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CIRCUIT COURT  
STATE OF HAWAII  
FILED  
2017 JAN -9 AM 11:28  
J. KURO  
CLERK

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

THEA EKINS-COWARD and AMY EKINS-COWARD,  
Plaintiffs,

vs.

UNIVERSITY OF HAWAII; DR. JIAN YU;  
DR. RICHARD E. ROCHELEAU; JOHN  
DOES 1-10; JANE DOES 1-10; DOE  
PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; DOE  
GOVERNMENTAL AGENCIES 1-10;  
Defendants.

CIVIL NO. 17-1-0036-01 BIA.  
(Other Non-Vehicle Tort)

**COMPLAINT; SUMMONS TO ANSWER  
CIVIL COMPLAINT**

COMPLAINT

Plaintiffs THEA EKINS-COWARD and AMY EKINS-COWARD file this Complaint against defendant UNIVERSITY OF HAWAII, a State of Hawaii agency and allege as follows:

1. This Court has jurisdiction to hear the claims in this Complaint pursuant to HRS § 661-1. Venue is appropriate in this Circuit pursuant to HRS § 603.36.

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.

Clerk, First Circuit, State of Hawaii

2. Plaintiff THEA EKINS-COWARD is a citizen of the United Kingdom of Great Britain and Northern Ireland. THEA EKINS-COWARD is eligible to bring a claim pursuant to HRS § 661-4 and brings this claim for personal injuries.

3. Plaintiff AMY EKINS-COWARD is also a citizen of the United Kingdom of Great Britain and Northern Ireland. AMY EKINS-COWARD is eligible to bring a claim pursuant to HRS § 661-4 and brings this claim for personal injuries. THEA EKINS-COWARD and AMY EKINS-COWARD at all times relevant herein were and are now lawfully married.

4. At all times relevant herein, defendant UNIVERSITY OF HAWAI'I (the "UNIVERSITY") was and is a governmental entity of the State of Hawai'i.

5. At all times relevant herein, all actions taken by any agent and/or employee of the UNIVERSITY were within the scope of that individual's office or employment.

6. At all times relevant herein, all allegations made against defendants include allegations for collective and/or individual action taken through their employees and/or agents.

7. The defendants designated as JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, and DOE GOVERNMENTAL ENTITIES 1-10 (hereinafter collectively referred to as "Doe Defendants") are sued herein under fictitious names for the reason that their true names and identities are presently unknown to plaintiffs, despite plaintiffs' diligent and good faith efforts to obtain this information, except that said Doe Defendants were connected in some manner with the named defendants and were individuals, corporations, parent corporations, divisions, subsidiaries, entities, agents, representatives, associations, affiliates, associates, co-venturers, business entities, employers, employees, servants, vendors, suppliers, manufacturers, subcontractors and contractors, or governmental entities, agencies or bodies, responsible in some manner presently unknown to

plaintiffs for the injuries and damages to plaintiffs. Plaintiffs hereby pray leave to certify the true names and capacities, activities and/or responsibilities of said Doe Defendants when the same are ascertained.

#### COMMON FACTUAL ALLEGATIONS

8. The Hawai'i Natural Energy Institute ("HNEI") is an organized research unit of the UNIVERSITY's School of Ocean and Earth Science and Technology and operated by the UNIVERSITY. The HNEI conducts what it represents to be leading edge research of great state and national importance aimed at developing, testing, and evaluating novel renewable energy technologies.

9. Each year the UNIVERSITY offers post-doctoral fellowships to a select few promising young scientists. The purpose of the fellowships is to provide training to the young scientists and to broaden their research skills under the supervision of a principal investigator. These fellowships allow the young scientists to engage in informal discourse and to exchange ideas with other members of the scientific community regarding the research conducted by the UNIVERSITY.

10. Dr. JIAN YU is a renowned professor and researcher at the UNIVERSITY and holds a doctorate in Biochemical Engineering. Dr. YU has over 24 years of experience in bio-based plastics, chemicals, and fuels with an emphasis in chemical, biochemical, and microbial conversion of renewable feedstock (including hydrogen and carbon dioxide). Dr. YU joined the UNIVERSITY in 2001, teaching, training, and conducting research in areas of importance dealing with engineering of marine bio-products, among other things.

11. Dr. RICHARD E. ROCHELEAU is the HNEI Director and holds a doctorate in Chemical Engineering. He has over 35 years of experience in renewable energy, with an



emphasis in the areas of photovoltaics, hydrogen technology, and fuel cells. Dr. ROCHELEAU joined the faculty of the HNEI at the UNIVERSITY in 1988 and was appointed Director in 2000. He is also a cooperating graduate faculty member of the Department of Electrical Engineering at the UNIVERSITY.

12. The UNIVERSITY and Dr. ROCHELEAU applied for and received a grant from the Office of Naval Research for one of the HNEI's research projects called "Asian Pacific Research Initiative for Sustainable Energy Systems." The grant was intended to subsidize, in part, the HNEI's research in the technology for producing liquid fuel from synthetic gases such as hydrogen, carbon monoxide, and carbon dioxide. The UNIVERSITY's grant proposal sought funds to underwrite the training of a post-doctoral fellow in the subject matter of the HNEI research. The UNIVERSITY's proposal represented that Dr. ROCHELEAU was to serve as the principal investigator and that postdoctoral fellows were to receive training in this field of research under the supervision of one of the senior faculty members and that the fellows were not to be employees of the UNIVERSITY.

13. In or about November 2015, the defendants, and each of them, selected and invited THEA EKINS-COWARD to visit the UNIVERSITY and the HNEI as a post-doctoral fellow and to receive from Dr. YU, who held himself out to be the principal investigator, scholarly training and instruction designed to further her knowledge of microalgal systems and algal derived products such as bioplastics. THEA EKINS-COWARD believed Dr. YU and the HNEI to be at the forefront of microalgae research and she further believed defendants could and would provide her training and instruction that would further her professional research goals.

14. The UNIVERSITY's invitation documented that it would provide THEA EKINS-COWARD the training necessary to:

“1) Design and set-up novel bioreactor systems for high biomass and bio-oil production from syngas and renewable carbon source.

2) Investigate a new downstream processing of biomass to produce liquid fuels and reuse of biomass residues based on our current research and technology.”

15. THEA EKINS-COWARD had received a doctorate in Chemical Engineering and Advanced Materials from Newcastle University in 2012. THEA EKINS-COWARD had previously worked on the harvesting of bio-products from microalgae and the fellowship, as advertised, suggested that her work at HNEI would be in algal systems. She had no previous experience in the preparation of gas mixtures with gases which may be combustible in certain circumstances and no previous experience in the processing and culturing of hydrogen oxidizing bacteria.

16. The UNIVERSITY’s fellowship invitation to THEA-EKINS COWARD made clear that the fellowship was not employment and thus the UNIVERSITY would not provide her “employment benefits such as sick and/or vacation leave, cost-shared medical insurance, etc.” The “Invitation Conditions” stated in relevant part:

2) The recipient of the fellowship is not an employee of the University of Hawai’i, therefore shall not be entitled to the rights, privileges, and benefits of University employees . . . . The University of Hawai’i accepts no responsibility, nor liability to obtain medical coverage for any expenses or costs in the event of injury in the course of your work or travel.

...

10) HNEI will provide adequate training resources (e.g., equipment, supplies, work space, etc. for the duration of your visit.)

17. Dr. YU personally informed THEA EKINS-COWARD that she was, as a post-doctoral fellow, a trainee and not a UNIVERSITY employee. As Dr. YU explained, “post-doctoral training provides an opportunity to a young researcher to build up a professional career.” Though not itself employment, Dr. YU explained that the fellowship is properly considered “a step stone for a young researcher who would like to use this opportunity as much as possible for professional employment” in the future.

18. THEA EKINS-COWARD accepted the UNIVERSITY’s invitation to be trained in the area as outlined above and on or about October 1, 2015, THEA EKINS-COWARD started her post-doctoral fellowship under Dr. YU’s tutelage.

19. The UNIVERSITY purchased and provided all materials THEA EKINS-COWARD would need and use for the research and experiments in which she would be involved. Dr. YU advised, directed and signed off on all materials and equipment that THEA EKINS-COWARD was to use in the research and experiments and specifically in the research and experiments concerning artificial photosynthesis of bacterium that produces biodegradable plastic, using a mixture of hydrogen, carbon dioxide, and oxygen gases to stimulate the growth of the bacterium.

20. The tanks the UNIVERSITY and Dr. YU prescribed and provided to THEA EKINS-COWARD were dangerous and not suitable for use in the research and experiments defendants directed THEA EKINS-COWARD to undertake as they were not designed for flammable gases, and were not grounded to prevent static electrical discharge. Further the



UNIVERSITY and Dr. YU instructed THEA EKINS-COWARD to use in the experiments Ashcroft digital gauges (100 psi and 300 psi versions) which were not intrinsically safe electrical components, i.e., they were not components designed for use with explosive gases.

21. On or about October 7, 2015, THEA EKINS-COWARD, unfamiliar with the experimental protocols she was instructed to effectuate, inquired about receiving lab safety training. THEA EKINS-COWARD also asked for safety training specifically with respect to handling and use of compressed gas cylinders because she had never before used compressed gas cylinders. Dr. YU, notwithstanding his knowledge of the dangers hereinabove described, refused to provide such safety training.

22. On or about October 21, 2015, THEA EKINS-COWARD asked Dr. YU, as her principal investigator and mentor, whether there were specific hazards about which she should be concerned, especially with respect to the proper method of combining the gases that Dr. YU directed her to use, and about safety procedures generally. Notwithstanding these inquiries and defendants' knowledge of the dangers, defendants failed and refused to warn of the dangers or to provide appropriate safety training. Dr. YU failed to provide THEA EKINS-COWARD with any training on the method for safely mixing the gases, using pressurized reactors, or any standard operating procedures ("SOP") for safely using the lab.

23. In light of his background, training, and experience, Dr. YU knew or should have known that the equipment defendants provided for THEA EKINS-COWARD's use was not properly grounded and not safe for use with combustible gases, knew or should have known of the hazards posed by the use of the equipment in such a manner, and knew or should have known of the unreasonable risk of harm in using the equipment for these gases in the manner defendants instructed THEA EKINS-COWARD to use them.

24. Despite Dr. YU's knowledge of the extreme danger to THEA EKINS-COWARD and those around her, Dr. YU failed to warn THEA EKINS-COWARD, failed to take any steps to make the laboratory safe, failed to provide necessary safety training to THEA EKINS-COWARD, and failed to provide proper and safe equipment. Rather, with full knowledge of these dangers and with reckless disregard of the safety of THEA EKINS-COWARD and those around her, Dr. YU instructed THEA EKINS-COWARD to proceed with the experiments notwithstanding the significant risk that the experimental protocol and equipment would ultimately result in an explosion.

25. In light of his background, training, experience, and his role as the principal investigator, Dr. ROCHELEAU knew or should have known that the equipment defendants provided for THEA EKINS-COWARD's use was not properly grounded and not safe for use with combustible gases, knew or should have known of the hazards posed by the use of the equipment in such a manner, and knew or should have known of the unreasonable risk of harm in using the equipment for these gases in the manner defendants instructed THEA EKINS-COWARD to use them.

26. Despite Dr. ROCHELEAU's knowledge of the extreme danger to THEA EKINS-COWARD and those around her, Dr. ROCHELEAU failed to warn THEA EKINS-COWARD, failed to take any steps to make the laboratory safe, failed to provide necessary safety training to THEA EKINS-COWARD, and failed to provide proper and safe equipment.

27. On or about March 16, 2016, because of the dangers known to defendants but unknown to THEA EKINS-COWARD, the defendants' experiment exploded. As a result, THEA EKINS-COWARD suffered serious injuries, including but not limited to the loss of her right arm above her elbow, suffered abrasions to her cornea, burns on her face, and nerve damage to her



ears with resulting loss of high frequency hearing.

28. Defendants, and each of them, had a duty to train, warn and provide proper equipment to THEA EKINS-COWARD, and to follow all applicable safety codes, standards, and regulations for the laboratory and for the type of experiments being conducted in the laboratory.

29. Defendants, and each of them, negligently, grossly negligently, carelessly and recklessly breached their duty by providing unsafe and improper equipment, by failing to provide adequate training, by failing to follow safety codes, standards and regulations in laboratory safety, by directing THEA EKINS-COWARD to undertake experiments that were inherently and unnecessarily unsafe, by failing to make reasonable inspection of the equipment, and by failing to warn of any inadequacy of the equipment or the possible dangerous condition.

**COUNT 1: PERSONAL INJURY**

30. Plaintiffs reallege and by reference incorporate herein the allegations contained in paragraphs 1 through 29.

31. Defendants' actions above-named caused THEA EKINS-COWARD's personal injury, proximately resulting in general and special damages in an amount to be proven at trial.

**COUNT 2: NEGLIGENCE**

32. Plaintiffs reallege and by reference incorporate herein the allegations contained in paragraphs 1 through 31.

33. Defendants' actions constitute negligence, proximately causing general and special damages in an amount to be proven at trial.

**COUNT 3: GROSS NEGLIGENCE**

34. Plaintiffs reallege and by reference incorporate herein the allegations contained in paragraphs 1 through 33.

35. Defendants' actions constitute gross negligence, proximately causing general and special damages in an amount to be proven at trial.

**COUNT 4: FAILURE TO WARN**

36. Plaintiffs reallege and by reference incorporate herein the allegations contained in paragraphs 1 through 35.

37. Defendants' actions constitute negligent failure to warn of a known hazard, proximately causing general and special damages in an amount to be proven at trial.

**COUNT 5: DANGEROUS CONDITION OF PUBLIC PROPERTY**

38. Plaintiffs reallege and by reference incorporate herein the allegations contained in paragraphs 1 through 37.

39. Defendants' actions constitute failure to eliminate or warn of a dangerous condition of public property, proximately causing general and special damages in an amount to be proven at trial.

**COUNT 6: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

40. Plaintiffs reallege and by reference incorporate herein the allegations contained in paragraphs 1 through 39.

41. Defendants' actions constitute negligent infliction of emotional distress, proximately causing general and special damages in an amount to be proven at trial.

**COUNT 7: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

42. Plaintiffs reallege and by reference incorporate herein the allegations contained in paragraphs 1 through 41.

43. Defendants' actions were so extreme and outrageous as to constitute intentional infliction of emotional distress, proximately causing general and special damages in an amount

to be proven at trial.

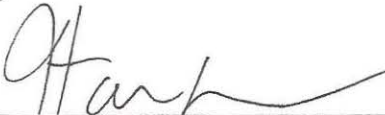
**COUNT 8: LOSS OF CONSORTIUM**

44. Plaintiffs reallege and by reference incorporate herein the allegations contained in paragraphs 1 through 43.

45. Defendants' actions caused plaintiff AMY EKINS-COWARD to suffer a loss of consortium, proximately causing general and special damages in an amount to be proven at trial.

WHEREFORE, plaintiffs pray that judgment be entered against defendants jointly and severally for reasonable expenses of injury, special and general damages, pre-judgment and post-judgment interest, costs, attorneys' fees and such other relief as the Court deems just.

DATED: Honolulu, Hawai'i, January 8, 2017.

  
\_\_\_\_\_  
HARRISON L. KIEHM  
MICHAEL S. DANKO  
Attorneys for Plaintiffs



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CIVIL NO. 17-1-0036-01  
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**SUMMONS TO ANSWER CIVIL  
COMPLAINT**

BIA.

**SUMMONS TO ANSWER CIVIL COMPLAINT**

STATE OF HAWAI'I

To the above-named Defendants:

You are hereby summoned and required to file with the Court and to serve upon plaintiffs' attorney, Harrison L. Kiehm, Esq., whose address is **LAW OFFICE OF HARRISON L. KIEHM**, 8 South King Street, Suite 202-B, Honolulu, Hawai'i 96813, an answer to the Complaint which is attached. This action must be taken within **twenty (20) days** after service of this summons upon you, exclusive of the day of service. If you fail to make your answer within the twenty (20) day time limit, judgment by default will be taken against you for the relief demanded in the Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in

writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

JAN - 9 2017

DATED: Honolulu, Hawai'i \_\_\_\_\_.



J. KUBO

CLERK OF THE ABOVE-ENTITLED COURT