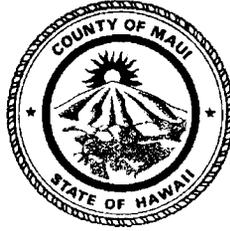


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Mayor



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August 29, 2016

MEMO TO: Donald Guzman, Chair
Committee of the Whole

FROM: Moana M. Lutey, Deputy Corporation Counsel

SUBJECT: LITIGATION MATTERS – Settlement of Claims and Lawsuits
COW-1) AUTHORIZING SETTLEMENT OF APRIL FREELAND, ET AL.
vs. COUNTY OF MAUI, ET AL., CIVIL NO.: 11-00617 ACK-KSC

Our Department respectfully requests the opportunity to present information to the Committee of the Whole and to discuss settlement options with regard to the above-referenced lawsuit.

Copies of the Resolution authorizing settlement and the Second Amended Complaint are attached.

Because the settlement demand is a confidential communication, 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.

We request that a representative from Department of Police be in attendance during discussion of this matter. Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your anticipated assistance in this matter.

cc: Tivoli S. Faaumu, Chief of Police

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
APRIL FREELAND, ET AL. VS. COUNTY OF MAUI, ET AL.,
CIVIL NO. 11-00617 ACK-KSC;
NINTH CIRCUIT U.S. COURT OF APPEALS NO. 14-15014

WHEREAS, Plaintiffs April Freeland and Norman Freeland filed a lawsuit in the United States District Court for the District of Hawaii on October 14, 2011, Civil No. 11-00617 ACK-KSC, against the County of Maui, Gary Yabuta, Jerald Perkett, Jeffrey Calibuso, Keoki Santos, Richard Dods, Christopher Gantala, Kenneth Carroll, Clifford Dagulo, Jamie Wright, Matthew Brown, Eduardo Bayle, Christopher Kealoha, Clifton Perreira, Gregg Okamoto, and Matthew Bigoss, claiming unlawful seizure, unlawful arrest, unlawful search, inadequate supervision and training, false arrest, assault, battery, false imprisonment, negligent infliction of emotional distress, and intentional infliction of emotional distress due to an incident on April 15, 2011; and

WHEREAS, Plaintiffs filed a First Amended Complaint on April 27, 2012, to provide more factual details in support of their claims; and

Resolution No. _____

WHEREAS, Plaintiffs filed a Second Amended Complaint on January 25, 2013, to further clarify the factual basis in support of their claims against the Defendants; and

WHEREAS, on December 11, 2013, the Court granted the County's Motion for Summary Judgment in part and denied it in part, failing to grant qualified immunity to the individual Defendants; and

WHEREAS, on January 3, 2014, the County appealed the Court's partial denial of summary judgment to the Ninth Circuit Court of Appeals; and

WHEREAS, on January 6, 2014, Plaintiffs stipulated to the dismissal of Defendants Jeffrey Calibuso, Richard Dods, Christopher Gantala, Kenneth Carroll, Clifford Dagulo, Jamie Wright, Matthew Brown, Eduardo Bayle, Christopher Kealoha, Clifton Perreira, and Gregg Okamoto; and

WHEREAS, the only remaining individual Defendants are Gary Yabuta, Jerald Perkett, Keoki Santos, and Matthew Bigoss; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case and the related appeal by way of a negotiated settlement or Offer of Judgment on behalf of the County and the remaining individual Defendants; and

Resolution No. _____

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case and the related appeal under the terms set forth in an executive meeting before the Committee of the Whole; and

WHEREAS, on April 5, 2013, the Council adopted Resolution 13-41, indemnifying the individual Defendants in the case; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case and the related appeal by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

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

1. That it hereby approves settlement of this case and the related appeal under the terms set forth in an executive meeting before the Committee of the Whole; and

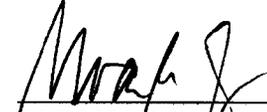
2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

Resolution No. _____

4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Chief of Police, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui

Law Office of Philip Lowenthal
By: Philip H. Lowenthal, 945
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Wailuku, Maui 96793
phl@maui.net
(808) 242-5000

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF HAWAII

April Freeland,
Norman Freeland,

Plaintiffs,

v.

County of Maui,
Gary Yabuta,
Jerald Perkett,
Jeffrey Calibuso,
Keoki Santos,
Richard Dods,
Christopher Gantala,
Kenneth Carroll,
Clifford Dagulo,
Jamie Wright,
Matthew Brown,
Eduardo Bayle,
Christopher Kealoha,
Clifton Perreira,
Gregg Okamoto,
Matthew Bigoss,
John Doe 1-20,
Doe Entities 1-20,

Civil Action No. CV 11-00617
ACK/KSC

Second Amended Complaint; Summons.

Defendants.

Second Amended Complaint

Plaintiffs April and Norman Freeland, through counsel, allege as follows:

Parties

1. Norman Freeland and April Freeland are husband and wife residing at 237 Manini Place, Kihei, Hawaii.
2. The County of Maui is a Corporation organized under the laws of the state of Hawaii
3. Defendant Gary Yabuta is chief of police of the Maui County Police Department and was at all times relevant acting in his capacity as chief of police.
4. Defendant Jerald Perkett is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
5. Defendant Jeffrey Calibuso is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
6. Defendant Keoki Santos is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
7. Defendant Richard Dods is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.

8. Defendant Christopher Gantala is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
9. Defendant Kenneth Carroll is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
10. Defendant Clifford Dagulo is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
11. Defendant Jamie Wright is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
12. Defendant Matthew Brown is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
13. Defendant Eduardo Bayle is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
14. Defendant Christopher Kealoha is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
15. Defendant Clifton Perreira is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.

16. Defendant Gregg Okamoto is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
17. Defendant Matthew Bigoss is a police officer for the Maui County Police Department and was at all times relevant acting in his capacity as a police officer.
18. Plaintiffs have attempted to obtain records which would enable them to ascertain the true and full names and identifies of all defendants in this action. Plaintiffs reserve the right to amend the complaint if they have been unable to ascertain the identity of the Doe Defendants.
19. Defendants are sued in their individual and official capacities.

Jurisdiction and Venue

20. The court has jurisdiction over this action under 28 U.S.C. § 1331 for violations of rights under the Constitution of the United States and 42 U.S.C. § 1983.
21. This court has jurisdiction over all other claims because they arose out of the same case or controversy.
22. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because all relevant conduct occurred in this Judicial District.

Factual Background

23. On April 15, 2011, Norman Freeland in April Freeland hosted a dinner at their residence in Kihei, Maui for three guests.
24. Norman Freeland was 72 years old.
25. April Freeland was 63 years old.
26. One of the guests was 86 years old.

27. Sometime around 8:00 p.m., the Freelands heard a loud noise on their front lanai.
28. When the Freelands approached the sliding glass door they were immediately confronted by men with military style guns.
29. The men did not identify themselves.
30. When Norman Freeland touched the door, the men rushed into the Freelands' home without permission.
31. The men screamed and yelled at the Freelands as they entered the Freelands' home.
32. A man grabbed Norman Freeland by the wrist and forcibly took him outside.
33. Another man grabbed April Freeland and forcibly took her outside.
34. A man with a combat type weapon held the Freelands captive.
35. On the lanai, a man told the Freelands they had a search warrant.
36. April Freeland told the men that they were at the wrong house.
37. April Freeland told the men that their address was clearly displayed and visible on the outside fence and door.
38. One of the men asked the Freelands if they knew a "Kim."
39. April Freeland told him they did not know a "Kim" and repeatedly told the men they were at the wrong house.
40. The men were later identified as police officers from the Maui County Police Department and have been named in this lawsuit.
41. The raid was part of a police operation dubbed "Operation Baby Girl."
42. "Operation Baby Girl" was part of a training exercise.

43. Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, Bigoss and Okamoto participated in the "Operation Baby Girl" raid.
44. Operation Baby Girl's mission was to execute Search Warrants 11-1-0087 and 11-1-0088.
45. Search warrant 11-1-0088 identified the residence to be searched as 323 Manini Place in Kihei, Hawaii.
46. 323 Manini Place does not exist.
47. Search warrant 11-1-0087 identified the person to be searched as a younger woman named Kimberlee.
48. The warrant described Kimberlee as a younger Hawaiian female with brown hair and brown eyes.
49. Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira all went past the fence onto the Freeland's property.
50. Before all of the officers passed the fence, Defendant Bigoss noticed mailboxes on the outside of the Freeland's fence.
51. Defendant Bigoss immediately knew the address on the warrant was incorrect.
52. Defendant Bigoss did not stop the raid and allowed officers to enter the Freeland's property.
53. Defendants Calibuso, Santos, Gantala, Carroll, Dagulo, Brown, Bayle, Kealoha and Perriera all went inside the Freeland's house.
54. As the officers began entering the Freeland's home, Defendant Dods looked into the Freeland's home and saw that the guests did not look like the target.

55. Defendant Dods did not stop the raid.
56. Defendant Bigoss realized after approximately 30 seconds the police were at the wrong house.
57. Defendant Bigoss did not stop the raid then, either.
58. Defendant Brown thought the Freeland's home was nice and clean and did not look like the house of a drug dealer.
59. Defendant Brown continued to execute the warrants and did not stop the raid.
60. Even though the men knew they were in the wrong house, they continued detaining the Freeland's and their guests.
61. Even though the men knew they were in the wrong house they continued searching the home.
62. After the search of the Freeland's home was complete, command was given to return to a police vehicle.
63. The officers did not find drugs, guns, or any other contraband in the home.
64. Defendant Santos assisted Defendant Bigoss in the investigation leading to the wrongful search warrant.
65. Defendant Bigoss told Santos the target residence was 323 Manini Place.
66. Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, Bigoss and Okamoto never confirmed whether 323 Manini Place existed.
67. Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, Bigoss and Okamoto never performed a follow-up site survey.

68. Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, Bigoss and Okamoto never verified the warrant.
69. Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira and Okamoto never approved the raid plan.
70. Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira and Okamoto never reviewed the raid plan.
71. The target, Kimberlee, never lived at the Freelands' home.
72. The target, Kimberlee, did not live at 323 Manini Place.
73. The target, Kimberlee, did not live at the house next door to the Freelands either.
74. The Freelands' home is a distinctive standalone residence.
75. The Freelands' home is surrounded by tall privacy fencing.
76. The Freelands' address is clearly and prominently posted on the fence.
77. The Freelands' address is not obscured.
78. The Freelands' posted the address just inside the fence as well.
79. The Freelands' home is light gray with reddish trim.
80. Just inside the privacy fence is a fish pond.
81. The house immediately to the right of the Freelands is 243 Manini Place and is separated from the Freelands' home by a fence.
82. The house to the right does not look like the Freelands' house. It is dark brown with greenish-blue trim. It does not have a fish pond.
83. The officers did not have probable cause to pass the Freelands' fence.

84. The officers did not have probable cause to enter the Freelands' home.
85. The officers did not have probable cause to search the Freelands' home.
86. The officers did not have probable cause to arrest the Freelands.
87. The officers did not have reasonable suspicion to seize the Freelands.
88. Exigent circumstances did not exist.
89. The officers did not knock and announce their presence at the fence.
90. The officers did not knock and announce their presence at the inside door to the home.
91. Search warrants were not given to the Freelands.
92. Search warrants were not returned to the Circuit Court.
93. The Maui County Police Department officers were acting under the control and direction of Defendant Yabuta at all relevant times.
94. Defendant Yabuta is responsible for the control, management and direction of all officers and employees according to the General Orders.
95. Defendant Yabuta has the responsibility for determining Department policies, according to the General Orders.
96. Defendant Yabuta uses General Orders to train, supervise and/or control his police force.
97. The General Orders govern everything from staff meetings to grooming policies.
98. Defendant Yabuta has failed to prepare and/or approve of a General Order regarding the application for search warrants.
99. Defendant Yabuta has failed to prepare and/or approve of a standard operating procedure regarding the application for search warrants.

100. Defendant Yabuta has failed to prepare and/or approve of a search warrant checklist.
101. Defendant Yabuta has failed to prepare and/or approve of a General Order referencing a police officer's obligation to refrain from entering and/or searching areas within a person's curtilage without a warrant.
102. Defendant Yabuta has failed to prepare and/or approve of a General Order regarding the retreat from a wrongful search.
103. Defendant Yabuta has failed to prepare and/or approve of a standard operating procedure regarding the retreat from a wrongful search.
104. Defendant Yabuta has failed to prepare and/or approve of a search warrant checklist.
105. Defendant Yabuta did not discipline Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, or Okamoto.
106. Defendants were acting under color of law, statute, ordinance, regulations, customs policies, practices, and/or usages at all times on April 15, 2011.
107. Defendants' conduct involved malice or reckless, negligent and/or callous indifference to the Freelands' constitutional rights.
108. Defendant Yabuta knew or should have known his customs, policy, persistent practice, indifferent training, deficient supervision, deficient discipline and/or remedial actions, lack of custom, lack of policy, lack of practice and/or lack of training would cause the Freelands injuries.
109. Defendant Yabuta's custom, policy, persistent practice, indifferent training, deficient supervision, deficient discipline and/or remedial actions, lack of

custom, lack of policy, lack of practice and/or lack of training caused the Freelands injuries.

110. County of Maui's custom, policy, persistent practice, indifferent training, deficient supervision, deficient discipline and/or remedial actions, lack of custom, lack of policy, lack of practice and/or lack of training caused the Freelands injuries.
111. County of Maui knew or should have known its customs, policy, persistent practice, indifferent training, deficient supervision, deficient discipline and/or remedial actions, lack of custom, lack of policy, lack of practice and/or lack of training would cause the Freelands injuries.
112. Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, Bigoss and Okamoto knew or should have known their actions or omissions would result in injuries and damages to the Freelands.
113. As a direct and proximate result of Defendants' conduct, the Freelands suffered the following injuries and damages: violation of their constitutional rights under the United States Constitution, violation of their constitutional rights under the Hawaii Constitution, violation of their statutory rights, emotional distress and fear, embarrassment, fright and shock, psychological injury, humiliation, costs and attorneys fees.
114. The Defendants' actions subject them to joint and several liability.

Count 1
Claim under 42 U.S.C. § 1983 for:
Unlawful Seizure

115. The previous paragraphs are incorporated here by reference.
116. The Freelands had a right to be free from unlawful seizures.

117. The Freelands were unlawfully seized by Defendants.
118. The unlawful seizure violated the Freelands rights under the Fourth Amendment to the Constitution of the United States which is protected by 42 USC § 1983.
119. The acts and omissions described above are the legal and proximate cause of injuries and damages suffered by the Freelands.

Count 2
Claim under 42 U.S.C. § 1983 for:
Unlawful Arrest

120. The previous paragraphs are incorporated here by reference.
121. The Freelands had a right to be free from unlawful arrests.
122. The Freelands were detained or retrained against their will by Defendants.
123. The unlawful arrests violated the Freelands rights under the Fourth Amendment to the Constitution of the United States which is protected by 42 USC § 1983.
124. The acts and omissions described above are the legal and proximate cause of injuries and damages suffered by the Freelands.

Count 3
Claim under 42 U.S.C. § 1983 for:
Unlawful Search

125. The previous paragraphs are incorporated here by reference.
126. The Freelands have a right to be free from unlawful searches.
127. The Freelands home was unlawfully searched by Defendants.

128. The unlawful search violated the Freeland's rights under the Fourth Amendment to the Constitution United States which is protected by 42 USC § 1983.
129. The acts and omissions described above are the legal and proximate cause of injuries and damages suffered by the Freeland's.

Count 4

**Claim under 42 U.S.C. § 1983 for:
Inadequate Supervision / Training / Discipline**

130. The previous paragraphs are incorporated here by reference.
131. Maui County Police Department's policies, practices and/or customs deprived the Freeland's of their constitutional rights.
132. The Maui County Police Department officers were acting under the control and direction of Defendant Gary Yabuta.
133. Defendant Yabuta is liable under 42 USC § 1983 because he established policies, practices and/or customs which proximately caused, or were the moving force behind, the violations of the Freeland's' constitutional rights.
134. Defendant Yabuta's unlawful policies, practices, and/or customs include but not are not limited to the following: improperly training and/or supervising officers regarding lawful and unlawful seizures, improperly training and/or supervising officers regarding lawful and unlawful arrests, improperly training and/or supervising officers regarding applications for search warrants, improperly training and/or supervising officers regarding execution of search warrants.
135. Defendant Yabuta's failure to train, supervise and/or discipline Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown,

Bayle, Kealoha, Perreira, Bigoss and Okamoto amounts to deliberate indifference to the rights of the Freelands.

136. Defendant Yabuta's failure to train, supervise and/or discipline Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, Bigoss and Okamoto caused the constitutional deprivations and injuries and damages suffered by the Freelands.

Count 5

**Claim under 42 U.S.C. § 1983 for:
Inadequate Supervision / Training / Discipline**

137. The previous paragraphs are incorporated here by reference.
138. Defendant County of Maui's policies, practices, and/or customs deprived the Freelands of their constitutional rights.
139. Maui County Police Department's policies practices and/or customs deprived the Freelands of their constitutional rights.
140. The Maui County Police Department officers were acting under the control and direction of Defendant Gary Yabuta, a county employee.
141. Defendant County of Maui is liable under 42 USC § 1983 because it established policies, customs and/or practices which proximately caused, or were the moving force behind, the violations of the Freelands' constitutional rights.
142. Defendant County of Maui's unlawful policies, practices, and/or customs include but not are not limited to the following: improperly training and/or supervising officers regarding lawful and unlawful seizures, improperly training and/or supervising officers regarding lawful and unlawful arrests, improperly training and/or supervising officers regarding applications for

search warrants, improperly training and/or supervising officers regarding execution of search warrants.

143. Defendant County's failure to train, supervise and/or discipline Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, Bigoss and Okamoto amounts to deliberate indifference to the rights of the Freelands.
144. Defendant County's failure to train, supervise and/or discipline Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, Bigoss and Okamoto caused the constitutional deprivations and injuries and damages suffered by the Freelands.

STATE CLAIMS

Count 6

False Arrest

145. The previous paragraphs are incorporated here by reference.
146. The Freelands were detained or restrained against their will by Defendants.
147. Defendants arrested the Freelands without probable cause.
148. The actions of the defendants, individually and in concert, subjected them to joint and several liability.
149. As a direct and proximate result of the false arrest by defendants, the Freelands suffered injuries and damages.

Count 7

Battery

150. The previous paragraphs are incorporated here by reference.
151. Defendants intentionally caused physical or bodily contact to the Freelands.
152. The contact was not justified and was harmful.
153. The Freelands did not authorize or consent to the contact.

154. The actions of the defendants, individually and in concert, subjected them to joint and several liability.
155. As a direct and proximate result of the assault by defendants, the Freelands suffered injuries and damages.

**Count 8
Assault**

156. The previous paragraphs are incorporated here by reference.
157. Defendants intended to cause apprehension and/or harmful and/or offensive contact to the Freelands.
158. Defendants' actions caused apprehension in the Freelands that harmful and/or offensive contact was imminent.
159. The actions of defendants, individually and in concert, subjected them to joint and several liability.
160. As a direct and proximate result of the conduct by defendants, the Freelands suffered injuries and damages.

**Count 9
Intentional Infliction of Emotional Distress**

161. The previous paragraphs are incorporated here by reference.
162. Defendants acted intentionally.
163. Defendants' actions were outrageous.
164. Defendants' actions caused extreme emotional distress to the Freelands.
165. The actions of the defendants, individually and in concert, subjected them to joint and several liability.
166. As a direct and proximate result of the infliction of emotional distress by defendants, the Freelands suffered injuries and damages.

Count 10
Negligent Infliction of Emotional Distress

167. The previous paragraphs are incorporated here by reference.
168. The Freelands suffered serious mental distress because of defendants' actions.
169. Defendants knew or should have known their actions would have caused serious mental distress.
170. The actions of the defendants, individually and in concert, subjected them to joint and several liability.
171. As a direct and proximate result of the infliction of emotional distress by defendants, the Freelands suffered injuries and damages.

Count 11
Trespass to Land

172. The previous paragraphs are incorporated here by reference.
173. Defendants intentionally entered and/or remained upon the Freelands' land and/or property.
174. Defendants did not have permission to do so.
175. The actions of defendants, individually and in concert, subjected them to joint and several liability.
176. As a direct and proximate result of the trespass, the Freelands suffered injuries and damages.

Count 12
Gross Negligence

177. The previous paragraphs are incorporated here by reference.
178. Defendants acted willfully, wantonly and with gross negligence.

179. The actions of defendants, individually and in concert, subjected them to joint and several liability.
180. As a direct and proximate result of defendants' conduct, the Freelands suffered injuries and damages.

Count 13

Respondeat Superior - Defendant Yabuta

181. The previous paragraphs are incorporated here by reference.
182. Defendant Gary Yabuta is responsible and/or vicariously liable for all actions, inactions, conduct and/or misconduct of Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, Bigoss and Okamoto.
183. As a direct and proximate result, Defendant Yabuta is liable for the injuries and damages caused to the Freelands.

Count 14

Respondeat Superior - Defendant County of Maui

184. The previous paragraphs are incorporated here by reference.
185. Defendant County of Maui is responsible and/or vicariously liable for all actions, inactions, conduct and/or misconduct of Defendants Yabuta, Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, Bigoss and Okamoto.
186. As a direct and proximate result, Defendant County of Maui is liable for the injuries and damages caused to the Freelands.

Count 15

Negligent Training / Supervision / Management / Control

187. The previous paragraphs are incorporated here by reference.

188. Defendant Yabuta failed to train, supervise, manage and/or control Defendants Perkett, Calibuso, Santos, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, Bigoss and/or Okamoto.
189. As a direct and proximate result, Defendants Yabuta and County of Maui are liable for the injuries and damages caused to the Freelands.

**Count 16
Negligence**

190. The previous paragraphs are incorporated here by reference.
191. Defendants owed a duty of care to the Freelands.
192. Defendants breached their duty of care as described in the previous paragraphs.
193. As a direct and proximate result of the Defendants' negligence, the Freelands suffered injuries and damages.

WHEREFORE, APRIL AND NORMAN FREELAND demand judgment against Defendants, jointly and/or severally, for damages as determined by the jury and further demand judgment against each Defendant, jointly and/or severally, for punitive damages where allowable by law, plus the costs of this action to include attorney fees and for such other relief as the Court deems just and equitable.

Jury Demand

Plaintiffs demand a jury trial under Federal Rule of Civil Procedure 38(b).

Dated: January 25, 2013

/s/Philip H. Lowenthal
Philip H. Lowenthal