

Utah Division of Consumer Protection
160 East 300 South, Second Floor
PO Box 146704
Salt Lake City, UT 84114-6704
PH. (801) 530-6601/FAX (801) 530-6001

**BEFORE THE DIVISION OF CONSUMER PROTECTION
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

MOUNTAIN LUMBER LLC, a Utah
limited liability company;

**HOLA CONSTRUCTION &
CONCRETE LLC**, a Utah limited
liability company doing business as
HOLA CONSTRUCTION;

ANDREW TUITAVAKE, an individual,
and as a manager of **MOUNTAIN
LUMBER LLC**;

LOSINA SEKONA, an individual, and
as a manager of **MOUNTAIN LUMBER
LLC**; and

TUPOU L. HOLA, an individual, and as
a manager of **HOLA CONSTRUCTION
& CONCRETE LLC**;

Respondents.

ADMINISTRATIVE CITATION

**DCP Legal File No. CP-2023-060
DCP Case No. 132502**

PURSUANT TO THE AUTHORITY granted by Utah Code § 13-2-6, which empowers the Division of Consumer Protection (Division) to issue a citation upon reasonable cause to believe a person has violated or is violating any statute listed in Utah Code § 13-2-1, it appears, upon information and belief, that you are in violation of the *Utah Consumer Sales Practices Act* (CSPA), Utah Code § 13-11-1 *et seq.*, and the *Utah Consumer Sales Practices Act Rule* (CSPA Rule), Utah Admin. Code R152-11-1 *et seq.* The Division incorporates by reference all information in the Notice attached to this Citation. The Division alleges:

RESPONDENTS

1. Mountain Lumber, LLC (“Mountain Lumber”) is a Utah limited liability company with a registered address in Salt Lake City, Utah.
2. Hola Construction & Concrete, LLC (“Hola Construction”) is a Utah limited liability company with a registered address in West Valley City, Utah. Hola Construction & Concrete, LLC also does business as Hola Construction.
3. Andrew Tuitavake (“Tuitavake”) is a resident of Utah, and is a manager of Mountain Lumber.
4. Losina Sekona (“Sekona”) is a resident of Utah, and is a manager of Mountain Lumber.

5. Tupou L. Hola (“Hola”) is a resident of Utah, and is the sole manager of Hola Construction.
6. Tuitavake, Sekona, Hola, Mountain Lumber, and Hola Construction will be referred to collectively as Respondents.
7. At all times relevant to this citation, Respondents operated a construction company and provided materials for their construction projects.

BACKGROUND AND INFORMATION

8. In or about early October 2021, consumers SF & TF (see Appendix A) spoke with Tuitavake and Hola to discuss building a concrete retaining wall in SF & TF’s backyard.
9. Tuitavake and Hola represented themselves as owners, members, and partners of Hola Construction.
10. SF & TF showed Tuitavake and Hola the engineering plans for a 16-foot tall and 200-foot long concrete wall. Tuitavake and Hola told SF & TF that they could build the wall according to the plans. They also showed SF & TF pictures of other projects that they had done in Park City.
11. SF & TF asked Tuitavake and Hola if they were licensed and insured. Tuitavake provided a license number of 11745700-5501 and proof of insurance.

12. Tuitavake and Hola represented that Respondents were licensed and insured to do this project.
13. A few months later, SF & TF discovered that Respondents were not licensed.
14. On or about November 13, 2021, TF & SF signed a contract with Respondents to perform the work for \$383,871.00.
15. Respondents started excavating into the mountain side and hauling off dirt.
16. On or about November 15, 2021, SF & TF paid Respondents a deposit of \$100,000.00. The check was made payable to Hola Construction.
17. On the same day, Tuitavake told SF & TF that Mountain Lumber would provide the materials for the project and they needed to send Mountain Lumber payments. SF & TF paid Respondents in the amount of \$30,271.00. That check was made payable to Mountain Lumber.
18. During the construction of the retaining walls, SF & TF made several payments to Respondents.
19. As of April 22, 2022, SF & TF paid Respondents a total of \$416,271.00. Out of that total, \$229,513.00 were checks made payable to Hola Construction, and \$186,758.00 were payable to Mountain Lumber. SF & TF made the following payments:

11/15/2021 Hola Construction \$100,000.00
12/16/2021 Hola Construction \$ 54,513.00
01/08/2022 Hola Construction \$ 25,000.00
01/15/2022 Hola Construction \$ 8,000.00
01/21/2022 Hola Construction \$ 42,000.00
Total: \$229,513.00

11/15/2021 Mountain Lumber \$ 30,271.00
12/16/2021 Mountain Lumber \$ 45,487.00
02/03/2022 Mountain Lumber \$ 13,000.00
02/22/2022 Mountain Lumber \$ 45,000.00
03/16/2022 Mountain Lumber \$ 12,000.00
04/11/2022 Mountain Lumber \$ 22,000.00
04/22/2022 Mountain Lumber \$ 19,000.00
Total: \$186,758.00

20. In or about May, 2022, SF & TF found that Respondents removed their tools from the garage where they were stored.
21. On or about May 25, 2022, SF contacted Respondents and spoke with Tuitavake and Hola to find out if they had started a new job and why they abandoned this project.
22. SF later contacted Respondents to find out what happened to the materials that Respondents had not provided. SF spoke with Sekona who said that Tuitavake was in charge of the project. At that point, SF & TF asked Sekona for a refund for the materials that were never provided.

23. On or about June 8, 2022, Tuitavake responded to SF & TF's question and said that Respondents had not abandoned the project. Tuitavake said he would send SF & TF a letter with all the changes.
24. On or about June 15, 2022, SF contacted Respondents again and spoke with Sekona. SF asked Sekona to provide an account of all transactions and issue any refunds for the materials that Respondents did not deliver.
25. The next day, SF contacted Respondents to follow up with their refund request. SF spoke with Sekona again. Sekona told SF that she (Sekona) needed to speak with Tuitavake.
26. A meeting with Tuitavake and Sekona was scheduled for the next day. However, Tuitavake and Sekona never showed up to the meeting.
27. On or about June 17, 2022, SF & TF sent a text message to Respondents requesting a refund for the work that they had not done.
28. On or about June 21, 2022, SF & TF sent another text to Tuitavake asking him when they would get the refund they requested on June 17, 2021.
29. On or about July 8, 2022, SF & TF received a text message from Tuitavake saying that there was an outstanding invoice of \$1,200,000.00 that needed to be paid before they would move forward with any work.

30. SF & TF were surprised by this text message because this was the first time they heard of this invoice.
31. On or about July 26, 2022, SF & TF sent a letter to Respondents requesting a refund for the materials that Respondents failed to deliver. Respondents never responded to SF & TF's letter.
32. SF & TF again tried to reach out to Respondents for a resolution without success.
33. To date, Respondents have not delivered all the materials that SF & TF paid for, and have not provided a refund for the materials that Respondents did not deliver.
34. To date, Respondents have not finished the wall that SF & TF paid for and have not provided a refund for the money that SF & TF paid for the wall.

COUNT 1

Respondents Mountain Lumber, Tuitavake, and Sekona Only

35. Respondents knowingly or intentionally received a total payment of \$186,758.00 from SF & TF to purchase materials for the wall, then failed to fully furnish the goods.
36. The above actions violate the CSPA, Utah Code § 13-11-4(2)(1):

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(1) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to:

(i) cancel the sales agreement and receive a refund of all previous payments to the supplier if the refund is mailed or delivered to the buyer within 10 business days after the day on which the seller receives written notification from the buyer of the buyer's intent to cancel the sales agreement and receive the refund; or

(ii) extend the shipping date to a specific date proposed by the supplier;

37. **The above actions are alleged as one violation of the above-referenced statute with a maximum potential fine of up to \$2,500.00 per violation.**

COUNT 2

Respondents Hola Construction, Tuitavake, and Hola.

38. Respondents knowingly or intentionally received a total payment of \$229,513.00 from SF & TF to build a concrete retaining wall, then failed to fully furnish the services.

39. The above actions violate the CSPA, Utah Code § 13-11-4(2)(1):

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to:

- (i) cancel the sales agreement and receive a refund of all previous payments to the supplier if the refund is mailed or delivered to the buyer within 10 business days after the day on which the seller receives written notification from the buyer of the buyer's intent to cancel the sales agreement and receive the refund; or
- (ii) extend the shipping date to a specific date proposed by the supplier;

40. **The above actions are alleged as one violations of the above-referenced statute with a maximum potential fine of up to \$2,500.00 per violation.**

COUNT 3

Respondents Mountain Lumber, Tuitavake, and Sekona

- 41. Respondents accepted payments of \$186,758.00 from SF & TF.
- 42. Respondents received a valid refund request from SF & TF for the materials they never provided. Respondents never issued a refund.
- 43. The above actions violate the CSPA Rule, Utah Admin. Code R152-11-10(B)(2):

(B) It shall be a deceptive act or practice in connection with a consumer transaction when the consumer can provide a reasonable proof of purchase from a supplier for the supplier to refuse to give refunds for:

....

- (2) Non-used, non-damaged or non-defective products unless:
 - (a) Such non-refund, exchange or credit policy, including applicable restocking fee, is clearly indicated by:
 - (i) a sign posted at the point of display, the point of sale the store entrance;
 - (ii) adequate verbal or written disclosure if the transaction occurs through the mail, over the telephone, via facsimile, machine, via e-mail, or over the Internet; or
 - (iii) a clear and conspicuous statement on the first or front page of any sales document or contract at the time of the sale.

Or, in the alternative, Utah Admin. Code R152-11-10(C):

C. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier who has accepted a deposit and has received from the consumer within a reasonable time a valid request for refund of the deposit to fail to make the refund within 30 calendar days after receipt of such request.

- 44. **The above actions are alleged as one violation of the above-referenced rule, with a maximum potential fine of up to \$2,500.00 per violation.**

COUNT 4

Respondents Hola Construction, Tuitavake, and Hola

- 45. Respondents accepted payments of \$229,513.00 from SF & TF.
- 46. Respondents received a valid refund request from SF & TF for the work that was not completed. Respondents never issue a refund.
- 47. The above actions violate the CSPA Rule, Utah Admin. Code R152-11-10(B)(2):

(B) It shall be a deceptive act or practice in connection with a consumer transaction when the consumer can provide a reasonable proof of purchase from a supplier for the supplier to refuse to give refunds for:

....

(2) Non-used, non-damaged or non-defective products unless:
(a) Such non-refund, exchange or credit policy, including applicable restocking fee, is clearly indicated by:

(i) a sign posted at the point of display, the point of sale the store entrance;

(ii) adequate verbal or written disclosure if the transaction occurs through the mail, over the telephone, via facsimile, machine, via e-mail, or over the Internet; or

(iii) a clear and conspicuous statement on the first or front page of any sales document or contract at the time of the sale.

Or, in the alternative, Utah Admin. Code R152-11-10(C):

C. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier who has accepted a deposit and has received from the consumer within a reasonable time a valid request for refund of the deposit to fail to make the refund within 30 calendar days after receipt of such request.

48. **The above actions are alleged as one violation of the above-referenced rule, with a maximum potential fine of up to \$2,500.00 per violation.**

COUNT 5

Respondents Hola Construction, Tuitavake, and Hola

49. Respondents represented to SF & TF that they were a licensed contractor.
50. Respondents were not licensed to do this type of work.

51. The above actions violate the CSPA Rule, Utah Admin. Code R152-11-5(B)(5):

(B) It shall be a deceptive act or practice in connection with a consumer transaction involving all other services not covered under Section A for a supplier to:

(5) Misrepresent that the supplier has the particular license, bond, insurance, qualifications, or expertise that is related to the work to be performed.

52. **The above actions are alleged as one violation of the above-referenced rule, with a maximum potential fine of up to \$2,500.00 per violation.**

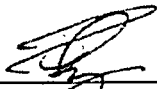
Total Alleged Counts for Respondents Mountain Lumber, Mr. Tuitavake and Ms. Sekona: 2

Total Potential Fine for Respondents Mountain Lumber, Mr. Tuitavake and Ms. Sekona: \$5,000.00

Total Alleged Counts for Respondents Hola Construction, Mr. Tuitavake and Mr. Hola: 3

Total Potential Fine for Respondents Hola Construction, Mr. Tuitavake and Mr. Hola: \$7,500.00

THIS CITATION ISSUED this 25th day of September, 2023.



Ao Pauga – Investigator

UTAH DIVISION OF CONSUMER PROTECTION

Appendix A

Consumer Name	Consumer Initials	City of Residence	State of Residence
[REDACTED]	SF	[REDACTED]	Utah
[REDACTED]	TF	[REDACTED]	Utah

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below by mailing a copy thereof, properly addressed by first class mail and certified mail with postage prepaid, to:

HOLA CONSTRUCTION &
CONCRETE LLC

[REDACTED]

WEST VALLEY UT 84118

ANDREW S TUITAVAKE

[REDACTED]

SALT LAKE CITY UT 84107

MOUNTAIN LUMBER

[REDACTED]

NORTH SALT LAKE UT 84054

TUPOU L HOLA

[REDACTED]

WEST VALLEY UT 84118

MOUNTAIN LUMBER

[REDACTED]

SALT LAKE CITY UT 84107

LOSINA SEKONA

[REDACTED]

NORTH SALT LAKE UT 84054

MOUNTAIN LUMBER

[REDACTED]

WEST VALLEY UT 84128

LOSINA SEKONA

[REDACTED]

WEST VALLEY UT 84128

And by email:

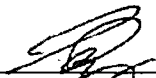
[REDACTED]

Tholaconstruction@gmail.com

[REDACTED]

legaldcp@utah.gov

Dated this 25th day of September 2023.



A. Pauga - Investigator

UTAH DIVISION OF CONSUMER PROTECTION

NOTICE
IMPORTANT - READ CAREFULLY

This citation may be contested by filing a request for review, in writing, within 20 days of issuance of this citation. Following receipt of a request for review, an informal hearing will be scheduled before the State of Utah, Department of Commerce, Division of Consumer Protection pursuant to Utah Code § 63G-4-203. Procedures for Informal Adjudicative Proceedings. The purpose for the hearing is a review of the citation for factual and legal sufficiency and other questions to be determined by the presiding officer.

A citation that is not contested becomes the final default order of the Division. A defaulted party may make a motion to the presiding officer to set aside a default. Utah Code § 63G-4-209(3). The defaulted party may seek agency review pursuant to Utah Code § 63G-4-301, or reconsideration pursuant to Utah Code § 63G-4-302, only of the presiding officer's decision on the motion to set aside the default. *See* Utah Code § 63G-4-209(3)(c).

In addition to any fines that may be levied, a cease and desist order may be entered against you. An intentional violation of a final cease and desist order is a third degree felony. Utah Code § 13-2-6(2).

To request a review of the citation, mail your written request to:

Katherine Hass – Director
Utah Division of Consumer Protection
PO Box 146704
Salt Lake City, UT 84114-6704

The presiding officer designated by the Director of the Division of Consumer Protection to conduct the hearing in your case is:

Nathaniel Gallegos, Administrative Law Judge
Heber M. Wells Bldg., 2nd Floor
160 East 300 South
Salt Lake City, UT 84114
Telephone: (801) 531-6706

A copy of Utah Admin. Code R477-101, Administrative Law Judge Conduct Committee, is available online at <https://rules.utah.gov/publicat/code/r477/r477-101.htm>.

Please be advised that all inquiries, correspondence, or other contacts concerning this citation, with the exception of any written request for review as set out above, should be directed to the below-named Division employee, designated by the Director of the Division of Consumer Protection pursuant to Utah Code § 13-2-6(3):

Ao Pauga – Investigator
Utah Division of Consumer Protection
PO Box 146704
Salt Lake City, UT 84114-6704
Telephone: (801) 530-6601

FREQUENTLY ASKED QUESTIONS

1. **How can I talk to someone at the Division about this citation?** The name of the investigator assigned to your case appears at the end of your citation. If you call the Division, 801-530-6601 and press 0, the receptionist can help transfer you to the assigned investigator.
2. **Can I resolve the citation without a hearing?** Contact the investigator assigned to your case if you are interested in a settlement to see if a settlement is possible in your case.
3. **How do I respond to the citation?** You may challenge the citation by submitting a written Request for Review using the attached form or using your own form.
4. **How long do I have to respond to the citation?** You have 20 calendar days from issuance of the citation to submit a Request for Review.
5. **What happens after I submit a Request for Review?** The presiding officer will send you a Notice of Administrative Hearing specifying a time, date, and location of a hearing before the Division.
6. **Who will preside over the case?** The name of the presiding officer for the hearing will be on your Notice of Administrative Hearing. Please address the presiding officer by name (e.g., "Judge Smith"). You may contact the presiding officer with any technical or procedural questions, but the presiding officer may not discuss the merits of the case with you.
7. **What if I have a scheduling conflict with the scheduled hearing time?** Failure to attend a hearing may result in a default and entry of judgment against you. You may ask the presiding officer assigned to your case, in writing, to reschedule the hearing if you have a conflict or require more time to prepare. A request for additional time is within the discretion of the presiding officer and may not be granted, particularly if requested only shortly before the scheduled hearing.
8. **What should I expect at a hearing?** An administrative law judge will act as the presiding officer and direct the proceeding. The hearing room has two tables for the parties, with the presiding officer sitting at the front of the hearing room. Generally, you (and your counsel, if applicable) will sit at one of the tables and Division staff will sit at the other table. Beginning with the Division, both sides will have an opportunity to present witnesses, evidence, and argument in support of why the citation should or should not stand.
9. **What kind of evidence can I present?** All parties may testify, present evidence, and comment on the issues. In presenting evidence, any party may examine witnesses and submit exhibits. At the request of either party, or at his or her own initiative, the presiding officer may also choose to examine a witness. Any party may ask to present a witness by telephone. The presiding officer may exclude any evidence he or she deems irrelevant, immaterial, or unduly repetitious or improper.
10. **How can I determine what evidence the Division has?** Discovery is prohibited in informal hearings, but parties may request information contained in the agency's files to the extent permitted by law. You may contact the assigned investigator to request access to this information.
11. **What is the burden of proof for the Division at a hearing?** Generally, the Division is responsible to prove its case against you by substantial evidence.
12. **Must I have an attorney?** You may represent yourself or be represented through an attorney. You may also represent a business that you own or manage.

You should not rely on this letter alone for instructions regarding hearings. The hearing is governed by law (including the Administrative Procedures Act, *see* Utah Code § 63G-4 *et al.*, Utah Division of Consumer Protection, *see* Utah Code § 13-2 *et al.*, and Department of Commerce Administrative Procedures Act Rules, *see* Utah Admin. Code R151-4.) You may access these laws and rules at le.utah.gov and rules.utah.gov.



DIVISION OF CONSUMER PROTECTION
Heber M. Wells Building
160 East 300 South
PO Box 146704
Salt Lake City, UT 84114-6741
Telephone: (801) 530-6601
Fax: (801) 530-6001

REQUEST FOR REVIEW

DCP Legal File No.		Date of Citation:	
Name:		Phone: ()	
Address:			
City:		State:	Zip:
Email:			

Requests for review must be received by the division within 20 calendar days of issuance of the citation. Utah Code § 13-2-6(3). If you fail to make a timely request, the citation shall become the final order of the division. If you represent multiple respondents, please submit a separate request for each respondent.

You may wish to consult an attorney before submitting this form and any attachments.

Select only one of the following:

- I admit to the statutory violation(s) described in the citation. The presiding officer will enter an order, assess a fine, and issue a cease and desist order.
- I admit to the statutory violation(s) described in the citation, but request a hearing to explain the circumstances of the violation(s) and request a reduced fine. *(If desired, attach a brief typewritten explanation of the circumstances of the violations. The presiding officer may ask you to submit an additional response.)*
- I contest the occurrence of the violation(s) described in the citation and request a hearing to contest the citation. *(If desired, attach a brief typewritten response to the allegations in the citation. The presiding officer may ask you to submit an additional response.)*

I certify that I have knowingly and voluntarily made the above election of rights. I understand that if I request a hearing the presiding officer will notify me in writing of the hearing date. If I fail to appear at the hearing, a default judgment may be entered against me. I acknowledge that I have either sought the advice of an attorney or have voluntarily chosen not to do so

Signature	Date of Signature
-----------	-------------------