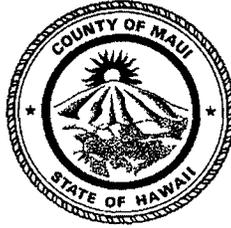


ALAN M. ARAKAWA
Mayor



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DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
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October 18, 2018

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

FROM: Shinken Naitoh, Deputy Corporation Counsel *SN*

SUBJECT: LITIGATION MATTERS – Settlement of Claims and Lawsuits
(PRL-1) AUTHORIZING SETTLEMENT OF LESLI LYN OTANI vs.
COUNTY OF MAUI, ET AL., CIVIL NO. 17-00281 JAO-KJM

OFFICE OF THE
COUNTY COUNCIL

2018 OCT 19 AM 9:57

RECEIVED

Our Department respectfully requests the opportunity to present information to the Parks, Recreation, Energy, and Legal Affairs Committee and to discuss further settlement options with regard to the above-referenced lawsuit (formerly designated as Civil No. 17-00281 DKW-KJM). This matter is time sensitive.

Copies of the Resolution authorizing settlement and the Complaint are attached. A copy of Resolution 18-145 that authorized the offer of settlement made on September 18, 2018 is also attached.

This matter is in active litigation and will involve discussion of confidential communications and attorney work product information. As such, 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 the Department of Public Works 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: David Goode, Director, Department of Public Works
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
LESLI LYN OTANI vs. COUNTY OF MAUI, ET AL.
CIVIL NO. 17-00281 JAO-KJM

WHEREAS, Plaintiff Lesli Lyn Otani filed a lawsuit in the United States District Court for the District of Hawaii on June 13, 2017, Civil No. 17-00281 JAO-KJM (formerly designated as Civil No. 17-00281 DKW-KJM) against the County of Maui, et al., claiming violations of her constitutional rights made actionable pursuant to 42 United States Code Section 1983, among other violations, including constitutional invasion of privacy and employment retaliation in violation of public policy and under Section 378-62, Hawaii Revised Statutes; and

WHEREAS, Defendants County of Maui, Department of Public Works, and David Goode filed their Answers on September 18, 2017; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, attempted to reach a resolution of this case by way of an Offer of Judgment dated September 18, 2018, as approved by Council in Resolution No. 18-145; and

Resolution No. _____

WHEREAS, said Offer of Judgment was rejected, and at a mediation conference before a federal magistrate judge on October 15, 2018, a counter demand for settlement was made by Plaintiff Lesli Lyn Otani; and

WHEREAS, the County of Maui, to avoid incurring further 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 in response to the counter demand for settlement made by Plaintiff Lesli Lyn Otani; 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 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:

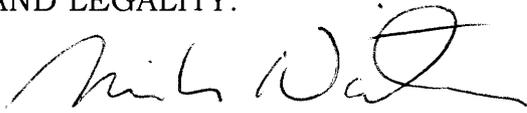
1. That it approves settlement of this case under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs Committee; and
2. That it further authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

Resolution No. _____

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, the Director of Public Works, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



SHINKEN NAITOH
Deputy Corporation Counsel
County of Maui

Resolution

No. 18-145

AUTHORIZING SETTLEMENT OF
LESLI LYN OTANI VS. COUNTY OF MAUI, ET AL.
CIVIL NO. 17-00281 DKW-KJM

WHEREAS, Plaintiff Lesli Lyn Otani filed a lawsuit in the United States District Court for the District of Hawaii on June 13, 2017, Civil No. 17-00281 DKW-KJM, against the County of Maui, et al., claiming violations of her constitutional rights made actionable pursuant to 42 United States Code Section 1983, among other violations, including constitutional invasion of privacy and employment retaliation in violation of public policy and under Section 378-62, Hawaii Revised Statutes; and

WHEREAS, Defendants, County of Maui, Department of Public Works, and David Goode filed their Answers on September 18, 2017; 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 Parks, Recreation, Energy, and Legal Affairs Committee; and

Resolution No. 18-145

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised 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:

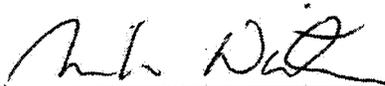
1. That it approves settlement of this case under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs Committee; and

2. That it further 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, the Director of Public Works, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



SHINKEN N. NAITOH
Deputy Corporation Counsel
County of Maui
Lit5750 - Otani v. COM

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 18-145 was adopted by the Council of the County of Maui, State of Hawaii, on the 7th day of September, 2018, by the following vote:

MEMBERS	Michael B. WHITE Chair	Robert CARROLL Vice-Chair	Alika ATAY	Eleanora COCHRAN	S. Stacy CRIVELLO	Donald S. GUZMAN	G. Riki HOKAMA	Kelly T. KING	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Excused	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

Of Counsel:

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Honolulu, Hawaii 96813

Telephone: (808) 545-4151
Facsimile: (888) 236-8984
Email: roman@amaguinlaw.com

Attorney for Plaintiff
LESLILYN OTANI

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

LESLI LYN OTANI

Plaintiff,

vs.

COUNTY OF MAUI; COUNTY
OF MAUI, DEPARTMENT OF
PUBLIC WORKS; DAVID
GOODE; JOHN DOES 1-10;
DOE ENTITIES 1-10,

Defendants.

) CIV NO. _____

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) COMPLAINT; DEMAND FOR
JURY TRIAL; SUMMONS

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NATURE OF THE ACTION AND JURISDICTION

This is an action under the United States Constitution for the violation of constitutional rights made actionable pursuant to 42 U.S.C. § 1983, among other violations, including wrongful actions and conduct under HRS § 378-62, by Defendants MAUI COUNTY ("COUNTY"), MAUI COUNTY, DEPARTMENT OF PUBLIC WORKS, and DAVID GOODE.

Plaintiff LESLILYN OTANI asserts that Defendants unlawfully discriminated against her on the basis of her protected activity and retaliated against Plaintiff under state law and the United States Constitution, as follows:

JURISDICTION AND VENUE

1. This case arises under the Constitution of the United States of America, including but not limited to the First and Fourteenth Amendments to the United States Constitution, statutory authority of the State of Hawaii, HRS § 378-62, and common law.
2. The claims asserted herein are authorized by and present a question of federal law, thereby conferring jurisdiction upon the Court pursuant to 28 U.S.C. §§1331, 1343(3), 2201 and 2202, and

42 U.S.C. § 1983, *inter alia*.

3. Any and all state law claims contained herein form part of the same case or controversy as gives rise to Plaintiff's federal law claims and therefore fall within the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

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

5. The request for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is and was a U.S. citizen and resident of the County of Maui, State of Hawaii.

7. Defendant COUNTY OF MAUI is and has been a duly organized municipal corporation of the State of Hawai'i at all times pertinent hereto. The Department of Public Works is a department and/or subdivision of/within Defendant COUNTY.

8. Plaintiff is informed and believes, and thereupon alleges that Defendant DAVID GOODE ("Defendant GOODE") is and was at

all relevant times herein a U.S. citizen and resident of the County of Maui, State of Hawai'i, and employed as the Director of Public Works.

9. Defendant GOODE is a person with final policy and decision making authority for Defendant COUNTY, was aware of Plaintiff's protected activity, including but not limited to reporting of what she believed to be illegal and/or improper conduct/activity by Defendant COUNTY.

10. Defendant GOODE initiated and followed through with Defendants' retaliation that occurred in response to and shortly after Plaintiff's protected and other activity, and/or ratified the retaliatory conduct by other COUNTY employees when he personally participated in and approved of the retaliatory disciplinary actions and proceedings against Plaintiff described herein.

11. Defendant GOODE is therefore sued both in his individual and in his official capacity.

12. The conduct of any individual defendant if so named was done under color of state law.

13. All of the acts and failures to act alleged herein were duly

performed by and attributable to all Defendants, each acting as a successor, agent, employee alter ego, indirect employer, joint employer or under the direction and control of the others, except as specifically alleged otherwise.

14. Said acts and failures to act were within the scope of such agency and/or employment, and each Defendant participated in, approved and/or ratified the unlawful acts and omissions by the other Defendants complained of herein. Whenever and wherever reference is made in this Complaint to any act by a Defendant or Defendants, such allegations and reference shall also be deemed to mean the acts and failures to act of each Defendant acting individually, jointly, and/or severally.

15. Plaintiff is unaware of the true names and capacities of each Defendant sued as a DOE Defendant and therefore Plaintiff sues said Defendants by fictitious names. Plaintiff reserves the right to amend the complaint to name each DOE Defendant individually or corporately as it becomes known.

16. Plaintiff alleges that each DOE Defendant was in some manner responsible for the acts and omissions alleged herein and Plaintiff will amend the complaint to allege such responsibility when

the same shall have been ascertained by Plaintiff.

STATEMENT OF CLAIMS

17. Plaintiff was born and raised on the island of Maui. She graduated from St. Anthony Jr. and Senior High School in Wailuku.

18. Plaintiff has been married to Edwin Otani for 19 years and they have two teenage children.

19. She and her family work and live on the family farm on Maui. Their children are the fifth generation of their family to work on the farm.

20. After graduating from high school Plaintiff earned a Bachelor of Science in Civil Engineering, specializing in Structural Engineering, from the University of Notre Dame.

21. She then returned to Maui and, since graduating with an engineering degree in 1997, has had a stellar career as an engineer working in both the private and public sector.

22. Plaintiff's career choice and ambition to study structural engineering, and to become an engineer, was inspired by her father, who was a concrete contractor and with whom she worked on projects.

23. She has earned licenses as a Professional Civil Engineer

and a Professional Land Surveyor, in addition to becoming a Certified Inspector of Sediment and Erosion Control.

24. She has been recognized as the "Young Engineer of the Year," as awarded by the Hawaii Society of Professional Engineers, Maui Chapter.

25. She received an award for the "Land Use & Codes Employee of the Year."

26. She received a "Certificate of Excellence for Best Maintained Federal Flood Control Project - Kahoma Stream."

27. She has regularly attended engineering workshops and received Certificates of Training from FEMA to further enhance her work training and education as an engineer, both in private practice and for the County of Maui. In short she was imminently qualified for the position from which she was terminated by Defendants.

28. Plaintiff started working as an engineer for the COUNTY in February 1999.

29. Prior to her promotion on April 1, 2016, to Chief of Field Operations and Maintenance for the Department of Public Works, she worked for the COUNTY as a Civil Engineer V.

30. Her work was always viewed as outstanding without any

work problems or discipline. Her leadership and supervisory skills were never viewed as less than outstanding.

31. However, things changed after she was promoted by the COUNTY to the Chief of Field Operations and Maintenance (or "Highways Chief") on April 1, 2016.

32. Plaintiff was promoted into the position formerly occupied by Brian Hashiro. Hashiro had been in the Department of Public Works position at the start of and during a tumultuous period filled with allegations of widespread theft, misappropriation, abuse of COUNTY credit cards ("pCards"), neglect, mismanagement, and lack of oversight--which has resulted and/or has been followed by investigations, both criminal and by Maui Corporation Counsel, still ongoing, and criminal charges filed against COUNTY employees of the Public Works Department.

33. Hashiro, during such period, and as the Chief of Field Operations and Maintenance, reported to Rowena Dagdag-Andaya, Deputy Director of the Department of Public Works.

34. Defendant GOODE was the Director of the Department of Public Works.

35. Both Dagdag-Andaya and GOODE were appointed to

their respective positions in 2010 by current Mayor Alan Arakawa. As such, in their positions as Director and Deputy Director, they were charged with the responsibility of protecting the COUNTY from the type of improper and possible criminal behavior, including theft and misappropriation, that has plagued the Department of Public Works for many years now.

36. GOODE is an engineer by profession. Prior to her appointment to a position typically filled by those with an engineering background, Dagdag-Andaya was a second grade teacher.

PLAINTIFF UNCOVERS MORE ABUSE OF PCARDS, THEFT AND MISAPPROPRIATION IN THE MAUI COUNTY PUBLIC WORKS DEPARTMENT

37. During Hashiro, GOODE and Dagdag-Andaya's tenure, in **May 2015**, a KHON news story reported that a "longtime" employee of the Wailuku Public Works Baseyard was under investigation for using his pCard to essentially build a "commercial kitchen that rivals a restaurant."

38. According to the KHON news story the employee had spent "tens of thousands of dollars" of COUNTY money to build the fancy kitchen.

39. The news story was of no real surprise to the rank-file members of the department. GOODE was also aware of the rumors from as far back as **2014**. According to the KHON story, in 2014 "another county worker blew the whistle on the kitchen-buying."

40. In response to the KHON news story Defendant GOODE and Dagdag-Andaya took superficial measures that were simply too little and too late to stem the overwhelming evidence that continued to roll into the COUNTY of widespread theft, fraud, and corruption. The information concerned far and beyond just the Wailuku Baseyard, which the Director, GOODE, and Deputy Director, Dagdag-Andaya, had ignored for several years.

41. Many in the COUNTY believed GOODE and Dagdag-Andaya were ultimately to blame for what was occurring, as the KHON news story only scratched the surface.

42. In this context Plaintiff was promoted into the position of Highways Chief around April 2016, after Hashiro retired in the midst of the controversy created by the publication of the KHON news story.

43. Around the same time, from April through June 2016, and beyond, as a more receptive Chief at the helm, Plaintiff had

begun to receive anonymous tips and reports that the Maui Public Works Department's Makawao Garage, Kihei Treatment Plant, and other departments and offices were plagued with the same or worse examples of theft, abuse of pCards, and misappropriation.

44. Plaintiff continued to receive reports that Defendant GOODE and Dagdag-Andaya, just like the situation at Wailuku Baseyard kitchen, were ignoring the misconduct occurring at the Makawao Garage.

45. The tips and information received by and followed up on by Plaintiff included a Wailuku Baseyard employee, "Employee 1," that repaired COUNTY vehicles. Employee 1 had been terminated but it was alleged that he had been caught two years before, but that the COUNTY did nothing about it.

46. Plaintiff raised her concern to GOODE and Adagdag-Andaya that she understood Employee 1 had already been caught doing the same thing two years prior, but that no formal action had been taken.

47. In response, GOODE and Adagdag-Andaya denied the allegations regarding Employee 1.

48. Another Makawao Garage employee, supervising

mechanic "Employee 2," was alleged to have been working on private ranch equipment at the Department of Public Works' Makawao Garage, in connection with side jobs he held, and that he and his subordinate employees regularly worked on private vehicles on work time, using parts and equipment purchased on Employee 2 and others' pCards. Employee 2 was alleged to have pocketed the money he charged the ranches.

49. Because Employee 2 was a supervisor he wielded the power and authority to pressure his subordinates to perform whatever tasks he assigned regardless of whether they were on COUNTY or private vehicles. It was even rumored and reported by one employee that Defendant GOODE's wife's private vehicle was one of them. When she took over Plaintiff told GOODE the information she received regarding his wife's vehicle being worked on by the garage. GOODE denied the report, but another employee subsequently contradicted GOODE's denial.

50. Plaintiff was made aware during her first few months as Chief that for several years the Department, specifically GOODE and Dagdag-Andaya, were aware or should have been aware of the theft and misappropriation, but did nothing about it.

51. Plaintiff reviewed documentation from the Makawao Garage, including pCard usage by the garage employees, and she determined that the average spending per mechanic, including and especially supervising mechanic "Employee 2", and per work order, were unreasonably high as compared to other locations.

52. She also discovered that while employees typically had a \$25,000 or less pCard spending limit, Employee 2's spending limit was \$40,000.

53. During her first few months in her new position Plaintiff received a report that supervising mechanic Employee 2 not only had a higher \$40,000 spending limit, that he was not only misusing his pCard by buying vehicle parts and equipment for personal use, but that he was also using other employees' pCards to make improper personal purchases.

54. Supervising mechanic Employee 2's explanation to Plaintiff regarding his increased pCard limit, was that he essentially had nothing to do with it being increased. In Plaintiff's view the response required following up with Superintendent "Employee 3," the Highways Superintendent.

55. As reported to Plaintiff, supervising mechanic Employee 2

had also kept and maintained for his personal use a COUNTY "ghost car."

56. According to the tipster, the "ghost car" had no GPS system and been stripped on the outside of any markings identifying it as belonging to the COUNTY.

57. Plaintiff attempted to locate the "ghost car" and believed there was, like many other tips that were coming into her, enough specific credible information supporting the tip, which required following up on.

58. In reviewing unresolved accounting discrepancies in connection with the reports she was receiving, Plaintiff believed the department was continuing to fall in the "red" in part due to the illegal and hidden practice of COUNTY vehicles being sold by employees for private/personal gain.

59. She noted that one such transaction was connected to the COUNTY's recently purchased new bulldozer.

60. Plaintiff traced the previous COUNTY bulldozer that had been replaced and determined it had been traded into a dealer by the COUNTY's Auto Service Coordinator as a "zero dollar" trade in, which was inconsistent with the more realistic \$75,000 to \$80,000

valuation of the bulldozer.

61. Plaintiff discovered the dealer then turned around and sold it for somewhere between \$15,000 and \$30,000.

62. The deal raised enough red flags for Plaintiff, on or around April 22, 2016, to bring that issue up with Defendant GOODE and Dagdag-Andaya. Importantly, the Auto Service Coordinator approves garage pCard spending for **all districts**, which potentially affected many more COUNTY vehicles.

63. To Plaintiff's surprise neither GOODE nor Dagdag-Andaya authorized or suggested that the ongoing investigation into the Wailuku Baseyard be expanded to the Auto Service Coordinator's bulldozer transaction and similar vehicle sales.

64. Undeterred, Plaintiff asked Defendant GOODE how he would like to proceed on the reports of fraud and misappropriation occurring at the Makawao Garage. Rather than take the prudent course of action and commencing a formal investigation, GOODE, instead directed Plaintiff to speak to Superintendent "Employee 3."

65. Plaintiff's previous experience speaking to the Superintendent Employee 3, was that he was uncooperative.

66. Therefore, Plaintiff asked that GOODE, the Director of

Public Works, speak to Superintendent Employee 3, but GOODE refused and instead instructed Plaintiff to speak to him.

67. After receiving no helpful information from the uncooperative Superintendent Employee 3, the Public Works Director's office set up a meeting with Corporation Counsel to discuss what to do with Employee 3.

68. On May 6, 2016, Plaintiff met with Corporation Counsel.

69. Based on their discussion the department placed Superintendent Employee 3 on paid leave pending investigation.

70. Corporation Counsel's involvement began to concern GOODE, who wanted his department to handle disciplinary decisions internally even though he had a demonstrated proclivity to ignore taking action.

71. Unbeknownst to GOODE, on or around May 28, 2016, Plaintiff received more specific information from a tipster, "Employee 4," that seemed to substantiate the misconduct of the Supervising mechanic with the \$40,000 pCard spending limit, "Employee 2." Employee 4 told Plaintiff he wanted to tell all he knew in exchange for "amnesty" for his own improprieties.

72. Up to that point whenever Plaintiff raised concerns

regarding the Makawao Garage to Defendant GOODE she was met with reluctance to investigate and GOODE's typical response that only Plaintiff "handle it." Such widespread corruption, however, could not be "handled" solely by Plaintiff and Corporation Counsel had already commenced the investigation into the Wailuku Baseyard.

73. The specific information Plaintiff was already able to provide, such as the lead on the sale of the COUNTY bulldozer for personal profit and potential/actual abuses of pCards needed a full-scale investigation, which GOODE and Dagdag-Andaya indicated was unnecessary.

74. This led Plaintiff to send an email to Corporation Counsel on May 28, 2016, for the purpose of reporting actual or potential violations of law or regulations:

I apologize for e-mailing you directly and on a weekend but I have a situation weighing on me. I am hearing talk that there may be a **supervisor at one of our garages pressuring the mechanics to work on non-County vehicles during work time as well as charging parts to Highways, Solid Waste, etc.** that is not used on County property. I have starting [sic] looking into it in the last few days and have a lot on questions on these purchases and use of a non-GPS vehicle as well. The individual in Makawao knows I am looking into his garage and I am very worried about the staff. Apparently, he's been in

control for so long **and nothing was done in the past so they were helpless.** I heard that one of the workers may have taken photos of things he was told to work on. I want to reach out and offer to him that if he has photos or anything to share, I am open to receiving them. However, the guys are worried about losing their jobs and retirement as well as repercussions.

75. The individual pressuring mechanics to perform what amounts to criminal acts was supervising mechanic Employee 2, whom GOODE previously decided NOT to investigate, despite overwhelming evidence for the need to intervene.

76. Corporation Counsel called for a meeting to take place on May 31, 2016. Plaintiff understood that prior to the start of the meeting a member of Corporation Counsel stated "this better not be about [supervising mechanic Employee 2]." To Corporation Counsel's chagrin the meeting was largely in part related to Employee 2.

77. Plaintiff learned later that GOODE and Dagdag-Andaya, prior to the publication of the KHON news story, were previously tasked with following up on and investigating allegations being made about Employee 2 and they essentially reported back that the allegations concerning Employee 2 had no basis. It is doubtful that any semblance of an investigation would not have turned up

incriminating information, a result which GOODE and Dagdag-Andaya appeared to hope for when Plaintiff raised concerns again regarding Employee 2.

78. At the meeting, Plaintiff relayed the previously unknown information regarding actual or potential violations of the law that were occurring or occurred at the Makawao Garage and which involved both rank-and-file and supervisory employees, including supervising mechanic Employee 2.

77. She also reported the red flags raised by improper transactions, sales of undervalued vehicles, and the sale of the bulldozer, and other previously undisclosed information.

78. Based on discussions with Corporation Counsel at the meeting, Employee 2, Employee 2's supervisor ("Employee 5"), and Employee 2's clerk ("Employee 6") were finally placed on paid leave pending investigation.

79. During the meeting in which she engaged in protected activity Plaintiff turned to GOODE, who obviously looked uncomfortable with the new information that she had shared at the meeting.

80. After seeing GOODE's negative reaction Plaintiff

attempted to assuage his palpable disappointment by apologetically telling him, "I'm sorry." GOODE essentially rejected Plaintiff's apology remarking, "**it's too late now.**"

81. Subsequently, the department's Auto Service Coordinator, "Employee 7," who was responsible for vehicle purchases, contracts, and vehicle disposals, was also placed on paid leave by Corporation Counsel pending investigation.

82. Corporation Counsel's increased involvement and quick actions obviously troubled GOODE and Dagdag-Andaya as it raised the issue whether or not GOODE and Dagdag-Andaya should be in their positions or disciplined.

83. It took Plaintiff's review of internal documents, and her report and subsequent cooperation with Corporation Counsel to finally bring to light how widespread the abuse and theft of COUNTY resources and money was.

84. For example, Plaintiff uncovered information that supervising mechanic Employee 2 had incurred over \$20,000 in charges with vendors and was paying it off slowly with pCards.

85. There was also information that ranches were being charged for parts and services, which Employee 2 pocketed.

86. Subordinate employees were forced to work on the private vehicles on weekends and the specter of not passing out of probation kept them compliant and mostly quiet about the theft and fraud occurring. Any cursory investigation by Defendant GOODE when asked on the prior occasion to look into the garage would have likely revealed red flags requiring follow up.

87. More reports, some anonymous, came into Plaintiff. One suggested that a worker at the Kihei Treatment Plant was able to profit off a side business just as employees at Wailuku Baseyard and Makawao Garage had.

88. As a result of Plaintiff's diligence six employees from the Highways Division are now being investigated and were placed on leave: The supervising mechanic (Employee 2), the Highways Superintendent (Employee 3), a Makawao Garage mechanic (Employee 4), Employee 2's supervisor (Employee 5), the supervising mechanic's clerk (Employee 6), and the Auto Services Coordinator (Employee 7).

89. Both GOODE and Dagdag-Andaya from that point on refused to discuss how/why the Makawao Garage issues were not addressed prior to Plaintiff's arrival or how their previous

"investigation" prior to Plaintiff's arrival could not have uncovered them.

90. They also both expressed resentment towards Plaintiff for reporting directly and working with Corporation Counsel.

91. GOODE would often remind Plaintiff in an abrupt manner that he was getting complaints that a certain employee or employees had been placed on paid leave pending investigation.

92. GOODE, whose wife's own private vehicle was reported to have been serviced by Makawao Garage, would complain to Plaintiff that he was getting angry calls and complaints also from the staff about the employees that were placed on leave pending investigation and he implied that she was at fault. Defendant GOODE implied that all of them should continue to work despite the cloud that was cast over their conduct and work.

93. GOODE continued to voice displeasure that one employee especially, supervisor Employee 5, who was Employee 2's direct supervisor, was on leave pending investigation.

94. GOODE would then state his intention to unilaterally bring supervisor Employee 5 from back from leave because the Makawao Garage needed supervision.

95. GOODE and Dagdag-Andaya were aware that, based on discussions with Corporation Counsel, supervisor Employee 5 was prohibited from returning and would remain on leave, since the investigation into the theft and misappropriation under Employee 5 was still ongoing.

96. GOODE ignored the sound reasoning for keeping Employee 5 away from the workplace while an investigation was pending. During the week of August 22, 2016, GOODE went behind Corporation Counsel's back and discussed the issue with COUNTY Managing Director, Keith Regan. Without any explanation as to the basis for the decision, or why Regan would understand the complexities of an ongoing investigation implicating criminal conduct better than Corporation Counsel, Regan permitted GOODE to return Employee 5 to the Makawao Garage.

97. GOODE and Dagdag-Andaya's disregard for the integrity of the investigation and their favorable treatment of an employee who was a key subject of the investigation, supervisor Employee 5, was consistent with their past failure to effectively and reasonably investigate the Makawao Garage and other locations, such as the Wailuku Baseyard.

98. GOODE and Dagdag-Andaya's subversion of and interference with the investigation did not go unaddressed by Corporation Counsel.

99. The sudden and increasing scrutiny on the department, especially after GOODE brought Employee 5 back to work, much of which occurred after Plaintiff's protected activity led to Director GOODE and Deputy Director Dagdag-Andaya's increased resentment towards Plaintiff.

100. Since Plaintiff had raised the theft and misappropriation issues with Corporation Counsel, and cooperated with the investigation, GOODE and Dagdag-Andaya regularly compared Plaintiff with her predecessor, Brian Hashiro, who had retired when the Wailuku Baseyard investigation heated up after KHON published its story.

101. Both GOODE and Dagdag-Andaya openly compared Plaintiff to Hashiro in an unflattering manner, opining that "Brian never gave them problems," that "we thought you would be good in your position," or words to that effect, even though Plaintiff had never been written up or counseled for the quality of her work.

102. Both GOODE and Dagdag-Andaya refused to work with

Plaintiff or discuss how the Makawao Garage issues were not previously addressed and effectively investigated when she wanted to discuss them.

103. Shortly after she brought forth evidence of and leads into potential theft and misappropriation occurring in the Makawao Garage, and she continued to cooperate with Corporation Counsel's investigation, Plaintiff was blindsided when, on September 30, 2016, GOODE and Dagdag-Andaya informed her that her six-month probation had been extended, despite having never having been written up or counseled.

104. Their initial explanation for the extension of her probation was that she had an inappropriate relationship with a male subordinate employee, which they ironically stated would NOT be investigated at the present time.

105. Plaintiff asserts that her complaints about violations or suspected violations of law were the proximate cause of adverse actions taken against her by Defendants. Both GOODE and Dagdag-Andaya told Plaintiff at the September 30, 2016, meeting that her predecessor, Hashiro, did not bring problems to the department like Plaintiff did.

106. Adverse actions taken against Plaintiff, included but were not limited to falsely and maliciously making outrageous allegations against her that they knew had no basis; not completing investigations they used as excuses to extend her probation and terminate her; not clearing her name and reputation after accusing her of having a romantic relationship with a subordinate and of violating the workplace violence policy; refusing to continue to work with her on investigating theft and corruption; extending her six-month probationary period and ultimately stripping her of her position, among other retaliatory acts.

107. Plaintiff asserts that the initial reason provided for the extension of her six-month probation, an inappropriate/romantic relationship with a male subordinate was false and pretext for discrimination.

108. The COUNTY has to date never cleared Plaintiff of the allegation, even though it knows the accusation was made falsely and maliciously.

109. Plaintiff further asserts that the subsequent reason Defendant GOODE gave in December 2016, for continuing her probation, possible violation of the Violence in the Workplace Action

Plan, was also baseless.

110. With respect to that accusation Defendants have also failed to complete their investigation that she violated the workplace violence policy, again, in retaliation against Plaintiff for her engaging in protected activity.

**SEPTEMBER 2016 KAHOMA FLOODING AND EMERGENCY
WORK CAUSE ENVIRONMENTAL DAMAGE**

111. On September 13, 2016, Maui County experienced torrential downpours, which caused flash flooding and emergency all-outs.

112. Maui residents and emergency responders spent days cleaning up mess from torrential downpours, which flooded homes, made roads impassable, and caused several mudslides.

113. The heavy rains flooded the streets of Lahaina town and prompted an island-wide brown water advisory. Many flood victims had to be rescued.

114. Iao Valley on Maui was hit with some of the worst damage from the storm. Overflow from the Wailuku river flooded homes and severely damaged Kepaniwai Park.

115. Plaintiff drafted and she and others in the department

reviewed a detailed list of the areas of damage.

116. They determined storm damage to both Iao Flood Control and Kahoma Flood Control, which are both regulated by the Army Corp. of Engineers, needed emergency work.

117. Plaintiff and the department understood, with guidance from an environmental consultant, that the Clean Water Act and the Army Corp. of Engineers required the emergency work to ensure that fill was not discharged into a stream or wetland.

118. Plaintiff also understood that material could not be pushed into piles within the stream and that the material must be quickly removed. Failure to remove stockpiles could result in the mud dewatering or having water seep out and to flow back into the stream causing sediment laden water to be discharged into the environment causing a brown water event.

119. The environmental consultant emphasized that if material was not disposed away from the stream then the "return flow" from the material constitutes prohibited "fill" under the law.

120. The consultant further emphasized that despite there being an emergency, "reasonable measures" must be taken right away to protect water quality, which would include starting any

excavation upstream.

121. By September 19 and 20, 2016, Plaintiff was concerned that the consultant's instructions, which she relayed repeatedly to her subordinate and his crew of employees from Lahaina, were not being followed leading to an increased risk of a brown water event.

122. Plaintiff's Lahaina subordinate was not following directions and refused to bring himself and his crew to work the necessary overtime to address the emergency. Community members were expressing their concern that the environment was not being protected.

123. Plaintiff believed that the best interests of Maui County required her and the department, Defendant GOODE, to step in and reprimand and/or take disciplinary action against the Lahaina subordinate for his willfully disregarding the instructions of the environmental consultant and Plaintiff.

124. On September 20, 2016, Plaintiff informed GOODE of the risk being taken and the fact that due to the crew's refusal to follow instructions and put in the time to mitigate the risks, there was increased return flow of brown sediment causing damage to the environment.

125. Instead of GOODE authorizing action being taken against the subordinate GOODE prohibited such action and instructed Plaintiff to give the subordinate "a day or two." Plaintiff believed that would only do more harm to ocean waters and the environment.

126. The danger of waters becoming more polluted worsened as the week went on as the Lahaina crew did not want to work overtime, especially on the weekend, September 24, and 25, 2016, to mitigate the flooding and appeared to have abandoned the project.

127. Subsequently, throughout the remainder of the month of September 2016, after numerous attempts to warn Defendant GOODE and Dagdag-Andaya of the environmental hazards, neither one would return her text messages or inquiries.

128. In discussions concerning the lack of progress being made to mitigate the adverse impact of the flooding, GOODE, in front of her subordinates, including the Lahaina staff, repeatedly accused Plaintiff of being "hypersensitive" to environmental concerns and the COUNTY's potential/actual violations of law.

129. It was especially during the last ten days of September

2016 that Plaintiff repeatedly emphasized to Defendants that the COUNTY's actions were negatively impacting downstream waters in violation of the Federal Clean Water Act, HRS §342D, and its accompanying administrative rules.

130. Those actions included but were not limited to:

- a. "Working from the gates, which was completely contrary to the instructions to work from upstream:
- b. stockpiling material near the streamflow contrary to their instructions;
- c. not minimizing the amount of equipment in the water;
- d. loading trucks on within the stream instead of on dry land;
- e. not working longer and more days to be productive;
- f. the subordinate ultimately abandoning the project and claiming his crew could not put in the necessary time during the emergency;
- g. brown water being discharged down the river and into the ocean, which was completely avoidable had Defendants taken Plaintiff's complaints seriously.

131. During this period Plaintiff provided Defendants pictures

of the work performed by the Lahaina crew to demonstrate the noncompliance with her, the Army Corp. of Engineers, and the environmental consultant's instructions. Plaintiff pleaded with GOODE to provide the support she needed during the emergency only to have GOODE give the crew "another day or two."

132. Ultimately, due to the crew not putting the necessary time and appropriate work, the emergency flood work in Kahoma was not completed until the end of October 2016, at least two to three weeks longer than it should have taken.

133. Compliance with the law was at best intermittent during this time.

134. Because the Lahaina District refused to work as directed, longer hours, and on weekends, Plaintiff had the Wailuku, Hana and Makawao crews come in to perform the work.

135. However, the delay in compliance was inevitable, as was the adverse environmental impact, despite Plaintiff's protestations that Defendant GOODE, the Director, do something more to support her, as she could not in a practical sense remove the subordinate and his crew from the project in the middle of the emergency.

136. The shoddy and lack of work by the subordinate and his Lahaina crew did not go unnoticed. There were complaints from the public, concerns from environmental advocates and e-mails, some from government agencies, questioning the work. Whenever Plaintiff would attempt to discuss the flooding compliance issues Defendants refused to respond, until they met to discuss with project with her and the staff, in which case Defendant GOODE accused her of being "hypersensitive" to compliance with environmental laws, thus continuing to undermine her attempts at achieving compliance.

137. Both would claim that during the emergency Plaintiff should have complete control over "operations" with respect to the flooding. Neither one though would intervene when faced with the specter that the Lahaina crew did not want to work the hours or in compliance with the law to protect the environment, and instead, would accuse her of being "hypersensitive", therefore undermining her compliance efforts.

138. At the same time GOODE readily admitted being in communication with the Lahaina crew during this time and to expressing his opinion to the crews that Plaintiff was being

"hypersensitive" to the environmental and legal compliance concerns she voiced during and after the emergency.

139. Plaintiff's complaints about the negative environmental impact and violations of environmental laws, in addition to her other protected activity, led to her six-month probation being extended beyond September 30, 2016. The reason given at the time for the extension of probation was that Plaintiff had an inappropriate/romantic relationship with a male subordinate employee, the same Lahaina subordinate that was causing problems during the emergency work and who essentially abandoned the project along with his crew.

140. Defendant GOODE and Dagdag-Andaya implied that the romantic relationship, a rumor started by the male employee, and spread with malice by Defendants, was the cause for the employee's poor work attitude during the flood work.

141. To date the COUNTY has neither formally cleared Plaintiff of the allegation in a timely manner nor even completed an "investigation", even though it knows the accusation was made falsely and spread maliciously by the subordinate.

142. Plaintiff further asserts that the subsequent reason

Defendant GOODE provided in December 2016 for continuing her probation, possible violation of the Violence in the Workplace Action Plan, was also baseless.

143. With respect to that accusation Defendants have also failed to complete their investigation in a timely manner or to formally vindicate Plaintiff, again, in retaliation against Plaintiff for her engaging in protected activity.

PLAINTIFF MEETS WITH DEFENDANTS, AGAIN EXPRESSES HER BELIEF THAT THE ACTIONS TAKEN AGAINST HER WERE DUE TO HER PROTECTED ACTIVITY AND, AFTER HE TERMINATES HER, DEFENDANT GOODE ADMITS HIS DECISION WAS MOTIVATED BY HER WHISTLEBLOWING

144. Defendant GOODE, Dagdag-Andaya and Plaintiff met on at least one more occasions after they informed her on September 30, 2016, that they were extending her six-month probation.

145. Defendant GOODE met with Plaintiff for her "probation" meetings on December 12, 2016, and January 24, 2017.

146. Prior to a January 20, 2016, meeting with Deputy Director Dagdag-Andaya, set up as a "mediation," it was emphasized that it would be "private and confidential, and [neither participant] will . . . share with anyone . . . any part of the mediation communication."

147. The parties signed a confidentiality agreement indicating their understanding and acceptance that the entire session(s) was held in the strictest confidence.

148. Plaintiff continued to express concerns over and complained about potential or actual violations of law related to both the flood work and widespread theft/corruption in the department.

149. Despite their signing an agreement to keep the meetings confidential, subsequent to the meeting conducted on January 20, 2017, Plaintiff was informed by employee Gary Ambrose that Dagdag-Andaya disclosed specific and sensitive information regarding what was discussed.

150. According to Ambrose the Deputy Director told him she "knew what I will say is confidential, that I didn't feel right and wanted to clear the air."

151. The Deputy Director continued to ignore the confidentiality agreement, gave specific information discussed, raised, and covered in the meeting, and attempted to pry information from Ambrose.

152. Such breach of confidentiality violated the agreement,

violated Plaintiff's privacy rights and constitutes additional evidence of unlawful retaliation; in addition to rendering the purpose of the meetings, to promote fair and free discussion, meaningless. The Deputy Director's breach of privacy in violation of the confidentiality agreement was also intended to galvanize employees against Plaintiff, as Ambrose and Plaintiff up to then had an excellent work relationship.

153. In an email Plaintiff complained to Defendants regarding the breach of privacy by Dagdag-Andaya.

154. Subsequently, on January 24, 2017, she complained again about the ongoing retaliatory acts she was experiencing. Plaintiff made clear that she believed the actions being taken against her were for cooperating in investigations regarding theft within Public Works and that she raised other potential areas of wrong doing. This included the sales of county vehicles for private gain, and that the County was negatively impacting downstream waters in Kahoma in violation of environmental laws.

155. On March 29, 2017, Plaintiff was called into a meeting and handed a letter authored and signed by Defendant GOODE, Director of Public Works, and her supervisor.

156. The letter stated that the COUNTY, meaning GOODE, decided to terminate Plaintiff from her position of Chief of Field Operations and Maintenance and to demote her back down to the Civil Engineer V position.

157. Defendant GOODE stated that the decision was based on the following summary of the four points made in the letter:

1. A characterization of Lesli as having made "inappropriate and disrespectful comments," at a November 2, 2016, meeting, which according to Goode, indicated "you [Lesli] were unwilling to work towards our goals of improved communication and relationships."
2. An "investigation found evidence of bad management practices and inappropriate behavior on your part. In part, you micro-managed attendance at a Pavement Preservation conference, you attempted to intimidate an employee of the Lahaina baseyard, you retaliated against another Lahaina employee who spoke out and were generally disrespectful."
3. After a mediation that took place on January 20, 2017, Goode criticized Lesli, **because she supposedly "accused me [Goode] of 'setting you up' and 'not having good intentions.'"**
4. **"On January, 24, 2017, during a performance evaluation follow-up meeting, you accused the department of retaliating against you for whistleblowing activities. After an extensive investigation, the Department of the Corporation Counsel has cleared Public Works of any retaliation for whistleblowing activities."**

158. As to the reasons GOODE claimed he based his termination decision on the first reason arises from a single incident. The second reason appears to arise from GOODE's belief that she demonstrated "bad management practices," which remained vague and explained by GOODE in such a conclusory manner to render it meaningless.

159. In discussions regarding her management style Defendants objected to how Plaintiff communicated and suggested that the concerns she voiced were unlike that of her predecessor, who was willing to overlook and ignore rumors of improprieties and criminal violations.

160. The third reason arises from GOODE taking offense to a statement by Plaintiff that GOODE "set" her up, which taken together with the fourth reason, Plaintiff's whistleblowing, clearly demonstrates animus towards Plaintiff for her engaging in protected activity.

161. The fourth point, as GOODE admits, relates to Plaintiff's "whistleblowing." On January 24, 2017, Plaintiff had reported to Defendant GOODE and Deputy Director Dagdag-Andaya that she believed her probation had been extended unfairly and in retaliation

for engaging in protected activity, specifically that she complained about previously unreported theft and corruption, that were perhaps covered up by and within the department, and that the COUNTY violated environmental laws in the wake of the recent September 2016 floods.

162. In his March 29, 2017, letter GOODE made a legal admission that the whistleblowing motivated his and the COUNTY's decision against Plaintiff. Yet, he attempted to excuse the action by claiming that his department had been "cleared."

163. Defendant GOODE should not even have been involved in the decision whether or not to fire Plaintiff as he was reported to have unlawfully retaliated against Plaintiff for her engaging in protected activity and therefore his participation in the disciplinary process constituted a conflict of interest.

164. Nevertheless, whether or not he and others were "cleared," up to the point he made his decision to terminate Plaintiff, is inconsequential to the protection afforded to whistleblowers under Hawaii law.

165. The fact that GOODE claimed his department had been "cleared", that either the COUNTY did not violate a law/regulation,

or that up to that point Defendants' actions were NOT taken due to Plaintiff's protected activity, is not a defense to liability. Still, GOODE admitted in writing that he decided to terminate Plaintiff due to her whistleblowing activities.

166. Plaintiff asserts that she engaged in protected activity and that a causal connection exists between Plaintiff's protected activity and the adverse action taken by Defendants, which GOODE admits was a result of her protected activity.

167. As a proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer job insecurity, loss of earnings and benefits, humiliation, emotional distress, and mental and physical anguish all to her damage in an amount to be proven at trial.

168. Plaintiff is entitled to damages from Defendants.

169. Defendants' acts and/or omissions were willful, wanton, outrageous and oppressive and were done with callous indifference to Plaintiff's present and future ability to earn a living.

170. Therefore Plaintiff is also entitled to punitive and exemplary damages from Defendants in an amount to be proven at trial.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

VIOLATION OF THE 1ST AMENDMENT TO THE UNITED STATES CONSTITUTION, ACTIONABLE PURSUANT TO 42 U.S.C. § 1983

171. Plaintiff re-alleges and incorporates by reference as though fully contained herein, the allegations set forth in paragraphs 1 through 170, above.

172. The fundamental right to freedom of speech is clearly established pursuant to the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment to the United States Constitution and exists in order to allow citizens of the United States to comment on overreaching and other inappropriate conduct by government officials as well as to enable the public to make informed decisions about the operation of their government.

173. Plaintiffs speech as set forth herein is protected by the First Amendment because her comments and words were delivered on matters of public concern.

174. Defendants, and/or each of them, had no adequate justification for treating Plaintiff differently from any other member

of the public.

175. Plaintiff's First Amendment right to comment and speak on matters of public concern outweigh any and all benefit, real or imagined, asserted by Defendants to justify Defendants' suppression and/or restriction of Plaintiff's exercise of her First Amendment rights.

176. By disparately treating, retaliating against, disciplining and terminating Plaintiff, as aforesaid, Defendants, and/or each of them, have unlawfully and wrongfully violated (and continue to violate) Plaintiff's First Amendment rights.

177. Defendants' actions and conduct, as aforesaid, constitute an adverse employment action against Plaintiff.

178. Plaintiff's exercise of her right to speak on matters of public concern was a substantial or motivating factor for Defendants' wrongful actions and conduct, and there is no question that Defendants, and/or each of them, would not have taken the actions set forth herein except to retaliate and punish Plaintiff for her exercise of First Amendment rights.

179. As a direct and legal result of Defendants' actions and conduct, as aforesaid, Plaintiff has suffered inconvenience, mental

anguish and emotional distress, mental and/or physical injury, injury to reputation, loss of income and benefits, together with such other and further compensatory damages, in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF

VIOLATION OF THE CONSTITUTIONAL RIGHT TO PRIVACY

180. Plaintiff re-alleges and incorporates by reference as though fully contained herein, the allegations set forth in paragraphs 1 through 179, above.

181. Plaintiff's meetings with Defendants to discuss her performance was required to be confidential as the parties executed a confidentiality agreement. Those discussions were also a form of privacy protected by the U.S. Constitution. Plaintiff had a reasonable expectation of privacy.

182. Despite their signing an agreement to keep the meetings confidential, subsequent to the meeting conducted on January 20, 2017, Plaintiff was informed by employee Gary Ambrose that Deputy Director Dagdag-Andaya disclosed specific and sensitive information regarding what had occurred and was discussed.

183. According to Ambrose the Deputy Director told him she

"knew what I will say is confidential, that I didn't feel right and wanted to clear the air."

184. The Deputy Director continued to ignore/violate the confidentiality agreement, revealed specific information discussed at, raised, and covered in the meeting, and then attempted to pry private/sensitive information from Ambrose.

185. Such breach of confidentiality violated the explicit and written agreement, violated Plaintiff's privacy rights and constitutes additional evidence of unlawful retaliation, in addition to rendering the purpose of the meetings, to promote fair and free discussion, meaningless. It also was intended to galvanize employees, such as Ambrose, against Plaintiff, insofar as the Deputy Director revealed Plaintiff's statements about the work environment and employee relations, even though Ambrose and Plaintiff had an excellent work relationship.

186. Plaintiff complained to Defendants regarding the breach of privacy by Deputy Director Dagdag-Andaya.

187. Subsequently, on January 24, 2017, Plaintiff complained again about the ongoing retaliatory acts she was experiencing, including the breach of privacy. Plaintiff made clear that she

believed the retaliation was due to her engaging in protected activity, complaining/raising issues about the September 2016 flooding and previously undisclosed theft/misappropriation.

188. Plaintiff has no knowledge that any investigation was commenced, completed or that corrective action taken. Rather Defendants took action against her shortly thereafter by not taking remedial action and then subsequently, shortly thereafter, terminating her employment.

189. Plaintiff has been damaged because of the loss of past wages, loss of future earning capacity, fringe benefits and other employment opportunities, all to her damage in a sum according to proof at trial.

190. As a further result of the above-described wrongful conduct of the Defendants, and each of them, Plaintiff has suffered humiliation, mental anguish and emotional distress, all to her general damages in a sum according to proof at trial.

191. The above-described actions of the Defendants, and each of them, were done with malice, fraud and oppression and in reckless disregard of Plaintiff's right to privacy and right not to be wrongfully terminated from her employment so as to justify an

award of punitive and exemplary damages.

THIRD CLAIM FOR RELIEF

VIOLATION OF PUBLIC POLICY

192. Plaintiff re-alleges and incorporates by reference paragraphs 1-191 above.

193. Plaintiff's complaints about violations or suspected violations of law were the proximate cause of the adverse actions taken against her by Defendant, including but not limited to her termination from the position of Chief of Field Operations and Maintenance for the Department of Public Works and demotion to Civil Engineer V.

194. The public policy exception to at-will employment prohibits an employer from discriminating against an employee if it violates a clear mandate of public policy. Here, the mandate of public policy includes but is not limited to the right under the United States Constitution to free speech, due process, and privacy, and the public policies concerning the protection of the environment and taxpayers' money, and criminal statutes prohibiting theft and misappropriation.

195. As a proximate result of Defendants' conduct, Plaintiff

has suffered and continues to suffer job insecurity, loss of earnings and benefits, humiliation, emotional distress, and mental and physical anguish all to her damage in an amount to be proven at trial.

196. Plaintiff is entitled to damages from Defendants in an amount to be proven at trial.

197. Defendants' acts and/or omissions were willful, wanton, outrageous and oppressive and were done with callous indifference to Plaintiff's present and future ability to earn a living and therefore Plaintiff is also entitled to punitive and exemplary damages from Defendants in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

VIOLATION OF THE CONSTITUTIONAL RIGHT TO DUE PROCESS

198. Plaintiff re-alleges and incorporates by reference paragraphs 1-197 above.

199. Plaintiff's complaints about violations or suspected violations of law were the proximate cause of the adverse action taken against her by Defendants.

200. The adverse actions, included but are not limited to the

commencement of two purported “investigations” (a romantic relationship with subordinate and violation of workplace violence policy) which, to date, were supposedly commenced, but never completed, and the formal results of which were never provided to Plaintiff.

201. Defendants' actions were taken without adequate process.

202. Defendants violated the Due Process Clause of the United States Constitution.

203. As a proximate result Plaintiff has suffered and continues to suffer job insecurity, loss of earnings and benefits, humiliation, emotional distress, and mental and physical anguish all to her damage in an amount to be proven at trial.

204. Plaintiff is entitled to damages from Defendants in an amount to be proven at trial.

205. Defendants' acts and/or omissions were willful, wanton, outrageous and oppressive and were done with callous indifference to Plaintiff's present and future ability to earn a living.

206. Therefore Plaintiff is also entitled to punitive and exemplary damages from Defendants in an amount to be proven at

trial.

FIFTH CLAIM FOR RELIEF

**VIOLATION OF HAWAII'S WHISTLEBLOWER STATUTE, HRS §
378-62**

207. Plaintiff re-alleges and incorporates by reference paragraphs 1-206 above.

208. HRS §378-62 provides:

§378-62. Discharge of, threats to, or discrimination against employee for reporting violations of law. An employer **shall not discharge, threaten, or otherwise discriminate against an employee** regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

(1) The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about to report to a public body, verbally or in writing, **a violation or a suspected violation** of:

(A) **A law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States;** or

(B) A contract executed by the State, a political subdivision of the State, or the United States[.]

HRS §378-62 (emphasis added).

209. Hawaii law protects employees who report the potentially illegal conduct of their employers.

210. Defendant GOODE admitted he terminated Plaintiff from

her position as Chief of Field Operations and Maintenance for the Department of Public Works, because she was a whistleblower.

211. GOODE attempted to excuse his illegal act by claiming the department had been "cleared"--meaning either Plaintiff's reports of the COUNTY's violation of laws/regulations had no basis and/or that there was no causal connection between the protected activity and the action taken against her up to the point he made the decision to terminate her.

212. However, the face of the stated at issue is clear. HRS §378-62 protects employees who report the **potentially** illegal conduct of their employers.

213. The only other element is that the employer take some adverse action against the employee as a result.

214. GOODE admitted taking action against Plaintiff due to her reporting suspected or actual violations of laws/regulations.

215. A causal connection between Plaintiff's protected activity and the decision to terminate her from her position is established by Defendant GOODE's own words constituting an admission.

216. Plaintiff was protected when she stood up for her rights and opposed potential/suspected violations of law.

217. A causal connection exists between Plaintiff's protected activity and the adverse actions taken by Defendants.

218. As a proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer job insecurity, loss of earnings and benefits, humiliation, emotional distress, and mental and physical anguish all to her damage in an amount to be proven at trial.

219. Plaintiff is entitled to damages from Defendants.

220. Defendants' acts and/or omissions were willful, wanton, outrageous and oppressive and were done with callous indifference to Plaintiff's present and future ability to earn a living and therefore Plaintiff is also entitled to punitive and exemplary damages from Defendants in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF

DECLARATORY AND INJUNCTIVE RELIEF

221. Plaintiff re-alleges and incorporates by reference paragraphs 1-220 above.

222. An actual and immediate controversy has arisen and now exists.

223. The controversy between Plaintiff and Defendants,

and/or each of them, whereby the parties have genuine and opposing interests and which interests are direct and substantial. Defendants, and/or each of them, have failed and refused, and continue to fail and to refuse to comply with the United States Constitution for the reasons set forth herein.

224. Plaintiff is therefore entitled to a declaratory judgment as well as such other and further relief as may follow from the entry of such a declaratory judgment.

225. Plaintiff seeks a declaration that the actions and conduct of Defendants are and were unconstitutional and wrongful, and constitute a violation of her constitutionally protected rights.

226. Plaintiff has no adequate remedy at law. Unless enjoined by the Court, Defendants, and/or each of them, will continue to infringe upon Plaintiffs constitutionally protected rights and will continue to inflict irreparable injury.

227. This threat of injury to Plaintiff from continuing violations requires preliminary and permanent injunctive relief.

PRAYER FOR RELIEF

228. Plaintiff is entitled to damages from Defendants.

229. Defendants' acts and/or omissions were willful, wanton,

outrageous and oppressive and were done with callous indifference to Plaintiff's present and future ability to earn a living; and, therefore Plaintiff is also entitled to punitive and other damages, to the extent permitted by law, and exemplary damages from Defendants.

230. Plaintiff prays that the Court issue a declaratory judgment stating that Defendants violated HRS Chapter 378 and the United States Constitution, among other laws/regulations.

231. Plaintiff prays that the Court enjoin Defendants from continuing to subject Plaintiff to the illegal conduct set forth in this Complaint.

Wherefore, Plaintiff prays this Court grant judgment in her favor over and against Defendants and award damages to Plaintiff, including special damages, back pay and future loss of earnings, compensatory damages, attorneys' fees, prejudgment interest, and to the extent permitted by law punitive damages in an amount deemed sufficient to punish Defendants for their actions; costs of this action; and such other and further relief as this Court may deem just and proper.

DATED: Honolulu, Hawai'i, _____, 2017.



ROMAN F. AMAGUIN
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

LESLI LYN OTANI)	CIV NO. _____
)	
Plaintiff,)	
)	
vs.)	
)	JURY TRIAL DEMAND
)	
COUNTY OF MAUI; COUNTY)	
OF MAUI, DEPARTMENT OF)	
PUBLIC WORKS; DAVID)	
GOODE; JOHN DOES 1-10;)	
DOE ENTITIES 1-10,)	
)	
)	
Defendants.)	
_____)	

JURY TRIAL DEMAND

Plaintiff, by and through his undersigned counsel, hereby
demands a trial by jury as to all issues so triable herein.

DATED: Honolulu, Hawaii, _____, 2017



ROMAN F. AMAGUIN
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

LESLI LYN OTANI)	CIV NO. _____
)	
Plaintiff,)	
)	
vs.)	
)	SUMMONS
)	
COUNTY OF MAUI; COUNTY)	
OF MAUI, DEPARTMENT OF)	
PUBLIC WORKS; DAVID)	
GOODE; JOHN DOES 1-10;)	
DOE ENTITIES 1-10)	
)	
Defendants.)	
)	
_____)	

SUMMONS

TO: THE ABOVE-NAMED DEFENDANTS

A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it)—or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3)—you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the

Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Roman Amaguin, Esq., 345 Queen Street, Suite 504, Honolulu, Hawaii 96813.

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You must also file your answer or motion with the court.

Clerk of Court

Date: _____

By Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

LESLI LYN OTANI)	CIV NO. <u>17-00281 DKW-KJM</u>
)	
Plaintiff,)	
)	
vs.)	
)	SUMMONS
)	
COUNTY OF MAUI; COUNTY)	
OF MAUI, DEPARTMENT OF)	
PUBLIC WORKS; DAVID)	
GOODE; JOHN DOES 1-10;)	
DOE ENTITIES 1-10)	
)	
Defendants.)	
)	
_____)	

SUMMONS

TO: THE ABOVE-NAMED DEFENDANTS

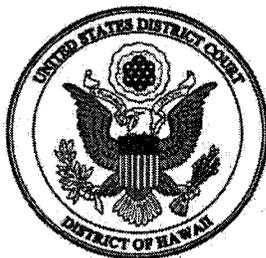
A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it)—or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3)—you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the

Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Roman Amaguin, Esq., 345 Queen Street, Suite 504, Honolulu, Hawaii 96813.

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You must also file your answer or motion with the court.

SUE BEITIA
Clerk of Court

Date: June 13, 2017



/s/SUE BEITIA by AFC, Deputy Clerk
By Deputy Clerk

SUMMONS CV 17-00281 DKW-KJM