs:	\$3,242.30

8. Order that Chris Sanger and Duke's Lagoon LLC shall pay the fines and the administrative costs stipulated above within ten (10) days of the date of the Board's action.
9. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case

RT

Suzanne D. Case, Chairperson

EXHIBIT A

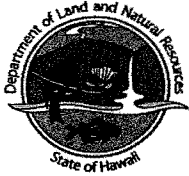


TMK (1) 2-3-037: portions of 021

EXHIBIT A

EXHIBIT B

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

August 27, 2019

Chris Sanger
Duke's Lagoon LLC
1741 Ala Moana Boulevard, Suite 400
Honolulu, Hawaii 96813

Chris Sanger
Duke's Lagoon LLC
1777 Ala Moana Boulevard, Suite 400
Honolulu, Hawaii 96813

Dear Mr. Sanger:

Subject: Unauthorized Commercial Activities on Duke Kahanamoku Beach

Recently, it has come to our attention that your company was occupying portions of the Duke Kahanamoku Beach on multiple dates for surfing instructions to your clients.

We consider your activity to be in violation of the respective sections of Hawaii Administrative Rules described below:

§13-221-35, Commercial activities. "No person shall engage in commercial activities of any kind without a written permit from the board or its authorized representative."

§13-221-46, Business operations. "No person shall solicit any business except in accordance with a permit, contract, license, lease, concession, or other written agreement with the board or its unauthorized representative."

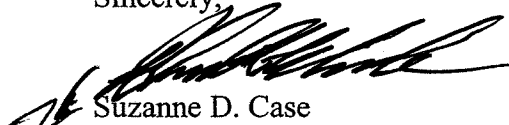
Pursuant to the Commercial Use Permit No. CO045676 dated June 3, 2019 issued by the Division of Boating and Ocean Recreation, your company is not authorized to have any commercial activity, including surf instruction, on the Duke Kahanamoku Beach. We request your cooperation by ceasing all unauthorized activities immediately.

Any violation of the Hawaii Administrative Rules is subject to a fine to be imposed by the Board of Land and Natural Resources up to ONE THOUSAND DOLLARS (\$1,000) for each violation per day pursuant to §171-6, Hawaii Revised Statutes, in addition to administrative costs incurred by the Department.

EXHIBIT B

If you have further questions, please contact Land Division at 587-0433.

Sincerely,



Suzanne D. Case
Chairperson

c: DOBOR (Attn.: Meghan Statts)

EXHIBIT C

RECEIVED
LAND DIVISION

STARN • O'TOOLE • MARCUS & FISHER

A LAW CORPORATION

2021 MAR 29 AM 10:55

March 24, 2021

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

VIA EMAIL AND U.S. MAIL

Suzanne D. Case, Chairperson (Suzanne.Case@hawaii.gov)
Board of Land and Natural Resources
1151 Punchbowl Street, Suite 131
Honolulu, Hawaii 96813-3047

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

2021 MAR 29 AM 8:29

RECEIVED

**Re: Request for DLNR to Take Immediate Action to Stop Unlawful
Commercial Activity by Chris Sanger**

Dear Chair Case,

As you know, we represent Hilton Hawaiian Village, LLC ("HHV"). HHV is the concessionaire under the Duke Kahanamoku Beach Concession Contract dated August 1, 2012 between the State of Hawaii and HHV (the "Beach Concession Contract"). Pursuant to the Beach Concession Contract, HHV pays the State a concession fee in excess of \$53,000 per month, and has the right, among other things, to rent surfboards, umbrellas, beach chairs and other beach equipment on Duke Kahanamoku Beach. HHV operates the concession through a subcontract with Waikiki Beach Activities ("WBA"). WBA recently brought to our attention that Mr. Chris Sanger is once again conducting illegal commercial activity at Duke Kahanamoku Beach, despite prior warnings from the DLNR. We write to ask that the DLNR take immediate action to stop Mr. Sanger from conducting his illegal activities.

Commercial activity is not permitted on Duke Kahanamoku Beach without a written permit from the Board of Land and Natural Resources. *See*, H.A.R. §13-221-35 and §13-221-46. You may recall that Mr. Sanger previously attempted to operate a surf school at Duke Kahanamoku Beach. On August 27, 2019, you sent a "cease and desist" letter to Mr. Sanger demanding that he stop his commercial surf school on the beach.¹ Mr. Sanger stopped his illegal surf school shortly thereafter. Unfortunately, and despite DLNR's prior notice to Mr. Sanger advising him unambiguously that *any* commercial activity on the beach requires a DLNR permit, Mr. Sanger has resumed his illegal commercial activities, this time by renting beach umbrellas and chaise lounge chairs on Duke Kahanamoku Beach, in flagrant violation of the law.

Last week WBA's President, Robert Martin, notified Barry Cheung at DLNR of Mr. Sanger's illegal activities. Mr. Martin was advised by Mr. Cheung to file a complaint with DLNR's Division of Conservation and Resources Enforcement ("DOCARE"). A copy of the statement Mr. Martin filed with DOCARE on March 16, 2021 is attached to this letter. That statement includes details of Mr. Sanger's illegal activities, as well as pictures that show the umbrellas and chairs Mr.

¹ For your convenience, a copy of your August 27, 2019 letter is attached to this letter.

EXHIBIT C

deprives HHV of rental income to which HHV is entitled under the Beach Concession Contract (and on which HHV relies to make payments of concession fees to the State).

Although Mr. Sanger's rental of umbrellas and beach chairs at Duke Kahanamoku Beach is an obvious violation of the law, to the extent Mr. Sanger believes he has a legal right to operate at the beach, we also remind you that paragraph 27 (Quiet Enjoyment) of the Beach Concession Contract states that HHV "shall and may have, hold, possess, and enjoy the Premises for the term contracted without hindrance or interruption by the State or any other person or persons lawfully claiming by, through, or under it."

As you know, although HHV was deprived of use of the beach for much of the last year due to COVID-19 restrictions, it continued to pay concession fees to the State (although the State did defer payment of a portion of those fees). HHV relies on the income derived from its concession in order to pay those fees. Mr. Sanger's conduct interferes with HHV's operations and further impairs HHV's already seriously-damaged economic position.

We trust that DOCARE will respond promptly to WBA's March 16 complaint, and prevent Mr. Sanger from continuing to rent umbrellas and beach chairs, or from conducting any other commercial activities, from Duke Kahanamoku Beach. Nevertheless, as the concessionaire under the Beach Concession Contract, HHV wanted to communicate with the State directly by this letter to express its objection to Mr. Sanger's activities and to ask the State to take clear and immediate action to rectify this situation.

Accordingly, on behalf of HHV, we hereby request that the State take such action as may be necessary to cause Mr. Sanger to cease and desist his commercial activities (specifically, renting of umbrellas and beach chairs) on an immediate basis.

If you have any questions or would like to discuss this matter, please let me know. Thank you very much.

Very truly yours,

A handwritten signature in black ink, appearing to read "Duane R. Fisher", written in a cursive style.

Duane R. Fisher

c: Debi Bishop, Managing Director, Hilton Hawaiian Village
Frank Connolly, Hilton Hotels
Nevin Kelly, Park Hotels & Resorts

Enclosures

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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ROBERT K. MASUDA
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We consider your activity to be in violation of the respective sections of Hawaii Administrative Rules described below:

§13-221-35, Commercial activities. "No person shall engage in commercial activities of any kind without a written permit from the board or its authorized representative."

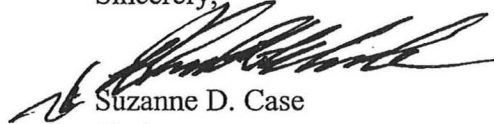
§13-221-46, Business operations. "No person shall solicit any business except in accordance with a permit, contract, license, lease, concession, or other written agreement with the board or its unauthorized representative."

Pursuant to the Commercial Use Permit No. CO045676 dated June 3, 2019 issued by the Division of Boating and Ocean Recreation, your company is not authorized to have any commercial activity, including surf instruction, on the Duke Kahanamoku Beach. We request your cooperation by ceasing all unauthorized activities immediately.

Any violation of the Hawaii Administrative Rules is subject to a fine to be imposed by the Board of Land and Natural Resources up to ONE THOUSAND DOLLARS (\$1,000) for each violation per day pursuant to §171-6, Hawaii Revised Statutes, in addition to administrative costs incurred by the Department.

If you have further questions, please contact Land Division at 587-0433.

Sincerely,



Suzanne D. Case
Chairperson

c: DOBOR (Attn.: Meghan Statts)

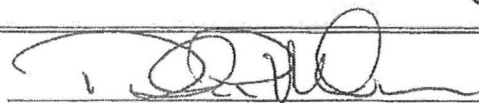
STATEMENT FORM CONTINUATION PAGE

Page 1 of 14 pages

Statement of: ROBERT MARTIN.

Rpt. No.:

AS AUTHORIZED MANAGING AGENT FOR HILTON HAWAIIAN VILLAGE RESORT (IN MY CAPACITY AS PRESIDENT OF WAIKIKI BEACH ACTIVITIES LTD) I WISH TO REPORT WHAT APPEARS TO BE UNAUTHORIZED COMMERCIAL OPERATIONS OCCURRING DAILY WITHIN THE BOUNDARIES OF THE DUKE KAHALANUOBU BEACH CONCESSION BETWEEN HILTON AND DLWR. — BEGINNING MARCH 6, 2021 AND CONTINUING TO TODAY I PERSONALLY OBSERVED, AND REPORTED TO HILTON INMGT THE PLANTING OF BETWEEN 1 AND 4 YELLOW COMMERCIAL-STYLE UMBRELLAS IN THE FRONT CENTER ROW OF HILTON'S BEACH CONCESSION. IN ADDITION, CHAISES AND SUP BOARDS WERE PLACED UNDER THE UMBRELLAS. I SAW THEM BOTH UNOCCUPIED AND OCCUPIED, PRE-SET AS EARLY AS 7:00 AM. I ALSO WITNESSED A SUP CLASS WITH 8 GUESTS AND 2 GUIDES, INCLUDING CHRIS SAUBER, WHOM I KNOW PERSONALLY, SETTING BOARDS ON THE BEACH AND GOING OFFSHORE. I PHOTOGRAPHED SEVERAL DAYS IN WHICH MR. SAUBER ARRIVED BETWEEN 6:30 AND 7:15 AM WITH UMBRELLAS AND A SHOVEL, AND PLANTED UMBRELLAS, THEN ROLLED BOARDS OUT AND ASKED A SECOND HELPER TO BRING CHAISES. THIS HAS OCCURRED FOR THE PAST 11 DAYS. (SEE PAGE 2)



Signature

Investigator's Signature

Date: 3/16/21

Time: 1900N

Date:

Time:

STATEMENT FORM CONTINUATION PAGE

Page 2 of 14 pages

Statement of:

Rpt. No.:

TODAY, MR SANGER AND AT LEAST 2 HELPERS HAVE PLANTED 25 UMBRELLAS SO FAR, AND MY STAFF REPORT THESE PEOPLE APPROACH HILTON GUESTS IN LINE AT HILTON BEACH STRAND AND GUIDING THEM TO THEIR YELLOW UMBRELLAS. BY PRE-SETTING, THEY ARE TAKING POSSESSION OF THE PRIME BEACH AREA BEFORE HILTON OPERATIONS BEGINS AT 9:00 AM.

THIS REPORT INCLUDES PHOTO EVIDENCE OF MY PERSONAL OBSERVATIONS. THIS INFORMATION HAS BEEN REPORTED DIRECTLY AND IN PERSON TO JEFFREY YERLIN, GM OF HILTON. HE HAS DIRECTED ME, IN THE CAPACITY OF HILTON'S BEACH CONCESSION MANAGING AGENT, TO SUBMIT ALL RELEVANT OBSERVATIONS TO DUNR AND/OR DOCARE AS IT IS GATHERED.

CC: JEFFREY YERLIN, GENERAL MANAGER, HHV

NOTE: I AM ALSO IN POSSESSION OF NEARLY A DOZEN VIDEO CLIPS TAKEN PERIODICALLY THIS MONTH SHOWING MR SANGER ET AL. SETTING UP AND BREAKING DOWN UMBRELLAS, CHAIRS, BOARDS, GEAR AT THE SAME LOCATIONS.

Signature

Investigator's Signature

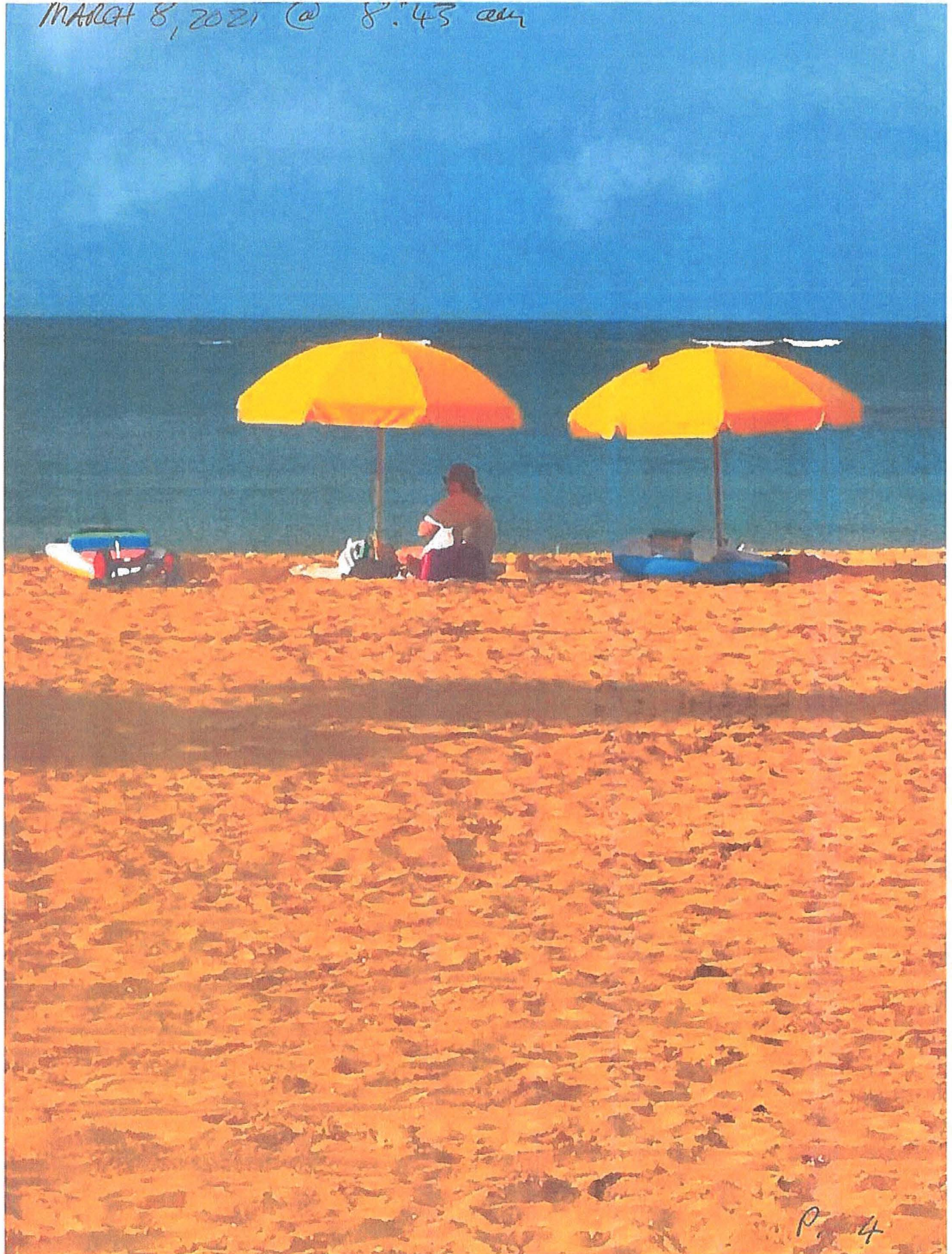
Date: 3/16/21Time: NOON

Date: _____

Time: _____



MARCH 8, 2021 @ 8:43 am



P. 4



P. 5

MARCH 2, 2021 @ 9:00

P.6

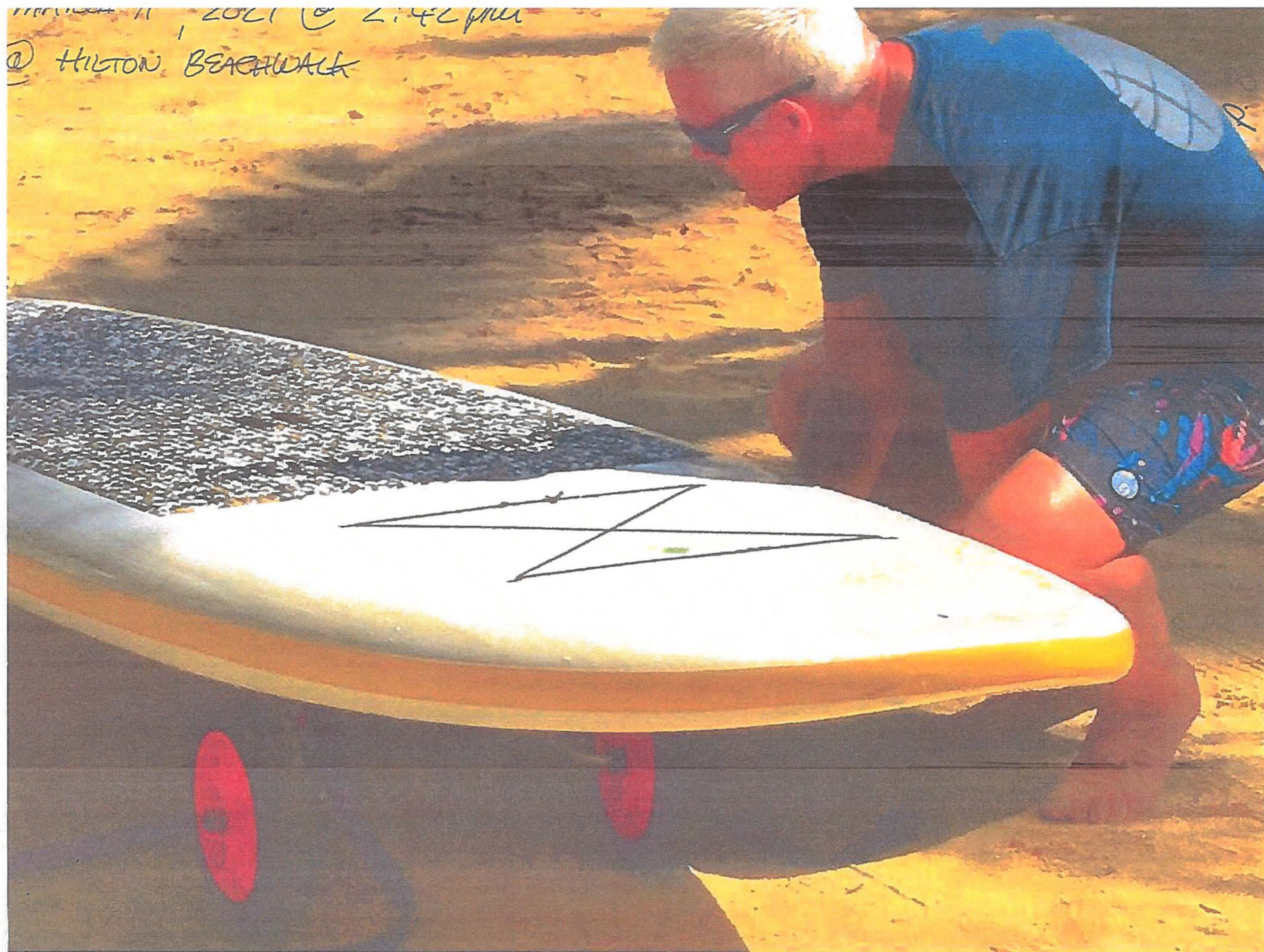


March 11, 2021 @ 9:04 am



P.7

MARCH 11, 2021 @ 2:42 PM
@ HILTON BEACHWALK



11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

P. 9



IMPACT 15, 20'21 @ 1.56 am MILE SUR KACK DROK
UMBRELLA (CIRCLED)



MARCH 14, 2021 @ 10:35 am



3 YELLOW UMBRELLAS - PKC-501 CASEY, MARCH 10, 2001
NOTE CIRCLED CHAIR AND SHOVEL USED BY MR. SANGER
AND HIS HELPERS, WHO HAVE BEGUN STATIONING ON
THE BEACH DURING OPERATING HOURS.

P12



ANOTHER OF MR SAUER'S HELPERS IS
ERIK MORRIS, SEEN HERE WITH "D" ON HIS SHIRT
SPEAKING TO A BEACH GOER, MARCH 16, 2021
@ 11.30 AM



P. 13

MARCH 16, 2021 @ 11:25 AM

2 OF MR. SANGER'S HELPERS STATIONED TO SET UP
ADDITIONAL CLIENTS @ DUKE'S BEACH

THE HELPER SEATED TO THE LEFT IS ROBBIE COATES

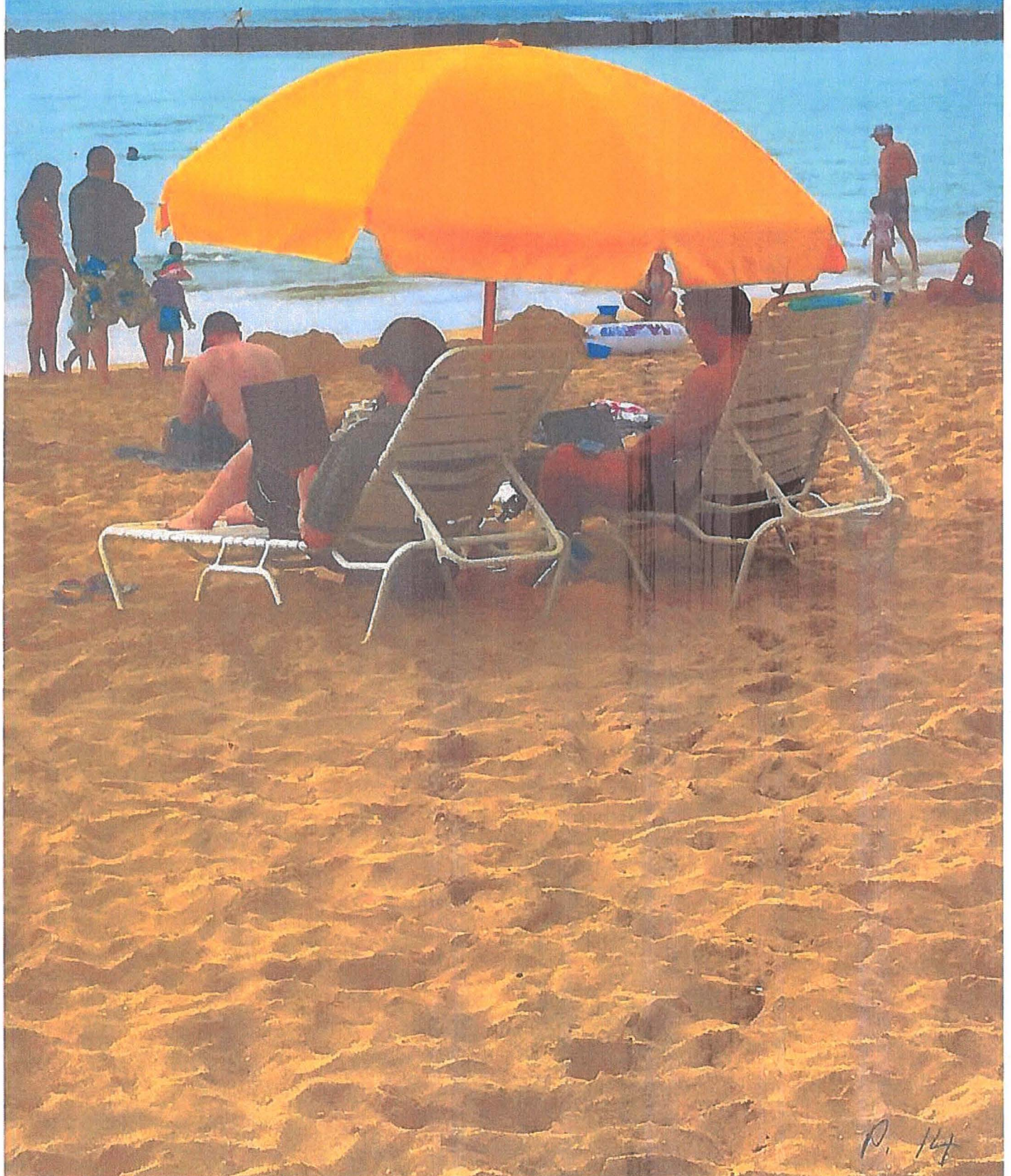


EXHIBIT D-1

State of Hawaii
Department of Land and Natural Resources
Division of Conservation Resource Enforcement
Oahu Branch

Follow-up Report
Unauthorized Commercial Activity
Report # 21-0721 -OA

ASSIGNMENT/ARRIVAL:

I am currently employed as the Oahu Branch Chief for the Division of Conservation Resources Enforcement, State of Hawaii Department of Land and Natural Resources, (DOCARE/DLNR).

On April 9, 2021 / 0736 hours, I made a check of the Waikiki Beach fronting the Hilton Hawaiian Village Hotel for any possible unauthorized commercial activity relating to presetting of umbrellas and chairs.

COMPLAINT:

DOCARE has been receiving numerous complaints regarding possible unauthorized commercial activity fronting the Hilton Hawaiian Village. The complaints relate to Chris Sanger of Duke Kahanamoku Lagoon Beach Service presetting beach chairs and umbrellas on the beach without a permit issued by the Department of Land and Natural Resources.

SCENE:

The Waikiki Beach area fronting the Hilton Hawaiian Village Hotel

Address: 2005 Kalia Road
Honolulu, HI 96815

Location commonly known as Duke Kahanamoku Beach

LAND OWNER:

State of Hawaii, Managed by the Division of Land Management.

WEATHER CONDITION and LIGHTING:

Early morning, post-sunrise with overcast skies.

VANTAGE POINTS:

Upon arrival to the location, at an approximate distance of twenty (20) yards, I observed the violation of presetting of beach chairs occurring.

OBSERVATION:

Approximately eighteen (18) white lounge chairs were lined up in a row on the beach. These chairs were set in pairs with a hole dug in the sand in-between each pair.

The white lounge chairs were facing the ocean and set back approximately twenty (20) yards back from the shoreline. **Refer to Photo # 1 & 2**

Umbrellas were erected in the sand at each end of the row of chairs. The remaining sets of chairs had one (1) umbrella laying down on the chair. **Refer to Photo #3 & 4**

RECEIVED
LAND DIVISION
2021 APR 12 PM 3:33
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

State of Hawaii
Department of Land and Natural Resources
Division of Conservation Resource Enforcement
Oahu Branch

Follow-up Report
Unauthorized Commercial Activity
Report # 21-0721 -OA

During this observation, I noticed one (1) female placing an item on a chair located on the east end of the row of lounge chairs. All other chairs were not occupied.

Behind the row of lounge chairs were two (2) regular beach chairs with an umbrella and a stand-up paddle board lying next to it. This area appeared to be where the person in charge of presetting would be present to conduct business.

I then noticed a Caucasian male wearing a green shirt, black shorts and a woven coconut leaf hat. He was standing in the back of the chairs talking on the phone.

SUSPECT COMPANY AND OWNER IDENTIFIED:

Company: Duke Kahanamoku Lagoon Beach Service LLC

Owner: Chris Sanger

Home Address: Ala Wai Small Boat Harbor [REDACTED]

[REDACTED]
Honolulu, HI 96815

Business Address: Ilikai Hotel
1777 Ala Moana Blvd.
Honolulu, HI 96815

Phone: [REDACTED]

E-mail: [REDACTED]

Refer to Photo #5

PHOTOS:

See photographic report attached.

EVIDENCE:

None taken.

INVESTIGATION:

This follow-up surveillance action was done in follow-up to on-going complaints. The complaints consisted of an illegal commercial activity that was occurring in front of the Hilton Hawaiian Village. The suspect business was operating without a permit from the Department of

State of Hawaii
Department of Land and Natural Resources
Division of Conservation Resource Enforcement
Oahu Branch

Follow-up Report
Unauthorized Commercial Activity
Report # 21-0721 -OA

Land and Natural Resources. The complaints mentioned that the suspected operator of the commercial business was seen presetting chairs and umbrellas at this location.

During this follow-up check of Dukes Beach, I observed eighteen (18) lounged chairs set in a row with one (1) umbrella erected on the west end and two (2) umbrellas erected on the east end of the row of chairs. Other umbrellas were observed laying on the chairs. There was one (1) female present and no other persons were seen occupying the chairs. Holes were pre-dug in the sand in-between the pair of chairs, as if waiting for placement of an umbrella.

I then proceeded to video the violation of chairs and umbrellas on the beach and also the suspected owner operator talking on his phone. After documenting the violation via video, I then turned my attention to the suspected owner of the business/chairs. I identified him as Chris Sanger, owner and operator of Duke Kahanamoku Lagoon Beach Service LLC. I then identified myself and the Department I was representing.

He proceeded to inform me that all the chairs were sold and he was waiting for his customers. He stated that his business was located in the Ilikai Hotel and that transactions were done online or in his shop. I then noticed a few people approaching him and asking about the chairs he had set up on the beach.

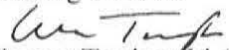
I then informed him that he was in violation of presetting his umbrellas and chairs on State property and that he needed to remove his chairs and umbrellas immediately that were not occupied. I then informed him that he could be facing possible fines from the Department of Land and Natural Resources for illegal commercial activity.

He then stated he understood and wanted suggestions on being able to operate without violating anything. I then informed him to contact DLNR Division of Land Management.

I left the location and got in my state vehicle. I then contacted DOCARE Enforcement Chief Jason Redulla to brief him on what I had observed and the interaction with the suspect. He directed me to submit a follow-up report relating to the surveillance I just conducted.

DISPOSITION:

Pending review.


Werner Taniguchi #227 / April 9, 2021 / 1500 hrs.

DOCARE
Photographic Report

CASE # 21-0721-OA

CLASSIFICATION: Unauthorized Commercial Activity
SCENE: Waikiki Beach fronting Hilton Hawaiian Village
EQUIPMENT: I Phone 7
WEATHER AND LIGHTING: Overcast/ Early morning

DATE/TIME: April 9 ,2021 0745
TAKEN BY: W. Taniguchi
SIGNATURE: _____
SUPERVISOR: _____

PHOTO # 1



A photo showing umbrellas and chairs setup twenty (20) yards back from the shoreline.

PHOTO # 2



A photo of umbrellas and chairs lined up on the beach.

**DOCARE
Photographic Report**

PHOTO # 3



A photo of umbrella erected on the west end of the row of chairs.

PHOTO # 4



Photo of umbrellas on the east end of the beach.

**DOCARE
Photographic Report**

PHOTO # 5



A photo of owner of Dukes Lagoon (Chris Sanger)

EXHIBIT D-2

21-0011-011
State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

Log Number OA-21-00187	District NORTHERN	Lead Investigator PAULELE, ROBERT A - PAULRA
Date/Time Reported 03/08/2021 1000	Location DUKE KAHANAMOKU BEACH	Classification PROH COMMERCIAL ACTIVITIES WITHOUT PERMIT
Status PEND PENDING FURTHER ACTION	Activity Code Land Management	

Incident and Report Control

A. COMPLAINT

Taken By: PAULELE, ROBERT A Reported Date/Time: 3/8/2021 10:00:00 AM

How Taken: MAIL

Complainant: MARTIN, ROB

Phones: [REDACTED]

Address:

Complainant: HAMPTON, BOB

Phones: [REDACTED]

Address:

Incident Summary: SYNOPSIS

Investigation pending Commercial Activities and Business Operations regarding Chris SANGER.

Location: DUKE KAHANAMOKU BEACH

Occurred From: 3/8/2021 1000
Occurred To: 3/17/2021 2300

B. REPORT CONTROL

Branch: OAHU

District: ODI

Lead Investigator: PAULELE, ROBERT A

C. NOTES/DISPOSITION/OTHER INFO

Disposition: PENDING FURTHER ACTION

RECEIVED
LAND DIVISION
2021 APR 12 PM 3:32
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

EXHIBIT D-2



State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

Log Number OA-21-00187	District DISTRICT I (OAHU)	Lead Investigator PAULELE, ROBERT A - PAULRA
Date/Time Reported 03/08/2021 1000	Location DUKE KAHANAMOKU BEACH	Incident Type Commercial Use Permit Violation
Status PEND PENDING FURTHER ACTION	Activity Code Land Management	

Investigation Report

☐ Fishing ☐ Hunting ☐ Boating ☐ Drug Rel. ☐ Forestry ☐ NOAA ☐ JEA ☐ Land - OCCL ☐ CWRM ☐ Historic ☐ State Parks ☐ KAIC ☐ Other

BASIC

Classification 13-221-35 PROH COMMERCIAL ACTIVITIES WITHOUT PERMIT	Source MAIL
Location of Incident / Intersecting Street X-Street:	Island Branch OAHU
Category OTHER OTHER AREAS	Weather CLEAR
Date / Time Occurred From 3/8/2021 1000	
Date / Time Occurred to 3/17/2021 2300	

WEAPONS USED:

PERSONS

Name (Last, First, Middle) MARTIN, ROB	Juvenile <input type="checkbox"/>	Sex	Race	Age	Date of Birth
Address					
Category COMPLAINANT	CODE: COMP	Home Phone	Other Phone		
Name (Last, First, Middle) HAMPTON, BOB	Juvenile <input type="checkbox"/>	Sex	Race	Age	Date of Birth
Address					
Category COMPLAINANT	CODE: COMP	Home Phone	Other Phone		
Name (Last, First, Middle) SANGER, CHRIS	Juvenile <input type="checkbox"/>	Sex	Race	Age	Date of Birth
Address					
Category SUSPECT	CODE: SUSP	Home Phone	Other Phone		

SYNOPSIS

Narrative Created By / Created On PAULELE, ROBERT A 03/24/2021	Approved By / On
--	------------------

SYNOPSIS

Investigation pending Commercial Activities and Business Operations regarding Chris SANGER.

RESPONDING / INVOLVED UNITS, OFFICERS, AND TIMES

Division	Supervisor
Unit Number	Officer / ID (Ofcr 1 / Ofcr 2)
	PAULELE, ROBERT A
	PAULRA
	Officer / ID (Ofcr 3 / Ofcr 4)

INVESTIGATION

Narrative Created By / Created On PAULELE, ROBERT A 03/24/2021	Approved By / On
--	------------------

Written By: PAULELE, ROBERT A
03/24/2021

Approved By:



Log Number OA-21-00187	District DISTRICT I (OAHU)	Lead Investigator PAULELE, ROBERT A - PAULRA
Date/Time Reported 03/08/2021 1000	Location DUKE KAHANAMOKU BEACH	Incident Type Commercial Use Permit Violation
Status PEND PENDING FURTHER ACTION	Activity Code Land Management	

ASSIGNMENT/ARRIVAL

03/08/21, at approximately 1000 hours, I was assigned by T/a Supervisor Officer VILLALOBOS to investigate a complaint regarding potential commercial activity on Kahanamoku Beach. The complaint was received via email from Barry CHEUNG.

SCENE/TIME ELEMENT

The scene of this investigation takes place at Kahanamoku Beach fronting the waters the edge and extending from the Hilton Hawaiian Hotel to South facing side of the Ala Wai Small Boat Harbor.

WEATHER

The weather was clear and sunny.

OBSERVATION

03/08/21, at approximately 1049 hours, I arrived on scene. While making checks, I observed two yellow in color pop-up umbrellas in the center of Kahanamoku Beach approximately 50 yards from the public access walk way and 15 yards from the high water mark. Further observation showed that there was a female party near the two umbrellas with what appeared to have a blue and white in color stand up paddle board near the area.

CONTACT WITH ROB MARTIN AND WAIKIKI BEACH SERVICES

03/08/21 at approximately 1055 hours, I made contact with an employee with Waikiki Beach Services (Sub-contractor/ managing agent for the Hilton Hawaiian Hotel) who requested to be anonymous. I spoke briefly with the beach attendant regarding the complaint and he stated that he observed a male walk down early this morning to set umbrellas up in the sand for customers. He further added that the male he observed setting up was not an associate of Waikiki Beach Services and felt that it was a violation of illegal commercial activity.

At approximately 1110 hours, I asked to speak with the manager on-site who was identified as Rob MARTIN. I spoke with MARTIN via telephone regarding the above mentioned. MARTIN continued to explain that these actions have been ongoing for some time. I asked MARTIN if he could identify the male party in question. MARTIN replied, "yes" and identified him as Chris SANGER. MARTIN stated that Waikiki Beach Services has exclusive rights to the beach which is under contract through the Hilton Hawaiian Hotel and the state. He noted that the Hilton pays a large fee to sub lease this land from the state and further feel that Chris SANGER in in violation of illegal commercial activity.

See attached statement along with photos from Rob MARTIN.



Log Number OA-21-00187	District DISTRICT I (OAHU)	Lead Investigator PAULELE, ROBERT A - PAULRA
Date/Time Reported 03/08/2021 1000	Location DUKE KAHANAMOKU BEACH	Incident Type Commercial Use Permit Violation
Status PEND PENDING FURTHER ACTION	Activity Code Land Management	

CONTACT WITH ANOYMOUS CUSTOMER OF DUKES LAGOON

03/08/21 at approximately 1130 hours, I made contact with the female party within the location of the yellow umbrellas who also request to remain anonymous. At the time contact she stated that she rented the umbrellas from Dukes Lagoon, which is a business store front located inside the Ilikai hotel. She also stated that she rented them from the store owner verbally identified as Chris SANGER.

CONTACT WITH SANGER AND DUKES LAGOON

03/08/21 at approximately 1145 hours, I made contact with Chris SANGER inside his business store front. SANGER stated that he is not marketing or selling his services on the beach. He further added that customers come see him inside his place of business to rent beach equipment such as umbrellas, beach chairs and surfboards. SANGER also confirmed that the two yellow umbrellas located on the beach belong to his business and that he rented them to customers.

See attached statement.

CHECKS MADE

Ilikai General Manager confirmed right of business regarding Dukes Lagoon. See attached letter. ORMA decal was provided bearing V03501 for right of access in the designated ORMA area. ORMA commercial Use Permit. See attached.

Blue Card was presented with permittee Chris SANGER listed

Letter from Colliers International Real Estate confirming Chris SANGER/ Dukes Lagoon confirming commercial tenancy. See attached letter.

ATTACHED DOCUMENTS

1. Complainant statement from Rob MARTIN/ Waikiki Beach Activities
2. DCCA State of Hawaii Business Information for Waikiki Beach Activities
3. Photos from Rob MARTIN. Full size pages (14 pages)
4. Email thread from Rob MARTIN (3 pages)
5. Suspect statement form for Chris SANGER / Dukes Lagoon (2 pages)
6. Letters from Ilikai and Colliers regarding right of business (2 pages)
7. Commercial Use Permit for Dukes Lagoon (5 pages)
8. Letter to SANGER from the State of Hawaii regarding Commercial Activities and Business Operations (1 page)
9. Photos attached of SANGER business store front, ORMA decal, etc. (5 pages)
10. Email thread from SANGER (4 pages)
11. Email from Barry CHEUNG with Duke Kahanamoku Concession Contract (23 pages)

SUSPECT INFORMATION

The suspect under this investigation is identified as:

NAME: Chris SANGER / Dukes Lagoon





Log Number OA-21-00187	District DISTRICT I (OAHU)	Lead Investigator PAULELE, ROBERT A - PAULRA
Date/Time Reported 03/08/2021 1000	Location DUKE KAHANAMOKU BEACH	Incident Type Commercial Use Permit Violation
Status PEND PENDING FURTHER ACTION	Activity Code Land Management	

COMPLAINANT INFORMATION

The complainant under this investigation is identified as:

NAME: Rob MARTIN



ADDRESS: N/A

BUSINESS PARTNER FOR WAIKIKI BEACH SERVICES

NAME: Bob HAMPTON



ADDRESS: N/A



Log Number OA-21-00187	District DISTRICT I (OAHU)	Lead Investigator PAULELE, ROBERT A - PAULRA
Date/Time Reported 03/08/2021 1000	Location DUKE KAHANAMOKU BEACH	Incident Type Commercial Use Permit Violation
Status PEND PENDING FURTHER ACTION	Activity Code Land Management	

TIMELINE OF INVESTIGATION

03/08/21 at approximately 1000 hours, I was assigned to the case.

03/08/21 at approximately 1049 hours, observed two yellow umbrellas in the sand on Kahanamoku Beach.

03/08/21 at approximately 1055 hours, made contact with Waikiki Beach Services.

03/08/21 at approximately 1342 hours, Chris SANGER provided me a copy of the letter from DLNR dated on August 27, 2019 regarding Unauthorized Commercial Activity on Duke Kahanamoku Beach.

03/10/21 at approximately 1433, I spoke with Barry CHEUNG (Land Division of DLNR) regarding this report. I requested for the Duke Kahanamoku Beach Concession Contract. CHEUNG emailed the full contract on 03/13/21.

03/10/21 at approximately 1348, Chris SANGER emailed a copy for the Duke Kahanamoku Beach Concession Contract. He wanted me to note that section 14 is contradictory.

03/10/21 at approximately 1348, SANGER provided a letter of reference directly from Rob MARTIN and on behalf of the Hilton. Dated 12/19/2015.

03/11/21 at approximately 0951, SANGER expressed his concern via email with conflict of interest with Barry CHEUNG and Bob HAMPTON (business partner to Rob MARTIN for Waikiki Beach Services).

03/11/21 at approximately 1624, MARTIN notified me that he has video of SANGER breaking down his commercial equipment.

03/12/21 at approximately 0945, MARTIN notified me via email that there is more umbrellas "positioned in the center of Hilton's prime rental area.

03/15/21 at approximately 1139, MARTIN notified me that umbrellas are still being set up within the area.

03/16/21 at approximately 1130, Statement form was picked up from SANGER.

03/16/21 at approximately 1200, Statement form was picked up from MARTIN along with photos and video attached to a USB drive.

03/22/16 at approximately 1002, spoke with Bob HAMPTON and ROB MARTIN per request and was told that the State needs to enforce.

PHOTOGRAPH RECORD

This has been submitted.

DISPOSITION


Pending.

**1. Complainant Statement from Rob MARTIN / Waikiki Beach
Activities**

Statement of: ROBERT MARTIN

Rpt. No.:

AS AUTHORIZED MANAGING AGENT FOR HILTON HAWAIIAN VILLAGE RESORT (IN MY CAPACITY AS PRESIDENT OF WAIKIKI BEACH ACTIVITIES LTD) I WISH TO REPORT WHAT APPEARS TO BE UNAUTHORIZED COMMERCIAL OPERATIONS OCCURRING DAILY WITHIN THE BOUNDARIES OF THE DUKE KAHAMAKU BEACH CONCESSION BETWEEN HILTON AND DLNR. — BEGINNING MARCH 6, 2021 AND CONTINUING TO TODAY I PERSONALLY OBSERVED, AND REPORTED TO HILTON MEANT THE PLANTING OF BETWEEN 1 AND 4 YELLOW COMMERCIAL-STYLE UMBRELLAS IN THE FRONT CENTER ROW OF HILTON'S BEACH CONCESSION. IN ADDITION, CHAISES AND SUP BOARDS WERE PLACED UNDER THE UMBRELLAS. I SAW THEM BOTH UNOCCUPIED AND OCCUPIED, PRE-SET AS EARLY AS 7:00 AM. I ALSO WITNESSED A SUP CLASS WITH 8 GUESTS AND 2 COACHES, INCLUDING CHRIS SAUBER, WHOM I KNOW PERSONALLY, SETTING BOARDS ON THE BEACH AND GOING OFFSHORE. I PHOTOGRAPHED SEVERAL DAYS IN WHICH MR. SAUBER ARRIVED BETWEEN 6:30 AND 7:15 AM WITH UMBRELLAS AND A SHOVEL, AND PLANTED UMBRELLAS, THEN ROLLED BOARDS OUT AND ASKED A SECOND HELPER TO BRING CHAISES. THIS HAS OCCURRED FOR THE PAST 11 DAYS. (SEE PAGE 2)


Signature

Date: 3/16/21

Time: NOON


Investigator's Signature

Date: 3/16/21

Time: 1200

STATEMENT FORM CONTINUATION PAGE

Page 2 of 14 pages

Statement of:

Rpt. No.:

TODAY, MR SANGER AND AT LEAST 2 HELPERS HAVE PLANTED 25 UMBRELLAS SO FAR, AND MY STAFF REPORT THESE PEOPLE APPROACH HILTON GUESTS IN LINE AT HILTON BEACH STALLS AND GUIDING THEM TO THEIR YELLOW UMBRELLAS. BY PRE-SETTING, THEY ARE TAKING POSSESSION OF THE PRIME BEACH AREA BEFORE HILTON OPERATIONS BEGINS AT 9:00 AM.

THIS REPORT INCLUDES PHOTO EVIDENCE OF MY PERSONAL OBSERVATIONS. THIS INFORMATION HAS BEEN REPORTED DIRECTLY AND IN PERSON TO JEFFREY YEHLIN, GM OF HILTON. HE HAS DIRECTED ME, IN THE CAPACITY OF HILTON'S BEACH CONCESSION MANAGING AGENT, TO SUBMIT ALL RELEVANT OBSERVATIONS TO DLNR AND/OR DOCARE AS IT IS GATHERED.

cc: JEFFREY YEHLIN, GENERAL MANAGER, HHV

NOTE: I AM ALSO IN POSSESSION OF NEARLY A DOZEN VIDEO CLIPS TAKEN PERIODICALLY THIS MONTH SHOWING MR SANGER ET AL. SETTING UP AND BREAKING DOWN UMBRELLAS, CHAIRS, BOARDS, GEAR AT THE SAME LOCATIONS.

Signature

Investigator's Signature

Date: 3/16/21

Time: NOON

Date: 3/16/21

Time: 12:00

2. DCCA State of Hawaii Business Information for Waikiki Beach Activities

DCCA State of Hawaii

Downloaded on April 9, 2021.

The information provided below is not a certification of good standing and does not constitute any other certification by the State.

Website URL: <http://hbe.ehawaii.gov/documents>

Business Information

MASTER NAME	WAIKIKI BEACH ACTIVITIES, LTD.
BUSINESS TYPE	Domestic Profit Corporation
FILE NUMBER	99402 D1
STATUS	Active
PURPOSE	TO ENGAGE IN THE BUSINESS OF OPERATING A TOUR BUSINESS AND SALES.
PLACE INCORPORATED	Hawaii UNITED STATES
INCORPORATION DATE	Apr 3, 1995
MAILING ADDRESS	2005 KALIA RD HONOLULU, Hawaii 96815-1999 UNITED STATES
TERM	PER
AGENT NAME	H ROBERT HAMPTON
AGENT ADDRESS	[REDACTED] HONOLULU, Hawaii 96825 UNITED STATES

Annual Filings

FILING YEAR	DATE RECEIVED	STATUS
2021		Not Filed
2020	May 14, 2020	Processed
2019	Apr 3, 2019	Processed
2018	Jun 21, 2018	Processed
2017	May 11, 2017	Processed
2016	May 1, 2016	Processed
2015	Apr 10, 2015	Processed
2014	Apr 10, 2014	Processed
2013	Apr 5, 2013	Processed
2012	Apr 3, 2012	Processed
2011	May 15, 2011	Processed
2010	Apr 7, 2010	Processed
2009	Apr 13, 2009	Processed
2008	Apr 2, 2008	Processed
2007	Jun 3, 2007	Processed
2006	Jun 1, 2006	Processed
2005	Oct 31, 2005	Processed
2004	Jun 4, 2004	Processed
2003	May 29, 2003	Processed
2002		Not Required
2001		Processed



Robert Martin
President & Chief Executive Officer

SALES, SERVICE & MORE
at the Hilton Hawaiian Village
Waikiki Beach Resort

BEACH RENTALS & ACTIVITIES
RETAIL • SPECIAL EVENTS

2005 Kalia Road • Honolulu, HI 96815

Telephone 808.951.4088

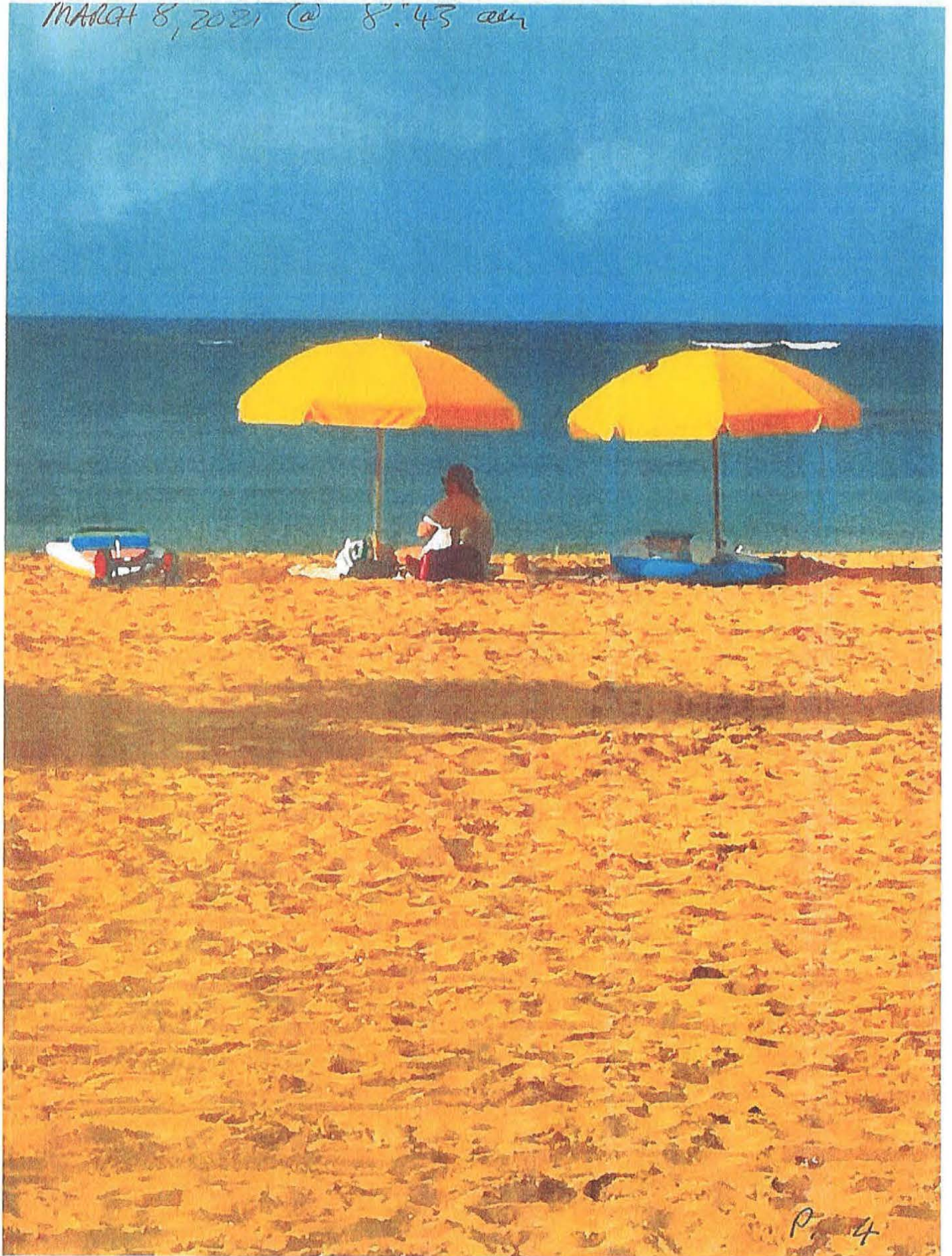
Facsimile 808.951.4089

www.waikikibeachactivities.com

3. Photos from Rob MARTIN / Waikiki Beach Activities



MARCH 8, 2021 @ 8:45 am



P. 4



P. 5

10/20/21 @ 9:00

P.6

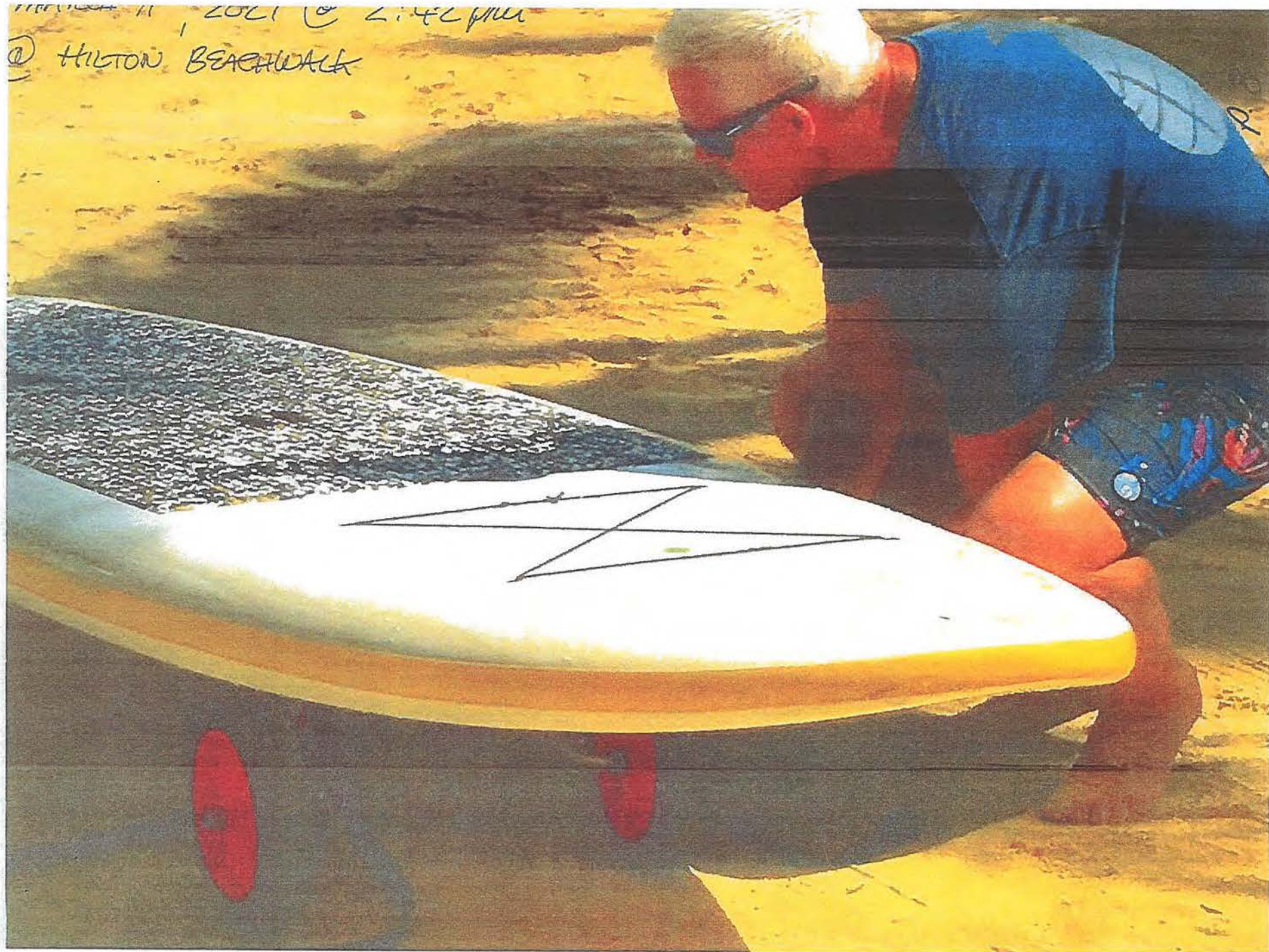


March 11, 2021 @ 4:04 PM

P.7



March 11, 2021 @ 2:42 PM
@ HILTON BEACHWALK

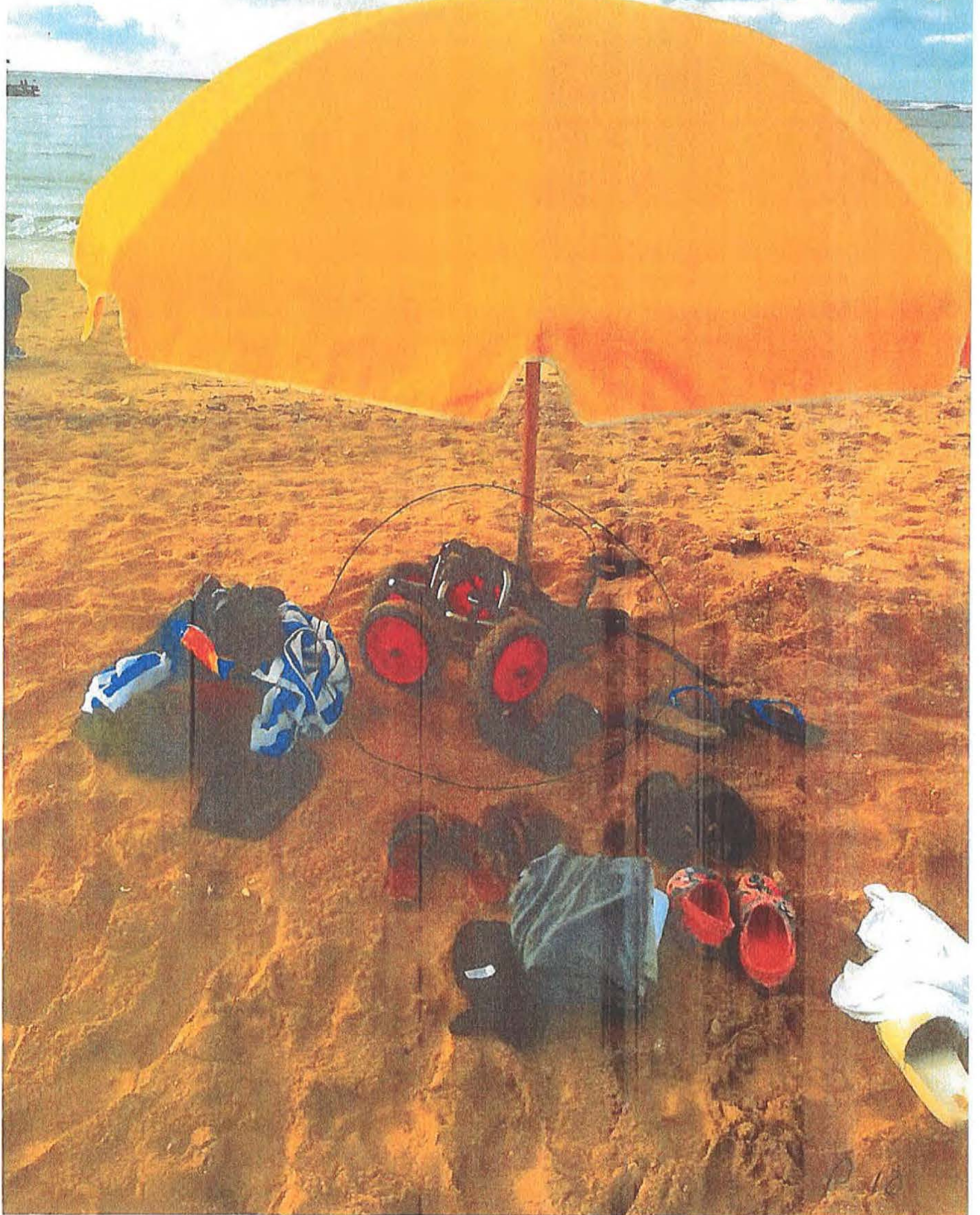


1941, July 15 Littleport

p. 9



MARCH 15, 2021 @ 1:56 am MUC SUR KACE DROK
UMBRELLA (CIRCLED)



March 14, 2001 @ 10:35 am



P. 11

3 YELLOW CHAIRS - PKC-21 CHAIR, MARCH 10, 2001
NOTE CIRCLED CHAIR AND SHOVEL USED BY MR. SAUGER
AND HIS HELPERS, WHO HAVE BEGUN STATIONING ON
THE BEACH DURING OPERATING HOURS.

012



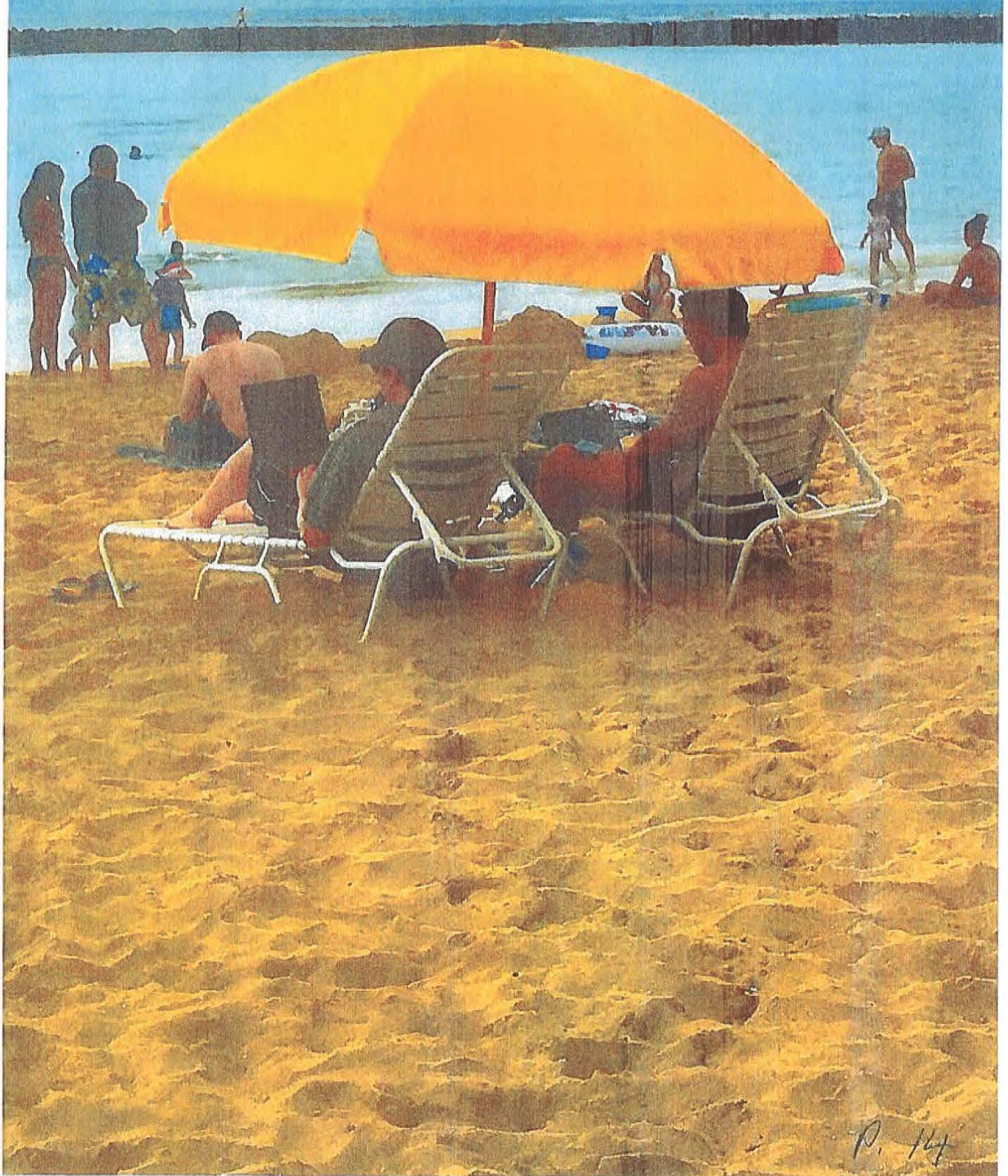
ANOTHER OF MR SAUER'S HELPERS IS
ERIK MORRIS, SEEN HERE WITH "D" ON HIS SHIRT
SPEAKING TO A BEACH GOER, MARCH 16, 2021
@ 11.30 am



MARCH 16, 2021 @ 11:25 AM

2 OF MR. SANGER'S HELPERS STATIONED TO SET UP
ADDITIONAL CLIENTS @ DUKE'S BEACH

THE HELPER SEATED TO THE LEFT IS ROBBIE COATES



P. 164

4. Email thread from Rob MARTIN / Waikiki Beach Actives

[EXTERNAL] Mr. Sanger performing unauthorized commercial beach operations

Robert Martin [REDACTED]

Thu 3/11/2021 4:24 PM

To: Paulele, Robert A [REDACTED]

Cc: Bob Cell [REDACTED] Errol Kane [REDACTED]

Dear Officer Paulele,

Attached are two links to video clips recorded by me at 3:00 pm today, March 11, 2021. They show Chris Sanger and possibly two assistants breaking down his commercial equipment, including umbrellas, chaise lounges, SUPs and paddles in the center of the Duke's Beach Concession.

Today, Mr. Sanger added to the two yellow umbrellas he has been setting up since last Saturday two beach chaises and a third umbrella further down the beach.

We will continue to monitor his actions, and possibly record him setting up his equipment early in the morning.

If you have difficulty opening and viewing the videos, please let me know and I will make them available on a thumb drive.

Thank you.

Rob Martin
Waikiki Beach Activities Ltd.
Managing Agent
Hilton Hawaiian Village Duke's Beach Concession
[REDACTED]

IMG_0062.mp4

[IMG_0063.mp4](#)

[EXTERNAL] March 12th unauthorized commercial activity at Duke's Beach by Mr Sanger

Robert Martin [REDACTED]

Fri 3/12/2021 9:54 AM

To: Paulele, Robert A [REDACTED]

Cc: [REDACTED]; Jeffrey Yedlin [REDACTED]; Bob Cell [REDACTED]

Dear Officer Paulele,

I came to the beach at 6:45 this morning and found three yellow umbrellas positioned in the center of Hilton's prime rental area. I also noted chaises placed under the umbrellas. Later in the morning Mr. Sanger was witnessed conducting a surf class with at least four patrons in the water in front of his umbrellas. I noted his rolling surf and umbrella rack stationed on the sand, nearby.

Thank you.

Rob Martin

Waikiki Beach Activities, Ltd

Managing Agent

Hilton Hawaiian Village Duke's Beach Concession
[REDACTED]

[EXTERNAL] Video from March 12th

Robert Martin [REDACTED]

Fri 3/12/2021 10:13 AM

To: Paulele, Robert A [REDACTED]

Officer Rob,

Here is the supporting video from my earlier report to you this morning.

Mahalo,

Rob Martin

[IMG_0065.mp4](#)

5. Suspect statement from Chris SANGER / Duke Lagoon LLC.

STATEMENT FORM

Report No.

71-0121-0A

Dist. No.

DI

Statement of (Name)

Chris Sanger

Complainant/Victim Name

Bob Hampton

Address

Waiwai Boat Harbor

Address

? ?

Age

D.O.B

SSN

Classification

Res. Phone

Bus. Phone

808-781-5799

Date of Occurrence

First August 27 2019

Location of Interview

Second March 8 2021

Third March 12 2021

I, Chris Sanger, do freely and voluntarily provide the following statement:

During the year 2019, I opened my Beach rental Shop at the Ilikai Hotel as a Commercial tenant. I obtained all my permits for surf instruction through the State of Hawaii. July 3 2019 Bob Hampton owner of Waikiki Beach activities approached me in front of my guests as I was getting out of the water at Duke's beach and told me I was in violation from the state of Hawaii for doing business at Kaiser's surf break. I told him I have all my permits and to check with the state of Hawaii. Bob Hampton walked away irritated and told me I would be hearing from his lawyers. On August 27, 2019 I received a letter from the State of Hawaii. The subject Unauthorized Commercial Activities on Duke's Beach. Not only is this not true, but I feel this is selective law enforcement. I did my research on who wrote the letter and found out it was Barry (don't know his last name) I called Barry and asked him why I was sent this letter without checking to see if this was true, he told me, if I was in compliance with the state not to worry about the letter he sent me (Barry). I feel this is a Bully tactic sent from Bob Hampton.

I have read this statement prepared by _____, which consists of _____ (typewritten) (handwritten) pages, and have been given the opportunity to make corrections thereon. I attest that this statement is true and correct, to the best of my knowledge, and that I gave this statement freely and voluntarily without coercion or promise of reward.

Signed: Chris SangerDate: March 16Time: 1030 AM

Witnessed by:

Investigator: R. P. [Signature]Date: 3/16/21Time: 1130Date: 3/16/21Time: 1130

STATEMENT FORM

Report No.

21-12671-01

Dist. No.

D1

Statement of (Name)

Complainant/Victim Name

Address

Ala Wai Boat Harbor

Address

??

Age

D.O.

SS

Classification

Res. Phone

Bus. Phone

Date of Occurrence

Location of Interview

I, Chris Sanger, do freely and voluntarily provide the following statement:

Is it a process or merely the whim of the chairperson? This was written purposely vague and loosely written to fit Waikiki Beach Activities.

On March 12 2021 Mr Rivira from DNR approached me and told me he had a Complaint that I was doing surf lessons on the beach and that the Hilton is the only one who can do this. ~~I told~~ He told me they were short staff and he came from Waianae to follow up on this supposed violation. This is called selective law enforcement coming directly from Sparky Kane owner and subcontractor for the Hilton, he is pushing his weight around and I feel this is Harassment. From Sparky not office Rivira or Office Paulele they are only doing there job. The beach is open to all people and if a Guest comes to Duke's Lagoon to rent, Our Customer service helps the Guest down to the beach to set up there equipment. I have not called DNR on ~~the~~ Bob Hampton because I don't have a problem with them. Bob Hampton keep calling the State

I have read this statement prepared by _____, which consists of _____ (typewritten) me (handwritten) pages, and have been given the opportunity to make corrections thereon. I attest that this statement is true and correct, to the best of my knowledge, and that I gave this statement freely and voluntarily without coercion or promise of reward.

Signed:

Date: March 16

Time: 1030 AM

Witnessed by:

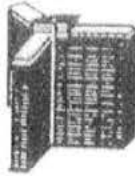
Investigator:

Date:

Time:

6. Letters from Ilikai and Colliers regarding right of business

THE



ILIKAI

Owners of Ilikai Apartment Building, Inc.

1777 Ala Moana Blvd. Suite 226 • Honolulu, HI 96815 • Ph. 942-1828 • Fax: 942-2443

March 9, 2021

State of Hawaii, Dept. of Land & Natural Resources
1151 Punchbowl St.
Honolulu, HI 96813

Re: Dukes Lagoon Rentals

To whom it may concern,

Duke's Lagoon that is owned and operated by Chris Sanger is a commercial tenant in the Ilikai lobby. Chris provides excellent customer service with the beach and ocean related items rented from his shop. We are very happy with the excellent reputation he brings to the Ilikai would hope that everyone could show the true "Aloha Spirit" he does. We look forward to many years of him servicing our guests.

Rob Johnson, ARM®, CMCA® AMS®
The Ilikai - General Manager
Office (808)942-1828

[Redacted]

www.ilikaiaaoao.com



VIA EMAIL

March 10, 2021

Mr. Chris Sanger
Duke's Lagoon at the Ilikai

Aloha DLNR,

Chris Sanger is a commercial tenant of the Ilikai Retail and is authorized to conduct business at the Ilikai relating to the following:

- Beach Rentals
- Umbrellas
- Surfboards etc.

Chris Sanger is an excellent tenant of the Ilikai and will comply with all legal rules / regulations of the City and County of Honolulu and state of Hawaii and DLNR. Please let us know if you have any questions or concerns.

Thank you,

Sincerely,

COLLIERS INTERNATIONAL REAL ESTATE
MANAGEMENT SERVICES (HI) LLC
Managing Agent for SFI Ilikai Retail Owner LLC

Phillip Hunt
Property Manager



7. Commercial Use of Permit for Dukes Lagoon

#	CONT CTR	BUSINESS NAME	ADDRESS	OWNER/REP NAME	PERMIT NO.	TYPE OF PERMIT	ACCT NO.	PHONE	E-MAIL	NUMBER	EXP. MONTH	WAIKIKI	SHORES & SHOREWATERS	OTHER	TYPE OF ACTIVITY
1	831	Achraf Marzouki dba Hawaii Waves Surf School	58-274 Kamehameha Hwy. #B, Haleiwa, HI 96712	Achraf Marzouki, Owner	20-17142	CUP	21264			V06543 V06542 (20)	7/31/2021		Ocean waters at Puena Point, Chun's Reef and Lanikaia Beach Park		Surf Instruction
1	831	Adventure Honolulu LLC	47-377 Kapehu St., Kaneohe, HI 96744	Michael Luttrell, Owner	20-17106	CUP	18192			From Shore Only	6/30/2021	Kaimana Beach	Shark's Cove, Haleiwa BP, Electric Beach and Magic Island		Scuba Instruction from Shore
1	828	Aloha Beach Services, LLC	6123 Wakine Place Honolulu 96821	Harry Robello, Owner	20-11494	CUP	16648			W01476 W01564 (43)	3/31/2022		Waters off Moana Surfside Hotel		Surf, SUP and Canoe Tours
4	826	Aloha Jet Ski, LLC	P.O. Box 915, Honolulu, HI 96808	Timothy Lennman, Owner	20-68149	ORMA	8016			W00662 W00663 (2)	2/28/2022			Keolu ORMA Thrill Craft Zone C	Jet Ski
5	831	Aloha Surfing Ohana LLC	66-130 Olana Place, Waiialua, HI 96791	Gabrielle Kahalelo, Owner	CO048416	CUP	21550			V01426 V01436 (11)	3/12/2021		Haleiwa Beach Park, Puena Point Beach Park, Lanikaia Beach, Chun's Reef, Chocolate Surf Break, Anuhulu Bridge River		Surf/ SUP/ Kayak Instruction
6	828	Aloha Waikiki Surf School LLC	444 Niu Street #102 Honolulu, HI 96815	Randall Spear and Mark Liddle	20-16829	CUP	20212			V04615 V04640 (6)	6/30/2021		Ala Wai SBH, and Queen's Beach Waters		Surf Instruction
7	828	Amp Surf, Corp.	2463 Kuhio Avenue, Honolulu 96815	Jatara Kato, Owner	CO048391	CUP	16649			V01386 V01425 (40)	3/31/2021		Ocean Waters off of Ala Moana BP		Surf Instruction
8	828	Anela Kai Catamarans, Inc.	1525 Wilder Avenue #1007 Honolulu, HI 96822	John Savio, Owner Fariyah Savio, Co-Owner	20-18712	ORMA	17004			V08356 (1)	9/30/2021		Waikiki OW		Catamaran Tours
9	828	Atlantis Submarines Hawaii, LLC	1600 Kapiolani Blvd. Ste. 1610 Honolulu, HI 96814	Mark A. Almaraz, GM	20-16821	CUP	17201			V06526 V06527 (2)	7/31/2021		Waikiki Offshore Ocean Waters		Submarine Tours
11	828	Blue Ocean Breeze Surf School LLC	575 N. Kalaheo Avenue, Kailua, HI 96734	Frank Da Silva Cabral de Melo, Owner	20-13287	CUP	21058			V01525 V01516 (12)	5/31/2021		Ala Moana Beach Park Ocean Waters		Surf Instruction
12	838	Bob's Hawaii Adventure LLC	7062 Kalamanaole Hwy Honolulu, HI 96825	Sam Montgomery, Owner	20-16596	CUP	16893			V03537 V03538 (2)	5/31/2021		Maunaloa Bay and all Oahu Ocean Waters		Scuba, SUP, Surf, Fishing, dolphin tours
13	831	Surf Girls	PO BOX 8, Haleiwa, HI 96712	Carol Philips, Owner	20-17112	CUP	18501			V08597 V08619 (22)	9/30/2021		Puena Point, Chun's Reef, Anahulu River		Surf and SUP Instruction/Tours
14	831	Buttons Surf School LLC	66-739 H4 Haleiwa Road, Haleiwa, HI 96712	Hinata Hart, Owner		CUP	19745			W00127 W00174 (48)			Puena Point, Chun's Reef, Anahulu River, Lanikaia		Surf/SUP Instruction
15	831	Catch A Wave LLC	P.O. Box 178, Haleiwa, HI 96712	Timothy Brennan, Owner	20-17127	CUP	19879			V01462 V01468 (7)	3/31/2021		Chun's Reef, Puena Pt, Kaiaia Bay, Haleiwa BP, Lanikaia		Surf/SUP Instruction
16	826	Diamond Head Parasail & Watersports, Inc.	1746 A Mikahala Way, Honolulu 96816	Greg Longnecker, President	20-43663	ORMA	7100			V09681 V09692 (12)	10/31/2021			Keolu ORMA Thrill Craft Zone	Jet Ski
17	827	Diamond Head Parasail, Inc.	1746 A Mikahala Way, Honolulu, HI 96816	Greg Longnecker, President	20-19479	ORMA	8001			V09680 (1)	10/31/2021			South Shore ORMA Parasail	Parasailing
19	828	Drive Oahu, Inc.	609 Keawe St., Honolulu, HI 96734	Brian Benton, President	20-16827	CUP	18963			V02112 V02146 (1 V02651 V02750 (252)	4/30/2021		Kuhio Beach Park Ocean Waters (From County stands #1 and #2)		Surf/SUP Instruction, Canoe Tours
20	828	Double Up, Inc. dba CUPS	822 Kaheka Street, Honolulu 96814	Makoto Kambara, President	20-16306	CUP	16608			W00626 W00635 (10)	2/28/2022		Ala Moana BP, Ala Wai SBH Helepad		Surf Instruction
21	828	Duke's Lagoon LLC	1777 Ala Moana Blvd. #105C Honolulu, HI 96815	Chris Sanger, Owner	20-16834	CUP	21068			V01501 V01520 (20)	5/31/2021		Waikiki Ocean Waters fronting Duke Kahanamoku Beach		Surf Instruction
22	831	E & P Charters LLC	87-561 Farrington Highway #121, Waianae, HI 96792	Jamie E. Davis, Manager	20-17109	CUP	18341			V06528 (1)	7/31/2021		West Side Ocean Waters Koolina to Kaena Point		Boat Tours
23	828	Faith Hawaii Surf School	6143 Summer Street, Honolulu 96821	Antone (Tony) Moniz, Owner	CO047499	CUP	16543			V00018 V00066 (49)	1/31/2021		Outrigger Reef Waikiki Beach Resort		Surf/SUP Instruction and Canoe Tours
24	828	GO GO YS, Inc.	808 Hauoli Street, Honolulu, HI 96826	Young Kim, Owner	CO048243	CUP	17711			V01105 V01124 (20)	2/28/2021		Waikiki OW Surf Spots, Queen's and Pops only		Surf Instruction
25	828	Gone Surfing Hawaii Corporation	P.O. Box 89044, Honolulu 96830	Joanne Howard, Owner	CO043408	CUP	16517			V00083 V00141 (61)	1/31/2021		All County beach parks on Oahu with restrictions on permit		Surf/SUP Instruction
26	831	Hawaii E-Foil Experience LLC	1216 Akumu Street, Kailua, HI 96734	Alika Ferreira, Owner	20-53564	CUP	T0000369			V10468 V10469 (2)	10/31/2021		Waimanalo Bay (Briwols Field) and Keolu Lagoon		E-Foil Instruction
27	831	Hans Hedemann Surf, Inc.	P.O. Box 240025, Honolulu 96824	Hans Hedemann, Owner	20-17095	CUP	17006			V04651 V04750 V04843 V04902 (120)	6/30/2021		Park Shore Hotel & Halekulani, Turtle Bay Ocean Waters and Kahala Hotel Ocean Waters		Surf/SUP Instruction, Canoe Tours
28	828	Hawaii Hot Spot Tours, L.L.C.	P.O. Box 821, Aiea 96703	Errol Kane, Owner	20-16810	CUP	16875			V01601 V01645 (43)	5/31/2021		Waikiki OW fronting Hilton HV		Surf Instruction
29	831	Hawaii High Surf Solutions LLC	66-158 A, Haleiwa Road, Haleiwa, HI 96712	James Stewart, Owner	20-62038	CUP	T0000683			V00175 V00179 (5)	1/31/2022		Sand Island and Haleiwa		E-Foil Instruction
29	838	Hawaii Kai Surf LLC dba Hawaiian Surf Adventures	288 Anapalau Place, Honolulu 96825	Satoshi Mitsuda, Owner	20-16595	CUP	16846			V02264 V02271 (10 surf/boat) V02274 V02276 (3 vests)	4/30/2021		Maunaloa Bay Waters and all Oahu offshore waters (except Kailua and Kaneohe Bay)		Scuba, Surf/B39 D39/SUP Inst, Canoe Tours
30	831	Hawaiian Ocean Adventures, LLC	53-834 E. Kamehameha Highway, Hauula, HI 96717	Brett Prejean, Owner	20-17103	CUP	17843			V01668 V01707 (40)	3/31/2021		Ko Olina, Kailua, Lanikai, Waimanalo, Punaluu, Haleiwa Ocean Waters		Surf/SUP, Kayak/Canoe and Canoe Sailing Tours
31	827	Hawaiian Parasail, Inc.	1125 Kaeleku Street, Honolulu, HI 96825	Mark Neumann, President	20-19481	ORMA	13746			W00654 W00659 (2)	2/28/2022			Maunaloa Bay, South Shore ORMA Parasail	Parasail Tours
32	828	LETTER MAILED 03/03	1022 Belser Street, Honolulu, HI 96816	Danny Tamonte, President	CO048239	CUP	16553			V00647 V00686 (40)	2/28/2021		Ala Moana Bowl's at Hilton/Ala Wai Helepad		Surf Instruction
33	838	Honolulu Diving Co., Inc.	1427 A, Makuna Place, Honolulu, HI 96816	John Hansen, Operations Manager/Captain	20-16599	RAMP	6311			W00657 (1)	2/28/2022			Ramp Maunaloa, Sand Island, Waianae & Haleiwa	Scuba Instruction/Tours, Whale and Dolphin watching, Sunset Cruises, and Shark Tours
34	828	Hook Up Surfing LLC	850 8th Avenue, Apt. A, Honolulu 96816	Ivan Duque, Owner	20-16819	CUP	17096			V04851 V04852 (32)	6/30/2021		Surf Spot Puukinihi, Flat Water, Tongu, Natatorium, Freddyland, Toes/Secret, Chun's Reef, Lanikaia and between Three		Surf and SUP Instruction
35	828		135 Uluniu Avenue #101, Honolulu, HI 96815	Paulo Fernando De Azevedo, Owner	20-16835	CUP	21169			V04641 V04650 (10)	6/30/2021		Waikiki OW Fronting Kuhio Beach Park		Surf Instruction
36	838	Island Parasail LLC	377 Keahole Street, #E 103, Honolulu, HI 96825	Jeffrey & Courtney Krantz, Owner	20-16593	ORMA	6860			W00650 (1)	2/28/2022			Maunaloa Bay ORMA Parasail	Parasailing
37	838	Island Watersports Hawaii, Inc.	7062 Kalamanaole Hwy, Honolulu, HI 96825	Sam Montgomery, Owner	20-16597	RAMP	19038			V03521 V03524 (4)	5/31/2021		All Oahu Waters		Scuba, Surf/SUP, fishing and boat tours
38	828	Islands Beach Activities, Inc.	1525 Wilder Avenue #1007 Honolulu, HI 96822	John Savio, Owner Fariyah Savio, Co-Owner	20-38711	CUP	17003			V08355 (1)	9/30/2021		Waikiki OW		Catamaran Tours
39	831	James A. Antunez dba Hawaii Surfing Academy	955 Akepo Lane #417 Honolulu, HI 96817	James Antunez, Owner	20-17092	CUP	16843			W02251 W02262 (12)	4/30/2022		Chun's Reef, Puena Point and Anahulu		Surf and SUP Instruction
40	831	Jet Boat Rides LLC	92-100 Waipahe Place, Kapolei, HI 96707	Sean Stone, Owner	20-54204	CUP	T0000395			V10470 V10471 (2)	10/31/2021		Waters off of Ko Olina and Waianae Coastline		Boat Tours
41	831	Kailua Sailboards & Kayaks, Inc.	130 Kailua Road, Kailua 96734	Egmar Klemmer, Owner	20-49124	CUP	17380			V04451 V04585 (15)	9/30/2021		OW off Kailua Beach Park and Lanikai		Kayak and SUP Tours

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
COMMERCIAL OPERATIONS PERMIT

Type of Commercial Operations:

- ☒ Commercial Use Permit
☐ Commercial Ramp Permit
☐ Vessel Moored Elsewhere (VME)

Date: 05/28/2020

Permit No.: 20-16834

Account No.: [REDACTED]

This permit authorizes DUKE'S LAGOON LLC (hereinafter referred to as the Permittee) to conduct the describe commercial activities (on signature page) on the ocean waters of the State of Hawaii located on the island of Oahu, the Ocean recreation management area or non-designated management area, to commence on 06/01/2020 and expires on 05/31/2021 unless terminated for cause.

Copies of the following exhibits are submitted for review and the record (if applicable):

- ☐ Vessel Documentation and/or Vessel Registration
- ☐ Vessel Inspection or Approved Marine Surveyor
- ☐ General Excise Tax License
- ☐ DCCA Certificate of Good Standing
- ☐ Letter of Permission from Land Owner for Access to the State Ocean Waters
- ☐ Certificate of commercial insurance policy naming the State of Hawaii as an additional insured, containing sufficient coverage limits and meeting all other requirements as outlined in Hawaii Administrative Rules §13-231-65
- ☐ Certificate of Compliance from the Hawaii Department of Taxation
- ☐ Partnership, Joint Venture, Corporate Exhibits
- ☐ PUC for vehicle(s), if applicable
- ☐ Certificate of Inspection for any vessels used in your commercial operation, if applicable.

1. The Permittee agrees to abide by all applicable Federal, State, and County laws and all boating and shore water rules promulgated by the Department of Land and Natural Resources (referred to as the Department). In addition to any fines or penalties a court of law may impose, any violation(s) of the provisions of the aforementioned laws or rules may cause this permit to be terminated by the Department of Land and Natural Resources Division of Boating and Ocean Recreation (the "Department") by written order of its Representative, and the vessel or operation shall immediately cease commercial activity. Issuance of a commercial use permit from DOBOR does not grant you transit rights to access the shoreline or conduct commercial activities on shore.
2. The Permittee agrees to operate the vessel or equipment described in this permit in accordance with all applicable rules and regulations regarding passenger-carrying capacity and commercial vessel activities.
3. When applicable, the Permittee agrees to present proof, upon request, of Coast Guard certification for the vessel(s) registered with the Department.
4. The fee for this commercial use permit will be as follows:
 - a. Commercial permittees operating from state land: The cost for a commercial use permit shall be \$300.00 per month or 3% of your gross receipts, whichever is greater.
 - b. Commercial permittees operating from a private or county facility or land and said operation does not involve the use of state fast land or land within a shoreline area: \$300.00 per month due and payable by the first day of each month.

- c. Commercial permittees possessing a harbor commercial use permit and a commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, who are paying their mooring fee or 3 per cent of gross receipts per month (whichever is greater) under the harbor commercial use permit, shall not be required to pay an additional 3 per cent of gross receipts per month under the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, provided that the payment made to the department is based on the total of gross receipts acquired under the harbor commercial use permit and the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate.

The foregoing fees are subject to change based upon amendments made to Hawaii Revised Statutes and or Hawaii Administrative Rules.

5. The fees stated above are due and payable to DOBOR in advance of the first day of the month. Not later than 30 days following the end of the month, the Permittee shall submit to the Division a report of gross receipts for the month plus payment of any additional amount required by the percentage of the gross receipts specified in paragraph 4. Failure to submit the report of gross receipts as required shall be cause for termination of the commercial use permit.
6. During scheduled events pursuant to a marine event permit or other official permission and authorized by the State or U.S. Coast Guard, vessel(s) or operations issued commercial use permits may be required to adjust their schedules or temporarily cease activity as directed by the Department.
7. The Permittee agrees to notify the Department in writing of any changes concerning ownership, address, vessel inventory or operator(s) of a vessel(s) within 7 days of the date of change. Failure to promptly notify the Department of any changes may cause this permit to be terminated by the Department.
8. The Permittee shall at all time use due care for public safety and shall defend, hold harmless and indemnify the State of Hawaii, its officers, agents and employees from and against all claims or demands, including claims for property damage, personal injury or death arising out of or incident to the operation of said vessel or operation.
9. The permit charges are for the privilege of operating a commercial vessel or operation in state navigable waters in the manner stated above. Any other use of harbor/ramp facilities or services must be requested and approved separately.
10. The duration of this commercial operating area use permit shall not exceed the period of 1 year from the date of commencement.
11. The Department may immediately revoke a commercial use permit without a hearing for activity that endangers or may endanger the health or safety of passengers or the public, and may suspend or revoke a commercial use permit for violation of any rules of the Department, if the activity or offense is not corrected following seventy-two (72) hours notice by the Department of the violation. The permit holder shall have ten (10) days from receipt of the notice of suspension or revocation to request in writing an administrative hearing. The administrative hearing is solely for the purpose of allowing the permit holder to contest the basis for suspension or revocation of the permit.
12. This commercial use permit shall be kept in the immediate possession of the Permittee or its agent(s), or at a place of safekeeping in the immediate vicinity of the permitted activity at all times when operating under this commercial use permit and Permittee or its agent(s) shall display the same upon the demand of a Federal, State, or County Enforcement Officer, or representative of the Department.
13. Gross Receipts Defined: Gross receipts shall include all receipts, whether by coin or currency, on account, by check or credit card, derived or received by the Permittee as a result of its operation herein granted and shall include the sales prices received or billed by the Permittee from the sale or rental of its equipment or services of: See signature page. The Permittee shall not be credited with, nor allowed to have any reduction in the amount of the gross receipts, as hereinabove defined, which results from any arrangements for illegal rebates or kickbacks or hidden credits given or allowed to customers.

14. Business Practices & Records: In connection with the obligations of the Permittee, Permittee hereby agrees to:
- a. Prepare and keep for a period of not less than three (3) years following the end of each permit year adequate records which shall show daily receipts from all sales and other transactions by the Permittee. The Permittee shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions, whether for cash or credit. The Permittee shall issue to each customer a receipt or sales slip for each transaction and must be recorded on serially-numbered receipts or sales slips. The Permittee further agrees to keep in storage for at least one (1) year following the termination, suspension, or revocation of the permit, all pertinent original sales records, serially-numbered sales slips and such other sales records, as would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of the Permittee's sales and gross receipts.
 - b. Submit to the Department on or before the 30th day of each and every month following each permit month (including the 30th day of the month following the end of the term) at the place fixed for payment of permit fees, a written statement using forms prescribed by the Chairperson of the Department of Land and Natural Resources to be certified as correct by the Permittee or by a person duly authorized by the Permittee to so certify showing in accurate detail, the amount of gross receipts for the preceding month and shall further submit to the Department on or before the 60th day following the end of each permit year at the place fixed for payment of fees, a written statement certified as correct by the Permittee or by a person duly authorized by the Permittee to so certify showing in accurate detail the amount of gross receipts during the preceding year duly verified by an independent Certified Public Accountant. The statements referred to herein shall be in such a form and style and contain such detail and breakdowns as the Department may require. Without any prejudice to any remedies herein provided for such default, if the Permittee shall fail to promptly furnish any such monthly report or Certified Public Accountants Annual Verification report, the Department may have such report prepared on the Permittee's behalf by an accountant to be selected by the Department, at the expense of the Permittee. The Permittee shall furnish to such accountant all records requested for the purpose of preparing such reports, and the Permittee shall pay to the Department all expenses incurred by the Permittee in securing such reports. Furthermore, the Department may make assessments upon the Permittee by recourse to such procedures selected by the Department which would produce reasonable gross receipts expectation upon which percentage charges may be computed.
- In the event that records have not been prepared and kept in accordance with the provisions set forth herein, the Department shall, in addition to all other payments required herein, be entitled to demand and receive an additional payment of ten percent (10%) of the applicable fee if the Permittee is paying fees based on percentage for the period or periods involved. Permittee shall grant unto the Department at all reasonable times access to all books, accounts, records and reports, including gross income tax reports, showing daily sales and at any reasonable times on twenty-four (24) hours notice will permit a complete audit to be made by the Department's Account or by a Certified Public Accountant of the Permittee's entire business affairs and records relating to the business authorized by this permit for the term of this permit.
- The Permittee will cooperate fully in the making of any inspection, examination or audit. Should such audit by the Department's Accountant or by a Certified Public Accountant disclose that rental has been underpaid by two percent (2%) or more for any period under examination, the Department shall, in addition to the remedies provided in the above, be entitled to reimbursement of the reasonable cost of any such audit in addition to the deficiency. If such audit by the Department's Accountant or by a Certified Public Account shall disclose that rent has been underpaid by five percent (5%) or more for the period under examination, the Department shall have the right, upon ten (10) days written notice to terminate this permit.
15. Time of Payment: The minimum monthly guaranteed fee required herein, shall be paid monthly, in advance, without notice, on the first day of each and every month of each and every year of the term hereof.
16. This permit does not grant any property rights or exclusive privileges.
17. The Department reserves the right to impose further restrictions.

2100-01-01

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

DESCRIPTION OF EQUIPMENT FOR USE IN STATE OCEAN WATERS

Contact Name Chris Snger Title President

Business Name Duke's Lagoon LLC

Business Work Phone (808)492-1232

Cell [REDACTED]

Fax

Email [REDACTED]

Mailing Address 1741 Ala Moana Blvd unit 84 Honolulu, HI 96815

*ACTION N New R Renewal D Deletion

SURFBOARDS:

*ACTION	Manufacturer/Builder Name	Color	Length	Quantity	Reg. Fee
R-5/N-15	NSP	White	11 feet	20	\$20.00
DC	blue planet Tough Tech	Brown	11 feet	15	\$0.00

OTHER EQUIPMENT:

TOTAL = \$20.00

*ACTION	Manufacturer/Builder Name	Color	Length	Quantity	Reg. Fee
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The description listed above is correct to the best of my knowledge. I agree to comply with all of the Department's Hawaii Administrative Rules. I agree to abide by all Federal and State laws, rules and regulations that govern the use of Oahu's ORMAS, vessels, equipment and facilities, including providing this equipment registration application, upon demand, to a police officer, or a representative of the department.

Signature of Officer Chris Sanger Title President

Print Name Chris Sanger Date 03/20/2020

DOBOR USE ONLY:

✓ APPROVED Date 06/04/20 Fees Paid \$ 20.00 Receipt Number 067095

Authorized Signature _____

Decals Numbers Issued V03501 - V03520 (20)

Expiration Date of Decals 05/2021

8. Letter to SANGER from the State of Hawaii



Sanger
587-0430



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
ROBERT K. MASUDA
FIRST DEPUTY
M. KALEO MANUEL
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

August 27, 2019

Chris Sanger
Duke's Lagoon LLC
1741 Ala Moana Boulevard, Suite 400
Honolulu, Hawaii 96813

✓ Chris Sanger
Duke's Lagoon LLC
1777 Ala Moana Boulevard, Suite 400
Honolulu, Hawaii 96813

Dear Mr. Sanger:

Subject: Unauthorized Commercial Activities on Duke Kahanamoku Beach

Recently, it has come to our attention that your company was occupying portions of the Duke Kahanamoku Beach on multiple dates for surfing instructions to your clients.

We consider your activity to be in violation of the respective sections of Hawaii Administrative Rules described below:

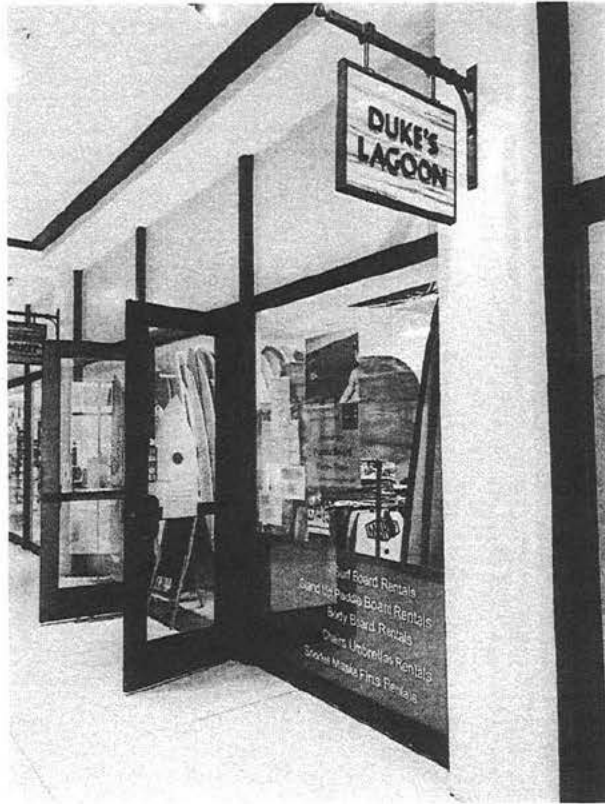
§13-221-35, Commercial activities. "No person shall engage in commercial activities of any kind without a written permit from the board or its authorized representative."

§13-221-46, Business operations. "No person shall solicit any business except in accordance with a permit, contract, license, lease, concession, or other written agreement with the board or its unauthorized representative."

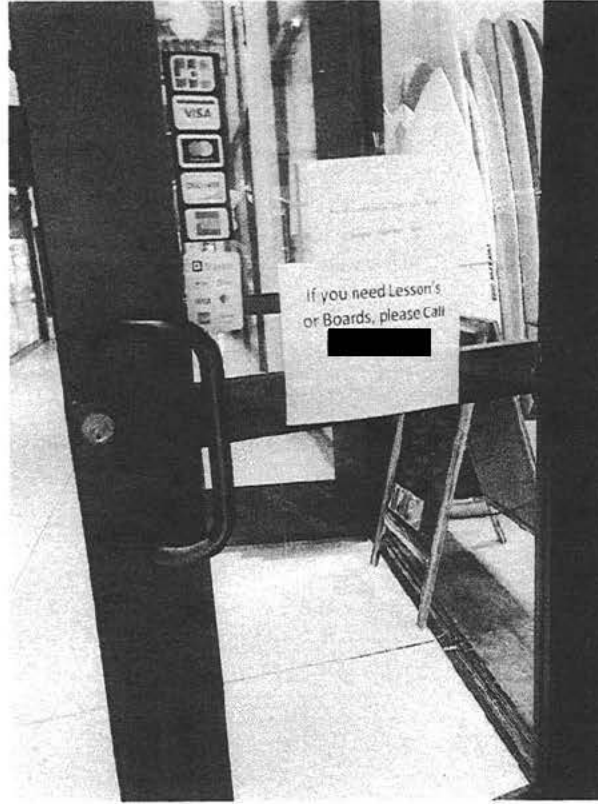
Pursuant to the Commercial Use Permit No. CO045676 dated June 3, 2019 issued by the Division of Boating and Ocean Recreation, your company is not authorized to have any commercial activity, including surf instruction, on the Duke Kahanamoku Beach. We request your cooperation by ceasing all unauthorized activities immediately.

Any violation of the Hawaii Administrative Rules is subject to a fine to be imposed by the Board of Land and Natural Resources up to ONE THOUSAND DOLLARS (\$1,000) for each violation per day pursuant to §171-6, Hawaii Revised Statutes, in addition to administrative costs incurred by the Department.

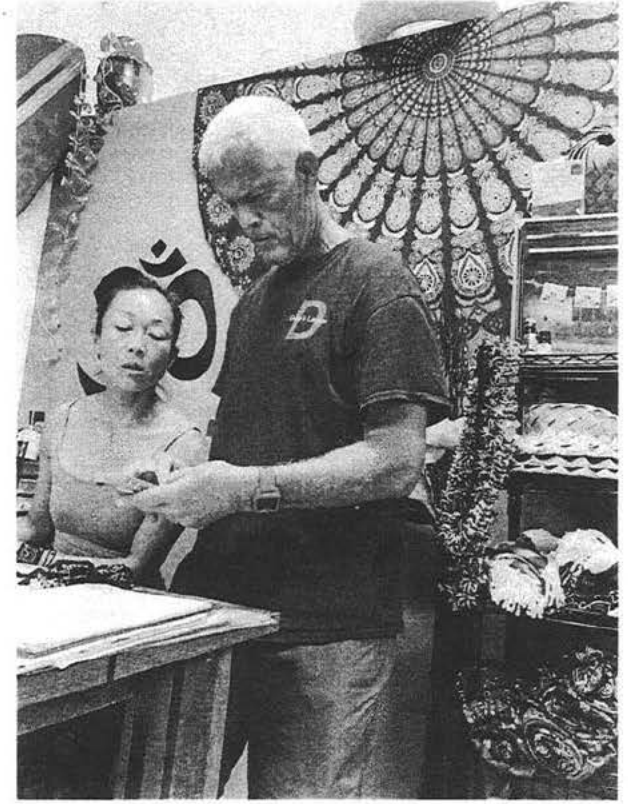
9. Photos of SANGER's business store front



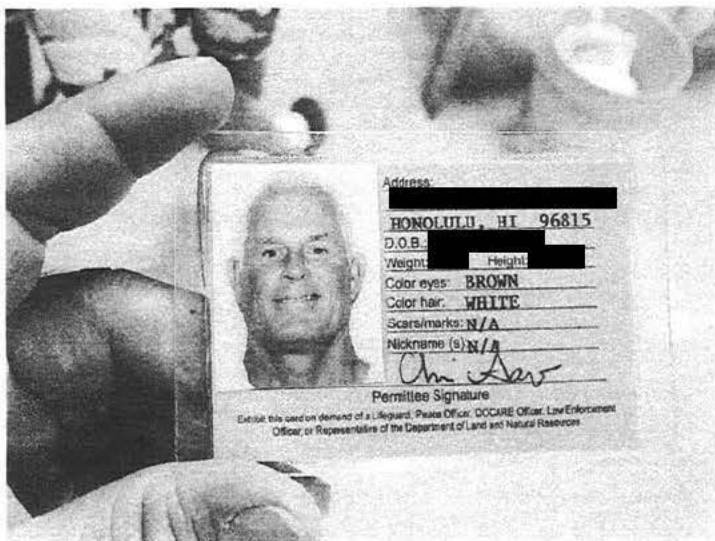
Business store front
located within Ilikai
Hotel



Listed at the door
entry inside the
business store front



Chris SANGER inside
business store front



Valid Blue Card



ORMA decals confirmed
with DOBAR



Two umbrellas observed at initial investigation at approximately 1049 hours on 03/08/21



Photos shared with me from Rob MARTIN
On 03/08/21



Photos shared with me from Rob MARTIN
On 03/08/21



Photos shared with me from Rob MARTIN
On 03/08/21



Photos shared with me from Rob MARTIN
On 03/08/21

10. Email thread from SANGER

[EXTERNAL] Dukes lagoon

Duke's Lagoon LLC [REDACTED]

Wed 3/10/2021 1:48 PM

To: Paulele, Robert A [REDACTED]

 1 attachment (590 KB)

GL6027--Original.pdf

Aloha Robert

Section 14 subletting

The first sentence contradicts the second sentence.

Bob Hampton and Rob Martin had the contract changed to fit there needs. Please find out who on the state level did this. Total corruption on waikiki beach activity's Rob and Bob's company and corruption on the state.

Mahalo Hawaiian for doing your job.

Warmest Aloha

chris

[EXTERNAL] barry close door meeting with Waikiki Beach Activity's on state contract,

Duke's Lagoon LLC [REDACTED]

Thu 3/11/2021 9:51 AM

To: Paulele, Robert A [REDACTED]

Aloha Robert,

Yesterday i talked with Barry about the state issued beach contract, i asked him who was involved with drafting the contract and he said he and the state lawyers where involved on making the contract.

Bob Hampton was present with Berry and the state lawyers to fit the contract for Waikiki beach activity's needs, Ryan Roth was Bob Hamptons General Manger at the time this took place. Ryan saw the first draft of the contract and watched the second being changed to fit WBA's needs.

WBA has had many sub contractors of the years.

Alohawindsurfing sub contractor Hot spots surf school sub contractors yoga school sub contractor sharp shooter sub contractor all of these company's are not the Hilton but WBA uses the Hilton name to harass company's doing the right thing.

i would like a face too face meeting with Russell Tsugi 5870419 to plead my case. Berry is corrupt and helped Bob Hampton change the state contract. Barry has also harass me two time's now with out merit because Bob Hampton pushing his weight.

Thank you for doing your job.

Warmest Aloha

Chris

Re: [EXTERNAL] Re: Failure Notice

Chris Sanger [REDACTED]

Sun 3/14/2021 10:12 AM

To: Paulele, Robert A [REDACTED]

Aloha Robert,

I'm in the shop all day today and we close at 4 pm and I will also be in the shop on Monday until 3pm.

Mahalo

Chris

Sent from Yahoo Mail for iPhone

On Saturday, March 13, 2021, 11:13 PM, Paulele, Robert A [REDACTED] wrote:

Aloha Chris,

I left you a VM earlier today. My investigation is still open. I am more than happy to meet with you on tomorrow or Monday regarding your concerns. Please let me know what works best for you.

Best,

Rob Paulele

Get Outlook for iOS

From: Chris Sanger [REDACTED]

Sent: Saturday, March 13, 2021 4:44:30 PM

To: Paulele, Robert A [REDACTED]

Subject: [EXTERNAL] Re: Failure Notice

Sent from Yahoo Mail for iPhone

On Saturday, March 13, 2021, 9:57 AM, [REDACTED] wrote:

Sorry, we were unable to deliver your message to the following address.

[REDACTED]
No mx record found for domain=dukesbeach.com

----- Forwarded message -----

11. Email thread from Barry CHEUNG and Concession Contract

FW: [EXTERNAL] Picture taken at 9:00 am 3-8-21 by WBA

Villalobos, Gerard P [REDACTED]

Mon 3/8/2021 10:45 AM

To: Paulele, Robert A [REDACTED]

1 attachments (81 KB)

IMG_0022.heic

From: Cheung, Barry W

Sent: Monday, March 08, 2021 10:10 AM

To: Villalobos, Gerard P [REDACTED]

Subject: Fw: [EXTERNAL] Picture taken at 9:00 am 3-8-21 by WBA

This one just came in. Do they need to call the Waimano first, for record purposes?

From: Bob Hampton [REDACTED]

Sent: Monday, March 8, 2021 10:09 AM

To: Cheung, Barry W [REDACTED]

Cc: Debi Bishop [REDACTED] Robert Martin [REDACTED]

Subject: [EXTERNAL] Picture taken at 9:00 am 3-8-21 by WBA

Aloha Barry

Sanger has again set up two Rental umbrellas on Duke Kahanamoku Beach. Sangers umbrellas have yellow canopies and he has also included a SUP surfboard. You can see it lying next to his yellow umbrellas.

His unapproved activity is preventing Hilton from using this portion of the beach pursuant to the Concession agreement.

Aloha

Bob

Sent from my iPhone

Re: Agreement

Cheung, Barry W [REDACTED]

Sat 3/13/2021 4:11 PM

To: Paulele, Robert A [REDACTED]

Monday is fine. Thanks.

Get [Outlook for iOS](#)

From: Paulele, Robert A [REDACTED]

Sent: Saturday, March 13, 2021 4:11:06 PM

To: Cheung, Barry W [REDACTED]

Subject: Re: Agreement

Aloha Barry,

I apologize for the delayed response. I am off on Thursday and Friday. I can give you a call this evening or we can touch base Monday. Please let me know what works for you.

Get [Outlook for iOS](#)

From: Cheung, Barry W [REDACTED]

Sent: Wednesday, March 10, 2021 3:04:24 PM

To: Paulele, Robert A [REDACTED]

Subject: FW: Agreement

Robert

Can you give me a call when you have time? 587-0430 until 4:30 pm or [REDACTED] cell) tomorrow.

Barry

From: Cheung, Barry W

Sent: Tuesday, March 9, 2021 2:49 PM

To: Paulele, Robert A [REDACTED]

Subject: Agreement

Attached is the agreement that I was talking about. I also got another call from Bob Hampton, of Waikiki Beach Activities telling me he has more photos. I am going to ask him send those photos to me, and I can forward to you subsequently. Thanks.

I can also be reached at work cell [REDACTED] if you need to talk to me while I am not in the office. Thanks and Stay Healthy out there.

Barry

DUKE KAHANAMOKU BEACH CONCESSION CONTRACT

between

STATE OF HAWAII

by its

Board of Land and Natural Resources

and

HILTON HAWAIIAN VILLAGE LLC, a Hawaii limited liability company

Commencement Date: August 1, 2012

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DUKE KAHANAMOKU BEACH CONCESSION CONTRACT

This Concession Contract made this 30th day of July, 2012, by and between the State of Hawaii, by its Board of Land and Natural Resources, hereinafter referred to as the "State", and HILTON HAWAIIAN VILLAGE LLC, a Hawaii limited liability company, whose principal place of business and mailing address is 2005 Kalia Road, Honolulu, Hawaii 96815, hereinafter referred to as the "Concessionaire."

WITNESSETH:

WHEREAS, the State owns the lands and is vested with the control and management of the area known as the Duke Kahanamoku Beach ("Beach"), on the island of Oahu; and

WHEREAS, the State has determined that it is desirable and appropriate to allow a limited amount of commercial activity on the Beach under this Concession Contract, while also ensuring that the Beach and surrounding natural resources are properly maintained for the use and enjoyment of the general public; and

WHEREAS, it is the intent of the State that the concession activity be performed in a fair and courteous manner from facilities that are well maintained, neat and well kept and without encroachment onto public spaces; and

WHEREAS, the State, pursuant to and in accordance with Hawaii Revised Statutes (HRS) chapter 102, has determined that Concessionaire is the highest responsible and qualified bidder; and

WHEREAS, the State and Concessionaire desire to enter into this Concession Contract on the terms and conditions herein;

NOW, THEREFORE, the State and Concessionaire, for and in consideration of the premises, and of the terms, covenants and conditions hereafter contained to be kept and performed by the State and Concessionaire, respectively, DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

As used herein, unless clearly repugnant to the context:

- a. "Chairperson" means the Chairperson of the Board of Land and Natural Resources, State of Hawaii, or successor or authorized representative.
- b. "Board" means the Board of Land and Natural Resources, State of Hawaii, or its authorized representative.
- c. "Department" means the Department of Land and Natural Resources, State of Hawaii.

- d. "Days" means calendar days, unless otherwise specified.
- e. "Concessionaire" means and includes the concessionaire identified herein, its heirs, executors, administrators, successors, and permitted assigns.
- f. "Holder of record of security interest" means a person who is the owner or possessor of a security interest in the land.

2. PREMISES

The "Premises" shall mean, include, be limited to, and contain the spaces identified in exhibit "A", attached hereto and made a part hereof, consisting of the "Concession Area" and the "Temporary Daytime Work Area."

Concessionaire shall not use any of the Beach outside of the Premises for any reason or purpose whatsoever, including (but not limited to) for storage, display, or placement of any concession sale or rental item, nor shall Concessionaire reserve any area of the Beach outside of the Premises (e.g., by roping, coning, signage, etc) for any reason or purpose whatsoever. No item or article may be posted, hung or placed on any tree, building, concession stand or on any portion of the Beach which is not specifically designated for use by the concession under the terms and conditions of this Concession Contract. Concessionaire may not set up, place, or install any umbrella or beach chair in any area outside of the Premises; provided, however, that this prohibition shall not apply to items that have been rented to the general public. Upon rental, Concessionaire may set up, place or install umbrellas or beach chairs in the area outside of the Premises for the duration of the rental. Concessionaire shall immediately remove any rented items from the Beach once Concessionaire's renter has ceased using the item.

Notwithstanding the foregoing, Concessionaire may use any available portion of the Beach for the purpose of surfboard use and instruction or for educating and informing customers on the use and operation of any item permitted to be rented under the terms of this Concession Contract; provided that the State, through the Chairperson, reserves the right to limit the number of persons that may receive instruction at any one time. Concessionaire must be involved in active instruction when using the Beach for the above stated purposes.

No electricity, water, or any other utility or service will be provided by the State.

3. SCOPE OF CONCESSION

a. Permitted Uses

- (i) Concessionaire shall be permitted to use the Premises as provided below:

- (a) Concession Area

Concessionaire may use the Concession Area for the rental of surfboards, catamarans, umbrellas, beach chairs, air floats and

mattresses, canoes and kayaks, aqua cycles, pedal boats, hoogie boards, beach mats, back rests, lounge chairs, snorkeling equipment, and surf boats; the sale of suntan oils and suntan lotions; and the provision of surfing and sailing lessons.

Notwithstanding the above, the Concessionaire may use the Concession Area for the display of its beach equipment, provided that such beach equipment is not stacked up in a disorderly manner, as determined by the Chairperson. Concessionaire shall have the exclusive right to provide the beach services listed above within the Concession Area.

Concessionaire shall obtain and maintain the proper registration of all water sports equipment from the Department's Division of Boating and Ocean Recreation.

At the close of each working day, Concessionaire shall clear the Concession Area and remove all of its equipment, supplies, inventory, and personalty of all kind from the Concession Area and from all public property. All equipment, supplies, and inventory shall be stored either in the Concessionaire's mobile storage units or off the Premises and off the Beach.

(b) Temporary Daytime Work Area

- (1) The Temporary Daytime Work Area shall only be used by the concessionaire during operating hours from 6:00 a.m. to 8:00 p.m., and only for temporary display and storage of the concessionaire's equipment and inventory. Commercial transactions may not be conducted from the Temporary Daytime Work Area. All commercial transactions are to be conducted solely from the Concession Area.
- (2) The concessionaire shall remove all its equipment, supplies, inventory, and other belongings from the Temporary Daytime Work Area before 8:00 pm daily.

Concessionaire shall not at any time construct, place, maintain, or install on the Premises any building, structure or improvement of any kind or description whatsoever.

Concessionaire shall be prohibited from providing any beach services not listed above and from using the Premises for any other purpose or use, unless written authorization is given by the Chairperson. Use of the Premises in a manner not authorized herein shall be a breach of this Concession Contract.

Concessionaire shall ensure that all equipment, supplies, and inventory are stored or maintained in a safe manner, including securing any such items to prevent them from being blown about by winds.

The State reserves the right, in its sole discretion and without liability or diminution in the monthly concession fee, to order Concessionaire to withdraw the use of its equipment from the Premises, the Beach, or the ocean.

At the close of each working day, which shall not be later than 8:00 pm, Concessionaire shall clear the Concession Area and the Temporary Daytime Work Area and remove all of its equipment, supplies, inventory, and personalty of all kind from the Concession Area, the Temporary Daytime Work Area, and from all public property. All equipment, supplies, and inventory shall be stored either in the mobile storage units parked at the adjacent Ala Wai Small Boat Harbor or off the Premises and off the Beach.

(ii) Concessionaire shall be allowed to obtain up to two (2) monthly parking permits at its own cost for the adjacent Ala Wai Small Boat Harbor for its mobile storage units, subject to the following conditions:

- (a) The concessionaire shall be subject to all applicable restrictions under the monthly parking permit(s), including but not limited to the following:
 - (1) The mobile storage unit(s) shall only be parked within stall(s) available to paid parking patrons.
 - (2) The paid parking stalls are unassigned and cannot be reserved.
 - (3) No commercial activity shall be conducted at the parking stall(s).
 - (4) The mobile storage unit(s) shall not be parked in any area that is closed to parking at night.
- (b) The mobile storage unit(s) shall only be allowed near the groin or sand area while Concessionaire's equipment is actively being loaded or unloaded.

b. Hours of Operation

The Concessionaire may conduct its operations within the Premises every day during the hours of 6:00 a.m. to 8:00 p.m. and no others, except as authorized in writing by the Chairperson.

The State reserves the right, in its sole discretion and without liability or diminution in the monthly concession fee, to interrupt or cancel operation or close any part or the entirety of

the Beach. In addition, Ocean Safety Lifeguards, Department's representatives, or State or County civil defense representatives shall have the authority to order Concessionaire to cease, curtail, postpone, or limit any otherwise permitted activity of Concessionaire without any liability on the part of the State during hazardous weather or water conditions or as otherwise required in such representatives' discretion for the health and safety of the public. Except as provided herein, if the State exercises this right, Concessionaire shall bear all expenses or losses in full and shall not take or allow to be taken any action for damages against the State and there shall be no diminution in the monthly concession fee except as provided herein.

Notwithstanding anything herein to the contrary, if a significant part of the Beach or the entirety of the Beach is closed to the extent Concessionaire is prohibited from conducting its operations for a period of seven (7) consecutive days or more, the monthly concession fee may be modified for the period during which the significant part of the Beach or the entirety of the Beach is closed and Concessionaire's business is not in operation. Concessionaire may make application for modification of the monthly concession fee to the Chairperson. The Chairperson, in his sole discretion, may approve the application for modification of the monthly concession fee, either in whole or in part.

If a significant part of the Beach or the entirety of the Beach is closed or not in operation for a period of three (3) consecutive months or more, either party may terminate this Concession Contract.

c. Concession Stand

The Concessionaire shall rent the beach or water sports equipment from a beach concession stand within the Concession Area. The stand shall be provided by Concessionaire, at Concessionaire's sole expense, and shall be a movable, portable stand, the dimensions of which shall not exceed 8'x 8'x 8'. Plans for such stand must be approved by the Chairperson prior to said stand being located in the area.

d. Equipment, Furniture, and Décor

The Concessionaire, at its own cost and expense, shall provide any and all supplies, equipment, and furniture necessary for the operation of the concession. All such equipment, furniture, and décor shall be subject to the prior approval of the State and shall conform with all applicable statutes, rules, regulations, and ordinances.

e. Conduct of Business

The Concessionaire, to the satisfaction of the Chairperson, shall conduct its operation in such manner as to avoid (1) the creation, commission, or maintenance of a nuisance on the Premises, (2) causing or creating of unusual or objectionable noises, or noxious smoke, gases, vapors and odors.

The Concessionaire shall clearly post a price list for all items offered by Concessionaire for sale or rental as well as the rates for surfing or sailing lessons.

The Concessionaire shall not use any radio, recording or audio playback device, or produce any sound or noise to disturb the quiet enjoyment of the surrounding beach area.

f. Maintenance and Clean-Up

The Concessionaire shall at all times keep and maintain the Premises and all equipment used by it in a clean and sanitary condition in conformance with the requirements of the State Department of Health and to the satisfaction of the Chairperson.

In addition, the concessionaire shall at all times keep and maintain the Beach in a clean and sanitary condition to the satisfaction of the Chairperson. This shall include cleaning of the Beach on a daily basis of all rubbish and debris including, but not limited to, bottles, cans, paper, drinking straws, bottle caps, food items, cigarette ends, and seaweed, to a depth of four (4) inches by use of a cleaning machine. If the cleaning machine is not able to be used due to natural causes or other causes beyond the control of the Concessionaire, the Concessionaire shall hand rake, hand pick, or by other suitable means, clean the Beach. The Concessionaire shall perform the cleaning between 8:00 p.m. to 6:00 a.m. daily.

The Beach is generally described as bound by the concrete walkway fronting the Hilton Hawaiian Village Rainbow Tower, the walkway adjacent to the lagoon on the Ewa side, the Diamond Head side of Paoa Place, and the area between the low tide and the high water mark occurring generally twice a day.

All equipment used in the cleaning shall be in good operating condition and must perform up to industry and current safety standards. The cleaning machine shall be capable of returning virtually all of the sand that was picked up with the debris back onto the Beach.

The Concessionaire shall comply with this condition to the satisfaction of the Chairperson.

g. Signs and Advertising

Concession signs shall be limited to placement on the concession stand and within the Concession Area. All signs require approval of the Chairperson as to appropriateness, size, design, and location before installation. The Concessionaire may place the name of their concession or business and any identifying registration mark, number or name onto any rental item to identify their ownership of the article or item.

No hawking, solicitation, or unauthorized advertising shall be made by Concessionaire or its employees outside of the Premises or on a public address system or by any amplified sound device.

h. Employees

The Concessionaire shall maintain an adequate staff of employees to provide efficient, prompt, and courteous service at all times. All employees shall be knowledgeable of the Hawaii Administrative Rules (HAR) Chapter 13-251. The Concessionaire shall only allow surf instructors who hold current, valid permits issued by the Department to provide surfing instructions. The Concessionaire shall have a manager on duty at all times that the concession is open to the public. The manager shall answer or attempt to answer all questions or concerns from the public about the concession operation.

The Concessionaire's employees shall at all times be neatly and cleanly uniformed (including name tags) at the expense of Concessionaire. The uniform may include but not be limited to swimsuit, tee shirt, tank top, jacket, and hat, all with appropriate logos. The final design of the uniform shall be approved by the Chairperson.

The Concessionaire shall employ only persons of good moral character, neat appearance, and polite manners. The Concessionaire shall require its employees to observe strict impartiality as to rates and services and in all circumstances to exercise courtesy and consideration in their relations with the public. The State shall have the right to eject from the Premises any employee of Concessionaire whose conduct is unprofessional, improper, inappropriate, or offensive.

4. TERM

The term of this Concession Contract shall be for fifteen (15) years, commencing on August 1, 2012, and terminating on July 31, 2027.

5. MONTHLY CONCESSION FEE

a. Monthly Concession Fee

The monthly concession fee shall be FIFTY THOUSAND TWO HUNDRED NINE AND NO/100 DOLLARS (\$50,209.00) at the commencement of this Concession Contract.

b. Monthly Concession Fee Reopening

The monthly concession fee shall increase by ten percent (10%) over the previous period's monthly concession fee at the end of the fifth (5th) and tenth (10th) years. Concessionaire shall be responsible for the increase in the monthly concession fee without notice or demand from the State. The State may treat the failure to make the payment of the increased monthly concession fee as a breach of this Concession Contract and terminate the Concession Contract.

c. Frequency of Payments

The Concessionaire shall pay the concession fee to the State, in advance, without notice or demand, on a quarterly basis. The quarterly concession fee payment shall be equal to three

monthly payments. The first quarterly payment shall be due upon commencement of this Concession Contract. Subsequent payments shall be due on the first day of every third month thereafter.

d. Where to Remit Payments

All payment of concession fees shall be made to the State, and submitted to the following:

Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

or at any other place the State may from time to time designate.

6. INTEREST RATE AND SERVICE CHARGE

The interest rate on any and all unpaid or delinquent concession fees and other charges shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment.

7. PERFORMANCE BOND

The Concessionaire shall procure and deposit with the State and thereafter keep in full force and effect during the term of this Concession Contract a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Concessionaire of all the terms, conditions, and covenants of this Concession Contract, in an amount equal to twice the amount of the monthly concession fee.

8. CLEARANCES

The Concessionaire shall be responsible for obtaining all necessary federal, state or county clearances, permits or licenses.

9. INDEPENDENT CONTRACTOR

The Concessionaire is deemed to be an Independent Contractor and not the agent, employee, partner, or joint venturer of the State of Hawaii.

10. WASTE AND UNLAWFUL, IMPROPER, OR OFFENSIVE USE OF PREMISES

The Concessionaire shall not commit, suffer, or permit to be committed, any waste, nuisance, strip or unlawful, improper, or offensive use of the Premises or any part thereof, nor, without the prior written consent of the State, cut down, remove, or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the Premises. In the event Concessionaire observes or otherwise obtains knowledge of any waste, nuisance, strip or

unlawful, improper or offensive use of the Premises by any person, Concessionaire shall so notify the State as soon as practicable.

11. INSPECTION BY STATE

The Concessionaire shall permit the State and its agents, at all reasonable times during the term, to enter the Premises to examine the condition and state of repair of the same.

12. LIENS

The Concessionaire shall not commit or suffer any act or neglect whereby the Premises or the estate of Concessionaire in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, and Concessionaire shall indemnify and hold harmless the State from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

13. ASSIGNMENTS

The Concessionaire shall not transfer, assign, or permit any other person to occupy or use the Premises or any portion thereof, or transfer or assign this Concession Contract or any interest therein, either voluntarily or by operation of law, and any transfer or assignment made shall be null and void. If Concessionaire is a partnership, joint venture, corporation, or limited liability company, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment.

14. SUBLETTING

The Concessionaire shall not rent or sublet the whole or any portion of the Premises or any operation under this Concession Contract.

The Concessionaire may retain the service of a managing agent to operate under the Concession Contract on its behalf, subject to prior written approval of the Chairperson.

15. INDEMNITY

The Concessionaire shall indemnify, defend, and hold the State harmless from and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or death, arising out of or resulting from: 1) any act or omission on the part of Concessionaire relating to Concessionaire's use, occupancy, maintenance, or enjoyment of the Premises or operation of the concession; 2) any failure on the part of Concessionaire to maintain the Premises and sidewalks and roadways adjacent thereto in Concessionaire's control, and including any accident, fire or nuisance growing out of or caused by any failure on the part of Concessionaire to maintain the Premises in a safe condition; 3) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of Concessionaire's non-observance or non-performance of any of the terms, covenants and conditions of this Concession Contract, or the rules, regulations, ordinances, and laws of the federal, state, municipal, or county governments.

16. COSTS OF LITIGATION

In case the State, without any fault on the State's part, shall be made a party to any litigation commenced by or against Concessionaire (other than condemnation proceedings), Concessionaire shall pay all costs, including reasonable attorneys' fees, and expenses incurred by or imposed upon the State; furthermore, Concessionaire shall pay all costs, including reasonable attorneys' fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Concession Contract, in recovering possession of the Premises, or in the collection of delinquent payments, taxes, and any and all other charges.

17. LIABILITY INSURANCE

The Concessionaire shall procure and maintain, at its cost and expense and acceptable to the State, in full force and effect throughout the term of this Concession Contract, comprehensive general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire Premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of the Concessionaire.

The Concessionaire, prior to entry and use of the Premises or within fifteen (15) days from the effective date of this Concession Contract, whichever is sooner, shall furnish the State with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire Concession Contract period, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the State. The State may at any time require the Concessionaire to provide the State with copies of the insurance policy(s) that are or were in effect during the Concession Contract period.

The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Concession Contract. If, in the opinion of the State, the insurance provisions in this Concession Contract do not provide adequate protection for the State, the State may require Concessionaire to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The State shall notify Concessionaire in writing of changes in the insurance requirements and Concessionaire shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the State incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Concessionaire's liability under this Concession Contract nor to release or relieve the

Concessionaire of the indemnification provisions and requirements of this Concession Contract. Notwithstanding the policy(s) of insurance, Concessionaire shall be obligated for the full and total amount of any damage, injury, or loss caused by Concessionaire's negligence or neglect connected with this Concession Contract.

It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Concessionaire's policy.

18. STATE'S LIEN

All equipment, fixtures, furniture, furnishings, inventory, merchandise, goods and other property of every kind and description which Concessionaire shall during the term of this Concession Contract place or store, or caused to be placed or stored, within the Premises whether subsequently removed therefrom by the State to a public warehouse or other place of storage and whether exempt from execution or not, shall be bound by and subject to a lien in favor of the State for the payment of the fees and charges herein reserved and any damages arising from any breach by Concessionaire of any of the terms, covenants or conditions of this Concession Contract; that upon default by Concessionaire, the State may take possession of said property or any parts thereof and sell or cause the same to be sold at public or private sale, with or without notice, to the highest bidder for cash, and apply the proceeds of said sale toward the cost thereof and the expenses of moving, preserving, protecting, and storing said property, and then toward any amount which may be owing to the State on account of Concessionaire's default. Without limitation to the foregoing, all persons who have any right, title or interest or security interest in any of the equipment, fixtures, furniture, furnishings, and other property placed, or stored within the Premises by Concessionaire, shall be deemed to have subordinated all of their right, title and interest and security interest in and to the same to the lien of the State as set forth herein unless they obtain the prior written approval of the State that their said interest shall have priority. Resort by the State to the remedy herein provided shall be in addition to and without prejudice to any other right or remedy which the State may have or be entitled.

19. MORTGAGE

The Concessionaire shall not mortgage, hypothecate, or pledge the Premises or any portion thereof of this Concession Contract or any interest therein.

20. ASSUMPTION OF RISK

The Concessionaire assumes the risk of any loss or damage to its property kept or maintained on or in the vicinity of the Premises. The State, its officers, agents and employees shall not be responsible or liable for any loss of, or damage to, the aforesaid property while on the Premises, regardless of how or the manner in which any such loss or damage is sustained.

21. AMENDMENTS

This Concession Contract shall not be varied, amended, or modified.

22. BREACH

Time is of the essence in all provisions of this Concession Contract. If Concessionaire shall fail to pay the concession fee or any part thereof at the times and in the manner aforesaid within ten (10) days after delivery by the State of a written notice of the breach or default by personal service, registered mail, or certified mail to Concessionaire at its last known address and to each mortgagee or holder of record having a security interest in the Premises, or if Concessionaire shall become bankrupt, or shall abandon the Premises, or if this Concession Contract or the Premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of Concessionaire's property for the benefit of creditors, or if Concessionaire shall fail to observe and perform any of the covenants, terms, and conditions herein contained and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the State of a written notice of this breach or default by personal service, registered mail, or certified mail to Concessionaire at its last known address and to each mortgagee or holder of record having a security interest in the Premises or if Concessionaire shall have received three (3) or more written notices of breach or default within the preceding twelve (12) months, the State may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, as may be amended from time to time, at once re-enter the Premises or any part thereof, and upon or without entry, at the State's option, terminate this Concession Contract without prejudice to any other remedy or right of action for arrears of fees or for any preceding or other breach of this Concession Contract. Without limiting the foregoing, in the event of termination of this Concession Contract, equipment thereon shall be removed by Concessionaire, and the State shall retain all fees paid in advance as damages.

23. RIGHT TO ENTER

The State or the county or city and county and the agents and representatives thereof shall have the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided, however, that in the exercise of these rights, the State or the county or city and county shall not interfere unreasonably with Concessionaire or Concessionaire's use and enjoyment of the Premises.

24. ACCEPTANCE OF RENT NOT A WAIVER

The acceptance of the concession fee by the State shall not be deemed a waiver of any breach by Concessionaire of any term, covenant, or condition of this Concession Contract, nor of the State's right to declare and enforce a forfeiture for any breach, and the failure of the State to insist upon strict performance of any term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition or option.

25. EXTENSION OF TIME

Notwithstanding any provision contained herein to the contrary, wherever applicable, the State may, for good cause shown, allow to Concessionaire additional time beyond the time or

times specified herein in which to comply, observe, and perform any of the terms, conditions, and covenants contained herein.

26. JUSTIFICATION OF SURETIES

Any bonds required by this Concession Contract shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, Hawaii Revised Statutes; provided, however, Concessionaire may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the State security in certified checks, certificates of deposit (payable on demand or after such period as the State may stipulate), bonds, stocks, or other negotiable securities properly endorsed, or execute and deliver to the State a deed or deeds of trust of real property, all of a character as shall be satisfactory to the State and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the State under the foregoing proviso shall be determined by the State, and that Concessionaire may, with the approval of the State, exchange other securities or money for any of the deposited securities if in the judgment of the State the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by Concessionaire, but only upon the written consent of the State and that until the consent be granted, which shall be discretionary with the State, no surety shall be released or relieved from any obligation thereunder.

27. QUIET ENJOYMENT

The State covenants and agrees with Concessionaire that upon payment of the concession fee at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of Concessionaire to be observed and performed, Concessionaire shall and may have, hold, possess, and enjoy the Premises for the term contracted without hindrance or interruption by the State or any other person or persons lawfully claiming by, through, or under it.

28. SURRENDER

At the expiration or early termination of this Concession Contract, Concessionaire shall peaceably deliver unto the State possession of the Premises in a clean and orderly condition. Furthermore, upon the expiration, termination or revocation of this Concession Contract, should Concessionaire fail to remove any or all of Concessionaire's personal property from the Premises, after notice thereof, the State may remove any or all personal property from the Premises and either deem the property abandoned and dispose of the property, or place the property in storage at the cost and expense of Concessionaire, and Concessionaire does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of this Concession Contract.

29. HAZARDOUS MATERIALS

Concessionaire shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Concessionaire shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of Concessionaire's business, and then only after written notice is given to the State of the identity of such materials and upon the State's consent, which consent may be withheld at the State's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Concessionaire, then Concessionaire shall be responsible for the reasonable costs thereof. In addition, Concessionaire shall execute affidavits, representations and the like from time to time at the State's request concerning Concessionaire's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Concessionaire.

Concessionaire agrees to indemnify, defend, and hold the State harmless from any damages and claims resulting from the release of hazardous materials on the Premises occurring while Concessionaire is in possession, or elsewhere if caused by Concessionaire or persons acting under Concessionaire. These covenants shall survive the expiration or earlier termination of this Concession Contract.

For the purposes of this Concession Contract, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

30. PHASE ONE (1) HAZARDOUS WASTE EVALUATION

The State reserves the right to require Concessionaire to conduct a Phase One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department. Any voluntary termination by Concessionaire will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed. This provision shall survive and continue in effect after termination of this Concession Contract.

31. ARCHAEOLOGICAL SITES

In the event any historic, prehistoric, or archaeological sites, burial sites or remains, such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, Concessionaire and Concessionaire's agents, employees and representatives shall immediately stop all land utilization or work and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

32. TAXES, ASSESSMENTS, ETC.

The Concessionaire shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part thereof, or any improvements thereon, or the State or Concessionaire in respect thereof, is now or may be assessed or become liable by authority of law during the term of this Concession Contract; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Concessionaire shall be required to pay only those installments, together with interest, as shall become due and payable during the term of this Concession Contract.

33. COVENANT AGAINST DISCRIMINATION

The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, disability, age, HIV (human immunodeficiency virus) infection, or sexual orientation.

34. STATE EMPLOYEES

No officer, whether elected or appointed, or employee of the State of Hawaii shall share in, or directly benefit from, this Concession Contract; provided, however, that this restriction shall not be applicable where the state officer or employee is a shareholder in a corporation and does not have a controlling interest in the corporation.

35. COMPLIANCE WITH LAWS

The Concessionaire shall comply with all the requirements of all municipal, state, and federal authorities and observe all municipal, state, and federal laws, ordinances, rules and regulations pertaining to the Premises, now in force or which may hereinafter be in force, including but not limited to federal and state labor laws and regulations.

36. HAWAII LAW

This Concession Contract shall be construed, interpreted, and governed by the laws of the State of Hawaii.

37. HEADINGS

The paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this Concession Contract.

38 GENDER

The use of any gender shall include all genders, and if there is more than one Concessionaire, then all words used in the contract shall extend to and include the plural.

39 PARTIAL INVALIDITY

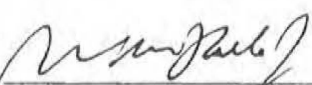
If any term, provision, covenant, or condition of this Concession Contract should be held to be invalid, void, or unenforceable, the remainder of this Concession Contract shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month, and year first above written.

STATE OF HAWAII

Approved by the Board
of Land and Natural
Resources at its meetings
held on March 11, 2010 and
Sept. 9, 2011.


By


WILLIAM J. AILA, JR.

Chairperson
Board of Land and Natural Resources

State

APPROVED AS TO FORM


LINDA L.W. CHOW
Deputy Attorney General

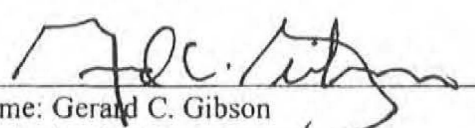
Dated:

Jul 19 2012

HILTON HAWAIIAN VILLAGE LLC,
Hawaii limited liability company

By: HILTON MANAGEMENT LLC
Its: Managing Agent

By

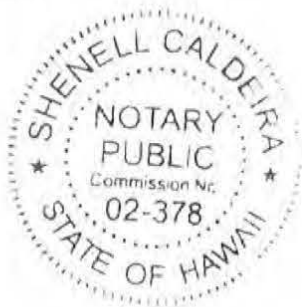

Name: Gerard C. Gibson
Its Authorized Representative

Concessionaire

STATE OF HAWAII |
COUNTY OF HAWAII |

SS:

On this day of 23rd day of July, 2012, before me personally appeared Gerard C. Gibson, to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that **he** executed the same as **his** free act and deed.

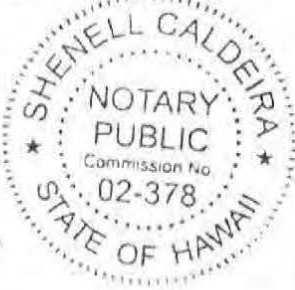


Shenell Caldeira

Shenell Caldeira
Notary Public, State of Hawaii

My commission expires: August 4, 2014

Doc Date:	<u>JUL 23 2012</u>	# Pages:	_____
Notary Name:	<u>Shenell Caldeira</u>	Third Circuit	
Doc Description:	<u>Beach Concession</u> <u>Contract, Duke Kahana Moku</u> <u>Beach, Oahu</u>		
Notary Signature	<u>Shenell Caldeira</u>	Date	<u>JUL 23 2012</u>



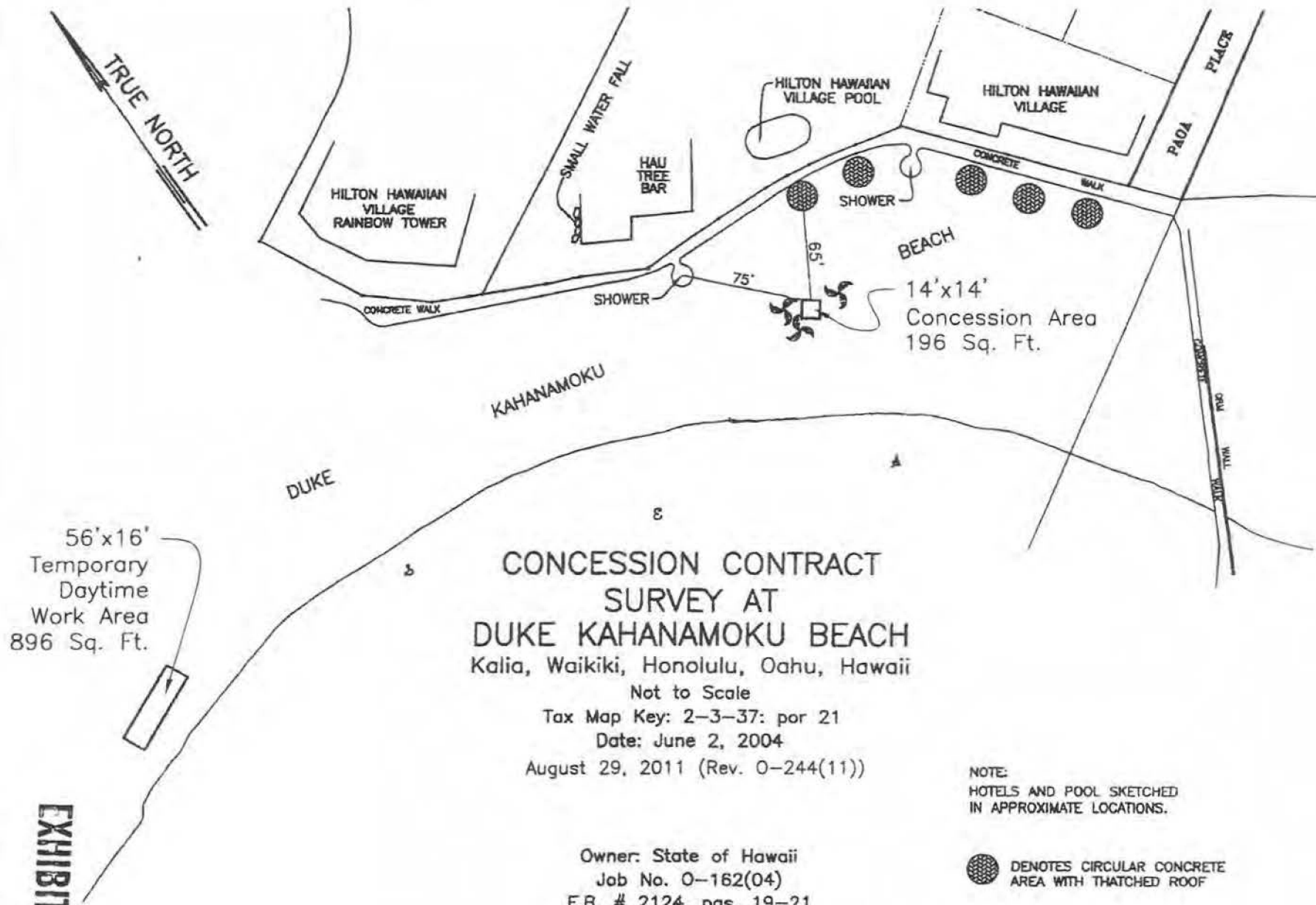


EXHIBIT "A"

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

EXHIBIT D-3



State of Hawaii Department of Land and Natural Resources Division of Conservation and Enforcement		
Log Number OA-21-00247	District NORTHERN	Lead Investigator PAULELE, ROBERT A - PAULRA
Date/Time Reported 03/29/2021	Location DUKE KAHANAMOKU BEACH	Classification PROH COMMERCIAL ACTIVITIES WITHOUT PERMIT
Status PEND PENDING FURTHER ACTION	Activity Code Land Management	

Incident and Report Control

A. COMPLAINT

Taken By: PAULELE, ROBERT A Reported Date/Time: 3/29/2021

How Taken: OTHER

Incident Summary: SYNOPSIS
Investigation pending Un-authorized commercial activities Chris SANGER.

Location: DUKE KAHANAMOKU BEACH

Occurred From: 3/29/2021 0640
Occurred To: 3/31/2021 1040

B. REPORT CONTROL

Branch: OAHU

District: ODI

Lead Investigator: PAULELE, ROBERT A

C. NOTES/DISPOSITION/OTHER INFO

Disposition: PENDING FURTHER ACTION

RECEIVED
LAND DIVISION
2021 APR 12 PM 3:33
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

EXHIBIT D-3

21-0721-0A



State of Hawaii Department of Land and Natural Resources Division of Conservation and Enforcement		
Log Number OA-21-00247	District DISTRICT I (OAHU)	Lead Investigator PAULELE, ROBERT A - PAULRA
Date/Time Reported 03/29/2021	Location DUKE KAHANAMOKU BEACH	Incident Type Commercial Use Permit Violation
Status PEND PENDING FURTHER ACTION	Activity Code Land Management	

Investigation Report

☐ Fishing ☐ Hunting ☐ Boating ☐ Drug Rel. ☐ Forestry ☐ NOAA ☐ JEA ☒ Land - OCCL ☐ CWRM ☐ Historic ☐ State Parks ☐ KAIC ☐ Other

BASIC

Classification 13-221-35 PROH COMMERCIAL ACTIVITIES WITHOUT PERMIT	Source OTHER OTHER	
Location of Incident / Intersecting Street	Island OAHU	Branch OAHU
X-Street:	Date / Time Occurred From 3/29/2021 0640	Date / Time Occurred to 3/31/2021 1040
Category OTHER OTHER AREAS	Weather CLEAR CLEAR	
WEAPONS USED		

PERSONS

Name (Last, First, Middle) SANGER, CHRIS	Juvenile <input type="checkbox"/>	Sex	Race	Age	Date of Birth
---	--------------------------------------	-----	------	-----	---------------

Address

Category NO INVOLVEMENT SELECTED OR CODE NOT IN LIST	CODE:	Home Phone	Other Phone
---	-------	------------	-------------

Name (Last, First, Middle) MARTIN, ROB	Juvenile <input type="checkbox"/>	Sex	Race	Age	Date of Birth
---	--------------------------------------	-----	------	-----	---------------

Address

Category NO INVOLVEMENT SELECTED OR CODE NOT IN LIST	CODE:	Home Phone	Other Phone
---	-------	------------	-------------

Name (Last, First, Middle) HAMPTON, BOB	Juvenile <input type="checkbox"/>	Sex	Race	Age	Date of Birth
--	--------------------------------------	-----	------	-----	---------------

Address

Category NO INVOLVEMENT SELECTED OR CODE NOT IN LIST	CODE:	Home Phone	Other Phone
---	-------	------------	-------------

SYNOPSIS

Narrative Created By / Created On PAULELE, ROBERT A 04/09/2021	Approved By / On
--	------------------

SYNOPSIS

Investigation pending Un-authorized commercial activities Chris SANGER.

RESPONDING / INVOLVED UNITS, OFFICERS, AND TIMES

Division OAHU	Supervisor Villalobos, Gerard P	VILLG
Unit Number	Officer / ID (Ofcr 1 / Ofcr 2) PAULELE, ROBERT A	Officer / ID (Ofcr 3 / Ofcr 4) PAULRA

INVESTIGATION

Narrative Created By / Created On PAULELE, ROBERT A 04/09/2021	Approved By / On
--	------------------

ASSIGNMENT/ARRIVAL

03/25/21, at approximately 1200 hours, I was assigned by T/a Supervisor Officer VILLALOBOS to continue an

Written By: PAULELE, ROBERT A
04/09/2021

Approved By:

PAGE 1



State of Hawaii Department of Land and Natural Resources Division of Conservation and Resource Enforcement		
Log Number OA-21-00247	District DISTRICT I (OAHU)	Lead Investigator PAULELE, ROBERT A - PAULRA
Date/Time Reported 03/29/2021	Location DUKE KAHANAMOKU BEACH	Incident Type Commercial Use Permit Violation
Status PEND PENDING FURTHER ACTION		Activity Code Land Management

ongoing investigation regarding un-authorized commercial activity. The assignment was to run an undercover operation from 3/29 to 3/31/2021 from 0600 hours to approximately 1000 hours. The scope of the investigation was to determine if there was un-authorized commercial activity through pre-setting equipment on the beach and engaging in any business transactions.

SCENE/TIME ELEMENT

The scene of this investigation takes place at Kahanamoku Beach fronting the waters the edge and extending from the Hilton Hawaiian Hotel to South facing side of the Ala Wai Small Boat Harbor.

WEATHER

The weather was clear and sunny.

03/29 OBSERVATION SUMMARY

03/29/2021 at approximately 0640 hours, I observed a grey in color truck parked in the Ala Wai Small Boat Harbor fronting the Hilton Hawaiian Hotel. During this time, I observed a stack full of beach chairs in the back of the bed of truck. Approximately 250 yards across the beach, I could also see a small roller cart with what appeared to have several yellow in color umbrellas stacked on top.

At approximately 0700 hours, I observed a Chris SANGER digging holes in the sand to assemble the yellow umbrellas.

At approximately 0708 hours, I observed four umbrellas that became occupied by customers near the shoreline.

At approximately 0810 hours, I observed an addition two umbrellas that became occupied by customers.

Between 0810 hours and 0900 hours all umbrellas were occupied.

At approximately 0900 hours, I met with Calen MIYAHARA who is with Land Division and works with Barry Cheung.

Within the hours of 0900-1000 hours Calen MIYAHARA and I did not observe any violation in regards to pre-setting or un-authorized commercial activity.

At approximately 1030 hours, I concluded my investigation

Note: I did not observed any transaction or exchange of currency during the times observed. All yellow umbrellas were pre- tagged with a numerical number ranging from 1-11 clipped to the canvas of the umbrella.

03/30 OBSERVATION SUMMARY

3/30/21 at approximately 0700 hours, I observed SANGER setting up equipment on the beach within the same proximity as the previous day.

At approximately 0800 hours, six of the eleven umbrellas became occupied.

At approximately 0810 hours, an additional two umbrellas were occupied.

At approximately 0911 hours, only one umbrella was un-occupied.

At approximately 0935 hours, all umbrellas were fully occupied.

At approximately 1030 hours, I concluded my investigation

Note: Continued observation on day two, no observation of exchange of currency, or business transaction. All yellow umbrellas were pre- tagged with a numerical number ranging from 1-11 clipped to the canvas of the



State of Hawaii Department of Land and Natural Resources Division of Conservation and Resources Enforcement		
Log Number OA-21-00247	District DISTRICT I (OAHU)	Lead Investigator PAULELE, ROBERT A - PAULRA
Date/Time Reported 03/29/2021	Location DUKE KAHANAMOKU BEACH	Incident Type Commercial Use Permit Violation
Status PEND PENDING FURTHER ACTION		Activity Code Land Management

umbrella.

03/31 OBSERVATION SUMMARY

3/31/21 at approximately 0700 hours, no umbrellas or beach chairs were observed.
At approximately 1030 hours, I concluded my investigation

ATTACHED DOCUMENTS

1. Email from Calen MIYAHARA with his investigation attached.

SUSPECT INFORMATION

The suspect under this investigation is identified as:

NAME: Chris SANGER / Dukes Lagoon

DOB: [REDACTED]

PHONE: [REDACTED]

ADDRESS: 7714 Ala Moana Blvd. #84, [REDACTED]

COMPLAINANT INFORMATION

The complainant under this investigation is identified as:

NAME: Rob MARTIN / Waikiki Beach Activities

PHONE: [REDACTED]

DOB: [REDACTED]

ADDRESS: N/A

BUSINESS PARTNER FOR WAIKIKI BEACH SERVICES

NAME: Bob HAMPTON / Waikiki Beach Activities

PHONE: [REDACTED]

ADDRESS: N/A

PHOTOGRAPH RECORD

This has been submitted.

DISPOSITION

Pending.

Written By: **PAULELE, ROBERT A**
04/09/2021

Approved By: 

 PAGE 3

FW: HHV report

Miyahara, Calen M [REDACTED]

Fri 4/9/2021 1:06 PM

To: Paulele, Robert A [REDACTED]

3 attachments (31 MB)

Hilton Hawaiian Village Illegal Commercial Activity Investigation 03-29-2021.docx; 20210329_085024.jpg; 20210329_085103.jpg;

Hi Rob,

See attached HHV report. Word version. Thank you.

Aloha, Cal

From: Cheung, Barry W [REDACTED]

Sent: Friday, April 2, 2021 12:42 PM

To: Tsuji, Russell Y [REDACTED]; Moore, Kevin E [REDACTED]; Hirokawa, Ian C [REDACTED]; Wynhoff, Bill J [REDACTED]; Taniguchi, Werner N [REDACTED]; Villalobos, Gerard P [REDACTED]

Cc: Miyahara, Calen M [REDACTED]

Subject: FW: HHV report

This morning, I got voicemails and email from Waikiki Beach Activities and Duane Fisher regarding the alleged unauthorized commercial activities on Duke Kahanamoku Beach. DOCARE and LD went out to the site this past Monday to Wednesday from early morning till mid-morning. Based on Cal's report, they did not notice any unauthorized commercial activities on the beach. Cal said Officer Paulele would also give similar report to his supervisor.

Subject to any findings to the contrary in the upcoming DOCARE report, it appears we cannot establish there are any unauthorized commercial activities there. Should we set up a conference call with Fisher to tell him what we found out?

Werner/Gerry

Can you provide us with a copy of Officer Paulele's report?

Thanks.

Barry

From: Miyahara, Calen M [REDACTED]

Sent: Thursday, April 1, 2021 4:43 PM

To: Cheung, Barry W [REDACTED]

Subject: HHV report

Hilton Hawaiian Village Sandy Beach Area Illegal Commercial Activity Investigation

Umbrella Pre-setting by Duke's Lagoon, LLC

3/29/21

I arrived at the location fronting the Waikiki Beach Activities concession at 8:48 am. I observed 11 yellow beach umbrellas with lounge chairs (2-3) under each umbrella set up by Duke's Lagoon. 10 of the umbrellas were set-up in a row with the 11th umbrella situated behind the 10 umbrellas. 2 paddle boards were laying on the beach adjacent to the 11th umbrella. At the time, 9 of the umbrellas were being used either by people or personal objects placed on the lounge chairs. 2 of the umbrellas were not in use. By 9:40 am, all 11 umbrellas were being used.

I met with Robert Paulele (DOCARE) at 9:15 am. Thereafter, we observed the activity together. According to Rob, at about 6:40 am, he saw workers begin to set-up the umbrellas and lounge chairs. Rob said within 5 minutes of setting up the first 4 umbrellas and lounge chairs, they were being used. Thereafter, people were coming around to the other umbrellas.

During the duration of the today's investigation no one was observed receiving paddle board instructions on the beach, and no one was observed taking any paddle board to the ocean area. I did not observe any illegal pre-setting of yellow beach umbrellas or commercial activities.

I concluded my investigation at 10:35 am.

3/30/21

Investigation conducted by DOCARE.

3/31/21

I arrived at the same location at 8:42 am. There were no yellow beach umbrellas set-up. I met with Rob at about 9:00 am. We observed the Hilton surfboard concession setting up 10 surfboards on the sandy beach area fronting the Waikiki Beach Activities concession. 9:25, 10 customers were receiving surfing instructions on the sandy beach area – photo and video documentation. 9:32, call to Barry, he said the concession is allow surfing instruction on the beach, but not more than 4 customers at a time. 9:45, I walked to the Ilikai Hotel and observed Mr. Sanger (Duke's Lagoon) sitting in his retail outlet. 10:15, I met with Rob and Eddie Thompson (DOCARE) by the old helicopter pad; Rob said he was going over the stop the Hilton concession from violating their agreement of no more than 4 customers being allowed to received surfing instructions on the sandy beach area. I did not observe any pre-setting of yellow beach umbrellas or illegal commercial activities.

I concluded my investigation at 10:25 am.





EXHIBIT E

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

April 14, 2021

Chris Sanger
1741 Ala Moana Boulevard, Unit 84
Honolulu, Hawaii 96815

Duke's Lagoon LLC
1741 Ala Moana Boulevard, Unit 84
Honolulu, Hawaii 96815

Dear Mr. Sanger and Duke's Lagoon LLC:

Subject: Unauthorized Commercial Activities on Duke Kahanamoku Beach

On the morning of April 9, 2021, the Division of Conservation and Resources Enforcement (DOCARE) brought to our attention that unauthorized commercial activities of presetting beach chairs and umbrellas occurred on the subject State land. A DOCARE officer observed there were beach chairs and umbrellas on the beach that were unoccupied. The DOCARE officer verbally informed you that your presetting was a violation and the beach chairs and umbrellas needed to be removed immediately.

Section 13-221-35, Hawaii Administrative Rules (HAR) provides: "No person shall engage in commercial activities of any kind without a written permit from the board or its authorized representative".

WE HEREBY DEMAND THAT YOU IMMEDIATELY CEASE AND DESIST presetting any beach chairs and umbrellas on the subject State land.

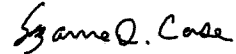
You are hereby on notice that the Department intends to bring an enforcement action against you before the Board of Land and Natural Resources (Board) for unauthorized commercial activities in violation of Section 13-221-35, HAR and other encroachments on State land in accordance with subsections 171-6(12) and (15), Hawaii Revised Statutes (HRS). Any violation of HAR is subject to a fine of not more than \$500 per day and recovery of administrative costs and damages pursuant to Section 13-221-3, HAR. In addition, any encroachment on State land in violation of subsections 171-6(12) and (15), HRS, is subject to fines up to \$5,000 for a first offense and \$1,000 per day as long as the violation persists, plus recovery of administrative costs, expenses

EXHIBIT E

and other damages. Further, the Department reserves all additional rights and remedies it may have (including, but not limited to any Boating and Ocean Recreation permit or rule violation) against you and others who may have acted in concert with or on your behalf concerning the above-referenced incident of April 9, 2021.

We will notify you again once the date of the Board meeting is decided.

Sincerely,

A handwritten signature in black ink that reads "Suzanne D. Case". The signature is written in a cursive style with a large, stylized 'S'.

RT

Suzanne D. Case
Chairperson

c: DOCARE, DLNR
 DOBOR, DLNR

EXHIBIT F

Cheung, Barry W

From: Duane Fisher [REDACTED]
Sent: Friday, April 16, 2021 2:32 PM
To: Tsuji, Russell Y; Cheung, Barry W; Case, Suzanne D
Cc: Wynhoff, Bill J; Chow, Linda L; Debi Bishop [REDACTED] Doug Chin; Frank Connolly; Nevin J. Kelly [REDACTED]
Subject: [EXTERNAL] Duke Kahanamoku Beach: Sanger
Attachments: Sanger mobilization 1.jpg


Dear Chair Case, Russell and Barry,

We urgently need your help, please. Below please find links to three videos. As you will see when you watch the videos, Mr. Sanger is clearly engaged in commercial activity from the beach. He is not operating from the Ilikai as he apparently claimed in discussions with Russell.

WBA / Hilton have repeatedly seen Mr. Sanger (1) pre-set his yellow umbrellas and white beach chairs to stake out turf on the beach, (2) park his truck in the parking lot next to the Lagoon and offload his umbrellas and chairs from there (see attached picture), (3) park stacks of chairs on a dolly on the beach / sidewalk area while he attempts to rent them, and (4) transact money with customers on the beach (via phones . . . maybe Venmo?). His "crew" wear green "Surf Instructor" shirts. The videos should help paint the picture. This is being done in plain sight and on a daily basis.

What is the status of the "cease and desist" letter to Mr. Sanger? Will he be fined? When will DOCARE start to enforce the prohibition on commercial activity on the beach without a permit?

As the lawful Beach Concessionaire at Duke Kahanamoku Beach, we continue to be deeply troubled that Mr. Sanger has been allowed to operate like this for over a month now. Thank you for your immediate attention to this.

 [BeachVideo2.mp4](#)

[Click to Download](#)

[Click to Download](#)

Aloha,
-Duane
Duane R. Fisher
Attorney at Law

Starn O'Toole Marcus & Fisher
A Law Corporation
Pacific Guardian Center, Makai Tower
733 Bishop Street, Suite 1900
Honolulu, HI 96813

Telephone: (808) 537-6100
Facsimile: (808) 537-5434
Website: www.starnlaw.com

EXHIBIT F

EXHIBIT G

Administrative Costs
(Including staff time and fringe benefits)

	Hourly Rate (\$)	Number of Hours	Sub-total (\$)	Fringe benefits @ 68.03%	Total (\$)
DOCARE Officer	23.39	60	1,403.40	954.73	2,358.13
DOCARE Chief	54.83	4	219.32	149.20	368.52
District Land Agent	38.36	8	306.88	208.77	515.65
					3,242.30

EXHIBIT G