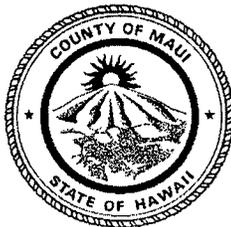


MICHAEL P. VICTORINO  
Mayor

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2019 JUN 13 PM 4:01

OFFICE OF THE  
COUNTY COUNCIL

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
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June 13, 2019

MEMO TO: Michael J. Molina, Chair  
Governance, Ethics, and Transparency Committee

FROM: Thomas Kolbe, Deputy Corporation Counsel 

SUBJECT: LITIGATION MATTERS – Settlement of Claims and Lawsuits (GET-1)  
Kelly Pauole v. County of Maui Police Department  
Civil No.: 18-1-0007 (2)

Our Department respectfully requests the opportunity to present information to the Governance, Ethics, and Transparency Committee, and to discuss settlement options with regard to the above-referenced lawsuit.

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

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. Faamu, Chief of Police

# Resolution

No. \_\_\_\_\_

AUTHORIZING SETTLEMENT OF  
KELLY PAUOLE VS. COUNTY OF MAUI POLICE DEPARTMENT  
CIVIL NO. 18-1-0007(2)

WHEREAS, Plaintiff Kelly Pauole filed a lawsuit in the Circuit Court of the Second Circuit in the State of Hawaii on March 20, 2018, Civil No. 18-1-0007(2), against the County of Maui Police Department, claiming employment discrimination and seeking special and general damages; 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 by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Governance, Ethics and Transparency Committee and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case 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:

**Resolution No. \_\_\_\_\_**

1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Governance, Ethics and Transparency Committee; 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 of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

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:



---

THOMAS KOLBE  
Deputy Corporation Counsel  
County of Maui  
Lit 5838

CL: FREE STATE

4/24/18

A1 4/24/18

FUJIWARA AND ROSENBAUM, L.L.L.C.

ELIZABETH JUBIN FUJIWARA 3558  
JOSEPH T. ROSENBAUM 9205  
1100 Alakea St., 20<sup>th</sup> Fl. Ste B  
Honolulu, Hawaii 96813  
Telephone: 808-203-5436

2018 APR 20 PM 3:30

I. KAPAONA

EX OFFICIO

Attorneys for Plaintiff  
KELLY PAUOLE

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

KELLY PAUOLE,

Plaintiff,

vs.

COUNTY OF MAUI POLICE  
DEPARTMENT; JOHN DOES 1-10; JANE  
DOES 1-10; DOE CORPORATIONS 1-10;  
DOE PARTNERSHIPS 1-10; DOE  
UNINCORPORATED ORGANIZATIONS  
1-10; and DOE GOVERNMENTAL  
AGENCIES 1-10,

Defendants.

) CIVIL NO. 18-1-0007(2)  
) (Other Civil Action)  
)  
) FIRST AMENDED COMPLAINT;  
) DEMAND FOR JURY TRIAL; SUMMONS

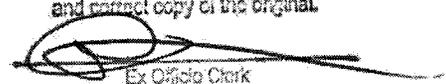
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MAUI POLICE DEPARTMENT

**FIRST AMENDED COMPLAINT**

COMES NOW Plaintiff KELLY PAUOLE [hereinafter referred to as "OFFICER  
PAUOLE"], by and through his counsel, ELIZABETH JUBIN FUJIWARA and JOSEPH T.  
ROSENBAUM, and complains against the above-named Defendants alleges and avers as  
follows:

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

  
Ex Officio Clerk  
Hawaii State Judiciary

## I. NATURE OF CASE

1. The basis of this case is employment discrimination against OFFICER PAUOLE at the County of Maui Police Department.

## II. JURISDICTION

2. OFFICER PAUOLE brings this action pursuant, including, but not limited to, Hawaii Revised Statutes [“HRS”] Chapter 378 Part I, Discriminatory Practices, to obtain full and complete relief and to redress the tortious conduct described herein.

3. At all times relevant herein, OFFICER PAUOLE was an employee with the County of Maui Police Department [hereinafter referred to as “MPD”] and a resident of the County of Maui, State of Hawai’i.

4. At all times relevant herein, Defendant MPD is an employer within the meaning of HRS Chapter 378. MPD was doing business in the County of Maui, State of Hawaii.

5. At all times relevant herein, Defendant MPD's principal place of business is in the County of Maui, State of Hawai’i.

6. Upon information and belief, and at all times relevant herein, Defendant MPD’s employees, agents and/or representatives, were acting within the course and scope of their duties as employees, agents and/or representatives of MPD; therefore, MPD is liable for the intentional and/or tortious and/or wrongful conduct of said employees, agents and/or representatives pursuant to the doctrine of Respondeat Superior and/or principles of Agency.

7. Defendants JOHN DOES 1-100, JANE DOES 1-100, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, DOE UNINCORPORATED ORGANIZATIONS 1-10, and DOE GOVERNMENTAL AGENCIES 1-10 are sued herein

under fictitious names because their true names, identities and capacities are unknown to OFFICER PAUOLE, except that they are connected in some manner with Defendants, and are/were agents, servants, employees, employers, representatives, co-venturers, associates, or independent contractors of Defendants herein, and were acting with the permission and consent and within the course and scope of said agency and employment and/or were in some manner presently unknown to OFFICER PAUOLE engaged in the activities alleged herein and/or were in some way responsible for the injuries or damages to OFFICER PAUOLE, which activities were a proximate cause of said injuries or damages to OFFICER PAUOLE. OFFICER PAUOLE has made good faith and diligent efforts to identify said Defendants, including interviewing individuals with knowledge of the claims herein. At such time as their true names and identities become known, OFFICER PAUOLE will amend his First Amended Complaint accordingly.

8. All events done by MPD described herein occurred within the County of Maui, State of Hawaii, and within the jurisdiction and venue of the Circuit Court of the Second Circuit, State of Hawai'i.

### **III. STATEMENT OF FACTS**

9. In December 1996, OFFICER PAUOLE began working for the MPD as a Police Officer I.

10. OFFICER PAUOLE was promoted to the position of Police Officer II.

11. OFFICER PAUOLE is disabled as he has been diagnosed with Post-Traumatic Stress Disorder ("PTSD") from his service during the Gulf War in the US Army.

12. OFFICER PAUOLE passed all psychological evaluations to enter MPD.

13. In late November 2006, OFFICER PAUOLE was involved in a shooting

of a criminal suspect that aggravated OFFICER PAUOLE disability.

14. MPD was made aware of OFFICER PAUOLE's medical situation that was caused by the aforementioned shooting of the criminal suspect.

15. Over the next several years, OFFICER PAUOLE was assigned light duty assignments and went on intermittent medical leave.

16. During the relevant time period, OFFICER PAUOLE was subjected to harassment and disparate treatment because of his disability.

17. Around August 2015, the MPD required OFFICER PAUOLE to undergo an Independent Medical Examination (IME).

18. OFFICER PAUOLE also visited his personal physician to undergo a medical examination.

19. Both MPD's and OFFICER PAUOLE's doctors recommended that the MPD allow OFFICER PAUOLE to return to a light duty assignment with goal of eventually returning to his Police Officer II position.

20. On or about November 30, 2015, the MPD allowed OFFICER PAUOLE to return to work.

21. In order to come back to work OFFICER PAUOLE requested via his doctor a reasonable accommodation in being assigned light duty work.

22. However, the MPD failed to assign OFFICER PAUOLE with an appropriate light duty work assignment as a reasonable accommodation.

23. OFFICER PAUOLE would be assigned to the cell block and would have to defend against detainee assaults, one of which had broken Plexiglas in his hand, one that had a knife and other seriously dangerous activity by detainees.

24. In April 2016, MPD Assistant Chief Victor Ramos informed OFFICER PAUOLE the MPD determined that OFFICER PAUOLE was not longer qualified to perform the essential functions of his Police Officer II position.

25. Ramos also told OFFICER PAUOLE that OFFICER PAUOLE needed to accept a demotion or be subjected to termination.

26. MPD failed to provide OFFICER PAUOLE with alternative (i.e. permanent modified light duty assignment) to allow OFFICER PAUOLE to remain in his Police Officer position.

27. OFFICER PAUOLE is aware that MPD has offered a permanent modified light duty assignment (instead of demotion) to other disabled MPD Police Officers.

28. OFFICER PAUOLE raised this concern with Ramos.

29. Ramos responded, "Somebody made magic" and said some commanders 'took care" of people because they liked them.

30. MPD failed to provide substantive medical documentation to support OFFICER PAUOLE's demotion.

31. On or about July 1, 2016, the MPD demoted OFFICER PAUOLE to a Public Safety Aide though OFFICER PAUOLE was previously assured the demotion would be effective no sooner than July 15, 2016 and that and that he would receive the same 25 year police retirement which would allow him to retire in December of 2018.

32. In May 2017, OFFICER PAUOLE discovered the MPD failed to provide OFFICER PAUOLE standard of conduct pay from approximately December 15, 2015 to June 30, 2016.

33. OFFICER PAUOLE was the only one of two officers out of more than

360 officers in the MPD not to receive this pay during the relevant time period.

34. On or about June 16, 2017, OFFICER PAUOLE duly filed a charge of disability discrimination and retaliation with the Equal Employment Opportunity Commission (“EEOC”) and the Hawaii Civil Rights Commission (“HCRC”).

35. Since then OFFICER PAUOLE continued to be subjected to disparate treatment due to his disability.

36. On June 20, 2017, OFFICER PAUOLE submitted a “To/From” written communication to the MPD Chief of Police requesting his reinstatement as a police officer.

37. The “To/From” informed the MPD Chief of Police that OFFICER PAUOLE disqualification from police work and demotion was a violation of the collective bargaining agreement and the Americans with Disabilities Act of 1990, as amended.

38. The “To/From” informed MPD Chief of Police that according to the Hawai’i ERS (retirement system) the promises and recotals that the MPD made regarding a 25 year police retirement when negotiating this forced demotion was not true.

39. This “To/From” was submitted to MPD Sgt. David LEFFLER via channels in accordance to General Order 101.1 which requires information flow up and down the chain of command.

40. After LEFFLER looked at OFFICER PAUOLE’s “To/From” he suggested that OFFICER PAUOLE make a correction.

41. OFFICER PAUOLE made the correction and then handed the corrected version back to LEFFLER.

42. This was the most important “To/From” of OFFICER PAUOLE’s career and OFFICER PAUOLE stood there to see if there was anything else that LEFFLER wanted

OFFICER PAUOLE to change.

43. After LEFFLER looked at OFFICER PAUOLE's "To/From" a second time LEFFLER stated that he would send it through and OFFICER PAUOLE thanked him for his time.

44. Later while at the MPD Kihei station one of OFFICER PAUOLE's co-workers stated that they had observed OFFICER PAUOLE's "To/From" on LEFFLER's desk and that it was faced up for everyone to see.

45. This co-worker stated that when the co-worker checked back at LEFFLER's office the "To/From" was no longer there.

46. OFFICER PAUOLE walked into the LEFFLER's office and confirmed that his "To/From" was not on LEFFLER's desk.

47. OFFICER PAUOLE believed that LEFFLER had forwarded it through up the chain of command.

48. OFFICER PAUOLE followed up on his "To/From" by contacting acting MPD Lieutenant Stuart KUNIOKA.

49. KUNIOKA stated that he received OFFICER PAUOLE's "To/From", read it and sent it through up the chain of command.

50. KUNIOKA also added, with all of the information OFFICER PAUOLE provided KUNIOKA did not see OFFICER PAUOLE's request for reinstatement being denied.

51. While at the MPD Kihei Station, OFFICER PAUOLE made contact with the MPD District Commander Clyde HOLOKAI.

52. In the end of June 2017, OFFICER PAUOLE asked HOLOKAI about the status of OFFICER PAUOLE's "To/From".

53. HOLOKAI stated "The one about reinstatement?"

54. OFFICER PAUOLE replied "Yes."

55. HOLOKAI stated that he heard about OFFICER PAUOLE's "To/From" however it was never received.

56. The next morning HOLOKAI stated that LEFFLER was holding onto OFFICER PAUOLE's "To/From" for some unknown reason.

57. That this was very upsetting to OFFICER PAUOLE because it was contrary to what KUNIOKA had already told OFFICER PAUOLE.

58. OFFICER PAUOLE was then told by HOLOKAI that LEFFLER would be contacted and that OFFICER PAUOLE's "To/From" would be sent through.

59. Towards the end of June 2017, OFFICER PAUOLE was approached by Lieutenant Randy ESPERANZA at the MPD Kihei Station.

60. ESPERANZA stated, "So what you trying to get back to patrol?"

61. OFFICER PAUOLE replied that he was attempting to be restored to his former position because everything that OFFICER PAUOLE was promised in regards to his retirement if he took the demotion was untrue.

62. OFFICER PAUOLE spoke with ESPERANZA at great length and plead his case for reinstatement.

63. OFFICER PAUOLE informed ESPERANZA that OFFICER PAUOLE went to the EEOC/HCRC and filed a complaint of discrimination against the Department.

64. OFFICER PAUOLE stated that given a choice he would rather have an opportunity to negotiate with the MPD directly rather than having to file a lawsuit in civil court.

65. OFFICER PAUOLE asked ESPERANZA what ESPERANZA thought of ESPERANZA's "To/From" and he stated that he did not read it yet.

66. That this was very upsetting to OFFICER PAUOLE a week after he had submitted it with all of the conflicting reports on whether or not it had been turned in.

67. Despite MPD's claim that OFFICER PAUOLE's "To/From" was being held back its contents had already begun to manifest up the chain of command.

68. Normally a "To/From" should go up the chain of command in 5-10 days.

69. On or about July 3<sup>rd</sup>, 2017, ESPERANZA again approached OFFICER PAUOLE at the MPD Kihei station and they again spoke at great lengths with another co-worker in the same room.

70. OFFICER PAUOLE again asked for an update on OFFICER PAUOLE's "To/From" and was again told that LEFFLER was still holding onto it.

71. The ESPERANZA stated that LEFFLER was probably holding onto it to add his comments.

72. OFFICER PAUOLE was in disbelief and expressed his frustration with the ESPERANZA regarding the two-week delay in the "To/From" submission.

73. OFFICER PAUOLE was also frustrated because as commanders it was in his superior's power to order the immediate dissemination of OFFICER PAUOLE's "To/From".

74. According to General Order 101.1 VII, Part B; "It is the responsibility of each person in the chain of command to ensure that information is properly disseminated."

75. On or about July 8<sup>th</sup>, 2017, OFFICER PAUOLE made contact with LEFFLER at the MPD Kihei police station and asked him if he had submitted OFFICER PAUOLE's "To/From".

76. LEFFLER stated that he did not submit OFFICER PAUOLE's "To/From" because LEFFLER was waiting for OFFICER PAUOLE to turn in a "corrected" version of his written communication.

77. LEFFLER then walked OFFICER PAUOLE into LEFFLER's office and then showed OFFICER PAUOLE his "To/From" sitting on LEFFLER desk.

78. LEFFLER stated that OFFICER PAUOLE's "To/From" had remained there on LEFFLER's desk and that it did not move for the last 18 days.

79. LEFFLER again stated that he was holding onto to it because he was waiting for OFFICER PAUOLE to hand LEFFLER a corrected version.

80. OFFICER PAUOLE told LEFFLER that he did hand LEFFLER the corrected version, a fact of which he adamantly denied.

81. OFFICER PAUOLE then made a request to take back his "To/From" and LEFFLER stated "Why are you upset?"

82. OFFICER PAUOLE replied, "Because I had submitted my To/From eighteen days ago and requested a ten-day response time."

83. LEFFLER then stated that he did not know about a ten-day response time and OFFICER PAUOLE replied "Did you even read it?"

84. In his "To/From" OFFICER PAUOLE had requested a ten-day response time.

85. At this time another MPD supervisor Sergeant MILES WON from across the room spoke out to defend LEFFLER and seemed to be upset with OFFICER PAUOLE.

86. The WON stated, "I like ask what you doing sending this through channels like this?"

87. The WON went on to state, "You shouldn't be submitting your "To/From" to a supervisor, you should be submitting it directly to the Captain."

88. What WON was saying went against Department General Order 101.1 Vlli part A. which states that information flows up and down the chain of command.

89. What WON was saying also would deny OFFICER PAUOLE the benefits and insight of submitting a "To/From" via channels which is a right afforded to all MPD employees.

90. This was the second time in six (6) months that OFFICER PAUOLE was told not to submit his "To/From" via channels.

91. On April 9, 2017, OFFICER PAUOLE attempted to submit a "To/From" to the MPD Chief of Police regarding disparate treatment (Re. SOCD pay).

92. MPD Sergeant NATHAN PELLAZARA refused to accept OFFICER PAUOLE's "To/From" and OFFICER PAUOLE was told to submit it to the Lieutenant RANDY ESPERANZA directly.

93. OFFICER PAUOLE was forced to submit this "To/From" to the RANDY ESPERANZA in a manila envelope.

94. Shortly after taking his "To/From" back from LEFFLER on or about July 8, 2017, OFFICER PAUOLE returned to the LEFFLER 's office in an attempt to smooth things over with his supervisors.

95. When OFFICER PAUOLE got LEFFLER's office was gone and OFFICER PAUOLE asked if LEFFLER had left already.

96. OFFICER PAUOLE was told WON "I think he going load up his gun or something, he said he gotta get ammo."

97. The next morning, OFFICER PAUOLE saw LEFFLER in the hallway with his gun belt in hand.

98. OFFICER PAUOLE greeted LEFFLER by stating "Good Morning Dave".

99. LEFFLER gave OFFICER PAUOLE a blank stare and said nothing.

100. After this occasion OFFICER PAUOLE had his PTSD flare up due to the statements of WON and actions of LEFFLER regarding LEFFLER's guns and ammunition.

101. On or about July 13<sup>th</sup>, 2017, OFFICER PAUOLE re-submitted his same "To/From" regarding reinstatement, this time to MPD Sgt. Eduardo BAYLE.

102. A week later BAYLE informed OFFICER PAUOLE that he had turned the "To/From" in.

103. OFFICER PAUOLE had again requested to receive a response within ten days.

104. As of the filing of this Complaint, OFFICER PAUOLE has not received any response from MPD regarding his "To/From".

105. OFFICER PAUOLE has yet to receive a response from the MPD Chief of Police or from anyone else in the chain of command regarding the "To/From".

106. From the time he turned in his original "To/From" regarding reinstatement OFFICER PAUOLE has made numerous complaints on the delay in response to this "To/From".

107. On April 7, 2017 two days after making an inquiry of disparate treatment (above To/From re: SOCD pay) OFFICER PAUOLE received text messages from a MPD Officer CHASE KELIIPAAKAUA who OFFICER PAUOLE had worked with a few times.

108. This KELIIPAAKAUA asked questions about the leave OFFICER PAUOLE took when dealing with his disability.

109. This KELIIPAAKAUA claimed that his life was falling apart and that he was going to take stress leave.

110. This KELIIPAAKAUA asked about the process that OFFICER PAUOLE used to take stress leave and asked OFFICER PAUOLE if he had gotten paid while out of work and on leave.

111. Although he was transparent in his response, OFFICER PAUOLE found the KELIIPAAKAUA's questions to be intrusive especially since OFFICER PAUOLE had no connection to him outside of work.

112. OFFICER PAUOLE also found this suspicious coming two days after he submitted said "To/From" regarding disparate treatment.

113. OFFICER PAUOLE found out later that KELIIPAAKAUA proceeded one step further by contacting a MPD supervisor with further inquiries about OFFICER PAUOLE's stress leave.

114. OFFICER PAUOLE found this to be a violation of his right to privacy done without his consent.

115. OFFICER PAUOLE believes that it was used to lure OFFICER PAUOLE into making statements to support the MPD's decision to disqualify OFFICER PAUOLE from police work.

116. Although these text messages were received months ago KELIIPAAKAUA has yet to take stress leave.

117. The week OFFICER PAUOLE had filed the EEOC/HCRC complaint on June 16, 2017 he began to get approached by a wave of co-workers with questions about his disability, about disability in general, about his PTSD, on whether or not he hits his children, and about his relationship with his ex-wife.

118. A new MPD Officer APAHLO KEMFORT asked OFFICER PAUOLE directly about how bad his PTSD was and wanted to know OFFICER PAUOLE's disability rating.

119. MPD Officer TAYLOR KAMAKAWIWOOLE would frequently ask about OFFICER PAUOLE while OFFICER PAUOLE was out on vacation.

120. OFFICER PAUOLE's MPD co-worker became suspicious as to why KAMAKAWIWOOLE was keeping tabs on OFFICER PAUOLE and questioned his frequent inquiries.

121. This co-worker was told that the MPD Officer TAYLOR KAMAKAWIWOOLE inquiries were made because "Kelly might be trying to file a class action type lawsuit."

122. OFFICER PAUOLE believes that KAMAKAWIWOOLE concern about OFFICER PAUOLE filing a lawsuit was not his own concern, but a concern of the MPD.

123. OFFICER PAUOLE believes that KAMAKAWIWOOLE was making these inquiries on the MPD's behalf.

124. After filing his EEOC complaint KAMAKAWIWOOLE stated to OFFICER PAUOLE, "I just like get out of the Department already, I could live off of \$1,800.00 dollars a month SSI."

125. That the term SSI referred to supplemental income paid to the extremely poor, elderly, handicapped and disabled.

126. To the best of OFFICER PAUOLE's knowledge none of these

characteristics would describe KAMAKAWIWOOLE.

127. OFFICER PAUOLE believes KAMAKAWIWOOLE was trying to encourage OFFICER PAUOLE to quit the MPD.

128. On or about July 2, 2017, an officer started a group text which included an officer from the Criminal Intelligence Unit, Martin MARFIL.

129. They invited former sergeant Walter AHUNA, officer Marvin MILES and OFFICER PAUOLE to a get together.

130. That this get together was out of the ordinary and suspicious coming two weeks after OFFICER PAUOLE had filed an EEOC/HCRC complaint.

131. Officer MILES and AHUNA agreed that the requested meeting had to do with OFFICER PAUOLE's complaint and they warned OFFICER PAUOLE not to attend.

132. OFFICER PAUOLE declined their invitation.

133. On or about August 15, 2017 while on his day off, OFFICER PAUOLE was contacted via phone by the above CIU officer MARFIL who OFFICER PAUOLE has known for over thirteen (13) years.

134. OFFICER PAUOLE had never received a direct phone call from MARFIL since their days on patrol.

135. When contacted, MARFIL asked OFFICER PAUOLE if he was

interested in working as a police officer in CIU.

136. When OFFICER PAUOLE reminded MARFIL that OFFICER PAUOLE was no longer a police officer MARFIL claimed that he was not aware that OFFICER PAUOLE had received a demotion. .

137. As the intelligence officer for the MPD Chief of Police and its administration MARFIL's claim of not knowing of OFFICER PAUOLE demotion is difficult to believe.

138. In July of 2016, OFFICER PAUOLE's demotion was made known on Personnel Order 16-33 and emailed to "All" Department employees.

139. In 2016, while in a hallway at the Wailuku station, OFFICER PAUOLE complained about the MPD's decision to demote him to MARFIL, as OFFICER PAUOLE did with many other police officers.

140. After being made this offer, for a brief moment OFFICER PAUOLE believed that his request for reinstatement had been granted.

141. When OFFICER PAUOLE I realized that this was a probe and not a real job offer it was upsetting and frustrating to say the least.

142. OFFICER PAUOLE found this offer of a position which they had no intention of giving me particularly cruel on the MPD's behalf.

143. OFFICER PAUOLE believe this to be further retaliation for filing the

above EEOC/HCRC complaint.

144. These inquiries at minimal violated OFFICER PAUOLE expectation of medical privacy in regard to his disability.

145. OFFICER PAUOLE believes that some of these inquiries and conversations have been designed to bait OFFICER PAUOLE into inappropriate statements and responses and constitutes entrapment.

146. On or about September 13, 2017, OFFICER PAUOLE filed his second EEOC/HCRC charge of discrimination against MPD alleging disability discrimination and retaliation.

147. In OFFICER PAUOLE's second complaint with the EEOC/HCRC, he made reference to his co-workers which included members of the MPD Kihei Patrol Administration.

148. A month following this complaint OFFICER PAUOLE was named as the offender in a Terroristic Threatening in the First Degree case.

149. This case was a class "C" felony and was initiated by the MPD Kihei Patrol Administration.

150. This case had no justification in its classification and was filed under report number 17-043924.

151. The basis for this class "C" felony case was unfounded and completely

retaliatory in nature.

152. On or about October 18, 2017, OFFICER PAUOLE was contacted by the MPD Kihei Patrol Division commander, Captain Clyde HOLOKAI and informed that OFFICER PAUOLE was not allowed to return to work.

153. OFFICER PAUOLE was told that they could not tell him why he was being banned from work.

154. After repeated inquiries during their conversation, OFFICER PAUOLE was finally told that there were criminal cases made against him.

155. OFFICER PAUOLE was not informed of the specific allegations and was told this was an "executive decision".

156. OFFICER PAUOLE asked if he was being retaliated against for filing complaints with the EEOC/HCRC and was told "No."

157. OFFICER PAUOLE asked if this had anything to do with his "To/From" written communication which accused the MPD of discrimination, retaliation and requested for his reinstatement as a police officer and was again told "No."

158. On or about October 19, 2017, OFFICER PAUOLE was informed by Lieutenant Wade MAEDA that a notification was sent out by MPD Captain Clyde HOLOKAI.

159. Many of the recipients of this notification disseminated this

information through their ranks which has allowed its contents to extend outside of the MPD.

160. According to MPD WAYDE MAEDA this email suggested that OFFICER PAUOLE was dangerous and posed a risk to others because OFFICER PAUOLE was going "Postal."

161. MAEDA stated according to the email, OFFICER PAUOLE was not just banned from his workplace at the MPD Kihei Police Station but from all MPD facilities.

162. The dissemination of this information subjects OFFICER PAUOLE to further humiliation, defamation of his character and places himself and his family in harm's way.

163. The recipients of this information, which includes police officers, are treating OFFICER PAUOLE with extreme prejudice when OFFICER PAUOLE is contacted or detected both on or off-duty.

164. On or about November 2, 2017, OFFICER PAUOLE was contacted by MPD Detective Jeffrey MAHONEY of the Criminal Investigative Division (Kihei).

165. MAHONEY stated that a Terroristic Threatening in the First Degree case was made against OFFICER PAUOLE by the MPD Kihei Patrol Administration.

166. MAHONEY stated that their justification for making this felony case was a statement made by OFFICER PAUOLE's co-worker Kristine ARMSTRONG during an open meeting.

167. According to MAHONEY, ARMSTRONG stated, that OFFICER PAUOLE said he could gain access into the Kihei Police Station arsenal.

168. MAHONEY stated that he knew that OFFICER PAUOLE was reaching out to the MPD for some time and that MPD was not responding to his above mentioned "To/From" for then approximately 120 days.

169. MAHONEY stated that a police interview regarding ARMSTRONG's allegations would help by giving OFFICER PAUOLE a "voice" to be heard.

170. MAHONEY offered to help OFFICER PAUOLE in communicating with the MPD "outside" of this criminal investigation.

171. I agreed to participate in the "police interview" by showing up for a police interrogation on the following day.

172. On November 3, 2017 OFFICER PAUOLE met with MAHONEY in the Wailuku CID Interrogation room.

173. Following an advisement of his Constitutional Rights, OFFICER PAUOLE waived his rights and agreed to make a statement without an attorney present.

174. The following is a summary of OFFICER PAUOLE's statement in the first person:

I stated that my co-worker ARMSTRONG and I would often "talk story" during our eight-hour shift. During one of our conversations I stated that the Kihei Police Station felt very secure.

ARMSTRONG then proceeded to point out the flawed security of the Kihei Police Station and the fact that the Department failed to install a third Emergency roller door on the Community room entry point. That one day while “talking story” with the intent on making conversation, I participated in ARMSTRONG’s flawed security theme of the Kihei Police Station. I stated that the arsenal room was located near the back door, there were no cameras, no alarm, no cage, that weapons were not locked to its rack and it was secured by a door that could be easily defeated. I stated that this was a concern for us since we were unarmed and often times the only people in the building at night. I stated with sarcasm, that if things went bad and we were alone in the station, with no armed police officers and in an exigent circumstance where our lives depended on it at least we knew we could kick in the door and access weapons and ammunition to defend the station until police officers arrived.

175. There was no intent to threaten ARMSTRONG or anyone else for that matter.

176. Following this statement, OFFICER PAUOLE asked MAHONEY if this was a “Terroristic Threatening in the First Degree,”

177. MAHONEY replied “No”.

178. MAHONEY stated that OFFICER PAUOLE statement was taken out of context because no one felt threatened.

179. MAHONEY stated that ARMSTRONG was not threatened or afraid of OFFICER PAUOLE and ARMSTRONG did not want to document a police report against OFFICER PAUOLE.

180. As a former police officer, OFFICER PAUOLE knows that feeling

threatened was a required element in the crime of Terroristic Threatening in the First Degree.

181. That based on MAHONEY's statement OFFICER PAUOLE questions ARMSTRONG's participation in this criminal case made against him.

182. Prior to this ARMSTRONG was having a difficult time securing medical insurance for her transition to life on the mainland.

183. Upon information and belief, ARMSTRONG had submitted her letter of resignation and her last day fell on November 9, 2017.

184. Upon information and belief, since making this false case against OFFICER PAUOLE, ARMSTRONG was generously granted transitional leave by the MPD solving her medical insurance dilemma.

185. According to Personnel Order 17-49 ARMSTRONG will continue to receive full medical benefits up until February 4, 2018.

186. OFFICER PAUOLE believes this to be a bargaining chip or at minimum motivation for ARMSTRONG's participation in this malicious and false prosecution attempt;

187. OFFICER PAUOLE has never been named as an offender in any criminal investigation as a juvenile or as an adult.

188. On or about October 27, 2017, OFFICER PAUOLE arrived at the MPD Wailuku Police station and spoke to officer Marvin MILES.

189. OFFICER PAUOLE informed MILES that OFFICER PAUOLE wanted to make police reports for Terroristic Threatening and Theft.

190. OFFICER PAUOLE informed MILES that these incidents occurred on police facilities and involved police personnel.

191. MILES called for a patrol supervisor and MPD sergeant Rockwell SILVA arrived shortly after.

192. Regarding the Terroristic Threatening case, OFFICER PAUOLE told SILVA that OFFICER PAUOLE wanted to make a police report and that OFFICER PAUOLE felt threatened.

193. SILVA responded by disregarding what OFFICER PAUOLE said and SILVA asked, "threatened or harassed?"

194. OFFICER PAUOLE repeated himself and stated that he felt threatened.

195. There is a significant criminal law distinction between feeling "harassed" and "threatened" as feeling "threatened" is classified as a more serious crime.

196. SILVA stated that he would document a "To/From" written communication to the MPD Chief of Police.

197. OFFICER PAUOLE replied that he wanted a "Police Report."

198. SILVA then stated that he could not classify OFFICER PAUOLE case a Terroristic Threatening because he said that it would get thrown out of court.

199. It is a MPD police officer's duty to take a police report from someone make a complaint to a MPD officer.

200. It is the Maui County Prosecutors Office's job to determine whether or not to file charges based on a MPD police report.

201. MPD police officers do not determine which cases will be filed in court.

202. SILVA then stated that if OFFICER PAUOLE "Felt Annoyed" SILVA could document this for OFFICER PAUOLE, but SILVA had to speak to his Lieutenant first before giving OFFICER PAUOLE the "Final Say."

203. SILVA stated that it sounded like OFFICER PAUOLE was fighting for his job right now.

204. SILVA said "The Captain tells you cannot go back to the Kihei Police Station you're on administrative leave. If you wanted to find out anything about that then do so."

205. SILVA then stated "No throw this bullshit inside over here part okay. What I telling you don't mix this up with that."

206. In short SILVA stated that OFFICER PAUOLE complaints were "bullshit" and that he was making them in response to being banned from work and having a criminal case made against him.

207. OFFICER PAUOLE tried to explain that his complaints were not "bullshit" and that the MPD was notified of these incidents and that nothing was done.

208. SILVA then replied then why are we doing this?

209. OFFICER PAUOLE stated he wanted police reports made because these were criminal cases.

210. SILVA then stated "So you just desire documentation no prosecution desired."

211. OFFICER PAUOLE stated that they could make that determination.

212. SILVA then stated that they didn't make that determination and as a victim in this case OFFICER PAUOLE had to make the decision.

213. OFFICER PAUOLE stated that at that time he was undecided on prosecution.

214. SILVA then stated, "You want this documented for the records?"

215. OFFICER PAUOLE stated that he was NOT saying that he wanted these cases made for records.

216. SILVA then cut OFFICER PAUOLE off and took a phone call.

217. When SILVA was done with his phone call he left and said that he needed to speak to his watch commander.

218. Their conversation ended with OFFICER PAUOLE requesting criminal cases and not cases made for records purposes only.

219. When SILVA returned he informed OFFICER PAUOLE that he spoke to his District Commander and that he was going to make me a police report based on OFFICER PAUOLE complaints.

220. OFFICER PAUOLE then reminded SILVA that OFFICER PAUOLE had a second police report that he needed to make.

221. OFFICER PAUOLE informed SILVA that it was a Theft report for OFFICER PAUOLE items valued at \$975.00 that occurred when OFFICER PAUOLE wall locker at the Lahaina Police Station was cleared without his permission.

222. OFFICER PAUOLE informed SILVA that the theft included a large amount of ammunition and high capacity .223 magazines.

223. OFFICER PAUOLE then handed SILVA a list of OFFICER PAUOLE's stolen items and SILVA stated that he would attach it to the police report.

224. Later, when OFFICER PAUOLE contacted MILES he informed OFFICER PAUOLE that SILVA ordered MILES to cancel the original police report number.

225. MILES was then ordered by SILVA to pull a second police report number (17-045236) for a non-criminal personal assistance case.

226. MILES said that the synopsis on the personal assistance report included the elements of a felony theft and a harassment however no criminal cases were documented.

227. When OFFICER PAUOLE picked up his "police report" it confirmed what MILES said: two separate criminal cases were combined to make one non-criminal personal assistance case for records purposes only.

228. As a former police officer OFFICER PAUOLE knows that the appropriate reports should have been a Terroristic Threatening in the second degree and a Theft in the second degree.

229. In regards to OFFICER PAUOLE's Terroristic Threatening complaint, MILES stated that he did hear OFFICER PAUOLE say that he felt threatened.

230. MILES stated that he was told by SILVA to state that OFFICER PAUOLE felt harassed.

231. Even if OFFICER PAUOLE did state that he felt harassed then the appropriate case, at a minimum, would have been a harassment and not a personal assistance case

232. A personal assistance case meant that these cases would not be investigated.

233. A personal assistance case meant that no follow-ups would be conducted in either case.

234. No attempts were made by MPD to locate OFFICER PAUOLE's stolen items or to identify those who were responsible.

235. OFFICER PAUOLE was denied his right to document his criminal cases and his right to have them properly investigated.

236. That during their conversation SILVA mentioned that OFFICER PAUOLE would not be alone in his demotion to Public Safety Aide.

237. SILVA stated that the MPD was going after other police officers who were currently being provided light modified duty accommodations.

238. SILVA stated that the MPD had a problem with paying these officers "PO" pay for being on light duty and not being out on the road.

239. SILVA stated if these police officers were not cleared for full patrol duty soon, like OFFICER PAUOLE they would have to take a demotion down to "Public Safety Aide."

240. SILVA said if they did not take the demotion they would have to find themselves another job.

241. That on November 1, 2017 at about 1315 hours, off-duty MPD police officer "Kalani" MILES spoke to MARFIL.

242. MARFIL stated that "Kelly was telling people he could break-in to the Kihei Police Station arsenal"

243. MARFIL stated "I thought me and Kelly was boys and he named me in his "lawsuit" (EEOC complaint);

244. MARFIL then stated that he wanted to confront OFFICER PAUOLE at the Kihei station but he was working on something.

245. MILES felt MARFIL's anger towards the OFFICER PAUOLE when he spoke about confronting OFFICER PAUOLE;

246. MARFIL stated he did not know that the OFFICER PAUOLE had been demoted, but MILES did not believe this.

247. MARFIL's following statement made it known that the call offering OFFICER PAUOLE a police position in CIU was a ruse and that MPD had no intention of giving the OFFICER PAUOLE the job.

248. MARFIL stated "I called Kelly on behalf of Chief Tivoli FAAUMU because "Kelly" was filing a class action lawsuit.

249. MPD has no qualified, licensed medical personnel specifically to address mental health issues.

250. The Los Angeles Police Department ("LAPD") has sixteen (16) fulltime staff psychologists that any LAPD employee (not just police officers) and their spouses can use.

251. The LAPD's mental health program allows for significant protective anonymity.
252. MPD has no psychologist or other qualified, licensed medical personnel at all to assist MPD officers or employees.
253. There is a pattern and practice of discrimination and retaliation against those officers at MPD that have PTSD.
254. Due to the negative treatment of officers at MPD with PTSD there are officers at MPD who keep their PTSD a secret.
255. Regarding the aforementioned acts, OFFICER PAUOLE timely submitted three (3) separate complaints of discrimination to the Hawaii Civil Rights Commission.
256. On or about October 10, 2017, OFFICER PAUOLE was issued his "right to sue" letter from the HCRC.
257. On January 8, 2018, OFFICER PAUOLE was issued his second "right to sue" letter from the HCRC.
258. On March 16, 2018, OFFICER PAUOLE was issued his third "right to sue" letter from the HCRC.

**COUNT I  
DISABILITY DISCRIMINATION**

259. OFFICER PAUOLE incorporates paragraphs 1 through 258 as though fully set forth herein.

260. An employer shall not discriminate against an employee based on disability under HRS, § 378-2 which states in pertinent part as follows:

§ 378-2: It shall be unlawful discriminatory practice:

(1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability . . .

(A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment

261. The MPD's conduct as described above is a violation of the HRS, § 378-2(1).

262. The aforementioned acts and/or conduct of the MPD entitles OFFICER PAUOLE to damages as provided by law. As a direct and proximate result of said unlawful employment practices OFFICER PAUOLE has suffered extreme mental anguish, outrage, depression, great humiliation, severe anxiety about his future and his ability to support himself, as well as painful embarrassment among his relatives and friends, damage to his good reputation, disruption of his personal life, loss of enjoyment of the ordinary pleasures of everyday life and other general damages in an amount which meets the minimal jurisdictional limits of this Court.

## **COUNT II RETALIATION**

263. OFFICER PAUOLE incorporates paragraphs 1 through 262 as though fully set forth herein.

264. It shall be unlawful discriminatory practice for an employer to discriminate against an individual under HRS, § 378-2(2) who "has filed a complaint . . . respecting the discriminatory practices prohibited under this part."

265. MPD's conduct as described above is a violation of HRS, § 378-2 (1 & 2).

266. The aforementioned acts and/or conduct of the MPD entitles OFFICER PAUOLE to damages as provided by law. As a direct and proximate result of said unlawful employment practices OFFICER PAUOLE has suffered extreme mental anguish, outrage, depression, great humiliation, severe anxiety about his future and his ability to support himself, as well as painful embarrassment among his relatives and friends, damage to his good reputation, disruption of his personal life, loss of enjoyment of the ordinary pleasures of everyday life and other general damages in an amount which meets the minimal jurisdictional limits of this Court.

**PRAYER FOR RELIEF**

WHEREFORE, OFFICER PAUOLE respectfully prays that this Court enter judgment granting the following relief on all causes of action:

A. That this Court enter a declaratory judgment that MPD have violated the rights of OFFICER PAUOLE;

B. That this Court award OFFICER PAUOLE special damages for the aforementioned Counts including but not limited to back pay, front pay, and all employee benefits that would have been enjoyed by him in amounts which shall be shown at trial;

C. That this Court award OFFICER PAUOLE compensatory damages, proximately caused by MPD's tortious and abusive conduct, including, but not limited to, general damages for intentional infliction of mental or emotional distress, assessed against MPD, all in an amount to be proven at trial;

D. As MPD's treatment of OFFICER PAUOLE, as aforesaid, constitutes extreme and outrageous behavior which exceeds all bounds usually tolerated by decent society. In committing the above acts and omissions, MPD acted wantonly and/or oppressively and/or

with such malice as implies a spirit of mischief or criminal indifference to civil obligations and/or there has been some willful misconduct that demonstrates that entire want of care which would raise the presumption of a conscious indifference to consequences, justifying an award of punitive or exemplary damages in an amount to be proven at trial, that this Court award OFFICER PAUOLE exemplary or punitive damages in an amount to be proven at trial;

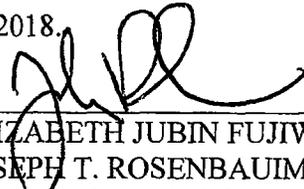
E. That this Court award OFFICER PAUOLE reasonable attorney's fees and costs of suit herein as well as prejudgment and post-judgment interest;

F. That this Court order appropriate injunctive relief;

G. That this Court retain jurisdiction over this action until MPD has fully complied with the order of this Court and that this Court require MPD to file such reports as may be necessary to secure compliance;

H. That this Court award OFFICER PAUOLE such other and further relief both legal and equitable as this Court deems just, necessary and proper under the circumstances.

DATED: Honolulu, Hawaii, March 20, 2018.



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ELIZABETH JUBIN FUJIWARA  
JOSEPH T. ROSENBAUM  
Attorneys for Plaintiff  
KELLY PAUOLE



IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

KELLY PAUOLE, ) CIVIL NO. 18-1-0007(2)  
 ) (Other Civil Action)  
 Plaintiff, )  
 ) SUMMONS  
 vs. )  
 )  
 COUNTY OF MAUI POLICE )  
 DEPARTMENT; JOHN DOES 1-10; JANE )  
 DOES 1-10; DOE CORPORATIONS 1-10; )  
 DOE PARTNERSHIPS 1-10; DOE )  
 UNINCORPORATED ORGANIZATIONS )  
 1-10; and DOE GOVERNMENTAL )  
 AGENCIES 1-10, )  
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 Defendants. )  
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SUMMONS

STATE OF HAWAII:

To the above-named Defendants:

You are hereby summoned and required to file with the Court and serve attorney FUJIWARA AND ROSENBAUM, LLC, whose address is 1100 Alakea St. 20<sup>th</sup> Fl. Ste B, Honolulu, Hawaii 96813, an answer to the First Amended Complaint herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the First Amended 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.

DATED: Honolulu, Hawaii, MAR 20 2018.

**EX OFFICIO** I. KAPAONA **SEAL**  
CLERK OF THE ABOVE-ENTITLED COURT



In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Second Circuit Court Administration Office at PHONE NO. 808-539-4399, OR TTY 808-539-4853, at least ten (10) working days prior to your hearing or appointment date.