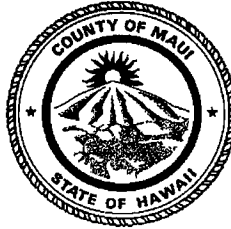


ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
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DEPARTMENT OF THE CORPORATION COUNSEL
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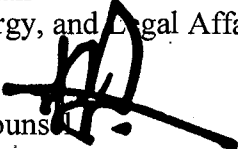
OFFICE OF THE
COUNTY COUNCIL

2017 SEP 13 PM 1:28

RECEIVED

September 12, 2017

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

FROM: Brian A. Bilberry
Deputy Corporation Counsel 

SUBJECT: Litigation Matter – Authorizing Settlement and Additional Compensation for
Employment of Special Counsel in *Harry Donenfeld v. County of Maui, et al.*
USDC CIVIL No. 16-00381-DKW-KJM

Our Department respectfully requests the opportunity to present two separate resolutions at the committees **September 19, 2017** meeting. The first Resolution will be to authorize settlement of this matter, in advance of settlement conference with Federal Magistrate Kenneth Mansfield on **September 20, 2017**. The second resolution will be to authorize additional compensation for the continued employment of special counsel for Defendant Alan Arakawa, as named “in his personal capacity” in the above-caption litigation.

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.

Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your anticipated assistance in this matter.

Resolution

No. _____

AUTHORIZING AN INCREASE IN COMPENSATION RELATED
TO THE EMPLOYMENT OF SPECIAL COUNSEL KOBAYASHI SUGITA
& GODA, LLP IN HARRY DONENFELD v. COUNTY OF MAUI,
ET AL., USDC CIVIL NO. 16-00381 DKW-KJM

WHEREAS, by Resolution No. 16-105, the Council authorized the employment of special counsel KOBAYASHI SUGITA & GODA, LLP ("special counsel") to represent Alan Arakawa, as sued "personally" in Harry Donenfeld v. County of Maui, et al.; and

WHEREAS, the Department of the Corporation Counsel has requested authorization to raise the compensation limit for the employment of special counsel by an additional \$75,000, for trial preparation and trial of this case, for a total compensation not exceeding \$150,000; now, therefore,

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

1. That the Council hereby approves and authorizes an increase in compensation for the employment of special counsel Kobayashi Sugita & Goda, LLP to represent Alan Arakawa "personally" in this case by \$75,000, for a total compensation not exceeding \$150,000; and

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

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, appearing to read 'B. Bilberry', is written over a horizontal line.

BRIAN A. BILBERRY
Deputy Corporation Counsel,
County of Maui

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
HARRY DONENFELD v. COUNTY OF MAUI,
ET AL., USDC CIVIL NO. 16-00381 DKW-KJM

WHEREAS, Plaintiff Harry Donenfeld filed a lawsuit in the United States District Court for the District of Hawaii, Civil No. 16-00381 DKW-KJM, against the County of Maui, et al., on July 8, 2016, asserting a wrongful termination claim, following termination from employment as film commissioner with the Office of Economic Development; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, seeks to reach a resolution of this case by way of a negotiated settlement or Offer of Settlement; 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 Parks, Recreation, Energy, and Legal Affairs 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 Settlement 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:

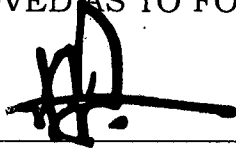
1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs Committee; and

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 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, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



BRIAN A. BILBERRY
Deputy Corporation Counsel
County of Maui

7/25/2016

Of Counsel:

BAYS LUNG ROSE & HOLMA

MICHAEL C. CARROLL 7583-0
Attorney at Law

A Law Corporation
GRANT FASI ALLISON 10368-0

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RECEIVED
CORPORATION COUNSEL
2016 JUL 25 AM 10:03

Attorneys for Plaintiff
HARRY DONENFELD

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HARRY DONENFELD,	) CIVIL NO. CV16-00381 DKW-KJM
	) (Other Civil Rights)
Plaintiff,)
	) FIRST AMENDED COMPLAINT;
vs.	) DEMAND FOR JURY TRIAL;
	) SUMMONS
COUNTY OF MAUI; ALAN)
ARAKAWA, in his official and)
personal capacity; JOHN DOES 1-10,)
JANE DOES 1-10, DOE)
PARTNERSHIPS 1-10, DOE)
CORPORATIONS 1-10, DOE)
ENTITIES 2-10 and DOE)
GOVERNMENTAL UNITS 1-10,)
)
Defendants.)
)

FIRST AMENDED COMPLAINT

Plaintiff, HARRY DONENFELD (“Plaintiff”), by and through his attorneys, Bays Lung Rose & Holma, asserts the following First Amended Complaint against Defendants COUNTY OF MAUI (“Maui County”), ALAN ARAKAWA in his official and personal capacity (“Mayor Arakawa”), and JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, DOE ENTITIES 2-10 and DOE GOVERNMENTAL UNITS 1-10 (“Defendant Does”).

I. NATURE OF THE CASE

1. This case is being brought because Plaintiff Harry Donenfeld’s employment as Maui County Film Commissioner was wrongfully terminated by the County of Maui, by and through its Mayor, Alan Arakawa (“Mayor Arakawa”), after Mayor Arakawa was requested to do so by Ryan Kavanaugh (“Kavanaugh”).

2. Kavanaugh is a long time financial backer of Mayor Arakawa’s campaigns and self-named charity and has spent considerable money lobbying legislation on behalf of the Mayor and the County of Maui. Kavanaugh has also lent his name and celebrity to the Mayor’s causes, and even offering tickets for the Mayor and his wife to attend the Golden Globes awards ceremony in Hollywood as Kavanaugh’s personal guests. In fact, Arakawa’s own Managing Director, Keith

Regan, was caught on tape admitting that Kavanaugh “gives the Mayor money for whatever . . . Big dollars from all over brought in to support [Mayor Arakawa].”

3. Kavanaugh sent emails to Mayor Arakawa and Maui County Staff threatening to end his support for the Mayor unless Donenfeld was fired. Kavanaugh’s emails included statements such as, “I’m no longer going to work on the Hawaii initiative unless [Donenfeld] is no longer involved,” and “I cannot be at the [Kokua Ball] . . . or continue to support [film legislation] if [Donenfeld] is involved.” In direct reply to these statements, Mayor Arakawa’s Cabinet Member, Jock Yamaguchi emailed Kavanaugh that the Mayor ordered high ranking Maui County staff to confront Donenfeld, and if Donenfeld interfered with Kavanaugh’s plans, “he will be fired.”

4. In an attempt to conceal the wrongful termination, Arakawa defamed Donenfeld by, among other things, stating in an interview with The Maui News that “[t]he reason [Donenfeld] was fired was because he wasn’t coming to work, period.” Maui County staff then attempted to stop the Mayor’s wrongful statements, “You cannot talk about personnel issues, Mayor,” to which Arakawa replied, “[y]ou’re right. But [Donenfeld] was given every option to continue working. He discontinued it.”

5. As a result of the Defendants’ wrongful actions, Donenfeld’s reputation has been severely damaged and he has suffered lost benefits, public

shame, and has been completely foreclosed from securing further employment in Maui's film industry. Donenfeld has even had job offers unrelated to Maui's film industry revoked for the express reason that prospective employees fear Mayor Arakawa and his public statements concerning Donenfeld's work ethic.

II. JURISDICTION AND VENUE

6. This action is brought for relief and damages from the deprivation of constitutional due process rights, and for damages for violations of state and federal law. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 over this action to redress the deprivation of Plaintiffs' rights under Federal law, including the Fourteenth Amendment of the United States Constitution.

7. The incidents that form the basis of this suit and all of the unlawful practices and torts alleged herein were committed within the State of Hawaii and/or caused injury in the State of Hawaii, and more particularly, occurred within this District. Consequently, venue is proper in this Court pursuant to 28 U.S.C. §§ 1391.

III. PARTIES

8. Plaintiff Donenfeld, is now, and at all times relevant to this action was, a United States Citizen and a resident of the County of Maui, State of Hawaii.

9. Donenfeld was appointed to be the Maui County Film Commissioner (“Film Commissioner”) by Defendant Mayor Arakawa (“Mayor Arakawa,” “Mayor,” or “Arakawa”) on or about January 2, 2011, and started work as Film Commissioner on or about August 4, 2011 until he was unlawfully terminated on or about September 6, 2013. The Maui County Film Commissioner is an appointed position in Maui County’s Film Office, which is organized under the Office of Economic Development (“OED”), a subdivision of the Office of the Mayor in the County of Maui’s government.

10. Defendant County of Maui (“Maui County”) is a municipal corporation duly organized under the laws of the State of Hawaii with the capacity and power to sue and be sued pursuant to Hawaii Revised Statutes (“HRS”) Chapter 46.

11. Upon information and belief, Defendant Mayor Arakawa is now, and at all times relevant to this action was, a resident of the County of Maui, State of Hawaii.

12. Mayor Arakawa is being sued in both his official capacity as Mayor of Maui County and in his personal capacity.

13. Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, DOE ENTITIES 2-10 and DOE GOVERNMENTAL UNITS 1-10 (collectively “Doe Defendants”) are

persons, partnerships, corporations, business entities and/or governmental entities who acted in a negligent, wrongful or tortious manner, and/or violated State or Federal Law, which proximately caused and contributed to the injuries and damages sustained by Donenfeld. The names and identities of the Doe Defendants are presently unknown to Donenfeld, except that they were in some manner responsible for the injuries or damages to Donenfeld, and/or are responsible for the violation of Federal and State law. Information obtained by Donenfeld has not provided Donenfeld with sufficient information to identify or name the Doe Defendants. Accordingly, Donenfeld has sued the unidentified Doe Defendants herein under fictitious names and prays for leave to certify their true names, identities, capacities, activities, and responsibilities when the same are ascertained.

IV. FACTUAL ALLEGATIONS

A. Relationship Between Defendant Mayor Arakawa And Kavanaugh

14. Defendant Arakawa is, and was at all relevant times, the Mayor of Maui County.

15. Ryan Kavanaugh (“Kavanaugh”) is a Hollywood “insider” and film producer who has provided significant financial support for Mayor Arakawa’s political campaigns, self-named charitable organization, and is the Mayor’s close friend.

16. In fact, on March 5, 2013, Mayor Arakawa appointee and Managing Director of the County of Maui Keith Regan (“Managing Director Regan”) was audio recorded disclosing the considerable influence Kavanaugh has over Mayor Arakawa:

[Kavanaugh] likes the Mayor [Arakawa]. For whatever reason, he likes the Mayor. I’m glad. He’s friends with the Mayor, he invites the Mayor over to his house, he plays chess with the Mayor, he brings celebrities to play chess with the Mayor. **He gives the Mayor money for whatever,** for [the Arakawa] Kokua Fund, the Aloha Initiative, for you name it, for the campaign. **This guy has even gone so far that he has even brought in people to contribute to other candidates who we support.** Example, Mufi Hannemann. **Big dollars from all over brought in to support.**

17. Upon information and belief, Kavanaugh made the maximum allowable campaign donations to Arakawa’s 2010 reelection bid.

18. Mayor Arakawa established his self-named charity, the Mayor Arakawa Community Kokua Fund (“Mayor Arakawa Kokua Fund”) in 2002 during his first term as Mayor.

19. Upon information and belief, the Mayor Arakawa Kokua Fund is a charitable organization designated as a 501(c)(3) non-profit organization that is 100% donation funded.

20. Upon information and belief, Kavanaugh was the single largest contributor to the Arakawa Kokua Fund during 2012, contributing \$57,500.00 of the \$59,122.00 revenue received by the Mayor Arakawa Kokua Fund during that

year, an amount approximately equal to 97.3% of total revenue. During this period, Mayor Arakawa simultaneously served as the Chairman of the Mayor Arakawa Kokua Fund, while also holding office as the Mayor of Maui County.

21. On March 9, 2013, the Arakawa Kokua Fund held an event titled the “2013 Mayor’s Kokua Ball” (“Kokua Ball”) at the King Kamehameha Golf Course Clubhouse. According to the Kokua Ball’s flier, guests who purchased tickets priced between \$125.00 and \$1,000.00 each were invited for an evening of “glitz, glamour, celebrity sightings and entertaining fun.”

22. Kavanaugh served as the honorary chairman of the sold-out Kokua Ball and was integral in the Kokua Ball’s success by lending his name and celebrity to the event, and even arranged for Academy Award-winning film actor Adrien Brody to fly in from Paris, France, solely to attend this event.

23. According to an internal Maui County memorandum, Kavanaugh invited the Mayor and his wife to the 68th Annual Golden Globes Awards Ceremony in Hollywood, California, as Kavanaugh’s personal guests. However, Managing Director Regan and his wife accepted the personal gift from Kavanaugh on the Mayor’s behalf.

24. Upon information and belief, Arakawa Cabinet Member and Executive Assistant of Water and Legislature Jock Yamaguchi (“Executive

Assistant Yamaguchi”) was specially assigned by Mayor Arakawa to act as liaison to Kavanaugh on behalf of Mayor Arakawa and Maui County.

25. Executive Assistant Yamaguchi prepared an internal Maui County memorandum that disclosed, among other things, that Kavanaugh spent over \$2 million on behalf of Defendants lobbying the State Legislature to pass House Bill 1551 and Senate Bill 1550 (collectively “Movie Tax Bill”).

B. Donenfeld Hired As Film Commissioner

26. Plaintiff Donenfeld was appointed to be the Maui County Film Commissioner by Mayor Arakawa and started work on or about August 4, 2011.

27. At the time he was appointed by Arakawa, and throughout his tenure as Film Commissioner, Donenfeld had a reasonable expectation that he would hold his position for the entire duration of Mayor Arakawa’s term as Maui County Mayor.

28. Donenfeld’s expectations were based on Mayor Arakawa’s assurances to Donenfeld that he would remain employed. At least one such assurance came in early-September 2013, just days prior to Donenfeld’s eventual termination.

29. Donenfeld was further led to believe he would not be fired because no Maui County Film Commissioner had ever been fired and every Film

Commissioner, before Donenfeld, held the position until the appointing mayor left office.

30. Donenfeld was also hired with the expectation he would have the rights and benefits mandated in The Department of Personnel Services of Maui County's Employee Handbook ("Employee Handbook").

31. The Employee Handbook states: "[t]here are occasions when it is necessary for supervisors to take disciplinary action **in order to attain proper employee performance and conduct.**" (Emphasis added).

32. The phrase "in order to attain proper employee performance and conduct" imposes a requirement of just cause for any disciplinary action by Maui County against its employees.

33. The Employee Handbook also requires Maui County to conduct regular performance evaluations of its employees "based on the quality and quantity of work performed and work attitudes."

34. Every Maui County employee "shall have a Performance Evaluation Report completed at the end of every three months during [the] probationary period," and "[p]erformance evaluation reports are also **completed at least once a year for regular employees**" and become a part of the employees' employment file.

35. Donenfeld's official personnel file ("Employment File") does not contain a single performance evaluation report.

C. Kavanaugh Requests Defendants Terminate Donenfeld As Film Commissioner

36. Sometime after Donenfeld started working as Film Commissioner, Kavanaugh grew dissatisfied with Donenfeld's performance as Film Commissioner.

37. Kavanaugh's displeasure with Donenfeld's job performance as Film Commissioner concerned, among other things, Kavanaugh's beliefs that Donenfeld had assisted Maui Film Studios LLC ("MFS"), and that MFS emergence threatened the likelihood that the Movie Tax Bill, that Kavanaugh had spent over \$2 million to support, would be enacted by the State Legislature.

38. On March 5, 2013, The Maui News published a story about MFS titled "Hawaii's 'largest film studio' in the works in C. Maui."

39. That same day, Kavanaugh reacted to the MFS news story by sending multiple emails requesting Donenfeld's termination as Film Commissioner.

40. One such email from Kavanaugh to Managing Director Regan and Executive Assistant Yamaguchi, sent March 5, 2013, stated:

I read today's announcement about the "Largest stages being built in Maui" and I must say I'm really disappointed . . . I've had

3 calls already today from different members of the House and Senate as to “What the hell is this” assuming we are involved.

...

[MFS'] stages aren't enough to shoot a porn let alone one scene of a movie. **More important it severely hurts our [Movie Tax] bill, and my . . . credibility with the state.**

I have, for years now, sat and watched this guy Harry, who doesn't know the first thing about the film business, mis-advise you guys, lie to you, and trash talk me. As interns at our company know more than he ever will it didn't bother me as I assumed he was hired as a favor to someone **or had special needs**. I sat quite when he trash talked me at the Mayor's last event

...

I cannot be at the [Mayor Arakawa Kokua Ball] this weekend or continue to support the [Movie Tax] bill if Harry is involved

(Emphasis Added).

41. A separate email contained in Maui County's records, also sent on March 5, 2013 by Kavanaugh, declares:

I'm sick of Harry and his shot [sic]. He is a lightweight and just gets in the way . . . [This] reflects poorly on me. I'm done with this Harry guy. **I'm no longer going to work on the Hawaii initiative unless Harry is no longer involved . . . I'm going to think on it but I don't think I want my name involved anymore as long as [Donenfeld] is involved.**

(Emphasis added).

42. Later that day, Executive Assistant Yamaguchi replied to Kavanaugh's requests, assuring him that Donenfeld would be fired if he interfered with Kavanaugh's plans concerning film legislation:

[The Mayor] has the managing director [Regan], chief of staff [Andaya], and another cabinet member [Communications Director Antone] meeting with Harry [Donenfeld] tonight with directive that they tell him – if he get involved in film legislation at all, or issues, or has his friends issue [sic], anything to the media regarding film . . . **that he will be fired.**

(Emphasis added).

43. Pursuant to Executive Yamaguchi’s promise to Kavanaugh, the Mayor ordered his top cabinet members, including, Managing Director Regan, Communications Director of Maui County Rod Antone (“Communications Director Antone”), and Mayor Arakawa’s Chief of Staff Herman Andaya (“Chief of Staff Andaya”) to confront Donenfeld that same day, March 5, 2013, at a Starbucks (“Starbucks Meeting”).

44. At the Starbucks Meeting, Managing Director Regan expressly declared the primary purpose of the Starbucks Meeting was to protect the relationship between Kavanaugh and the Mayor and to order Donenfeld not to harm the Movie Tax Bill in any way, and stop Donenfeld’s support for MFS because MFS threatened Kavanaugh and the Movie Tax Bill.

45. Then, on July 27, 2013, Kavanaugh emailed Mayor Arakawa directly, reiterating his prior position and adding that he could influence two movies to select Maui for filming and production, but was unlikely to do so because the producers “wouldn’t want to deal with Maui’s current film commissioner [Donenfeld]. Do you have any time to discuss.”

46. Soon thereafter, Executive Assistant Yamaguchi sent an email calling for an August 21, 2013 “Ryan Kavanaugh-Mayor meeting.” This meeting, held in the Mayor’s office, was attended by Mayor Arakawa, Kavanaugh, Chief of Staff Andaya, Director of the Office of Economic Development Teena Rasmussen (“OED Director Rasmussen”), Executive Assistant Yamaguchi, and Donenfeld.

47. Upon information and belief, although Managing Director Regan did not attend the “Ryan Kavanaugh-Mayor meeting,” he listened in on the meeting by occupying the bathroom that adjoins the Managing Director’s and Mayor’s offices for the duration of this meeting.

48. The “Ryan Kavanaugh-Mayor meeting” was conducted by Kavanaugh where he reaffirmed his prior positions, as stated in the March 5, 2013 emails, and criticized Donenfeld’s performance as Film Commissioner.

49. At the conclusion of the “Ryan Kavanaugh-Mayor meeting,” OED Director Rasmussen told Donenfeld that he was to be at his desk every morning by 7:45 a.m. or he would be fired.

D. Donenfeld Terminated As Film Commissioner And Defamed By Mayor Arakawa

50. Donenfeld was terminated as Film Commissioner on or about September 6, 2013.

51. Upon information and belief, although OED Director Rasmussen was the Maui County employee that terminated Donenfeld’s

employment, Rasmussen lacked the unilateral authority to terminate Donenfeld's employment, or only did so with Mayor Arakawa's knowledge and authority.

52. Rasmussen gave no reason, documentation, or supportive evidence as to why Donenfeld was being fired other than declaring Donenfeld had failed to be at his desk by 7:45 a.m. on or about the day of September 4, 2013, as required after the "Ryan Kavanaugh-Mayor meeting."

53. Donenfeld was terminated without just cause.

54. In late-2015, Mayor Arakawa's relationship with Kavanaugh came under public scrutiny due to the September-2015 publication of a news article titled "Pay for Play," which focused on Kavanaugh, the role the Mayor Arakawa Kokua Fund plays in Maui County Politics, and Donenfeld's termination as Film Commissioner.

55. Then, while being interviewed for The Maui News' October 4, 2015 article titled "Mayor: Ex-film commissioner 'wasn't coming to work,'" the Mayor declared "**[t]he reason [Donenfeld] was fired was because he wasn't coming to work, period.**" Communications Director Antone immediately interrupted, "[y]ou cannot talk about personnel issues, Mayor," to which Arakawa replied, "**[y]ou're right. But [Donenfeld] was given every option to continue working. He discontinued it.**" (Emphasis added).

56. Further, Donenfeld did not learn of or have any knowledge that he was terminated for an improper purpose until late-2015 when Brian Perry (“Perry”), a journalist with The Maui News, began publishing various newspaper articles about the relationship between Mayor Arakawa and Kavanaugh.

57. In or around November 2015, Perry emailed Donenfeld portions of Kavanaugh’s March 5, 2013 emails requesting Donenfeld’s termination. Perry obtained the emails from Maui County pursuant to a Uniform Information Practices Act (“UIPA”) request in or around mid-2015.

58. Perry published portions of these emails in The Maui News on November 29, 2015, in a story titled “Filmmaker tried to push out film commissioner.”

59. Prior to the release of Kavanaugh’s March 5, 2013 emails and Mayor Arakawa’s false statements about the reason Donenfeld was terminated, Donenfeld had no basis to believe he was terminated for a wrongful purpose.

E. Donenfeld’s Maui County Employment File Does Not Support Mayor Arakawa’s Public Declarations That Donenfeld’s Employment Was Terminated Because He Failed To Attend Work

60. A review of Donenfeld’s Maui County Employment File reveals that he was not fired for failure to attend to work, contrary to Mayor Arakawa’s public declarations.

61. The only documentation of Donenfeld's attendance contained in his Employment File is for the period from August 1, 2011 through August 15, 2011. The Employment File indicates Donenfeld's attendance at work was perfect during this period.

62. Further, the Employment File clearly states that Donenfeld was not fired for cause or misconduct.

63. According to a letter in Donenfeld's Employment File, dated November 11, 2013, Maui County reported: (1) "**there was no final incident and no prior warnings**" before Donenfeld's termination; there "**is insufficient evidence to show that [Donenfeld's] discharge was due to willful or deliberate disregard of the employer's best interests**"; (3) "**[Donenfeld] was discharged for reasons other than misconduct connected with work**"; and (4) Donenfeld was discharged because he was "**incompatible for the position.**" (Emphasis added).

64. No other documentation or evidence is contained anywhere in the Employment File indicating that Donenfeld was fired for cause or misconduct, or that Donenfeld had ever missed a day of work or attended work late.

F. Maui County's Administrative Mishandling Of Donenfeld's Termination Caused Donenfeld To Lose Benefits

65. Between September 6, 2013, when Donenfeld was terminated, and approximately November 15, 2013, Defendants told Donenfeld they would

hold up his ability to collect unemployment insurance unless he signed an agreement (“Separation Agreement”) that, among other things, prohibited Donenfeld from discussing his termination.

66. Between September 6, 2013 and November 15, 2013, Donenfeld was, through Maui County’s own administrative mishandling, still a registered employee of Maui County, despite the fact that he had been fired on or around September 6, 2013 and was no longer receiving a paycheck.

67. Furthermore, because Donenfeld did not receive his final paycheck until on or around November 15, 2013, Donenfeld’s tax and medical withholdings were not timely paid, causing his health and medical benefit payments to lapse and making him ineligible for COBRA health insurance after his termination.

68. Maui County’s mishandling of Donenfeld’s termination is reflected in an email sent on October 30, 2013 by Maui County’s First Assistant to Managing Director Dave Ching (“Ching”): “[c]an someone please let me . . . know what the ‘official’ status of Harry Donenfeld is? He is currently still an active employee[.]” Later that day, Ching also emailed he “has not been able to provide a definitive answer” and he “would recommend that [Maui County] terminate Harry [Donenfeld] on the record so that he can get his unemployment.”

69. The County's mishandling of Donenfeld's termination also prevented Donenfeld from timely applying for unemployment insurance payments resulting in lost benefits for Donenfeld.

COUNT I
(Wrongful Termination)

70. Donenfeld repeats, realleges, and incorporates by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

71. Donenfeld was wrongfully terminated as Film Commissioner by Defendants as a political favor by Mayor Arakawa to Ryan Kavanaugh.

72. Defendants' unlawful termination of Donenfeld as Film Commissioner contravenes the letter and purpose of the Federal and State constitutions, and statutory and regulatory provisions and schemes of the State of Hawaii. Defendants' unlawful conduct includes, but is not limited to, violations of Donenfeld's Procedural Due Process of Law as set forth in: (1) the Fourteenth Amendment of the United States Constitution and Article I, Section 5 of the Hawaii Constitution; (2) Donenfeld's significant privacy interests as set forth in HRS § 92F-14; and (3) HRS § 84-13, which prohibits "legislators and employees from using their official position to gain or grant unwarranted privileges, exemptions, advantages, or treatment for oneself or others."

73. Because Defendants' termination of Donenfeld violates clear mandates of public policy of the State of Hawaii, Defendants are liable to Donenfeld for the tort of wrongful termination. See Parnar v. Americana Hotels, 65 Haw. 370, 380, 652 P.2d 625, 631 (1982).

74. As a direct and proximate result of Defendants' unlawful termination of Donenfeld as Film Commissioner, Donenfeld has been injured and continues to be injured in an amount to be proven at trial.

75. Based on Defendants' wrongful termination of Donenfeld, Defendants are jointly and severally liable to Donenfeld for damages, and other such relief as this Court deems just and proper.

COUNT II
(Defamation)

76. Donenfeld repeats, realleges, and incorporates by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

77. Mayor Arakawa's statements that "**[t]he reason [Donenfeld] was fired was because he wasn't coming to work, period**" and that "**[Donenfeld] was given every option to continue working. He discontinued it**" were false and defamatory and concerned another person. (Emphasis added).

78. Mayor Arakawa's defamatory statements were published to a third party, The Maui News, and were reprinted in The Maui News' October 4, 2015 article titled "Mayor: Ex-film commissioner 'wasn't coming to work.'"

79. Mayor Arakawa's statements were made without reasonable care to Donenfeld or his reputation and were therefore negligently published.

80. Alternatively, because the Mayor knew that Donenfeld was terminated as Maui County Film Commissioner as a political favor to his friend and financial supporter, Ryan Kavanaugh, and not because Donenfeld had missed work, Mayor Arakawa's defamatory statements were made with actual malice.

81. The publication of Mayor Arakawa's defamatory statements to a third party injured and continues to injure Donenfeld.

82. Based on Mayor Arakawa's defamation of Donenfeld, Defendants are jointly and severally liable to Donenfeld for damages, and other such relief as this Court deems just and proper.

COUNT III
(Privacy Violations - HRS Chapter 92F)

83. Donenfeld repeats, realleges, and incorporates by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

84. Donenfeld had a significant privacy interest in the information contained in and pertaining to his Employment File for his tenure as Maui County Film Commissioner.

85. Donenfeld was not discharged for cause or misconduct and no disciplinary action was ever taken against Donenfeld by Maui County during his tenure as Film Commissioner.

86. Mayor Arakawa's public statements alleging that Donenfeld was fired for failure to attend work or otherwise be present for his duties as Maui County Film Commissioner violated Donenfeld's significant privacy interests pursuant to HRS § 92F-14.

87. Mayor Arakawa's public disclosures of Donenfeld's private employment information are not protected under the exceptions contained in HRS Chapter 92F because Donenfeld was not fired for misconduct, Maui County never made any allegations of misconduct against Donenfeld, and no disciplinary action was ever taken against Donenfeld.

88. Pursuant to HRS § 92F-27, Donenfeld is entitled to recover compensatory, general, and special damages against the Defendants, for among other things, damages and expenses necessarily incurred because of, or flowing from, Defendants' wrongful, illegal and discriminatory acts, interest, litigation

costs, reasonable attorneys' fees, and such further and additional relief as the Court may permit.

COUNT IV

(Constitutional and Civil Rights Pursuant to 42 U.S.C. §§ 1983, 1988
Denial of Fourteenth Amendment Due Process of Law)
(Against Defendant Alan Arakawa)

89. Donenfeld repeats, realleges, and incorporates by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

90. As set forth herein, Donenfeld's right to constitutional due process of law was violated by Mayor Arakawa acting in his individual and official capacity when he terminated Donenfeld's employment or caused Donenfeld's termination on or around September 6, 2013.

91. Donenfeld had a liberty and property interest in choosing and continuing his employment in Maui County's film industry free from unreasonable government interference. Donenfeld could not be deprived of these rights arbitrarily, for improper reasons, and without procedural due process.

92. Mayor Arakawa unreasonably interfered with and deprived Donenfeld of his liberty and property interests in his position by the conduct set forth in this First Amended Complaint.

93. As a result of Mayor Arakawa's conduct, Donenfeld has been completely foreclosed from gaining employment in Maui County's film industry.

94. Alternatively, Donenfeld's employment as Film Commissioner was a property interest because Mayor Arakawa represented that his employment would continue and Donenfeld had a reasonable expectation he would not be fired.

95. Donenfeld's property interests were harmed when Donenfeld was fired for arbitrary and capricious reasons, without just cause as required by the Maui County Employee Handbook, without a meaningful opportunity to be heard, without the proper policies and procedures mandated by the Employee Handbook, and because his termination was at the request of Ryan Kavanaugh.

96. The damage and injury complained of is present, permanent, and continuing in its impact.

97. As a result of Mayor Arakawa's statements published by The Maui News on October 4, 2015 in the article titled "Mayor: Ex-film commissioner 'wasn't coming to work,'" Donenfeld's denial of due process was ongoing and undiscovered until that time.

98. Donenfeld filed this First Amended Complaint as soon as he reasonably learned of or knew of the denial of his due process of law that resulted from Mayor Arakawa's conduct as described herein in this First Amended Complaint.

99. Based on the Defendants' deprivation of Donenfeld's rights secured under the United States Constitution as alleged herein, Donenfeld is

entitled to recover compensatory, general, and special damages against Mayor Arakawa, in his individual and official capacity, for among other things, damages and expenses necessarily incurred because of, or flowing from, Defendants' wrongful, illegal and discriminatory acts, interest, litigation costs, reasonable attorneys' fees, and experts' fees pursuant to 42 U.S.C. §§ 1983 and 1988, and such further and additional relief as the Court may permit.

COUNT V
(Breach of Contract)

100. Donenfeld repeats, realleges, and incorporates by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

101. Donenfeld's employment agreement ("Contract") with Maui County to be the Maui County Film Commissioner was a valid and enforceable contract.

102. At all times, Donenfeld performed all his obligations or was ready, willing, and able to perform his obligations under the Contract.

103. Defendants materially breached the Contract by, among other things, their conduct described herein in this First Amended Complaint.

104. Defendants' breaches are not excusable or justifiable by law, necessity, or otherwise.

105. As a direct and foreseeable result of Defendants' breaches of the Contract, Donenfeld has been damaged in an amount to be proven at trial.

COUNT VI
(Interference with Contractual Relations)

106. Donenfeld repeats, realleges, and incorporates by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

107. Donenfeld had a valid employment contract with the County of Maui.

108. Mayor Arakawa knew about Donenfeld's employment contract with the County of Maui.

109. Mayor Arakawa intentionally induced Maui County to breach its employment contract with Donenfeld and Mayor Arakawa had no legal justification for his conduct in doing so.

110. Maui County did in fact breach its employment contract with Donenfeld.

111. As a direct and foreseeable result of the breach of Donenfeld's employment contract with Maui County, Donenfeld has been damaged in an amount to be proven at trial.

COUNT VII

(Breach of Implied Covenant of Good Faith and Fair Dealing)

112. Donenfeld repeats, realleges, and incorporates by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

113. In all contracts, including the Contract, there is an implied covenant of good faith and fair dealing.

114. Defendants' conduct, as described above, constitutes violations of the covenant of good faith and fair dealing.

115. As a direct and proximate result of the Defendants' breaches of the covenant of good faith and fair dealing, Donenfeld has been damaged in an amount to be proven at trial.

COUNT VIII

(Promissory Estoppel)

116. Donenfeld repeats, realleges, and incorporates by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

117. Defendants made express and implied promises and representations to Donenfeld that, among other things, he would be employed for a term specified, that he would not be terminated without just cause and proper notice, that Defendants would not disclose private employment information to the

public, and that Defendants would not publicly make false statements about him to the public and media in order to embarrass him.

118. In exchange for Defendants' representations and promises, Donenfeld agreed and continued to act as the Maui Film Commissioner and took other actions in reliance thereon.

119. Defendants should have reasonably expected its representations and promises as set forth above would induce Donenfeld from taking these actions.

120. Donenfeld relied, to its detriment, on Defendants' representations and promises.

121. As a result of Donenfeld's reliance upon the representations and promises made by Defendants, Donenfeld has suffered damages in an amount to be proven at trial.

COUNT IX
(Negligence)

122. Donenfeld repeats, realleges, and incorporates by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

123. Defendants owed Donenfeld a reasonable duty of care in their handling of Donenfeld's Employment File, personal information, protection of his reputation, and actions relating to Donenfeld's employment and termination, including but not limited to, timely classifying Donenfeld as terminated after he

was fired so that his medical and unemployment benefits would not be unjustly delayed.

124. Defendants breached their duty of care to Donenfeld through their conduct as described in this First Amended Complaint.

125. As a direct and proximate result of Defendants' breaches of their duty of care to Donenfeld, Donenfeld has been injured and continues to be injured.

126. As a direct and proximate result of Defendants' breaches of their duty of care, Defendants are jointly and severally liable to Donenfeld for damages and other such relief as this Court deems just and proper.

COUNT X
(Punitive Damages)

127. Donenfeld repeats, realleges, and incorporates by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

128. Defendants' conduct, as described herein, constitutes willful, wanton and/or malicious conduct, and/or reckless disregard for Donenfeld's rights under law.

129. Donenfeld suffered damages as a result of Defendants' conduct.

130. Donenfeld is entitled to recover punitive damages against Defendants.

WHEREFORE, Plaintiff prays for the following relief:

- A. For general, special, consequential, compensatory, treble, exemplary, and/or punitive damages in amounts to be proven at trial;
- B. That Plaintiff be awarded pre-judgment and post-judgment interest;
- C. For all reasonable attorneys' fees and costs; and
- D. That this Court award Plaintiff such other relief as the Court deems just and equitable.

DATED: Honolulu, Hawaii, July 12, 2016.

/s/ Michael C. Carroll
MICHAEL C. CARROLL
GRANT FASI ALLISON

Attorneys for Plaintiff
HARRY DONENFELD

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HARRY DONENFELD,	)	CIVIL NO. CV16-00381 DKW-KJM
	)	(Other Civil Rights)
Plaintiff,)	
	)	FIRST AMENDED COMPLAINT;
vs.	)	DEMAND FOR JURY TRIAL;
	)	SUMMONS
COUNTY OF MAUI; ALAN)	
ARAKAWA, in his official and)	
personal capacity; JOHN DOES 1-10,)	
JANE DOES 1-10, DOE)	
PARTNERSHIPS 1-10, DOE)	
CORPORATIONS 1-10, DOE)	
ENTITIES 2-10 and DOE)	
GOVERNMENTAL UNITS 1-10,)	
)	
Defendants.)	
_____)	

DEMAND FOR JURY TRIAL

Trial by jury is hereby demanded in the above-entitled action on all triable issues.

DATED: Honolulu, Hawaii, July 12, 2016.

/s/ Michael C. Carroll
MICHAEL C. CARROLL
GRANT FASI ALLISON

Attorneys for Plaintiff
HARRY DONENFELD