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Attorney for Defendant

NA'I AUPUNI

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

C. KAUI JOCHANAN AMSTERDAM,

Plaintiff,

vs.

CIVIL NO. 15-00447 JMS-BMK

DEFENDANTS' ANSWER TO  
COMPLAINT FILED OCTOBER 27,  
2015; CERTIFICATE OF SERVICE

NA‘I AUPUNI FD; KUHIO ASAM,  
President; PAULINE NAMU‘O, V.  
President; KEALOHA BALLESTEROS,  
Sec./Treasurer; GERRY MIYAMOTO;  
SELENA L. SCHUELKE,

Defendants.

**DEFENDANTS’ ANSWER TO COMPLAINT**  
**FILED OCTOBER 27, 2015**

Defendants NA‘I AUPUNI (incorrectly named as NA‘I AUPUNI FD)  
 (“Na‘i Aupuni”), KUHIO ASAM, President, PAULINE NAMU‘O, V. President,  
 KEALOHA BALLESTEROS, Sec./Treasurer, GERRY MIYAMOTO, and  
 SELENA L. SCHUELKE (collectively referred to herein as “Defendants”), by and  
 through their counsel, McCorriston Miller Mukai MacKinnon LLP and Sullivan  
 Lee Meheula Lee LLP, hereby submit the following as their Answer to the  
 Complaint filed by Plaintiff C. KAUI JOCHANAN AMSTERDAM on  
 October 27, 2015 (“Complaint”):

**FIRST DEFENSE**

**1. INTRODUCTION**

1. In response to the unnumbered first indented paragraph of the  
 Complaint, and to the extent Plaintiff discusses his background, Defendants are  
 without knowledge or information sufficient to form a belief as to the truth of the

allegations and on that basis deny them. Further responding, Defendants state that the Complaint speaks for itself and on that basis denies the remaining allegations.

2. In response to the unnumbered second indented paragraph of the Complaint, Defendants state that the Complaint speaks for itself and on that basis denies the allegations contained therein. Defendants further state that although Plaintiff purports to pursue the claims identified, Defendants deny that Plaintiff is entitled to any recovery under any such claims against Defendants, or at all.

## **2. BACKGROUND**

3. In response to the unnumbered third indented paragraph of the Complaint, Defendants deny the allegations, including those calling for legal conclusions.

4. In response to the unnumbered fourth indented paragraph of the Complaint, Defendants state that a notice was sent to approximately 95,000 certified Native Hawaiians that included key dates for the Na'i Aupuni election process, and said notice speak for itself. Further responding, Defendants deny any remaining allegations.

5. In response to the unnumbered fifth indented paragraph of the Complaint, Defendants state that the Complaint speaks for itself and on that basis denies the allegations contained therein. Further responding, Defendants deny the allegations, including those calling for legal conclusions

6. In response to the unnumbered sixth indented paragraph of the Complaint, Defendants deny the allegations, including those calling for legal conclusions.

7. In response to the unnumbered seventh indented paragraph of the Complaint, Defendants deny the allegations, including those calling for legal conclusions.

8. In response to the unnumbered eighth indented paragraph of the Complaint, Defendants deny the allegations, including those calling for legal conclusions.

9. In response to the unnumbered ninth indented paragraph of the Complaint, Defendants deny the allegations, including those calling for legal conclusions.

### **3. CONCLUSION**

10. In response to the unnumbered tenth indented paragraph of the Complaint, Defendants state that the Complaint speaks for itself and on that basis denies the allegations contained therein.

11. In response to the unnumbered eleventh indented paragraph of the Complaint, Defendants state that the Complaint speaks for itself and on that basis denies the allegations contained therein. Further responding, Defendants deny the allegations, including those calling for legal conclusions.

12. In response to the unnumbered twelfth indented paragraph of the Complaint, Defendants state that the Complaint speaks for itself and on that basis denies the allegations contained therein.

### **AFFIRMATIVE DEFENSES**

1. The Complaint, and each purported claim alleged therein, fails to state a claim against Defendants upon which relief can be granted.

2. Plaintiff is not entitled to injunctive or declaratory rights against Defendants because Defendants are not state actors given that the Na‘i Aupuni election of delegates is not a State election and the State does not control Na‘i Aupuni.

3. Plaintiff lacks standing to assert some or all of the claims set forth in the Complaint.

4. Some or all of Plaintiff’s claims are not ripe for review and/or adjudication.

5. Plaintiff’s requested relief would violate the political question doctrine.

6. One or more abstention doctrines preclude a determination of this matter.

7. Plaintiff’s claims are barred, in whole or in part, by the equitable theories of estoppel, waiver, and laches.

8. The U.S. Department of Interior's current rule-making process may result in a federal regulation later this year, but before any delegate organic documents can be ratified that specifically authorizes Act 195.

9. Under the circumstances noted above, the Court should refuse to exercise its judicial power and thus reject Plaintiff's request for declaratory relief. Wilton v. Seven Falls Co., 515 U.S. 277, 286-87 (1995).

10. Defendants hereby reserve all rights to bring and assert further defenses, claims, and counter-claims, as discovery and the evidence may merit, and also reserve the right to name additional parties to this action. Furthermore, by alleging the above defenses separately and additionally, Defendants intend no alteration of the burden of proof and/or burden of going forward with evidence which otherwise exists with respect to any particular issues at law or in equity. All such defenses are pled in the alternative and do not constitute an admission of liability or that the Plaintiff is entitled to any relief whatsoever.

11. Defendants give notice that they intend to rely upon any other matter constituting an avoidance or affirmative defense as set forth in Rule 8(c) of the Federal Rules of Civil Procedure, and that they intend to seek leave to amend their answer to allege those defenses of which they may become aware during the course of discovery or trial of this action.

WHEREFORE, Defendants pray for relief as follows:

1. That Plaintiff take nothing by this action;
2. That judgment be entered against Plaintiff and in favor of Defendants;
3. That Defendants be awarded their costs incurred in this action,  
including, where applicable under the law, reasonable attorneys' fees; and
4. That this Court grant such other relief as the Court deems just and proper.

DATED: Honolulu, Hawai'i, November 17, 2015.

/s/ DAVID J. MINKIN  
MCCORRISTON MILLER MUKAI  
MACKINNON  
DAVID J. MINKIN  
TROY J. H. ANDRADE  
JESSICA M. WAN  
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*PAULINE NAMU'O, KEALOHA*  
*BALLESTEROS, GERRY*  
*MIYAMOTO, and SELINA L.*  
*SCHUELKE*

SULLIVAN MEHEULA LEE  
WILLIAM MEHEULA  
*Attorney for Defendant*  
*NA'I AUPUNI*

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C. KAUI JOCHANAN AMSTERDAM,

Plaintiff,

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NA'I AUPUNI FD; KUHIO ASAM,  
President; PAULINE NAMU'O, V.  
President; KEALOHA BALLESTEROS,  
Sec./Treasurer; GERRY MIYAMOTO;  
SELENA L. SCHUELKE,

Defendants.

CIVIL NO. 15-00447 JMS-BMK

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on the date noted below, a true and correct copy of the foregoing document was duly served upon the following party via U.S. mail, postage prepaid, at his last known address:

C. KAUI JOCHANAN AMSTERDAM  
1415 Pensacola Street, #12  
Honolulu, Hawai'i 96822

Plaintiff, *Pro Se*



DATED: Honolulu, Hawai‘i, November 17, 2015.

/s/ DAVID J. MINKIN  
McCORRISTON MILLER MUKAI  
MACKINNON

DAVID J. MINKIN  
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*PAULINE NAMU‘O, KEALOHA*  
*BALLESTEROS, GERRY*  
*MIYAMOTO, and SELINA L.*  
*SCHUELKE*

SULLIVAN MEHEULA LEE  
WILLIAM MEHEULA  
*Attorney for Defendant*  
*NA‘I AUPUNI*

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*C. Kaui Jochanan Amsterdam vs. Na‘i Aupuni FD, et al.*, Civil No. 15-00447 JMS-BMK; **CERTIFICATE OF SERVICE** [DEFENDANTS’ ANSWER TO COMPLAINT FILED OCTOBER 27, 2015]