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DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
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May 28, 2024

Via email only at county.clerk@mauicounty.us

Honorable Alice L. Lee, Chair
and Members of the Council
County of Maui
Wailuku, Hawaii 96793

SUBJECT: LITIGATION MATTER
Chelsie Evans vs. Scott Martin, et al.;
CIVIL NO.: 2CCV-24-0000034
Authorizing the Employment of Special Counsel

Dear Chair Lee and Council Members:

Attached is a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ES&A, INC., A LAW CORPORATION, IN CHELSIE EVANS, INDIVIDUALLY AND AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TRE' PU'WAILA'AHIAOLOPAKAAMELEHUA-NANI EVANS-DUMARAN, DECEASED, vs. SCOTT MARTINS, CIVIL NO. 2CCV-24-0000034 seeking to obtain authority for the above-captioned matter.

We are requesting the proposed resolution be scheduled for discussion and action, or referral to the appropriate standing committee as soon as possible. Also attached is the Complaint, Demand for Jury Trial and Summons, filed on February 5, 2024.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Glen R. Pascual", is written over a horizontal line.

Glen R. Pascual
Deputy Corporation Counsel

cc: Bradford Ventura, Maui Fire Chief
Attachments

Attachment 1

LEU OKUDA & DOI
Attorneys at Law

GARY Y. OKUDA 3013
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SECOND CIRCUIT
2CCV-24-0000034
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Attorneys for the Plaintiffs
CHELSIE EVANS, Individually and as the
Personal Representative of THE ESTATE OF
TRE' PU'UWAILA'AHIAOLOPAKAAMELEHUANANI
EVANS-DUMARAN, DECEASED

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHELSIE EVANS, Individually and)	CIVIL NO. _____
as the Personal Representative)	(Other Civil Action)
of THE ESTATE OF TRE')	
PU'UWAILA'AHIAOLOPAKAAMELEHUA-)	COMPLAINT
NANI EVANS-DUMARAN, DECEASED,)	
Plaintiffs,)	DEMAND FOR JURY TRIAL
)	SUMMONS
vs.)	
)	
SCOTT MARTIN, AND DOE)	
DEFENDANTS 1 THROUGH 10,)	
)	
Defendants)	
)	
_____)	

COMPLAINT

Plaintiff CHELSIE EVANS, Individually and as the Personal
Representative of THE ESTATE OF TRE'
PU'UWAILA'AHIAOLOPAKAAMELEHUANANI EVANS-DUMARAN, DECEASED,

through her undersigned attorneys, LEU OKUDA & DOI, ATTORNEYS AT LAW, for a Complaint against Defendants SCOTT MARTIN, AND DOE DEFENDANTS 1 THROUGH 10, alleges as follows:

COUNT I

1. Plaintiff CHELSIE EVANS is a resident of the City and County of Honolulu, State of Hawaii. Plaintiff is the mother of the Deceased and the Personal Representative of the ESTATE OF TRE' PU'UWAILA'AHIAOLOPAKAAMELEHUANANI EVANS-DUMARAN, DECEASED, P. No. 2CLP-23-0000119, filed in the Circuit Court of the Second Circuit, State of Hawaii.

2. Defendant SCOTT MARTIN is a resident of the County of Maui, State of Hawaii.

3. Defendants DOE DEFENDANTS 1 THROUGH 10 are natural persons, corporations, partnerships, associations, or government entities whose exact identity and capacity are presently unknown to Plaintiff, but who in some manner induced, conspired in, aided and abetted, and caused the wrongs complained of in this Complaint, except that they are connected in some manner with the named Defendants or were agents, servants, employees, employers, representatives, co-venturers, partners, associates, consultants, vendors, suppliers, manufacturers, subcontractors or contractors, sureties, owners, lessees, assignees, licensees of the named Defendants, or were in some manner presently unknown to Plaintiffs engaged in the activities alleged herein or were in

some manner responsible for the injuries or damages to Plaintiffs and that their true names, identities, capacities, activities and responsibilities are presently unknown to Plaintiff or her Attorneys.

COUNT I

4. On or about January 27, 2023, the Decedent, TRE' PU'UWAILA'AHIAOLOPAKAAMELEHUANANI EVANS-DUMARAN, was employed as a firefighter with the Maui Fire Department, County of Maui, State of Hawaii.

5. On or about January 27, 2023, Defendant SCOTT MARTIN was employed as a firefighter with the Maui Fire Department, County of Maui, State of Hawaii, and was the supervisor of the Decedent EVANS-DUMARAN.

6. The Kulanihakoi storm drain channel head wall is located on or near Oluea Street, Kihei, Maui.

7. On or about January 27, 2023, Defendant MARTIN ordered Decedent EVANS-DUMARAN and one other firefighter to go with Defendant MARTIN to the area near the storm drain channel headwall. Defendant MARTIN did not take the required full firefighting crew.

8. Defendant MARTIN gave the order to go to the area near the storm drain channel headwall, although there was no imminent risk of harm to life or property.

9. Although there was no imminent risk of harm to life or

property, Defendant MARTIN ordered Decedent EVANS-DUMARAN to leave the protection of the fire truck, and enter into the water ponding near the storm drain channel headwall.

10. Defendant MARTIN ordered Decedent EVANS-DUMARAN to leave the protection of the fire truck, and enter into the water ponding near the storm drain channel headwall, without any protection, such as flotation devices or being tied by rope to the fire truck.

11. In making the above orders, including ordering Decedent EVANS-DUMARAN to leave the protection of the fire truck without adequate safety equipment or protections, Defendant MARTIN knew he was violating the duties, obligations, responsibilities and common sense required of him as Decedent's supervisor and was therefore irresponsible as a supervisor through demonstrated lack of proper caution that intentionally or recklessly ignored the foreseeable consequences.

A. At all times relevant, Defendant was a Captain with the Maui Fire Department, and was the Decedent's supervisor.

B. As a Captain, Defendant commanded the activities of the fire company in which Decedent was assigned. With respect to Decedent's fire company, Defendant planned, developed, coordinated and executed work related to the activities, functions and programs of the fire company. [Source: DEPARTMENT OF PERSONNEL SERVICES, COUNTY OF MAUI, PART 1. "FIRE CAPTAIN."

Duties Summary. (Effective November 20, 2013)"]

C. As a Captain, Defendant assesses conditions, lays out strategy and directs deployment of personnel and equipment to effectively accomplish missions; determines the need for additional support and request for same; and remains in command until the fire or other emergency is over or when relieved by a superior officer. [Source: DEPARTMENT OF PERSONNEL SERVICES, COUNTY OF MAUI, PART 1. "FIRE CAPTAIN. Duties Summary." (Effective November 20, 2013)"]

D. As a Captain, Defendant was required to become familiar with the conditions and environment of his assigned area, so that Defendant could plan and conduct drills and training sessions in fire fighting, search/rescue and HAZMAT methods, use of firefighting, search/rescue and HAZMAT equipment and tools, and on department policies, procedures and fire codes, rules and regulations, and laws; and to pre-plan firefighting, search/rescue and HAZMAT operations. [Source: DEPARTMENT OF PERSONNEL SERVICES, COUNTY OF MAUI, PART 1. "FIRE CAPTAIN. Duties Summary. (Effective November 20, 2013)"]

E. As a Captain, Defendant was required to keep abreast of new developments in firefighting, search/rescue, and HAZMAT operations by reading publications and trade journals. [Source: DEPARTMENT OF PERSONNEL SERVICES, COUNTY OF MAUI, PART 1. "FIRE CAPTAIN. Duties Summary. (Effective November 20,

2013)"]

F. As a Captain, Defendant was required to have knowledge of firefighting, hazardous materials, and rescue principles and practices; safety codes, regulations and laws; training and educational techniques; and principles and practices of supervision. [Source: DEPARTMENT OF PERSONNEL SERVICES, COUNTY OF MAUI, PART 1. "FIRE CAPTAIN. Minimum Qualification Requirements. (Effective November 20, 2013)"]

G. As a Captain, Defendant was required to have the ability to direct men and plan, layout, supervise and coordinate the work of others; analyze firefighting, search/rescue and hazardous material situations and adopt an effective course of action. [Source: DEPARTMENT OF PERSONNEL SERVICES, COUNTY OF MAUI, PART 1. "FIRE CAPTAIN. Minimum Qualification Requirements. (Effective November 20, 2013)"]

H. Prior to January 27, 2023, Defendant knew that the MAUI FIRE DEPARTMENT had issued swift water rescue bags, "PERSONAL PROTECTIVE EQUIPMENT" or other equipment to protect firefighters responding to situations or incidents involving flood waters (hereafter, "Water Safety Equipment").

I. Prior to January 27, 2023, Defendant knew that he could request Water Safety Equipment and specialized department technical rescue resources, if Water Safety Equipment were not in a fire truck or fire department response vehicle.

J. Prior to January 27, 2023, Defendant knew that as a Captain, Defendant should not place the fire fighters who he commanded and supervised in high-risk or life threat risk situations for non-life safety purposes such as property conservation, animal rescue or body recovery.

K. Prior to January 27, 2023, Defendant knew that as a Captain:

(1) A fire fighter's life should not be risked to save property or the environment.

(2) A fire fighter should not enter a hazard zone with deep water, flowing water or within a storm water management infrastructure system for the purpose of property or environmental preservation or protection during a high water, active flooding or rain related inclement weather event.

(3) Extreme caution is needed to be taken anytime the bottom of water is not clearly visible and subsurface hazards may exist.

12. Defendant MARTIN knew or reasonably should have known that his conduct placed Decedent EVANS-DUMARAN in serious risk of serious bodily injury.

13. At the time when Defendant MARTIN ordered Decedent EVANS-DUMARAN to leave the protection of the fire truck, and enter into the water ponding near the storm drain channel headwall, Defendant MARTIN was acting as the Incident Commander,

as that term is used in the document titled RISK MANAGEMENT PLAN, E.O. 300.03.

A. Notwithstanding the policies and procedures set forth in the above described document, failed to integrate risk management in formulating a size-up, and failed to develop a strategy for the incident.

B. Defendant MARTIN did not evaluate the risk.

C. Defendant MARTIN did not have well-defined strategic options.

D. Defendant MARTIN did not follow all standard operating guidelines.

E. Defendant MARTIN did not implement the training he knew about or received regarding flooding, water or swift water situations.

F. Defendant MARTIN did not have the Decedent wearing protective clothing ensemble and equipment.

G. Defendant MARTIN did not employ effective incident management and communications.

H. Defendant MARTIN did not follow safety procedures.

I. Defendant MARTIN did not have adequate backup crew.

14. Defendant MARTIN knew or recklessly or intentionally ignored the requirement, warning or admonition in the document titled RISK MANAGEMENT PLAN, E.O. 300.03 which stated the

following "philosophy":

"We will risk a lot to save a lot."

"We will risk a little to save a little."

"We will risk nothing to save nothing".

15. At the time when Defendant MARTIN ordered Decedent EVANS-DUMARAN to leave the protection of the fire truck, and enter into the water ponding near the storm drain channel headwall, there was nothing to be saved by the Maui Fire Department.

16. Without limiting the foregoing, Defendant MARTIN: (1) had knowledge of the risk of injury to Decedent EVANS-DUMARAN; (2) had knowledge that injury to Decedent EVANS-DUMARAN was a probable, as opposed to a possible, result of the danger; and (3) consciously failed to avoid the peril.

17. Defendant MARTIN's conduct described above was wanton and willful misconduct.

18. Because of Defendant MARTIN's wanton and willful misconduct conduct, Decedent EVANS-DUMARAN fell into the storm drain water as he was walking in an unprotected area next to the Kulanihakoi storm drain channel head wall after a section of chain link fencing had been removed.

19. After Decedent EVANS-DUMARAN fell into the storm drain channel water, he was sucked into the storm drain opening below that was missing the grate.

20. Decedent EVANS-DUMARAN then traveled 1,350 feet through the storm drainpipe into a spillway and was rescued 40 to 50-feet offshore in the ocean.

21. Decedent EVANS-DUMARAN later passed away due to the injuries resulting from the above.

22. In Iddings v. Mee-Lee, 82 Haw. 1, 9, 919 P.2d 263, 271 (Hawaii 1996), the Hawaii Supreme Court recognized that an injured employee may maintain an action against a co-employee who intentionally or recklessly caused the injury. Iddings v. Mee-Lee, 82 Haw. 1, 9, 919 P.2d 263, 271 (Hawaii 1996) ("[w]e therefore hold that allowing suits between co-employees based upon reckless conduct does not contravene or impair the purposes of Hawai'i's workers' compensation scheme.").

23. See also Iddings v. Mee-Lee, 82 Haw. 1, 21, 919 P.2d 263, 283 (Hawaii 1996), where the Hawaii Supreme Court held:

Based on the allegations made in Iddings's affidavit, we believe that, in view of the interpretation of HRS § 386-8 that we announce today, there are genuine issues of material fact regarding whether Dr. Mee-Lee engaged in "wilful and wanton misconduct," thereby excepting his conduct from the immunity accorded him against suits by co-employees under HRS § 386-8. Specifically, we believe that there are genuine issues of material fact regarding whether Dr. Mee-Lee's alleged failure to reduce the patient population, and, accordingly, the furniture in the CMC's Intensive Care Module that allegedly caused Iddings's injuries, occurred in circumstances indicating that Dr. Mee-Lee: (1) had knowledge of the risk of injury to

CMC staff stemming from the alleged overcrowding; (2) had knowledge that injury was a probable, as opposed to a possible, result of the danger; and (3) consciously failed to avoid the peril. Consequently, we hold that the circuit court erred in granting summary judgment in favor of Dr. Mee-Lee and against Iddings.

Iddings v. Mee-Lee, 82 Haw. 1, 21, 919 P.2d 263, 283 (Hawaii 1996).

24. As a result of the foregoing, the ESTATE OF TRE' PU'UWAILA'AHIAOLOPAKAAMELEHUANANI EVANS-DUMARAN, DECEASED suffered damages as shall be proven at trial.

25. Because of the foregoing conduct, the ESTATE OF TRE' PU'UWAILA'AHIAOLOPAKAAMELEHUANANI EVANS-DUMARAN, DECEASED is entitled to damages in an amount as shall be proven at trial.

26. The ESTATE OF TRE' PU'UWAILA'AHIAOLOPAKAAMELEHUANANI EVANS-DUMARAN, DECEASED is also entitled to an award of punitive damages in an amount as shall be proven at trial.

COUNT II

27. Plaintiffs repeat, reallege and incorporate by reference the above allegations.

28. Plaintiff CHELSIE EVANS is the mother of TRE' PU'UWAILA'AHIAOLOPAKAAMELEHUANANI EVANS-DUMARAN, DECEASED .

29. H.R.S. Sec. 663-3 provides as follows:

§ 663-3. Death by wrongful act

(a) When the death of a person is caused by the wrongful act, neglect, or default of any

person, the deceased's legal representative, or any of the persons enumerated in subsection (b), may maintain an action against the person causing the death or against the person responsible for the death. The action shall be maintained on behalf of the persons enumerated in subsection (b), except that the legal representative may recover on behalf of the estate the reasonable expenses of the deceased's last illness and burial.

(b) In any action under this section, such damages may be given as under the circumstances shall be deemed fair and just compensation, with reference to the pecuniary injury and loss of love and affection, including:

(1) Loss of society, companionship, comfort, consortium, or protection;

(2) Loss of marital care, attention, advice, or counsel;

(3) Loss of care, attention, advice, or counsel of a reciprocal beneficiary as defined in chapter 572C;

(4) Loss of filial care or attention; or

(5) Loss of parental care, training, guidance, or education, suffered as a result of the death of the person;

by the surviving spouse, reciprocal beneficiary, children, father, mother, and by any person wholly or partly dependent upon the deceased person. The jury or court sitting without jury shall allocate the damages to the persons entitled thereto in its verdict or judgment, and any damages recovered under this section, except for reasonable expenses of last illness and burial, shall not constitute a part of the estate of the deceased. Any action brought under this section shall be commenced within two years from the date of death of the

injured person, except as otherwise provided.

30. As a result of the death of Decedent EVANS-DUMARAN and the conduct described in the preceding paragraphs, Plaintiff CHELSIE EVANS suffered pecuniary injury and loss of love and affection, including:

(1) Loss of society, companionship, comfort, consortium, or protection;

(2) Loss of marital care, attention, advice, or counsel;

(3) Loss of care, attention, advice, or counsel of a reciprocal beneficiary as defined in chapter 572C;

(4) Loss of filial care or attention

31. Therefore, Plaintiff CHELSIE EVANS suffered damages as shall be proven at trial.

32. Because of the foregoing, Plaintiff CHELSIE EVANS is entitled to damages in an amount as shall be proven at trial.

33. Plaintiff CHELSIE EVANS is also entitled to an award of punitive damages in an amount as shall be proven at trial.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally, as follows:

A. General and special damages as shall be proven at trial.

B. Judgment against Defendants for punitive damages as

shall be proven at trial.

C. Judgment against Defendants for attorneys fees, costs and such further relief the court deems just and appropriate.

DATED: Honolulu, Hawaii, February 5, 2024.

/s/ GARY Y. OKUDA 3013

GARY Y. OKUDA

Attorney for Plaintiffs
CHELSIE EVANS, Individually
and as the Personal Representative
of THE ESTATE OF TRE'
PU'UWAILA'AHIAOLOPAKAAMELEHUANANI
EVANS-DUMARAN, DECEASED

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CHELSIE EVANS, Individually and as the
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TRE' PU'UWAILA'AHIAOLOPAKAAMELEHUANANI
EVANS-DUMARAN, DECEASED

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHELSIE EVANS, Individually and)	CIVIL NO. _____
as the Personal Representative)	(Other Civil Action)
of THE ESTATE OF TRE')	
PU'UWAILA'AHIAOLOPAKAAMELEHUA-)	DEMAND FOR JURY TRIAL
NANI EVANS-DUMARAN, DECEASED,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
SCOTT MARTIN, AND DOE)	
DEFENDANTS 1 THROUGH 10,)	
)	
Defendants)	
)	
)	

DEMAND FOR JURY TRIAL

Plaintiff CHELSIE EVANS, Individually and as the Personal
Representative of THE ESTATE OF TRE'
PU'UWAILA'AHIAOLOPAKAAMELEHUANANI EVANS-DUMARAN, DECEASED,



demands a TRIAL BY JURY.

DATED: Honolulu, Hawaii, February 5, 2024.

/s/ GARY Y. OKUDA 3013

GARY Y. OKUDA

Attorney for Plaintiffs
CHELSIE EVANS, Individually
and as the Personal Representative
of THE ESTATE OF TRE'
PU'UWAILA'AHIAOLOPAKAAMELEHUANANI
EVANS-DUMARAN, DECEASED

STATE OF HAWAII CIRCUIT COURT OF THE SECOND CIRCUIT		SUMMONS TO ANSWER CIVIL COMPLAINT	
CASE NUMBER		PLAINTIFF'S NAME & ADDRESS, TEL. NO. LEU OKUDA & DOI Attorneys at Law	
PLAINTIFF CHELSIE EVANS, Individually and as the Personal Representative of THE ESTATE OF TRE' PU'UWAILA'AHIAOLOPAKAAAMELEHUANANI EVANS-DUMARAN, DECEASED,		GARY Y. OKUDA 3013 The Merchant House 222 Merchant Street, Main Floor Honolulu, Hawaii 96813 Telephone: (808) 538-1921 gary@leu-okuda.com	
DEFENDANT(S) SCOTT MARTIN, AND DOE DEFENDANTS 1 THROUGH 10,			
TO THE ABOVE-NAMED DEFENDANT(S) <p>You are hereby summoned and required to filed with the court and serve upon GARY Y. OKUDA 3013 / LEU OKUDA & DOI Attorneys at Law The Merchant House 222 Merchant Street, Main Floor Honolulu, Hawaii 96813 Telephone: (808) 538-1921</p> <p>plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p>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.</p> <p>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>			
DATE ISSUED <u>FEBRUARY 5, 2024</u>		Effective Date of 28-Oct-2019 Signed by: /s/ D. Pellazar Clerk, 2nd Circuit, State of Hawai'i	
			
<p>If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation: Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: adarequest@courts.hawaii.gov. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.</p>			