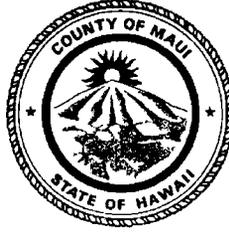


ALAN M. ARAKAWA
Mayor



PRL-1(17)

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First Deputy

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DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
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WAILUKU, MAUI, HAWAII 96793
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CORPORATION COUNSEL

June 16, 2017

MEMO TO: Don S. Guzman, Chair
Parks, Recreation, Energy and Legal Affairs Committee

F R O M: Moana M. Lutey, Deputy Corporation Counsel

SUBJECT: Litigation Matters (PRL-1)
Jason Griego and James Sanchez v. County of Maui, et al., Civ.
No. 15-00122 SOM KJM

Our Department respectfully requests the opportunity to discuss the indemnification of police officer Myles S. Won in the above-captioned matter during executive session. Our department would like to have this matter considered at the next committee meeting. The resolution, copies of the Second Amended Complaint for Damages and the letter from the Police Commission approving legal representation are attached for your perusal.

It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

Our department would also like to request that a representative of the Department of Police be at the meeting to answer any questions that may arise.

Thank you for your anticipated assistance on this matter.

MML:cs
Enclosure

cc: Police Chief Tivoli Faaumu

Resolution

No. _____

INDEMNIFYING MYLES S. WON IN JASON GRIEGO AND JAMES SANCHEZ V. COUNTY OF MAUI, ET AL., CIVIL NO. 15-00122 SOM KJM

WHEREAS, Myles S. Won (“Defendant”), who was an employee of the Department of Police on July 14, 2013, has been named as a defendant in his individual capacity, in the case of Jason Griego and James Sanchez v. County of Maui, et al., Civil No. 15-00122 SOM KJM; and

WHEREAS, Plaintiffs Jason Griego and James Sanchez allege that Defendant violated their rights under the Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution as well as Article I of the Constitution of the State of Hawaii and that they suffered damages and injuries as a result of an incident on July 14, 2013; and

WHEREAS, the Police Commission has reviewed this matter under its statutory authority and determined that this Defendant is entitled to legal representation; and

WHEREAS, based upon an investigation of this matter, the Department of the Corporation Counsel believes there to be a good faith basis for indemnification and has recommended that the Council indemnify this Defendant for any damages that may be assessed against him in this case; and

Resolution No. _____

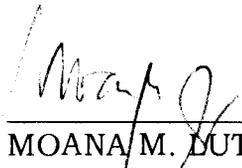
WHEREAS, Plaintiffs seek general, special, and punitive damages, and interest and costs of suit; and

WHEREAS, based upon the recommendation of the Department of the Corporation Counsel, it appears at this time that it would be in the best interest of the County of Maui to indemnify Defendant in this case; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That Myles S. Won is indemnified by the County of Maui for any damages that may be assessed against him in this case; and
2. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, the Chief of Police, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui
Lit 5482 – Griego v COM

ERIC A. SEITZ
ATTORNEY AT LAW
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JASON GRIEGO and JAMES SANCHEZ,)	Civil No. 15-00122 SOM-KJM
)	
Plaintiffs,)	SECOND AMENDED COMPLAINT;
vs.)	DEMAND FOR JURY TIAL
)	
COUNTY OF MAUI; ANSELM YAZAKI;)	
ALY MIYASHIRO; MYLES S. WON;)	
DOE OFFICERS 2-15,)	
)	
Defendants.)	
)	

SECOND AMENDED COMPLAINT FOR DAMAGES

Plaintiffs JASON GRIEGO and JAMES SANCHEZ, by and through their undersigned attorneys, allege as follows:

I. Introduction

(1) This is an action to redress the deprivation under color of statutes, ordinances, rules, regulations, customs, policies, practices, and/or usages of rights, privileges, and immunities secured to JASON GRIEGO and JAMES SANCHEZ under the Fourth, Fifth, Eighth, Ninth and Fourteenth

Amendments to the Constitution of the United States, Article I of the Constitution of the State of Hawaii, inter alia, and 42 U.S.C. § 1983, et seq.

II. PARTIES

(2) Plaintiff JASON GRIEGO is and has been a resident of Rio Rancho, Sandoval County, New Mexico, at all times pertinent hereto and served as the Chief of the Cuba Police Department, Sandoval County, New Mexico.

(3) Plaintiff JAMES SANCHEZ is and has been a resident of Counselor, Sandoval County, New Mexico and a Reserve Officer of the Cuba City Police Department, Sandoval County, New Mexico, at all times pertinent hereto.

(4) Defendant COUNTY OF MAUI is and has been a duly organized municipal corporation of the State of Hawaii and employer of Defendants ANSELM YAZAKI, ALY MIYASHIRO, MYRNA SAB AS-RYDER, and DOE DEFENDANTS 1-15 at all times pertinent hereto.

(5) Upon information and belief, Defendant ANSELM YAZAKI (hereinafter "Officer YAZAKI") is and has been a resident of the County of Maui, State of Hawaii, and an employee of the Maui Police Department at all times pertinent hereto. Officer YAZAKI is sued herein in both his individual and official capacities.

(6) Upon information and belief, Defendant ALY MIYASHIRO (hereinafter "Officer MIYASHIRO") is and has been a resident of the County of Maui, State of Hawaii, and an employee of the Maui Police Department at all times pertinent hereto. Officer MIYASHIRO is sued herein in both his individual and official capacities.

(7) Upon information and belief, Defendant MYLES S. WON (hereinafter "Officer WON") is and has been a resident of the County of Maui, State of Hawaii, an employee of the Maui Department, and was a supervising officer of Officers YAZAKI and MIYASHIRO at all times pertinent hereto. Officer WON is sued herein in both his individual and official capacities.

(8) DOE OFFICERS 2-15 (hereinafter "Doe Officers") are individuals whose true identities and capacities are as yet unknown to the Plaintiffs and their counsel, despite diligent inquiry and investigation, and who acted herein as described more particularly below in connection with the breaches of duties and/or violations of law alleged herein and who in some manner or form not currently discovered or known to Plaintiffs may have contributed to or be responsible for the injuries alleged herein. The true names and capacities of the Doe Defendants will be substituted as they become known.

III. Jurisdiction and Venue

(9) The civil rights claims asserted herein present a question of federal law thereby conferring jurisdiction upon the court under 42 U.S.C. §1983 and 28 U.S.C. §§1331 and 1343(a)(3), inter alia.

(10) Any and all state law claims alleged herein arise from the same acts and/or omissions set forth below and fall within the court's supplemental jurisdiction under 28 U.S.C. § 1367.

(11) Venue resides in the United States District Court for the District of Hawaii pursuant to 28 U.S.C. §1391(b), inter alia, as all of the events and/or omissions described herein occurred in the State of Hawaii.

IV. Factual Allegations

(12) In mid-July, 2013, while on vacation from their official duties with the Cuba City Police Department, Plaintiffs JASON GRIEGO and JAMES SANCHEZ (collectively referred to as "Plaintiffs") were on Maui under private contract to provide personal security services for New Mexico businessman David Maniatis.

(13) While at his residence in Kihei, Maui, Mr. Maniatis required Plaintiffs to carry firearms.

(14) At all times pertinent hereto Plaintiffs were "qualified law enforcement officers" permitted to carry

concealed firearms pursuant to PL 108-277 (HR 218), July 22, 2004, 118 Stat. 865.

(15) At the conclusion of their assignment on Sunday, July 14, 2013, Plaintiffs returned to Mr. Maniatis's residence in the afternoon to retrieve their personal belongings and drop off some thank you gifts and then drove to their hotel, i.e., Makena Beach Resort, with plans to return to New Mexico the next day.

(16) At the Makena Beach Resort Plaintiff GRIEGO with his wife and two children, and Plaintiff SANCHEZ with his son, stayed in adjacent rooms.

(17) Plaintiffs are informed and believe, and thereupon allege, sometime on the evening of July 14, 2013, supervising Officer WON, based upon inadequate investigation by Officer YAZAKI and/or Doe Officers, assigned Officers YAZAKI and MIYASHIRO to conduct an unreasonable/improper warrantless search and seizure of Plaintiffs at their hotel rooms.

(18) At or around 10:00 p.m., on July 14, 2013, Plaintiff SANCHEZ answered a knock at his hotel room door.

(19) At the time Plaintiff SANCHEZ's son was at the hotel pool with Plaintiff GRIEGO's children.

(20) When Plaintiff SANCHEZ opened the door he was greeted by Officer MIYASHIRO and Doe Officer 2 who asked him if he knows David Maniatis.

(21) When Plaintiff SANCHEZ confirmed that he worked for Mr. Maniatis he was directed to get dressed because they wanted to talk to him.

(22) Plaintiff SANCHEZ retreated back into his room and dressed while Officer MIYASHIRO and Doe Officer 2 waited at the door.

(23) When he returned to the door Plaintiff SANCHEZ provided his credentials to the officers identifying himself as a New Mexico law enforcement officer.

(24) Officer MIYASHIRO and/or Doe Officer 2 immediately grabbed Plaintiff SANCHEZ by his right arm, seized his identification/credentials, asked him if he had a weapon on him, and proceeded to pat him down.

(25) Plaintiff SANCHEZ denied that he was carrying a weapon.

(26) When Officer MIYASHIRO and/or Doe Officer 2 asked Plaintiff SANCHEZ where his firearm was, he informed them he did not have a firearm.

(27) When Plaintiff SANCHEZ asked what was going on, he was informed that he was under arrest, placed in handcuffs behind his back, and Officer MIYASHIRO and Doe Officer 2 entered his room and proceeded to search his personal belongings.

(28) When Plaintiff SANCHEZ asked if they had an arrest or search warrant Officer MIYASHIRO and/or Doe Officer 2 told

him they did not need a warrant and refused to inform him why he was being arrested.

(29) Although Plaintiff SANCHEZ asked to be handcuffed in the front due to pain he was suffering from a preexisting back condition, Officer MIYASHIRO and/or Doe Officer 1 ignored his request and ushered him outside to a police vehicle.

(30) Plaintiff SANCHEZ was then transported to the Maui Police Department.

(31) When Plaintiff SANCHEZ asked about what was going to happen to his son at the hotel he was told not to worry about it.

(32) Upon arrival at the Maui Police Station, Plaintiff SANCHEZ was photographed, finger-printed, and taken to an area where he was interrogated by Defendant MIYASHIRO.

(33) When Plaintiff SANCHEZ refused to answer any questions he was placed in a holding cell that had feces and urine on the floor.

(34) After Plaintiff SANCHEZ pointed this out to the officers he was directed to remove his shoes and socks and given a paper towel on which to stand.

(35) Approximately 30 minutes later Plaintiff SANCHEZ was removed from the cell and interrogated again.

(36) At or about 2:00 a.m. Plaintiff SANCHEZ was informed that he was going to be released on his own

recognizance pending investigation after which he was escorted out of the building, given back his personal property, and left in a dark alley.

(37) Also at or around 10:00 p.m., Plaintiff GRIEGO was awakened by his wife and informed that there were police officers at their hotel room door who wanted to speak to him.

(38) When he went to the door Plaintiff GRIEGO was met by Officer YAZAKI and Doe Officer 3, along with other non-uniformed individuals, and told that they were looking for Chief Griego.

(39) Plaintiff GRIEGO confirmed his identity, pulled out his wallet, and presented the officers with his identification and police credentials.

(40) Officer YAZAKI informed Plaintiff GRIEGO that he was under arrest, instructed him to turn around, seized his identification and police credentials, and handcuffed him behind his back.

(41) Officer Yazaki along with Doe Officer 3 and other officers accompanying them entered his room and began searching his family's personal belongings.

(42) When Plaintiff GRIEGO asked what they were doing and if they had a warrant, Officer YAZAKI and/or Doe Officer 3 said they didn't need one and asked Plaintiff GRIEGO if he had any firearms.

(43) Plaintiff GRIEGO confirmed he had 3 handguns with him and pointed out the backpack in which the weapons were stored.

(44) Officer YAZAKI and/or Doe Officer 3 seized Plaintiff GRIEGO's back pack with the 3 firearms inside and ushered him outside to a police vehicle.

(45) When Plaintiff GRIEGO asked why he was being arrested he was told to shut up.

(46) When Plaintiff GRIEGO asked that the handcuffs be moved to his front due to pain he was suffering from a preexisting back condition, he was told that was his problem.

(47) Plaintiff GRIEGO was then transported to the Maui Police Department.

(48) Upon his arrival at the Maui Police Station parking lot Plaintiff GRIEGO was held in the police vehicle with his hands cuffed behind him for a period of time during which he complained of suffering back spasms.

(49) When Doe Officers removed Plaintiff GRIEGO from the vehicle with his hands cuffed behind him Plaintiff GRIEGO fell to the ground after which he was picked up and ushered into a detention area where he was handcuffed to a wall.

(50) While handcuffed to the wall Plaintiff GRIEGO identified himself as a New Mexico Police Chief and asked what he was being charged with and the amount of his bond.

(51) Plaintiff GRIEGO was taunted by Doe Officer 3 about how it feels to be a police chief and to be in cuffs, told not to worry about the charges against him, that they would figure it out, and that his bond would be so high he wouldn't be able to bail out.

(52) Plaintiff GRIEGO was then taken for photographing and fingerprinting after which he was placed in the cell from which Plaintiff SANCHEZ was being removed.

(53) Upon noticing that there was feces and urine on the floor and that Plaintiff SANCHEZ was barefooted, when Plaintiff GRIEGO was ordered to take off his slippers, he refused.

(54) After a short period, at or about 2:00 a.m., Plaintiff GRIEGO was removed from the cell, and interrogated by Officer YAZAKI.

(55) Shortly thereafter Plaintiff GRIEGO's personal property was returned to him, he was escorted to a back door, and instructed to leave the premises.

(56) When Plaintiffs asked for assistance in getting back to their hotel they were simply directed to leave the premises or be charged with trespassing.

(57) After Plaintiffs were able to contact Plaintiff GRIEGO's wife she informed them that their families had been evicted from the hotel because a police officer had informed the hotel that Plaintiffs had violently attacked someone.

(58) Plaintiff GRIEGO's wife eventually picked Plaintiffs up at the Police Station and they all checked into a nearby hotel and made arrangements to leave for home on the earliest flight available the next day.

(59) When Plaintiffs arrived at the airport the next morning they were met by Officer MYRNA SABAS-RYDER who asked them to show her their law enforcement credentials.

(60) After presenting Officer SABAS-RYDER their credentials, Officer SABAS-RYDER informed Plaintiffs that there appeared to have been a misunderstanding.

(61) Officer SABAS-RYDER denied Plaintiff GRIEGO's request for the return of his firearms.

(62) Plaintiff GRIEGO was later able to retrieve his firearms from the Maui Police Department at significant expense and was told that the charges against them were dismissed.

(63) Plaintiffs did not at any time provoke, invite, consent to, or otherwise allow or permit any of the Defendants to berate and/or falsely arrest them.

(64) Plaintiffs are informed and believe that all of the individually named Defendant Officers are trained pursuant to

Defendant COUNTY OF MAUI's General Order 101.3 ("Order 101.3") relating to "Search and Seizure Without a Warrant" and that their conduct on the night of July 14, 2013, was governed by Order 101.3 and the training pursuant to Order 101.3.

(65) Pursuant to Order 101.3, "[a]ll searches conducted by officers of this Department must be based on probable cause and conducted with a warrant which is based on such probable cause. . . unless the circumstances fall within the exceptions described in this directive."

(66) Order 101.3 further states, in relevant part, "[p]robable cause exists where the facts and circumstances within the officers knowledge of which they had reasonable, trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." (Emphasis added.)

(67) Plaintiffs are informed and believe, and thereupon allege, that despite Defendant COUNTY OF MAUI's clear policy regarding "Search and Seizure Without a Warrant," individual Defendant Officers were never adequately trained and/or supervised based upon the inadequate investigation by and conduct exhibited by individual Defendant Officers in the execution of the search and seizure of Plaintiffs on the night of July 14, 2013.

(68) Plaintiffs are informed and believe, and thereupon allege, that Defendant COUNTY OF MAUI never reviewed individual Defendant Officers' conduct, disciplined and/or retrained individual Defendant Officers in accordance with Order 101.3, thereby failing to supervise and/or discipline individual Defendant Officers consistent with Defendant COUNTY OF MAUI's own policies.

(69) Plaintiffs are informed and believe, and thereupon allege, that the actions of individually named Defendant Officers were without reasonable, just, and/or probable cause.

(70) As a result of the foregoing, Plaintiffs have suffered the denial of certain government security contracts and licenses due to reports of pending criminal charges maintained on the National Crime Information Center data base stemming from their arrests on July 14, 2013.

(71) As a direct and proximate result of the foregoing Plaintiffs were unreasonably/improperly seized and detained, physically and mentally assaulted, and their private hotel rooms were unreasonably/improperly searched and property unreasonably/improperly seized from them.

(72) As a direct and proximate result of the foregoing Plaintiffs have suffered great emotional distress, anxiety, worry, and concern.

(73) As a direct and proximate result of the foregoing Plaintiffs have suffered and continue to suffer substantial economic losses.

V. First Cause of Action
(Constitutional and/or 42 U.S.C. Section 1983 Violations)

(74) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 73 above.

(75) Plaintiffs are informed and believe, and thereupon allege, that Defendant Officers and Defendant COUNTY OF MAUI acted and/or purported to act herein under color of statutes, ordinances, rules, regulations, customs, policies, practices, and/or usages of the County of Maui, and/or the Maui County Police Department.

(76) Plaintiffs are informed and believe, and thereupon allege, that the acts of Defendant Officers described above were without probable, sufficient, just, or reasonable cause in violation of rights guaranteed to Plaintiffs under the Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, and Article I of the Constitution of the State of Hawaii, inter alia.

VI. Second Cause of Action
(False Imprisonment and/or False Arrest)

(77) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 though 73, above.

(78) Defendant Officers and certain other Doe Defendants detained and/or restrained Plaintiffs against their will.

(79) Defendant Officers and certain other Doe Defendants' detention and/or restraint of Plaintiffs against their will was unlawful.

(80) Defendant Officers and certain other Doe Defendants arrested Plaintiffs without sufficient justification or probable cause.

VII. Third Cause of Action
(Intentional Infliction of Emotional Distress)

(81) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 73, and 78 through 80 above.

(82) Plaintiffs are informed and believe, and thereupon allege, that Defendant Officers acted herein knowingly, intentionally, deliberately, willfully, and/or maliciously.

VIII. Fourth Cause of Action
(Negligence Claims)

(83) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 73, above.

(84) Plaintiffs are informed and believe, and thereupon allege, that the Defendant Officers acted herein negligently thereby proximately and directly causing the injuries complained of herein.

IX. Fifth Cause of Action
(Negligent Training, Supervision, and/or Discipline)

(85) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 73 and 84, above.

(86) Defendant COUNTY OF MAUI owed duties to Plaintiffs to exercise the requisite standard of care and skill ordinarily exercised by similar institutions and agencies in the State of Hawaii in training, supervising, and disciplining its employees, and to take reasonable care to control such employees to prevent them from committing acts that injure third parties.

(87) Defendant COUNTY OF MAUI knew or had reason to know that it was responsible for the training, supervising, and disciplining of Defendant Officers.

(88) By failing to properly train, supervise, and/or discipline Defendant Officers, Defendant COUNTY OF MAUI breached its duties of reasonable care owed to Plaintiffs thereby proximately and directly causing the injuries to Plaintiff complained of herein.

X.Sixth Cause of Action
(Negligence against Superior/Agency)

(89) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 73 and 84, above.

(90) Defendant Officers acted within the scope of their employment by Defendant COUNTY OF MAUI as Maui police officers.

(91) Defendant COUNTY OF MAUI is liable for the negligent acts of its employees.

WHEREFORE Plaintiffs pray for relief as follows:

1. For general damages according to the proof thereof at trial;
2. For special damages according to proof thereof at trial;
3. For punitive damages against Defendant Officers;
4. For reimbursement of their costs and expenses herein, including reasonable provision of their attorneys' fees; and
5. For such further relief and additional relief as the court deems appropriate and just.

DATED: Honolulu, Hawaii, July 22, 2016 .

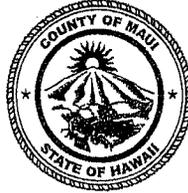
/s/ Della A. Belatti

ERIC A. SEITZ
DELLA A. BELATTI
SARAH R. DEVINE

Attorneys for Plaintiffs

CHAIRMAN
Kevin Tanaka

VICE-CHAIRMAN
Howard Hanzawa



POLICE COMMISSION
COUNTY OF MAUI
WAILUKU, MAUI, HAWAII

MEMBERS
Lawrence Feinberg
May Fujiwara
Gwen Ohashi Hiraga
Lawrence Ing
Nora Kawasaki
Eugene Santiago
Michael Wilson

55 Mahalani Street, Wailuku, Maui, HI 96793
(808) 244-6440

August 17, 2016

Mr. Tivoli S. Faaumu
Chief of Police
Maui Police Department
55 Mahalani Street
Wailuku, HI 96793

Dear Chief Faaumu:

This is to advise you that during our Police Commission meeting on August 17, 2016, the Request for Legal Representation in Jason Griego and James Sanchez vs County of Maui, et al. was reviewed.

The Commission voted to approve legal representation for Sergeant Myles S. Won.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Tanaka".

KEVIN TANAKA
Chair

c: Corporation Counsel
Sergeant Myles S. Won