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DISTRICT OF HAWAII  
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DISTRICT OF HAWAII

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

NELDON MAMUAD,  
Plaintiff,  
vs.  
COUNTY OF MAUI, a municipal  
corporation,  
Defendant.

CIV. NO. **CV 14 00102 JMS BMK**  
[CIVIL RIGHTS ACTION]  
**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF AND  
DAMAGES; SUMMONS IN A  
CIVIL CASE**

**JURY TRIAL DEMANDED**

**LODGED UNDER SEAL  
PURSUANT TO  
LOCAL RULE 83.12**

**COMPLAINT**

COMES NOW Plaintiff NELDON MAMUAD, by and through the undersigned attorneys, and alleges as follows:

**INTRODUCTION**

1. This action is for damages and for declaratory and injunctive relief arising out of Defendant's violations of Plaintiff's civil rights and civil liberties guaranteed to him by the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment and actionable pursuant to 42 U.S.C. § 1983.

2. Plaintiff Neldon Mamuad is one of several administrators of a Facebook page with the name "MAUIWatch," a crowdsourcing site for traffic information and other news for the island of Maui. *See* MAUIWatch, <https://www.facebook.com/MAUIWatch> (last accessed February 28, 2014). Facebook pages like MAUIWatch allow "businesses, organizations and brands to share their stories and connect with people." "What is a Facebook Page,"

Facebook.com, <https://www.facebook.com/help/www/174987089221178> (last accessed February 27, 2014).

3. Plaintiff Mamuad started the page on or about July 7, 2013, at which time it was titled “TAGUMAWatch”; as explained more fully *infra*, Plaintiff Mamuad changed the title of the page to MAUIWatch in August 2013, only after being pressured to do so (in addition to being pressured to shut down the page altogether) by Maui Corporation Counsel Patrick Wong, in violation of Plaintiff Mamuad’s First Amendment rights.

4. MAUIWatch has over 25,000 “likes,” meaning that over 25,000 Facebook users are connected to the site and, therefore, may see postings from MAUIWatch on the news feeds of their own Facebook pages. *See* Facebook, What does it mean to like a Page or content off of Facebook?, Facebook.com, <https://www.facebook.com/help/131263873618748> (last accessed February 27, 2014).

5. Based solely on the number of “likes,” MAUIWatch’s popularity dwarfs that of other news sites specific to Maui County, with more “likes” by far than Maui’s major daily newspaper, The Maui News (fewer than 5,700, <https://www.facebook.com/MauiNews>, last accessed February 27, 2014), the news site Mauinow.com (fewer than 18,000, <https://www.facebook.com/mauinow>, last accessed February 27, 2014), the Maui Police Department (fewer than 2,500,

<https://www.facebook.com/pages/Maui-Police-Department/176665472380309>, last accessed February 27, 2014), or the County of Maui (fewer than 4,800, <https://www.facebook.com/pages/County-of-Maui/150618851661152>, last accessed February 27, 2014).

6. As one of several administrators, Plaintiff Mamuad posts, edits, and deletes content on the site.

7. MAUIWatch provides information about traffic, missing persons and pets, shark sightings, public events, and other news targeted to Maui residents and visitors. MAUIWatch also offers a space for readers to comment on a wide range of issues: recent topics have included civil rights in Russia during the Winter Olympics, the Super Bowl, and conspiracy theories offered by so-called “birthers” in the wake of the death of Department of Health Director Loretta Fuddy. MAUIWatch administrators (including Plaintiff Mamuad) often offer their own opinions on social issues. MAUIWatch is expanding, having just added a meteorologist (Malika Dudley, formerly of Hawaii News Now).

8. The site often contains humorous and satirical posts, and items that are intended to be sarcastic or otherwise tongue-in-cheek, both from MAUIWatch’s administrators and from other commentators.

9. Plaintiff Mamuad currently holds two positions with Maui County: he is a volunteer Liquor Commissioner (a position he has held since March 2012), and

he works approximately ten to fifteen hours a week as an aide to a County Council Member (a position he has held since January 2013 and for which he is paid hourly).

10. Plaintiff Mamuad's work with the County and his participation in MAUIWatch do not overlap. He has never put his name anywhere on the Facebook site. Nothing on the Facebook page has ever indicated or implied that the administrator(s) of the site has/have any sort of employment relationship with the County. Mr. Mamuad has never suggested, in any way, that he was speaking on behalf of the County of Maui. He has never made any statements or done any work on the Facebook page on County time or on County equipment. He has never purported to speak as an employee on matters relating to the internal workings of the Liquor Commission or the County Council.

11. Instead, Plaintiff Mamuad's speech is consistently that of an observer to Officer Taguma's actions (and the apparent policies driving those actions), a perspective that is available to every other individual on Maui and that does not arise from his position as an employee or Commissioner.

12. Indeed, until very recently, Plaintiff Mamuad has worked very hard to conceal the fact that he was involved with MAUIWatch from the general public at all.

13. Defendant County now seeks to punish Plaintiff Mamuad for his social commentary on the MAUIWatch site (both under its current name, MAUIWatch, and under its former name, TAGUMAWatch), and chill his future speech, apparently based on lawful comments made regarding a Maui Police Department Officer.

14. It is still unclear to Plaintiff Mamuad what, exactly, he has said or done to warrant this punishment, insofar as none of his speech violates any law or County policy.

15. As such, Defendant County has violated Plaintiff Mamuad's rights guaranteed by the First Amendment to the United States Constitution.

16. This action seeks an order prohibiting Defendant County from interfering with Plaintiff Mamuad's right to speak freely and ordering the County to expunge any record of disciplinary action from Plaintiff Mamuad's records. Plaintiff seeks declaratory and injunctive relief, and damages, from Maui County for its past and ongoing violations of Plaintiff's classic right to free speech.

### **JURISDICTION AND VENUE**

17. This action is brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988, to redress the deprivation, under color of law, of rights secured the by the United States Constitution.

18. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, since this case involves a civil action that is brought to redress the deprivation of rights secured by the Constitution of the United States.

19. This Court is authorized to order declaratory and injunctive relief pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

20. Venue is properly in this district pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this district and the events giving rise to these claims occurred in this district.

**JURY TRIAL DEMANDED**

21. Plaintiffs demand a jury trial on all issues triable herein.

**THE PARTIES**

**Plaintiff**

22. At all times relevant to this action, Plaintiff Neldon Mamuad resided within the County of Maui, State of Hawaii.

23. Plaintiff Mamuad is a volunteer Liquor Commissioner for the County of Maui.

24. Plaintiff Mamuad also works approximately ten to fifteen hours per week as an executive assistant to a Maui County Council Member. He is paid hourly. His schedule is flexible – he does not work a set schedule.

25. Mr. Mamuad does the majority of his work out in the field, rather than in the Kalana O Maui Building on South High Street in Wailuku. He does not have a County of Maui computer assigned to him personally.

26. Plaintiff Mamuad is not employed by (and has never been employed by) the Maui Police Department.

**Defendant**

27. Defendant COUNTY OF MAUI (“County”) is a political subdivision and municipal corporation within the State of Hawaii, and includes the Maui Police Department (“MPD”).

28. The violations of Plaintiff’s First Amendment rights, as set forth herein, were the result of employees and/or agents of Defendant County acting pursuant to the official policies and/or customs of the County, and/or because those actions have been approved, ratified, and/or enforced by persons and/or entities with decision-making authority.

29. The County is sued for damages to redress past violations of Plaintiff’s First Amendment rights; to expunge any record of disciplinary action from Plaintiff’s records; and for prospective relief intended to prevent future violations of Plaintiff’s First Amendment rights.



## FACTUAL ALLEGATIONS

### *MPD Officer Keith Taguma*

30. Maui Police Department Officer Keith Taguma is well-known on Maui. He has a reputation for being prolific in writing traffic citations, and for his rigorous and meticulous enforcement of Maui traffic laws.

31. Some Maui residents believe that Officer Taguma's work is praiseworthy, while others believe his work represents a misallocation of scarce governmental resources.

32. For example, Maui Time – a Maui news organization – named Officer Taguma its 2013 “Best Scary Public Figure.” The author noted that “Maui Police Officer Keith Taguma is a Legend on Maui,” and went on to state: “Sure, we call him scary and curse him when he writes parking tickets for cars parked five minutes past the two-hour mark, but deep down, most of us admire the guy. He is without question the hardest working cop in the Maui PD, and for that, MauiTime and its readers salute him.” Anthony Pignataro, *Best Scary Public Figure: Keith Taguma*, MAUITIME, July 18, 2013, <http://mauifeed.com/best-of-maui/mauitime-best-of-maui-best-scary-public-figure-keith-taguma-bom2013/> (last accessed February 27, 2014).

33. This attitude towards Officer Taguma – a combination of admiration and loathing – appears to be common among Maui residents. *See, e.g., Watch*

*Out for Taguma*, MAUI JUNGALOW, December 5, 2012,

[http://www.mauijungalow.com/2012/12/watch-out-for-](http://www.mauijungalow.com/2012/12/watch-out-for-taguma.html#.Uv_TibSPSdw)

[taguma.html#.Uv\\_TibSPSdw](http://www.mauijungalow.com/2012/12/watch-out-for-taguma.html#.Uv_TibSPSdw) (last accessed February 27, 2014) (containing a

parody of the song “Santa Claus is Coming to Town” with amended lyrics, such as

“You better watch out/You better not cry/Better not SPEED/I’m telling you

why/Officer Taguma just got me”); *Taguma Got Me*, MAUI, HAWAII – HOW TO

LIVE THE MAUI LIFE, <http://emaui.blogspot.com/2009/01/taguma-got-me.html> (last

accessed February 15, 2014) (“If you're from Maui, you know who Taguma is.”).

Plaintiff Mamuad did not write any of these materials.

### ***Origins of “TAGUMAWatch”***

34. From 2002-2007, Plaintiff Mamuad was employed with the Pacific Radio Group as Program Director. He was widely known on a popular morning program called “The Big Phat Morning Show.”

35. Around 2004-2005, after Plaintiff Mamuad’s friend and colleague had been pulled over by Officer Taguma, Plaintiff Mamuad started having a regular segment on his radio show called “TAGUMAWatch.” Plaintiff Mamuad and his co-host would report sightings of Officer Taguma on his Cushman Golf Cart, the majority of the time in Wailuku town, doing traffic enforcement and so on. The segment evolved to a traffic-watch type of report where listeners would call in and report traffic conditions and police activity on Maui.

36. During the “TAGUMAWatch” radio segment, Plaintiff Mamuad and his co-host invited listeners to call in wherever they saw Officer Taguma. Listeners seemed to enjoy this segment, insofar as Plaintiff Mamuad and his co-host received large numbers of phone calls during that segment of the show.

37. Plaintiff Mamuad believed then – as he does now – that people on Maui wanted to hear about (and talk about) Officer Taguma and the ways in which he did his job.

38. Callers to the program expressed differing views on Officer Taguma. Some thought he was a great police officer; others thought that he went too far, and was too harsh in how he treated motorists on Maui. The focus of the program was on Officer Taguma’s official duties only, however – not on his home/personal life.

39. Plaintiff Mamuad believes that he, his co-host, and callers to the program had good discussions about the use of police force/resources, and about the proper role of police officers on Maui.

40. Mr. Mamuad stopped hosting the radio program in 2007, but in June 2013, was talking with friends about TAGUMAWatch and realized that there was still community interest in discussing issues such as the use of police resources and the boundaries of police power.

***Creation of TAGUMAWatch Facebook Page***

41. On or about July 7, 2013, Plaintiff Mamuad created a Facebook Fan Page called “TAGUMAWatch.” He posted some photos on the site that he obtained off the internet, including from the website of the Maui Time.

42. Plaintiff Mamuad, a police radio scanner enthusiast, began posting traffic advisories around Maui to the Facebook page. Viewers then started to send in photos of traffic and road conditions and the page popularity just skyrocketed.

43. TAGUMAWatch began to garner a good deal of attention on Maui. People on Maui began to upload photos of Officer Taguma (while on-duty) to the Facebook page.

44. Indeed, just three days after its creation, the “TAGUMAWatch” page was featured on the nightly news. *See* Lisa Kubota, *Maui Police Officer Turns Into Social Media Star*, HAWAII NEWS NOW, July 10, 2013, <http://www.hawaiinewsnow.com/story/22811250/maui-police-officer-turns-into-social-media-star> (last accessed February 27, 2014). The news story reports that “Officer Keith Taguma is well-known for ticketing drivers for everything from speeding to expired parking meters” and that “he is a familiar figure out on the roads.” The reporters also stated (at the end of the video clip), with a laugh, that one of Hawaii News Now’s own reporters had a personal experience being stopped by Officer Taguma.

45. In the Hawaii News Now story, Professor Tom Kelleher, Chair of the University of Hawaii at Manoa's School of Communications, accurately captured the tone and intent of the TAGUMAWatch page when he commented as follows: "It's interesting because it's funny. I can see why people like it, why it draws people. It's sort of a novelty. Let's keep an eye on this officer. Little bit of an inside joke there in the Maui community[.]'"

46. Plaintiff Mamuad's intention was never to act maliciously towards Officer Taguma. Instead, he intended to poke fun at the Officer for the ways in which he performed his official duties, as a way of discussing issues like the proper role of police officers on Maui and police misconduct. One of the first posts on TAGUMAWatch's site – on the day the page was created – reads as follows:

Some people have misconceptions about this page and its purpose. This page is not about right or wrong, good vs. evil, or to demean any man or person.

The Tag-Man has gained the most notoriety because he is the Top Gun (no pun intended) in his field; a true legend of Maui with people all across the island and from all different age groups having an opinion or a story about the man. Having those kinds of traits are what the history books were made for. That's something to be proud of, right guys?

This is a forum where you can express your point of view both positive and negative as allowed by the First Amendment. The side of the fence your opinions may fall on is not our main concern.

If you see the Tag-Man out doing his job for this great County of Maui, give us a heads-up post here on this page. If you think this page

is offensive, then damn it, this ain't for you. The overwhelming response to this page should let you know that you are probably in the minority of this issue. I for one think he should embrace this notoriety and ride the wave all the way in. No harm, No Foul.

Analogy: Would you classify a "Whale Watching" page to be the same as a "Kill the Whales" page or "Japanese Whale Harvesting" page? The same is true here.

We don't mean harm to anybody, just let us know when you see the whales "breaching" in your area so we can get our cameras ready. We love whales! LOL And we don't really care if the whales were MEAN or NICE. We know it's just part of being a whale. Get it? Got it? Good.

MAUIWatch (formerly TAGUMAWatch),

<https://www.facebook.com/MAUIWatch>, July 7, 2013 (last accessed February 27, 2014).

47. Some visitors to the site post negative comments regarding Officer Taguma, while some post positive comments about him.

48. The TAGUMAWatch site was – and is – designed to inform the public, to facilitate community conversations, and to offer satirical commentary on items affecting Maui residents – including Officer Taguma.

49. The TAGUMAWatch site became quite popular in a short amount of time. In nine days (*i.e.*, by July 16), TAGUMAWatch garnished over 9,000 Facebook "likes," which meant the site had more Facebook "likes" than other Maui news outlets and government agencies. As of the filing of this Complaint, the site had over 25,300 "likes."

***Plaintiff's attempts to remain anonymous; no overlap between Plaintiff's work for the County and Plaintiff's participation with Facebook page***

50. Plaintiff Mamuad did not, however, publicize his involvement with the TAGUMAWatch page at its outset. People who were familiar with the popular feature on the radio may have assumed his involvement, and a few close friends knew Plaintiff Mamuad was involved in the site, but he tried to keep his involvement otherwise anonymous. He did so, in part, to separate his work on TAGUMAWatch from his work with the County.

51. Plaintiff Mamuad has never indicated on the Facebook page (as TAGUMAWatch or MAUIWatch) that the page was in any way affiliated with Maui County. He has never identified himself as a Maui County employee or officer. He has never purported to provide "inside" information on County business from his workplace (regarding the Liquor Commission or the County Council Member's office) and/or relating to his own workplace. He has never made any statements to suggest that he is speaking on behalf of Maui County. His speech is consistently that of an observer to Officer Taguma's actions (and the apparent policies driving those actions), a perspective available to virtually every other individual on Maui.

52. Similarly, Plaintiff Mamuad has never discussed TAGUMAWatch while performing County business (as a Liquor Commissioner or as an executive aide to the County Council Member), while in the Kalana O Maui Building or in

any facility where he performs his official duties as a Liquor Commissioner, or on any County equipment. His work for the County and his involvement in TAGUMAWatch were (and are) completely separate.

***Defendant County's initial steps to interfere with Plaintiff's speech; additional efforts by Plaintiff to remain anonymous***

53. Less than three weeks after its inception, Defendant County began taking steps to interfere with Plaintiff Mamuad's speech.

54. Corporation Counsel Patrick Wong telephoned Plaintiff Mamuad on July 23, and the two met the following day (July 24). During the July 24 meeting, Corporation Counsel Wong made clear to Plaintiff Mamuad that he (Mr. Wong), on behalf of the County, was very upset with the page and wanted it to stop – specifically, that writing about Officer Taguma cease. Mr. Wong told Plaintiff Mamuad that, if Plaintiff Mamuad knew who was involved with the TAGUMAWatch Facebook page, Mr. Wong wanted it taken down.

55. On August 9, the MauiTime blog contained a post about TAGUMAWatch, suggesting that Plaintiff Mamuad was involved with the page. Anthony Pignataro, *County of Maui Investigating Popular TAGUMAWatch Facebook Page*, MAUIFEED, August 9, 2013, available at <http://mauifeed.com/maui-news/county-of-maui-investigating-popular-tagumawatch-facebook-page/> (last accessed February 27, 2014).



56. The same day (August 9), Corporation Counsel Wong reached out to the County Council Member for whom Plaintiff Mamuad worked and asked for a meeting. On August 11, Plaintiff Mamuad again met with Mr. Wong, along with the County Council Member for whom he (Plaintiff Mamuad) works.

57. During this second meeting, Corporation Counsel Wong said that, during the first meeting, he had instructed Plaintiff Mamuad to shut the page down entirely within two weeks of the first meeting.

58. Plaintiff Mamuad was very upset that Corporation Counsel Wong continued to pressure him to stop speaking via the Facebook page. The meetings made Plaintiff Mamuad feel like the County was coming after him, and that they were trying to silence him.

59. During the second meeting, Corporation Counsel Wong said he wanted Plaintiff Mamuad to change the name of the site. Plaintiff Mamuad agreed to change the name; he did not want to do so, but he thought doing so would help to ease tensions and make the County leave him alone.

60. Consequently, Plaintiff Mamuad changed the name to MAUIWatch. After doing so, he thought that this issue was resolved, and that all of this was behind him. He was wrong – the County did not stop its attempts to stifle Plaintiff Mamuad's speech.

*Harassment complaint, investigation, and County disciplinary action*

61. In August 2013, Officer Taguma submitted a complaint to Keith Reagan, Managing Director for the County of Maui, complaining that he was being harassed via the TAGUMAWatch site. On information and belief, Officer Taguma also submitted a similar complaint to the Maui County Council.

62. In a letter dated September 12, 2013, Deputy Corporation Counsel Gary Murai informed Plaintiff Mamuad that a harassment complaint was filed against him (Plaintiff Mamuad), and that Plaintiff Mamuad was expected to attend an interview with Mr. Murai and Deputy Director of Personnel Services David Underwood the following week. The letter did not indicate what, if anything, Plaintiff Mamuad had done to harass any other individual. A true and correct copy of this letter is attached hereto as **Exhibit 1**.

63. Plaintiff Mamuad has never been permitted to view the complaint. Plaintiff Mamuad's counsel was permitted to view the complaint, but was specifically instructed – both verbally and in writing – that a photocopy of the complaint could not leave Defendant's office. Plaintiff's counsel had to hire a Maui attorney specifically for the purpose of viewing the complaint and providing hand-written notes of the complaint's contents to Plaintiff's counsel.

64. Plaintiff Mamuad's counsel repeatedly asked Deputy Corporation Counsel Gary Murai for an explanation of what Plaintiff Mamuad had allegedly

done to violate a County policy. In a letter dated September 27, 2013, Mr. Murai stated that the applicable policy was the Violence in the Workplace Action Plan, attached hereto as **Exhibit 2**. Neither Mr. Murai nor any other representative from Defendant County has ever provided any information as to what, exactly, Plaintiff Mamuad had done to violate the Action Plan (except as otherwise set forth herein).

65. In general terms, the harassment complaint alleges that Plaintiff Mamuad has used Officer Taguma's name and photo without his permission and has encouraged others to submit photographs of and comments about him. It also alleges that Plaintiff Mamuad failed to comply with Corporation Counsel Wong's directive to shut the site down.

66. On October 16, 2013, Plaintiff Mamuad attended the interview with Deputy Corporation Counsel Gary Murai and Gary Underwood from the Department of Personnel Services, as required by the September 21, 2013 notice. Plaintiff Mamuad attended with his counsel, Marcus Landsberg and Daniel Gluck.

67. At the inception of the interview (which was transcribed by a court reporter), Mr. Murai stated that, "As a Council employee and County officer, you are obligated to cooperate with investigations, and you are prohibited from making false statements. Failure to do so may result in disciplinary action." Transcript of Proceedings, Interview of Neldon Mamuad, October 16, 2013 (hereinafter, "Tr. 10/16/13"), 5:19-22. In a later exchange with counsel, Mr. Murai similarly stated

that “Neldon is required to cooperate” with the investigation. *Id.* at 18:20. Mr. Murai also repeatedly stated that the investigation process was confidential. *id.* at 5:22-6:6; 45:11-17.

68. When Plaintiff Mamuad began the interview, he wanted to maintain his anonymity regarding his involvement with TAGUMAWatch/MAUIWatch. During the interview, however, he was pressured by Deputy Corporation Counsel Murai to reveal his involvement with the site during the interview. Mr. Murai repeatedly stated that Plaintiff Mamuad was obligated to comply with the investigation, and that if he did not do so, he would face disciplinary action. Mr. Murai repeatedly threatened to end the interview altogether when Plaintiff Mamuad’s counsel asserted Plaintiff Mamuad’s right to speak anonymously. Tr. 10/16/13 at 19:13-14; 20:24-25.

69. Faced with the choice of being found to be refusing to cooperate with a government investigation, or revealing his involvement with the Facebook page, Plaintiff Mamuad decided to answer Mr. Murai’s questions. His decision to do so was based solely on the threat of disciplinary action against him, Tr. 10/16/13 at 22:14-23, and Plaintiff Mamuad was upset that the County had forced him to reveal his role in what he had wanted to be anonymous speech.

70. During the interview, Plaintiff Mamuad's counsel repeatedly asked Mr. Murai for an explanation of what Mr. Mamuad had allegedly done to violate a County policy. Tr. 10/16/13 at 13:12-22; 19:4-20; 21:1-6.

71. Neither Mr. Murai nor Mr. Underwood answered Plaintiff's counsel's questions. Instead, Mr. Murai stated only that he was going to ask questions, and that if counsel instructed Mr. Murai not to answer, then he would terminate the interview. Tr. 10/16/13 at 19:13-14; 20:24-25.

72. At one point, Mr. Mamuad's counsel objected to what appeared to be a boundless attempt by the County to investigate speech made by Mr. Murai outside of his position as an employee/Commissioner; Mr. Murai responded by saying, "what I don't understand is what the distinction is between private life and nonprivate life for purposes of, you know, County of Maui policies." *Id.* at 14:15-18.

73. Plaintiff Mamuad answered Mr. Murai's questions and otherwise cooperated with the investigation.

74. During the interview, Mr. Murai questioned Plaintiff Mamuad about a few specific posts on the website, most of which Plaintiff Mamuad did not write himself.

75. After the interview, Plaintiff Mamuad was nervous about what was going to happen. He continued to work on the MAUIWatch page, but he refrained

from posting items regarding Officer Taguma that he ordinarily would have done. He continues to refrain from posting items about Officer Taguma and/or other County employees that he wishes to post.

76. On January 24, 2014, Plaintiff Mamuad received a letter (dated January 21, 2014) from Keith Regan, Managing Director for the Department of Management for Maui County, stating that Plaintiff Mamuad had violated the Violence in the Workplace Action Plan as a Liquor Commissioner. Plaintiff Mamuad has not received any correspondence from the County Council, indicating whether he did or did not violate any County policy in his capacity as an executive aide to a County Council Member. A copy of the January 21, 2014 letter is attached hereto as **Exhibit 3**.

77. The letter does not indicate what, precisely, Plaintiff Mamuad allegedly did to have violated the Violence in the Workplace Action Plan. It states only that “the complaint, in summary, alleged that you subjected a fellow County employee to harassment and cyber-bullying through the use of an online social media website.” It further states that “the completed investigation determined that a violation of the Violence in the Workplace Action Plan did occur.” It contains no other information about how, when, where, or why Plaintiff Mamuad is alleged to have violated the Action Plan.

78. Defendant County's Violence in the Workplace Action Plan states that an employee shall "[a]void or refrain from acts of violence, threats of violence, and harassment at work." The Action Plan defines harassment as follows:

**"Harassment"** includes but is not limited to intentionally or knowingly causing unwelcome conduct directed towards an individual that seriously alarms, disturbs, consistently or continually bothers an individual, and that serves no legitimate purpose.

The Action Plan further defines "Work sites" or "Workplace" as "anywhere employees are authorized to conduct official County business including sites away from the office or base."

79. The January 21, 2014 letter requires Plaintiff Mamuad to enroll in an Employee Assistance Program "to address harassment and cyber-bullying" within 90 days of the date of the letter (*i.e.*, by Monday, April 21, 2014). It further instructs Plaintiff Mamuad that "No further violations of the County of Maui Violence in the Workplace Action Plan occur."

80. Insofar as Defendant County has never identified any statements or actions by Plaintiff Mamuad that purportedly violate the Violence in the Workplace Action Plan, and Mr. Mamuad does not know what statements the County considers to violate the Action Plan, he does not know what speech is allowed and what is prohibited.

81. Insofar as the Violence in the Workplace Action Plan prohibits speech that "bothers" a County employee – and insofar as Defendant County apparently

believes that the First Amendment is not a “legitimate purpose” that would exempt Plaintiff Mamuad’s speech from the prohibitions of the Action Plan – the Action Plan (and the January 21, 2014 letter), as applied to Plaintiff Mamuad, therefore restricts Plaintiff Mamuad’s speech as to an extraordinarily wide range of topics and individuals. For example, the Action Plan seemingly prohibits Plaintiff Mamuad from speaking negatively about *any* County official: the Mayor, any member of the County Council, any police officer, or any individual member of any of the sixteen County Departments.

82. Regardless of what the Action Plan says or whether/how it applies, however, a County policy cannot trump the First Amendment.

83. As a result of Defendant County’s actions (and threats of future disciplinary action), Plaintiff Mamuad is afraid to speak regarding Officer Taguma and the broader issues of misallocation of police resources on Maui.

84. Plaintiff Mamuad is also anxious, worried, and distressed that these “findings” (that he violated the Action Plan) are now part of his employment/service record for the County, and that this matter will impede his ability to obtain/maintain employment with the County and/or with other employers into the future.

85. Plaintiff Mamuad wishes to continue to post content on the MAUIWatch site, including items involving Officer Taguma and other County



officials – both complimentary and critical. He wishes to be able to discuss (and foster debate on) the broader issue of police misconduct on Maui, to shine light on the police, to discuss misappropriation of police resources, and to inform the public of traffic issues. He has refrained from doing so since Defendant County began to interfere with his speech; he has immediate and concrete plans to do so into the future, though he is likewise refraining from doing so out of fear of further disciplinary action by Defendant County.

86. Defendant County receives no cognizable benefit from infringing upon Defendant's speech. Plaintiff Mamuad and Officer Taguma do not share a workplace – they do not work for the same Department, and (as far as Plaintiff Mamuad can recall) the two have never met in person.

87. Furthermore, even if Plaintiff Mamuad were to refrain from posting on the Facebook page, other administrators and commentators will inevitably continue to do so. That is, many other individuals in the Maui community will continue to use Officer Taguma's name and photo without his permission, and will continue to speak critically about him, regardless of whether Plaintiff Mamuad himself is personally involved.

*Loss of anonymity*

88. Plaintiff Mamuad had, on several occasions, spoken with a reporter from another news agency regarding the possibility of sharing content between the MAUIWatch and this other agency. Plaintiff Mamuad thought that he would remain anonymous, but did not directly instruct the reporter to refrain from using his name. Due to this miscommunication, the reporter published the fact that Plaintiff Mamuad was the creator of MAUIWatch.

89. The reporter did, however, accurately capture the nature of MAUIWatch, in writing the following:

MAUIWatch is Hawaii's fastest growing news service — and yet it's only on Facebook.

Six months ago, Maui resident Neldon Mamuad started a MAUIWatch page that quickly grew to become the county's most popular Facebook page with more than 23,000 fans. They often crowdsource images and information on weird weather, accidents, road closures, crazy high milk prices and the like. In some ways, it is the definition of news you can use — and share.

Gene Park, *Think You're a Journalist? Read On*, CIVIL BEAT, February 7, 2014, <http://www.civilbeat.com/posts/2014/02/07/21128-gene-park-think-youre-a-journalist-read-on/> (last accessed February 27, 2014).

90. Given that Maui County officials already forced Plaintiff Mamuad to reveal that he had created the page, and given that the information had already

been publicized, Plaintiff Mamuad did not believe it was fruitful to try to contain the information further (by, *e.g.*, requesting a retraction).

***Lack of administrative appeal process***

91. On information and belief, there is no method by which Plaintiff Mamuad can appeal the findings made against him regarding the Violence in the Workplace Action Plan.

92. After receiving a copy of the letter dated January 21, 2014 from Keith Regan, Managing Director for the Department of Management, County of Maui, Plaintiff Mamuad's counsel sent a number of inquiries to Maui County officials to determine whether any administrative appeals exist for Plaintiff Mamuad in this situation.

93. Specifically, after first exchanging e-mails with Deputy Corporation Counsel Murai, Plaintiff Mamuad's counsel sent three e-mail messages to David Ching, First Assistant to the Managing Director, Department of Management, County of Maui, asking whether Plaintiff Mamuad has any right of appeal from the findings against him. Mr. Ching repeatedly promised to respond to these inquiries, but has never provided a substantive response.

94. Additionally, on February 5, 2014, Plaintiff Mamuad's counsel e-mailed Lance Hiromoto, Director of the Department of Personnel Services for Maui County, to inquire as to whether the Civil Service Commission would have

jurisdiction over such an appeal. The next day, Director Hiromoto responded via e-mail with his opinion that the Commission would lack jurisdiction over such an appeal.

95. Based on this investigation, and the County's lack of response to counsel's repeated inquiries, it appears as though Plaintiff Mamuad has no other recourse to challenge the findings made against him.

### **DECLARATORY AND INJUNCTIVE RELIEF**

96. An actual and immediate controversy has arisen and now exists between Plaintiff and Defendant, which parties have genuine and opposing interests and which interests are direct and substantial. Defendant has failed and continues to fail to comply with the United States Constitution for at least the reasons set forth herein. 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.

97. Specifically, Plaintiff seeks a declaration that the conduct of Defendant County (by and through its officers, including but not limited to Corporation Counsel Patrick Wong, Deputy Director of Personnel Services David Underwood, Managing Director Keith Regan, and First Assistant to the Managing Director David Ching) were and are unconstitutional.

98. Plaintiff further seeks a declaration that Defendant County's Violence in the Workplace Action Plan is unconstitutional as applied to him.

99. Plaintiff has no adequate remedy at law. Unless enjoined by the Court, Defendant will continue to infringe upon Plaintiff's constitutionally protected rights and will continue to inflict irreparable injury. This threat of injury to Plaintiff from continuing violations requires preliminary and permanent injunctive relief.

### **CLAIM FOR RELIEF**

#### **VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION, ACTIONABLE PURSUANT TO 42 U.S.C. § 1983 (Freedom of Speech)**

100. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 99, above, as if fully set forth herein.

101. The right of free speech is clearly established by the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment to the United States Constitution.

102. Indeed, the First Amendment exists precisely for this kind of social commentary, in which citizens may comment on overreaching by government officials.

103. The First Amendment likewise protects the right of individuals to photograph and/or videotape law enforcement officers in the performance of their

duties, as well as the rights of individuals to encourage the general public to exercise their First Amendment rights.

104. All of Plaintiff Mamuad's speech on TAGUMAWatch/MAUIWatch is protected by the First Amendment. His postings did not contain threats, fighting words, obscenity, or any other speech that is not protected by the First Amendment.

105. Though Maui Police Department Officer Taguma is a public figure for free speech purposes, Plaintiff Mamuad's speech regarding Officer Taguma was not defamatory under any legal standard.

106. Defendant County could not take any legal action to interfere with or silence Plaintiff Mamuad's speech if he were a private citizen. As such, Defendant County has resorted to punishing Plaintiff Mamuad in his capacity as a Liquor Commissioner.

107. "It is well settled that 'a State cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression.'" *Garcetti v. Ceballos*, 547 U.S. 410 (2006) (quoting *Connick v. Myers*, 461 U.S. 138, 142 (1983)).

108. At all times and in all manners relevant to this Complaint, Plaintiff Mamuad was speaking as a private citizen on matters of public concern.

109. Defendant County had no adequate justification for treating Plaintiff differently from any other member of the general public.

110. Defendant County gains no benefit, as an employer, from punishing Plaintiff for his speech or from chilling his future speech. Plaintiff's First Amendment rights outweigh whatever illusory benefit Defendant County claims to gain from its suppression of Plaintiff's speech.

111. Even if Defendant County were to terminate Plaintiff altogether as an employee/Commissioner, Plaintiff could continue speaking on the MAUIWatch page in exactly the same manner as he had done prior to the County's disciplinary action. Similarly, given that there are other administrators of the MAUIWatch page, attempting to silence Plaintiff will do nothing to stop other administrators (not to mention the tens of thousands of Facebook users who "like" the page and leave comments) from speaking out against Maui County policies.

112. The actions of Defendant Maui County complained of herein were directed toward intimidating Plaintiff Mamuad and chilling the exercise of his protected expressive rights by, among other means, silencing or diluting his message and by deterring his right to speak, including his right to speak anonymously, as guaranteed by the First Amendment to the United States Constitution.

113. By disciplining Plaintiff Mamuad, Defendant County has unlawfully deprived (and continues to deprive) Plaintiff Mamuad of the ability to exercise his clearly established First Amendment rights.

114. Defendant's attempts to chill Plaintiff's speech by, *inter alia*, ordering Plaintiff to cease speaking, by ordering him to attend counseling/training sessions, and by threatening him with additional discipline if he fails to comply with its orders, constitute adverse employment action and therefore unlawful retaliation.

115. Plaintiff's speech not just a substantial or motivating factor for Defendant's actions – it was the *only* factor leading to Defendant's actions – and Defendant would not have taken the actions set forth herein but for Plaintiff's protected speech.

116. As a direct and proximate result of the violations of Plaintiff Mamuad's constitutional rights by Defendant Maui County, as set forth herein, Plaintiff Mamuad fears that he will face further disciplinary action if he continues to speak as a private citizen on matters of public concern.

117. As a direct and proximate result of the violations of Plaintiff Mamuad's constitutional rights by Defendant Maui County, as set forth herein, Plaintiff Mamuad has suffered inconvenience, mental and emotional distress, litigation expenses and other compensatory damages, in an amount to be determined by the Court.



**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

- A. Assume jurisdiction over this action;
- B. Issue a declaratory judgment stating that Defendant's actions violated Plaintiff Mamuad's right to speak freely on matters of public concern as guaranteed by the First Amendment to the United States Constitution (as incorporated by the Fourteenth Amendment to the United States Constitution), and that the Violence in the Workplace Action Plan is unconstitutional as applied to Plaintiff Mamuad;
- C. Issue a preliminary and permanent injunction enjoining Defendant (and its divisions, officers, servants, employees, attorneys, agents and representatives, successors-in-office and all persons acting or purporting to act in concert or in cooperation with Defendant or pursuant to Defendant's authority) from subjecting Plaintiff to the customs, policies, practices, rules, regulations, acts and omissions set forth in this Complaint, which injunction shall include an order to expunge all records of disciplinary proceedings against the Plaintiff;
- D. Retain jurisdiction over Defendant until such time as the Court is satisfied that Defendant's unlawful customs, policies, practices, rules,

regulations, acts and omissions complained of herein no longer exist and will not recur;

- E. Award reasonable attorneys' fees, costs and other expenditures incurred as a result of bringing this action, pursuant to 42 U.S.C. § 1988 and other applicable laws;
- F. Award actual and nominal damages to Plaintiff for the violations of clearly established law set forth herein; and
- G. Order such other relief as this Court deems just and proper.

DATED: Honolulu, Hawai'i, March 3, 2014.



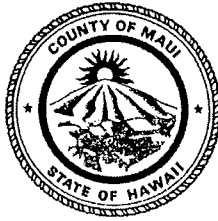
DANIEL M. GLUCK  
LOIS K. PERRIN  
AMERICAN CIVIL LIBERTIES UNION  
OF HAWAII FOUNDATION

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Fax No. (808) 244-2646

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152

September 12, 2013

CONFIDENTIAL via Certified Mail:

Neldon Mamuad  
50 Alana Place  
Makawao, HI 96768

Dear Mr. Mamuad,

RE: Investigation of a complaint of harassment

I am writing to inform you that complaint of harassment has been filed against you. Deputy Director of Personnel Services David Underwood and I have been assigned to investigate the complaint.

We have scheduled an interview with you for Friday, September 20, 2013 at 9:00 a.m. in the conference room of the Department of the Corporation Counsel, on the third floor of the Kalana O Maui Building, 200 S. High Street.

This matter may result in disciplinary action taken against you. If you wish, you may bring a representative with you. If you have any documentary evidence you want us to consider, please bring those with you as well.

Please confirm whether you will be meeting with us by calling me at 270-7575, sending an email to [gary.murai@co.maui.hi.us](mailto:gary.murai@co.maui.hi.us) or by letter to the address above. If you are not available on September 20, 2013 at 9:00 a.m. please suggest another date and time.

Sincerely,

  
GARY Y. MURAI  
Deputy Corporation Counsel

GYM:tlj

cc: ✓ David Underwood, Department of Personnel Services  
Don Guzman, Council Member



## COUNTY OF MAUI VIOLENCE IN THE WORKPLACE ACTION PLAN

The purpose of this action plan is to implement the County of Maui's Administrative Directive on Violence in the Workplace regarding acts of violence in the workplace by any officer, employee, or member of the public and to develop objectives to ensure a safe working environment for all officers, employees, and members of the public while on County of Maui premises and work sites.

### I. APPLICABILITY

The County of Maui is committed to promoting and maintaining a safe and healthy work environment for all of its officers, employees, and the public, which is free from violence. As part of its zero-tolerance directive, acts or threats of violence will not be tolerated in the working environment of the County of Maui.

Witnesses of any act of violence, or threat of violence of County of Maui officers, employees, or members of the public on County premises or work sites, or of any act which causes damage to County of Maui property shall make every effort to promptly report the violence to the immediate supervisor who will then report the incident to the Department Head, who, in turn, will report it to the Managing Director. Anyone may report the incident to the police.

Witnesses of any act of violence, or threat of violence occurring outside of County of Maui premises or work sites but related to one's County employment shall make every effort to promptly report the violence to their immediate supervisor who will then report to the employing Department Head, who, in turn, will report it to the Managing Director. The Managing Director shall report the incident to the police, as deemed appropriate.

Possession, use, or threat of use of a firearm or any other weapons by any County employee is prohibited while the employee is at work or on County of Maui property, including County vehicles and vehicles used while conducting County business, unless such possession or use of a weapon is a necessary and approved requirement of the job as reflected in the official position description. Use or threat of use of any equipment or object (inanimate or animate) as a weapon is also prohibited.

There shall be no retaliation by anyone against any officer, employee, or member of the public for reporting real or implied violent behavior in the workplace. Any such retaliatory or discriminatory action shall be reported to one's immediate supervisor who will report to the Department Head. The Department Head will deal promptly with the situation and report the incident to the Managing Director.

When a threat is received and management determines that a potential for violence exists, a management team will take the appropriate action to determine the risk of the employee

County of Maui

Violence in the Workplace Action Plan

to him/herself or other employees, and to members of the public. A management team will be comprised of managerial staff representing the department, Personnel Services, and Corporation Counsel.

After an incident of violence has occurred, the Department Head or Managing Director may provide debriefings, including appropriate counseling, to affected County officers and employees, as needed, for recovery and transition back to work.

The Department of Personnel Services shall provide appropriate training to implement this plan.

## II. DEFINITIONS

**“Acts of Violence” or “Violence”** includes, but is not limited to, any intentional verbal, physical, psychological threat, physical impairment, and/or bodily injury to an individual or group that has the intention or results in physical and/or psychological damage or harm. This includes physical attack, property damage, or behavior that expresses or suggests an intent to cause physical or mental harm to another person or property.

Examples of acts of violence include, but are not limited to, the following:

- Gun shot and/or gun shot wounds.
- Rape, sexual assault or sexual abuse.
- Stabbing.
- Strangulation.
- Hitting, kicking, punching, slapping or shoving an individual.
- Other forms of physical harm resulting in injury or death.
- Robbery.
- Kidnaping.
- Stalking.
- Verbal threats or abuse which includes verbal intimidation and swearing.
- Making harassing or threatening phone calls, letters or other forms of written or electronic communications.
- Property damage, and acts of vandalism.

**“Threat”** includes but is not limited to an expression (verbal or non-verbal) of intention to inflict physical or mental harm or injury to another person or property. An expression constitutes a threat without regard to whether the party communicating the threat has the ability to carry it out and without regard to whether the expression is contingent, conditional or future.

**“Harassment”** includes but is not limited to intentionally or knowingly causing unwelcome conduct directed towards an individual that seriously alarms, disturbs, consistently or continually bothers an individual, and that serves no legitimate purpose.

County of Maui

Violence in the Workplace Action Plan

**“Work sites” or “Workplace”** means anywhere employees are authorized to conduct official County business including sites away from the office or base.

**“Department”** includes any and all departments, divisions, boards, commissions or agencies of the County of Maui.

**“Guideline”** means a course of action which is broad and general in nature and which conveys a principle intent that should be used, if practical, and may be used to develop additional specific procedures to cover special circumstances.

**“Intervention”** means the act of interfering in events or affairs of others for the purpose of restoring a peaceful coexistence among employees.

**“Crisis”** means a significant event requiring decision making to bring the situation back to normal.

### **III. OBJECTIVES**

The objectives of this action plan are to:

1. Protect the health, safety and welfare of all officers, employees and members of the public at County of Maui premises and work sites. Work sites are any location where employees are authorized to conduct official County business including sites away from the office or base.
2. Prevent violent behavior and harassment of officers, employees, and members of the public on County of Maui premises and work sites.
3. Comply with federal and state legal requirements and implement provisions of the various collective bargaining agreements regarding workplace violence by providing a safe and healthy working environment for all County of Maui officers and employees.
4. Establish reporting requirements for any act or threat of violence and harassment on County of Maui premises and work sites, and provide County officers and employees post-trauma debriefing for recovery and a smooth transition back to work.

County of Maui

Violence in the Workplace Action Plan

**IV. VIOLATIONS**

Persons acting in contradiction to the County’s zero tolerance of acts of violence may be subject to prosecution for criminal violations of the law. Officers and employees violating this action plan will be dealt with appropriately. Actions taken will be in accordance with applicable provisions of personnel laws, rules and collective bargaining agreements.

**V. ROLES AND RESPONSIBILITIES**

A. Departments and Agencies

1. Provide a safe and healthy work environment for its officers, employees and members of the public.
2. Prominently post the County of Maui Violence in the Workplace Directive and Action Plan in all work areas and facilities.
3. Distribute the Directive and Action Plan to each employee, including new employees, and document that each employee received the Directive and Action Plan. (See attached Distribution List form.)
4. Establish a mechanism for annually informing/reminding employees of this action plan and their obligation to report violence in the workplace.
5. Provide opportunities for officers and employees to attend employer-sponsored violence in the workplace training sessions.

6. Develop and implement departmental procedures for identifying and responding to acts of violence, threats of violence, or harassment. This may include, but not be limited to, developing and administering a department workplace violence plan consistent with this action plan that meets the department’s needs using available in-house resources. Examples of individual department plans should include, but not be limited to:

*The State Department of Labor and Industrial Relations, Occupational & Safety/Consultation office can assist by providing "walk-thru's" (i.e., instruct departments on conducting self-inspections) for the purpose of identifying engineering controls and administrative practices to prevent and control potential hazards. Call toll-free at 1-800-468-4644, extension 69090.*

- a. Establishment of a “Threat of Violence Response Team” whose purpose is to assess a work site’s vulnerability to violence. It is suggested that representatives from senior management & employees be included on the team and that input be obtained from police, personnel, and risk management.
- b. Identification of areas/operations with potential for workplace violence. Analysis should include, but not be limited to,

County of Maui

Violence in the Workplace Action Plan

review of injury and worker's compensation records, incident reports, facility design and access requirements.

- c. Identification of engineering controls and administrative practices to prevent and control potential hazards.

*Consult with the Department of Personnel Services prior to conducting an investigation. This is to insure employees involved are aware and advised of their right to union representation, that they are aware signed statements may be taken, and that the investigation is conducted in a timely, fair, and comprehensive manner. In addition, this is to insure that an in-house investigation does not interfere in instances where a criminal investigation is taking place.*

- 1. Examples of engineering controls include making changes to a department's physical environment to reduce or eliminate hazards. (Creating barriers between worker and hazard, emergency warning systems buzzers, lights, etc., arranging work areas to prevent entrapment of staff.)
- 2. Examples of administrative practice controls relate to the way jobs or tasks are performed. (i.e., a sign-in system for visitors and designating a response team for quick response to workplace violence emergencies.)
- 7. Report any act of violence, threat of violence, or harassment of County officers, employees, or members of the public, on County premises/work sites immediately to police and the Managing Director. Departments must also notify the Department of Personnel Services.
- 8. Report to the State of Hawaii, Department of Labor, any act of violence that results in the loss of life, injury to three or more employees requiring inpatient hospitalization, or property damage in excess of \$25,000. Complete OSHA Log of Injury and Illness Form (OSHA 300), as required by law.

- 9. Investigate any workplace violence incident report and act in accordance with procedures outlined in Part V of this plan. Investigations must be conducted in accordance with existing collective bargaining agreements. Report findings of the investigation to the police, Managing Director, and affected employees, as appropriate.

*The Department of Personnel Services can assist in making arrangements to utilize the Employee Assistance Program (EAP.)*

- 10. Inform all officers and employees of available counseling services through the Employee Assistance Program and



County of Maui

Violence in the Workplace Action Plan

encourage them to use these services to cope with personal problems at home and at work.

11. Arrange for post-trauma debriefings, including appropriate counseling, for officers and employees, who may be affected by an act of violence.
12. Take appropriate action against an officer or employee who violates the County of Maui Violence in the Workplace Directive.

B. Supervisor

1. Insure proper conduct of all employees under his/her supervision.
2. Insure that subordinates, employees, including new subordinate employees, are aware of the Violence in the Workplace Directive and insures their attendance in violence in the workplace training.
3. Attend employer-sponsored training on workplace violence.
4. Continually review or examine operations to anticipate risks or potential workplace violence situations, make recommendations, and take action, as appropriate.
5. Follow departmental procedures regarding any act of workplace violence, threat of violence, or harassment occurring on County premises or work sites, or any act which causes damage to County property.
6. Complete a Workplace Violence Incident Report [DPS-VWP-2(6-01)] to document incident and submit report to Department Head. (See attached.)
7. Report any act of violence, threat of violence, and harassment on County premises/work sites or any act which causes damage to County property to the police as deemed appropriate. Report the same to Department Head, who will, in turn, report to the Managing Director. The Managing Director may report the incident to the police, as deemed appropriate.
8. Take necessary action to diffuse a potentially volatile situation.
9. Conduct a thorough investigation in consultation with the Department of Personnel Services.
10. Establish a suggestion/complaint procedure which allows employees to freely share their ideas and concerns regarding workplace safety.

County of Maui

Violence in the Workplace Action Plan

Encourage employees to participate in this process.

C. Employee

1. Attend employer-sponsored training on workplace violence.
2. Inform supervisor of any concern for safety on-the-job in the event employee perceives an act of violence, threat of violence, and/or harassment.
3. Avoid or refrain from acts of violence, threats of violence, and harassment at work.
4. Make every effort to promptly report any act of violence, threat of violence, and harassment on County premises/work sites or any act which causes damage to County property to the supervisor.
5. Be familiar with departmental procedures regarding workplace violence.
6. Evacuate the work area, if necessary, to protect health and safety. Call 911 in the event of an act of violence.
7. Complete a Workplace Violence Incident Report [DPS-VWP-2(6-01)] to document incident and submit report to supervisor. (See attached.)
8. Make every effort to promptly report any retaliation or harassment made against employee to the supervisor for reporting real or implied violent behavior or harassment in the workplace.

D. Managing Director

1. Promotes a safe and healthy work environment for all County of Maui officers and employees.
2. Coordinates immediate investigation with the department(s) involved, the Department of Personnel Services, and police upon receipt of a Workplace Violence Incident Report.
3. Oversees post-trauma debriefings, including appropriate counseling, for affected County officers and employees, as needed, for recovery and transition back to work.

E. Department of Personnel Services

County of Maui

Violence in the Workplace Action Plan

1. Implements and maintains the County of Maui Violence In The Workplace Directive.
2. Assists departments and agencies in developing and implementing departmental workplace violence policies and procedures.
3. Coordinates and implements training for officers and employees relative to workplace violence.
4. Coordinates the County of Maui Employee Assistance Program.
5. Maintains copies of all Workplace Violence Incident Reports.
6. Assists supervisory personnel with investigations of reported workplace violence.

F. Department of Finance, Risk Management Division

1. Coordinates the County of Maui's Safety Program.
2. Develops and implements safety procedures to comply with current laws and safety policy.
3. Monitors County of Maui compliance relative to safety and workplace violence.

G. Departments of the Corporation Counsel and Prosecuting Attorney

1. Provide legal assistance to departments and agencies as requested.

H. Department of Police

1. Provides law enforcement assistance to departments and agencies as requested.

County of Maui

Violence in the Workplace Action Plan

**VI. FORMS**

- DPS-VWP-1, Violence In The Workplace Directive Distribution List (copy attached)
- DPS-VWP-2, Violence In The Workplace Incident Report (copy attached)

County of Maui

Violence in the Workplace Action Plan

**COUNTY OF MAUI  
VIOLENCE IN THE WORKPLACE  
ADMINISTRATIVE DIRECTIVE & ACTION PLAN  
DISTRIBUTION LIST**

I certify that I have distributed a copy of the County of Maui's Violence in the Workplace Administrative Directive and Action Plan to the employees listed below on the dates shown. I also certify that the Administrative Directive and Action Plan are prominently posted in all work areas and facilities.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Department/Division

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone/Extension

Name	Date	Name	Date

COUNTY OF MAUI  
VIOLENCE IN THE WORKPLACE  
INCIDENT REPORT

Date/Time of Incident: \_\_\_\_\_ Date/Time Reported: \_\_\_\_\_

Reported to: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

Reported by: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

Location of incident: \_\_\_\_\_

Type of incident: \_\_\_\_\_

Alleged Perpetrator(s): \_\_\_\_\_

Witnesses: (List names, positions, phone numbers) \_\_\_\_\_

\_\_\_\_\_

Describe the incident: (Be specific, i.e., what occurred, what was said, what triggered the incident, what each person said and did, what/how the incident ended, what happened to the individual(s) after the incident.)

\_\_\_\_\_

Actions taken in response to the incident:

Police/911 Called? Yes/No Date/Time: \_\_\_\_\_

Rescue Unit Sent? Yes/No Approximate time of arrival: \_\_\_\_\_

Serious Injuries Involved? Yes/No Describe: \_\_\_\_\_

Name(s) of Police Officer(s) responding to incident: \_\_\_\_\_

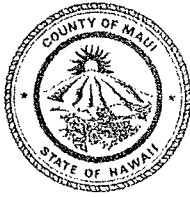
Other: \_\_\_\_\_

\_\_\_\_\_

Report submitted by: \_\_\_\_\_ Department: \_\_\_\_\_

Position Title: \_\_\_\_\_ Telephone No.: \_\_\_\_\_ Date: \_\_\_\_\_

ALAN M. ARAKAWA  
MAYOR



KEITH A. REGAN  
MANAGING DIRECTOR

**DEPARTMENT OF MANAGEMENT**  
COUNTY OF MAUI

January 21, 2014

Neldon Mamuad  
50 Alana Place  
Makawao, HI 96768

Dear Mr. Mamuad:

**SUBJECT: INVESTIGATION OF A COMPLAINT OF VIOLATION OF THE  
COUNTY OF MAUI'S VIOLENCE IN THE WORKPLACE  
ACTION PLAN**

On or about August 13, 2013, we received a written complaint alleging that a violation of the County of Maui's Violence in the Workplace Action Plan had occurred. The complaint, in summary, alleged that you subjected a fellow County employee to harassment and cyber-bullying through the use of an online social media website. Given the sensitive nature of this complaint, our office requested that an investigation be conducted jointly by the Department of the Corporation Counsel and the Department of Personnel Services.

The completed investigation determined that a violation of the Violence in the Workplace Action Plan did occur. As an active commissioner of the Liquor Control Commission, you are held to the same standards as an employee or officer of the County of Maui. The County of Maui maintains a zero tolerance policy for violations of the County of Maui's Violence in the Workplace Action Plan. Given the determination that you were in direct violation of the action plan, we are requiring the following:

1. Mandatory enrollment and attendance in a County of Maui sponsored Employee Assistance Program (EAP) specifically to address harassment and cyber-bullying.
2. Enrollment and attendance in the aforementioned program be initiated within 90 days of the date of this letter.

3. Notification from EAP that the program has been successfully completed, provided to this office within 30 days of successful completion.
4. Enrollment and attendance in a County of Maui training on the Violence in the Workplace Action Plan conducted by the Department of Personnel Services within 90 days of the date of this letter.
5. Notification from the Department of Personnel Services that training has been successfully completed.
6. There shall be no retaliation against the complainant.
7. No further violations of the County of Maui Violence in the Workplace Action Plan occur.

Please understand that the foregoing is consistent with our steps in progressive disciplinary action. Failure to complete the foregoing may result in further disciplinary action including but not limited to the provisions set forth in section 13-2(5).

The findings presented to this office are serious violations of the County of Maui's Violence in the Workplace Action Plan. Unfortunately, given the serious nature of the violation, we are required to take the steps prescribed above in order to ensure no further violations occur. Please feel free to contact David Ching at 270-7855 should you have concerns or questions related to the contents of this letter.

Sincerely,



KEITH A. REGAN  
Managing Director



HID 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Hawaii

Neldon Mamuad

Plaintiff

v.

County of Maui

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) County of Maui
c/o Department of Corporation Counsel
200 S. High St.
Kalana O Maui Bldg., 3rd Fl.
Wailuku, HI 96793

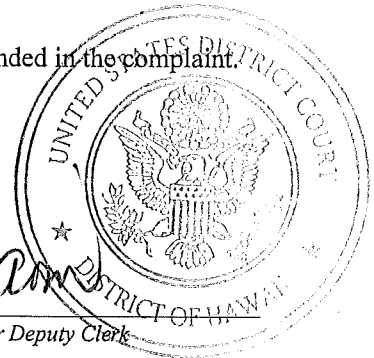
A lawsuit has been filed against you.

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:

Daniel M. Gluck
ACLU of Hawaii
P.O. Box 3410
Honolulu, HI 96801

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

SUE BEITIA
CLERK OF COURT



Handwritten signature of SUE BEITIA

Signature of Clerk or Deputy Clerk

Date: MAR 03 2014

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>Neldon Mamuad</p> <p>(b) County of Residence of First Listed Plaintiff <u>Maui</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)                  Daniel M. Gluck #7959                  ACLU of Hawaii, P.O. Box 3410, Honolulu, HI 96801                  (808) 522-5908</p>	<p><b>DEFENDANTS</b></p> <p>County of Maui</p> <p>County of Residence of First Listed Defendant <u>Maui</u>                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)                  Department of Corporation Counsel                  200 S. High St., Kalana O Maui Bldg., 3rd Fl.                  Wailuku, HI 96793</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
<p><b>REAL PROPERTY</b></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p><b>CIVIL RIGHTS</b></p> <p><input checked="" type="checkbox"/> 440 Other Civil Rights</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 448 Education</p>	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <p><input type="checkbox"/> 463 Alien Detainee</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><b>Other:</b></p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</p>		

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 USC 1983

Brief description of cause:  
Injunctive and declaratory relief and damages for violations of Plaintiff's First Amendment rights

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 3/3/14 SIGNATURE OF ATTORNEY OF RECORD Daniel M. Gluck

FOR OFFICE USE ONLY: RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_