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Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

THE HAWAII MUSEUM OF FLYING,)	CIVIL NO. _____
dba NAVAL AIR MUSEUM BARBERS)	[Other Civil Action]
POINT,)	
)	COMPLAINT
Plaintiff,)	
)	
vs.)	
)	
STATE OF HAWAII, DEPARTMENT)	
OF TRANSPORTATION, AIRPORTS)	
DIVISION; and DOE DEFENDANTS)	
1-20,)	
)	
Defendants.)	
_____)	

COMPLAINT

Plaintiff THE HAWAII MUSEUM OF FLYING, dba NAVAL AIR MUSEUM BARBERS POINT, through its counsel undersigned, sets forth the following Complaint against Defendant STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, AIRPORTS DIVISION; and DOE DEFENDANTS 1-20:

STATEMENT OF JURISDICTION

1. Plaintiff THE HAWAII MUSEUM OF FLYING, dba NAVAL AIR MUSEUM BARBERS POINT, is a domestic nonprofit corporation organized under the laws of the State of Hawaii. It operates at Building 1792 Midway Road, Kalaeloa Airport, Hawaii.

2. Defendant STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, AIRPORTS DIVISION, is a sovereign entity which has waived its sovereign immunity pursuant to Hawaii Revised Statutes chapter 662.

3. DOE DEFENDANTS 1-20 are persons, corporations, partnerships or other entities who are being sued under fictitious names because Plaintiff does not know their true names, identities, capacities, activities and/or responsibilities. However, Plaintiff believes that said DOE DEFENDANTS 1-20 are or may be, or were or may have been, in some yet undetermined manner or capacity, responsible for the damages, harm, losses, costs and expenses suffered by the Plaintiff referred to herein; and further that said DOE DEFENDANTS 1-20 legally caused and/or contributed to said harm, losses, costs and expenses through their intentional, negligent, wrongful and/or tortious acts. Plaintiff has been unable to ascertain the identities of these DOE DEFENDANTS 1-20 through an examination of documents available to them at this time. Accordingly, Plaintiff prays for leave to amend this Complaint and insert the true names, identities, capacities, activities, responsibilities and/or omissions of DOE DEFENDANTS 1-20 when and if the same are ascertained.

4. All relevant incidents described herein occurred in the City and County of Honolulu, State of Hawaii.

STATEMENT OF FACTS

5. Plaintiff THE HAWAII MUSEUM OF FLYING was organized in 1998. In 2007, it registered its trade name NAVAL AIR MUSEUM BARBERS POINT, and was thereafter known as THE HAWAII MUSEUM OF FLYING, dba NAVAL AIR MUSEUM BARBERS POINT (hereinafter "NAVAL AIR MUSEUM"). The NAVAL AIR MUSEUM is an I.R.S. registered 501(c)3 non-profit organization.

6. Its purpose was to "foster, encourage, develop, study, and support aviation in [Hawaii] and educate the public about the importance and the role that aviation has played in the history of [the] state, nation and world."

7. This was to be accomplished through the preservation of "all types of aircraft and aviation activities[,] and would include "artifacts, static displays and flyable aircraft."

8. In 1998, the NAVAL AIR MUSEUM applied to the National Museum of Naval Aviation to be qualified as a certified borrower of United States Navy, Marine or Coast Guard aircraft or artifacts.

9. The application was approved, and the United States Navy and NAVAL AIR MUSEUM entered into a loan agreement authorizing the NAVAL AIR MUSEUM to be custodian of five aircraft that had been left at the Naval Air Station Barbers Point.

10. The five aircraft that remained were a P-3A Orion, an F-4N Phantom, and three A-4E Skyhawks. They were to be the

NAVAL AIR MUSEUM's first exhibits.

11. The NAVAL AIR MUSEUM had also been provided by the United States Navy two buildings #1792 and #1791 to use as the NAVAL AIR MUSEUM's office space. ¹

12. On July 1, 1999, Naval Air Station Barbers Point closed and was transferred to the STATE. It was renamed Kalaeloa Airport, which is a joint civil-military regional airport of the State of Hawaii.

13. Kalaeloa Airport operates primarily as a general aviation facility utilized by general aviation and Hawaii and international based military aircraft. Under the United States Federal Aviation Regulations, Kalaeloa Airport is a Part 91 general aviation facility, which means that it services general aviation except for commercial air carriers and air cargo operations. ²

14. Kalaeloa Airport is managed by Defendant STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, AIRPORTS DIVISION (hereinafter "STATE").

15. In 1999, NAVAL AIR MUSEUM began its operation at

¹ Beginning in 1999, a different tenant occupied building #1791.

² Commercial air carriers include, for example, Delta Airlines, United Airlines, or Hawaiian Airlines. Airports that allow large commercial air carriers are designated Part 139 airports under the Federal Aviation Regulations. Commercial aircraft carrying less than ten passengers could utilize Kalaeloa Airport.

Kalaeloa Airport with its five aircraft that remained from the Naval Air Station Barbers Point.

16. Visitors to the NAVAL AIR MUSEUM were provided educational and historical guided tours of the aircraft and tarmac. The NAVAL AIR MUSEUM publicized its existence through its website, social media, and word-of-mouth. Visitors included U. S. military veterans, tour groups and students, as well as the general public.

17. In March 2001, the STATE granted to the NAVAL AIR MUSEUM Revocable Permit No. 6020, providing the NAVAL AIR MUSEUM approximately 41,488 square feet to conduct tours and display its aircraft.

18. The STATE also granted the NAVAL AIR MUSEUM Parking Permit No. PP-00-0004, which provided five stalls specifically designated for the placement of NAVAL AIR MUSEUM aircraft. The five stalls covered by Parking Permit No. PP-00-0004 were within the boundaries of Revocable Permit No. 6020.

19. Finally, the STATE granted the NAVAL AIR MUSEUM Revocable Permit No. 5986, which allowed the NAVAL AIR MUSEUM to occupy a 901 square foot building with an additional 1,522 square feet of paved land. The area covered by Revocable Permit No. 5986 was approximately 400 yards from the grounds covered by Revocable Permit No. 6020 and Parking Permit No. PP-00-0004.

20. In keeping with its mission statement, over twenty years of operation the NAVAL AIR MUSEUM provided much more to the

community than the display of historic military aircraft.

21. One significant contribution to the Hawaii community that is unknown to the public is the way in which the NAVAL AIR MUSEUM provides direct support to the operators, staff and tenants of the Kalaeloa Airport. Indeed it is an integral part of the Kalaeloa Airport operations.

22. For example, the NAVAL AIR MUSEUM is one of four entities on the island of Oahu that have specialized Aviation Support Equipment (hereinafter "ASE").³ The ASE⁴ is used in situations to service large aircraft, and as a result the Kalaeloa Airport is a frequent preferred destination for transient civilian or military aircraft passing through Hawaii. The NAVAL AIR MUSEUM provides crucial ASE support as needed to incoming civilian or military aircraft at no cost. Consequently, unknown to the public, there is a significant return economic benefit to the STATE when the aircraft passing through will purchase fuel and pay a "flowage" fee to the STATE.

23. The NAVAL AIR MUSEUM also makes available to military units a secure "Ready Room" that is used for aircrew briefings, and is specially configured like an aircraft carrier's

³ The other entities being Joint Base Pearl Harbor Hickam, Marine Corp Base Hawaii Kaneohe Bay, Wheeler Army Airfield, and Coast Guard Air Station Barbers Point.

⁴ ASE includes special tow bars and tow support, heavy aircraft tugs, maintenance platform stands, air conditioning carts, hydraulic service cart, among other unique items.

briefing room to accommodate audio and visual needs such as digital projectors, computers, and communication gear.

24. The NAVAL AIR MUSEUM has also furnished its volunteer services and expertise to the STATE at no cost by: removing medium-sized aircraft that are stranded on the runway following a mishap (in fact the NAVAL AIR MUSEUM removed 54 aircraft over the years); landscaping and tie-down maintenance; since 1999, painting, maintaining, repairing and cleaning the bathrooms in building 1953, which is supposed to be the STATE's responsibility (the actual cost incurred by the NAVAL AIR MUSEUM was approximately \$18,000.00, which was never charged to the STATE).

25. Another unknown contribution of the NAVAL AIR MUSEUM is its provision of crucial support-unavailable from other entities-during natural disasters and emergencies due to the NAVAL AIR MUSEUM's capability to immediately respond to requests for assistance. The NAVAL AIR MUSEUM's experienced staff and trained volunteers implement a protocol that follows United States military aviation procedures and, in cases of emergencies, the United States Incident Command System. ⁵

26. For example in 2011 during the Fukushima earthquake-tsunami scare, the NAVAL AIR MUSEUM was instrumental

⁵ The Incident Command System is a Federal program implemented following 9-11 that enables agencies from different sectors to uniformly react in emergencies.

in parking and securing the United States Coast Guard Air Station's aircraft and ground support equipment from its location at the south end of Kalaeloa Airport to the north end, all of which occurred at night. ⁶ And in 2016, in anticipation of Hurricanes Madeline and Lester making landfall, the Hawaii Army National Guard requested the assistance of the NAVAL AIR MUSEUM in securing heavy CH47 helicopters brought in from Wheeler Army Airfield to Kalaeloa Airport for use after the potential disasters.

27. With respect to special equipment that can be used in a disaster scenario, the NAVAL AIR MUSEUM owns a portable air traffic control tower ⁷ and emergency operations center system which can be transported via air, sea or ground transport to any airport in Hawaii. ⁸ This is critical to have available in the event infrastructure is destroyed during a disaster.

28. The NAVAL AIR MUSEUM also has 5-ton and 2.5-ton trucks and a wrecker that can be used to move large debris from

⁶ As a consequence of the NAVAL AIR MUSEUM's actions a Memorandum of Understanding was entered into between the United States Coast Guard and the NAVAL AIR MUSEUM that formalized the NAVAL AIR MUSEUM's assistance to the United States Coast Guard in times of emergency.

⁷ The NAVAL AIR MUSEUM owns one of only four on the island of Oahu, the other portable air traffic control towers being located at Wheeler Air Force Base, Kaneohe Marine Corps Air Station, Joint Base Pearl Harbor Hickam, and the 297th Air Traffic Control Squadron.

⁸ The STATE previously used the portable air traffic control tower in 2003.

the airfield or runways, which often is a necessity during a powerful storm, hurricane or other disaster.

29. An additional contribution of the NAVAL AIR MUSEUM is as an irreplaceable resource in the training of various Federal, State of Hawaii and County agencies such as: the Department of Agriculture (snake detection canines); Department of Homeland Security (bomb detection canines); Honolulu Police Department (drug detection canines); Honolulu Police Department Special Services Division, airline hostage rescue exercises; Hawaii Air National Guard aircraft recovery support; and United States Air Force pallet load training.

30. Finally, the NAVAL AIR MUSEUM provides educational resources, historic and heritage tours, professional military education, public relations and public interface with Kalaeloa Airport and its surrounding community and neighborhoods. ⁹

31. In 2011, the STATE terminated the NAVAL AIR MUSEUM's Revocable Permit No. 6020 and Parking Permit No. 00-0004 to enable the STATE to engage in construction of water and sewer lines that went through the area covered by Revocable Permit No. 6020. The reason for the water and sewer lines was to service proposed new T-hangars on the southwest corner of Kalaeloa

⁹ Over the years these have included Eagle Scout service projects, STEM events for public and private Oahu schools, U. S. Veteran healing and support projects, Toys-for-Tots, public and private school vocational days, civil air patrol training exercises, living history events, squadron reunions, community open house events, among other projects and events.

Airport.

32. During the construction, the NAVAL AIR MUSEUM was relocated to an area approximately 300 yards west of its original space.

33. The NAVAL AIR MUSEUM was assured that it would be moved only temporarily and that another Revocable Permit like 6020 would be issued to the NAVAL AIR MUSEUM after construction had been completed.

34. The only permit that remained in effect was Revocable Permit No. 5986, which covered the 900 square foot building approximately a quarter-mile from area covered by Revocable Permit No. 6020.

35. In 2013 the construction of the water and sewer lines was completed.

36. The NAVAL AIR MUSEUM was thereafter moved back to its original location.

37. At the time, the NAVAL AIR MUSEUM inquired about obtaining a new Revocable Permit like No. 6020 and Parking Permit like No. 00-0004.

38. The STATE, however, did not provide the NAVAL AIR MUSEUM with similar permits.

39. From that point forward for the next six years, the NAVAL AIR MUSEUM continued to operate with only Revocable Permit No. 5986.

40. In July 2019, the STATE made a string of

allegations that the NAVAL AIR MUSEUM was in violation of the terms of its permit.

41. First, on July 5th the STATE claimed that the NAVAL AIR MUSEUM did not have general liability insurance, which was required under the terms of the Revocable Permit.

42. In fact, the NAVAL AIR MUSEUM did have a current Certificate of Insurance and provided proof of the same to the STATE on July 10, 2019, to confirm coverage.

43. At or about that time the STATE informed the NAVAL AIR MUSEUM that it was in violation of the terms of its Revocable Permit in that it had failed to pay City and County of Honolulu Real Property taxes.

44. The NAVAL AIR MUSEUM provided proof that said taxes were paid in full on July 8, 2019.

45. Next the STATE informed the NAVAL AIR MUSEUM that it had been determined that unauthorized washing and oil leaks and/or spills had occurred on the demised premises in violation of STATE environmental rules.

46. On September 6, 2019, the STATE sent a follow-up letter to the NAVAL AIR MUSEUM reiterating the claims and providing the NAVAL AIR MUSEUM with a deadline of October 10, 2019, to mitigate the deficiencies.

47. The NAVAL AIR MUSEUM complied with the request and fully addressed the STATE's environmental concerns by the STATE's required deadline.

48. All of the foregoing alleged permit violations were fully resolved by the NAVAL AIR MUSEUM.

49. However, on September 17, 2019, the STATE sent a Letter of Revocation and Notice to Vacate, now claiming that the NAVAL AIR MUSEUM was operating outside of the area authorized under Revocable Permit No. 5986.

50. Revocable Permit No. 5986, however, only pertained to the 900 square foot building.

51. From the time that the NAVAL AIR MUSEUM was temporarily relocated in 2011, as well as from 2013 when it was moved back to its original space by the STATE, the NAVAL AIR MUSEUM was not provided another Revocable Permit like 6020 or Parking Permit like No. 00-0004.

52. Instead, the STATE allowed the NAVAL AIR MUSEUM to continue its operations in the location where it had been placed by the STATE in 2013.

53. The NAVAL AIR MUSEUM had previously approached the STATE about taking space in Hangar 110, which was conveyed by the United States to the STATE for aeronautical use and is supported by the annual receipt by the STATE of Federal grant money.

54. The receipt of Federal grant money required that Hangar 110 be used for aeronautical purposes, and the NAVAL AIR MUSEUM would have satisfied the Federal requirement.

55. The STATE, however, denied the NAVAL AIR MUSEUM's proposal, and Hangar 110 remains unoccupied for many years.

COUNT I-BREACH OF AGREEMENT

56. Plaintiff incorporates by reference as if set forth fully herein the allegations and averments of the foregoing paragraphs.

57. The NAVAL AIR MUSEUM has an implied agreement with the STATE to occupy certain designated space, and to fulfill certain requirements with respect to said occupancy.

58. The NAVAL AIR MUSEUM has complied with the requirements of its implied agreement with the STATE.

59. Notwithstanding the NAVAL AIR MUSEUM's satisfaction of the terms of its implied agreement, the STATE has acted to remove the NAVAL AIR MUSEUM from its designated space.

60. The STATE, by its actions, is in breach of its implied agreement with the NAVAL AIR MUSEUM to occupy its designated premises.

61. As a result of the STATE's breach of the implied agreement, the NAVAL AIR MUSEUM has suffered special and consequential damages in amounts to be determined at trial.

COUNT II-RELIANCE

62. Plaintiff incorporates by reference as if set forth fully herein the allegations and averments of the foregoing paragraphs.

63. The NAVAL AIR MUSEUM has occupied its space designated by the STATE in reliance on the STATE's implied agreement that the NAVAL AIR MUSEUM could continue its occupation

as long as the NAVAL AIR MUSEUM fulfilled its obligations under the implied agreement.

64. The NAVAL AIR MUSEUM relied on the STATE's implied agreement, to the NAVAL AIR MUSEUM's detriment, and as a consequence has expended resources and incurred obligations that it would not have otherwise incurred.

65. As a result of the NAVAL AIR MUSEUM's reliance on the STATE's implied agreement, the NAVAL AIR MUSEUM has suffered special and consequential damages in amounts to be determined at trial.

COUNT III-DEFAMATION AND SLANDER

66. Plaintiff incorporates by reference as if set forth fully herein the allegations and averments of the foregoing paragraphs.

67. Following the September 17, 2019 Letter of Revocation and Notice to Vacate, the STATE stated in writing and orally that the NAVAL AIR MUSEUM did not have general liability insurance, did not comply with environmental requirements, and occupied spaces in areas without the consent of the STATE, among other statements to the public and third-parties.

68. These statements, in writing and oral, were not true and were defamatory and slanderous.

69. As a result of the STATE's defamatory and slanderous statements, the NAVAL AIR MUSEUM has suffered harm to its professional reputation and other general damages, as well as

special damages in amounts to be shown at trial.

COUNT IV-QUANTUM MERUIT

70. Plaintiff incorporates by reference as if set forth fully herein the allegations and averments of the foregoing paragraphs.

71. Over the many years of its operation at the Kalaeloa Airport, the NAVAL AIR MUSEUM has conferred significant economic benefits on the STATE.

72. Said economic benefits were accepted by the STATE and the NAVAL AIR MUSEUM has repeatedly informed the STATE about the value of said economic benefits.

73. The STATE, in failing to compensate or remunerate the NAVAL AIR MUSEUM for its services, has been unjustly enriched thereby. Accordingly, equity requires that the STATE be held liable to the NAVAL AIR MUSEUM for *quantum meruit* in an amount that would confer just compensation to the NAVAL AIR MUSEUM for its services and avoid unjust enrichment on the part of the STATE.

COUNT V-INJUNCTIVE RELIEF

74. Plaintiff incorporates by reference as if set forth fully herein the allegations and averments of the foregoing paragraphs.

75. The NAVAL AIR MUSEUM, as a result of the actions of the STATE, has been prevented from conducting tours, operations and other activities that enable it to generate

income.

76. The NAVAL AIR MUSEUM, however, has continued to maintain its necessary insurance, as well as pay its rent, necessary utilities and taxes.

77. Due to the STATE's action, the NAVAL AIR MUSEUM is being forced out of business because it is unable to maintain its income.

78. The STATE should be ordered to allow the NAVAL AIR MUSEUM to continue to operate until a final determination has been made on the claims in this Complaint.

79. The NAVAL AIR MUSEUM has in its collection aircraft, artifacts and equipment on loan from the United States Navy, United States Marine Corps and United States Army.

80. Federal law prohibits the STATE from impounding, entering, moving or scrapping said items on loan from the United States Navy, United States Marine Corps and United States Army.

81. The STATE has indicated that it will act in ways in contravention of the Federal law. This should be stopped.

82. The STATE has also prohibited the NAVAL AIR MUSEUM personnel from accessing its property and collection, and its designated premises.

83. As a result the NAVAL AIR MUSEUM cannot properly service its collection.

84. The NAVAL AIR MUSEUM should be allowed to service

its collection.

85. Since September 2019, the STATE-or its agents- has entered the Ready Room, aircraft and vehicles without the knowledge or permission of the NAVAL AIR MUSEUM.

86. The STATE and its agents should be prohibited from such entry or access.

87. The NAVAL AIR MUSEUM has substantial artifacts and assets that are not on loan from the United States military services.

88. The NAVAL AIR MUSEUM is informed and believes that the STATE is soliciting bids to scrap the NAVAL AIR MUSEUM's artifacts and assets.

89. The STATE should be prevented from engaging entities to scrap the NAVAL AIR MUSEUM's artifacts and assets.

90. The STATE has contacted entities and/or individuals informing them about the controversy with the NAVAL AIR MUSEUM, causing said entities and/or individuals to act in ways or nurture beliefs that are in detriment to the NAVAL AIR MUSEUM.

91. The STATE should stop making all such contacts.

92. The NAVAL AIR MUSEUM seeks an order from the Court enjoining the STATE from continuing to act in ways set forth above to the detriment of the NAVAL AIR MUSEUM.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff THE HAWAII MUSEUM OF FLYING, dba NAVAL AIR MUSEUM BARBERS POINT, prays for judgment in its favor and against Defendant STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, AIRPORTS DIVISION; and DOE DEFENDANTS 1-20, jointly and severally, as follows:

A. For special and consequential damages in amounts to be shown at trial, but not less than the jurisdictional limits of this court;

B. For general damages in an amount to be shown at trial;

C. For injunctive relief; and

D. Such other and further relief, both legal and equitable, as the Court deems just.

DATED: Honolulu, Hawaii, December 11, 2019.

 /S/ Mitchell S. Wong
MITCHELL S. WONG
Attorneys for Plaintiff