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Attorneys for Plaintiff  
RHYS NAKAKURA

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

RHYS NAKAKURA,	)	CIVIL NO. 19-00320 DKW-KJM
	)	
Plaintiff,	)	FIRST AMENDED COMPLAINT; DEMAND
	)	FOR JURY; SUMMONS
vs.	)	
	)	
CITY AND COUNTY OF HONOLULU, a	)	
Municipal Corporation;	)	
NATHAN L.Y. WHARTON;	)	
COURTNEY PAHIA-LEWIS;	)	
JANGHOON J. CHO;	)	
TRACY N. TAMONDONG;	)	
	)	
Defendants.	)	
	)	

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FIRST AMENDED COMPLAINT

COMES NOW Plaintiff RHYS NAKAKURA, by and through his undersigned attorneys, and for a Complaint against the above-named Defendants, alleges and avers as follows:

INTRODUCTION

1. This is an action to redress the deprivation under color of law, ordinances, regulations, customs, policies, practices and/or usages or rights, privileges and immunities secured to the Plaintiffs by the First, Fourth, Fifth, Sixth,

and Fourteenth Amendments to the Constitution of the United States, inter alia, and 42 U.S.C. Sections 1983 and 1985 et seq. Plaintiff further invokes the pendant jurisdiction of the Court to hear and decide claims arising out of State law and thereby alleges various State Common Law causes of action under a common nucleus of operative facts.

2. Plaintiff contends that he was falsely and unlawfully detained, unlawfully assaulted, battered, and arrested by City and County of Honolulu Police Officers and persons acting under their direction and control, in violation of applicable provisions of both the Constitution of the United States and the Constitution of the State of Hawai'i.

3. Plaintiff further contends that he was subjected to various other State Common Law causes of actions arising out of a common nucleus of operative facts.

#### JURISDICTION

4. Plaintiff brings this claim for violation of his First, Fourth, Fifth, Sixth, and Fourteenth Amendment rights under the Constitution of the United States, pursuant to the Civil Rights Act of 1871, 42 U.S.C. Sections 1983 and 1985, the Constitution of the State of Hawai'i as well as various common law causes of action.

5. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. Sections 1331, 1332(a)(1), and 1343(a)(3), as this

case involves a Federal question, and a deprivation of the Plaintiff's civil rights

PARTIES

6. Plaintiff, RHYS NAKAKURA, is and at all times mentioned herein was a resident of the City and County of Honolulu, State of Hawai'i.

7. Defendant CITY AND COUNTY OF HONOLULU is a duly organized municipal corporation organized and existing under and by virtue of the laws of the State of Hawai'i. At all times mentioned herein Defendant City and County of Honolulu was the employer of Defendants NATHAN L.Y. WHARTON, COURTNEY PAHIA-LEWIS, JANGHOON J. CHO, and TRACY N. TAMONDONG, who performed all the herein acts for and in the name of the Defendant, City and County of Honolulu.

8. Defendant, NATHAN L.Y. WHARTON (hereinafter referred to as Defendant WHARTON), was at all times relevant to the incidents that are the subject of this lawsuit, a Police Officer for the City and County of Honolulu Police Department. The acts of Defendant WHARTON, which are the subject of this lawsuit, was undertaken in the course and scope of his employment for Defendant Municipality City and County of Honolulu. He is sued in both his individual and official capacity. Upon information and belief, Defendant WHARTON is and has been a resident and citizen of the City and County of Honolulu, State of Hawai'i.

9. Defendant, COURTNEY PAHIA-LEWIS (hereinafter referred to as Defendant PAHIA-LEWIS), was at all times relevant to the incidents that are the subject of this lawsuit, a Police Officer for the City and County of Honolulu Police Department. The acts of Defendant PAHIA-LEWIS, which are the subject of this lawsuit, was undertaken in the course and scope of his employment for Defendant Municipality City and County of Honolulu. He is sued in both his individual and official capacity. Upon information and belief, Defendant PAHIA-LEWIS is and has been a resident and citizen of the City and County of Honolulu, State of Hawai'i.

10. Defendant, JANGHOON J. CHO (hereinafter referred to as Defendant CHO), was at all times relevant to the incidents that are the subject of this lawsuit, a Police Officer for the City and County of Honolulu Police Department. The acts of Defendant CHO, which are the subject of this lawsuit, was undertaken in the course and scope of her employment for Defendant Municipality City and County of Honolulu. He is sued in both his individual and official capacity. Upon information and belief, Defendant CHO is and has been a resident and citizen of the City and County of Honolulu, State of Hawai'i.

11. Defendant, TRACY N. TAMONDONG (hereinafter referred to as Defendant TAMONDONG), was at all times relevant to the incidents that are the subject of this lawsuit, a Police Officer for the City and County of Honolulu Police Department. The acts

of Defendant TAMONDONG, which are the subject of this lawsuit, was undertaken in the course and scope of his employment for Defendant Municipality City and County of Honolulu. He is sued in both his individual and official capacity. Upon information and belief, Defendant TAMONDONG is and has been a resident and citizen of the City and County of Honolulu, State of Hawai'i.

12. Plaintiff is informed and believes that other individuals acting in the capacity of Honolulu Police Officers assisted, aided and abetted in committing the acts as more fully set forth in the complaint, and will seek leave to amend the complaint to add said individuals when their names, acts and omissions giving rise to the complaint are more fully known.

#### FACTUAL ALLEGATIONS

13. On or about Friday, June 23, 2017 at approximately 7:45 p.m. Plaintiff was in the area of 193 Paoa Place, Fort DeRussy, Waikiki, Hawai'i.

14. At the aforementioned said day and time Defendant WHARTON briefed Defendants PAHIA-LEWIS, CHO, and TAMONDONG that they were going to be addressing peddling violations in in the Waikiki District, on the beach area located behind the Hilton Hawaiian Village Hotels.

15. At said date and time Defendant TAMONDONG saw Plaintiff standing next to a table with LED lit objects on the table that was set up on the sand in said area.

16. Defendant CHO went to investigate if a peddling violation was occurring.

17. As Defendant CHO approached Plaintiff, he noted that there was a crowd of people milling around Plaintiff.

18. Defendant CHO observed Plaintiff standing behind a table that had "light up helicopters".

19. Defendant CHO stated that Plaintiff was demonstrating how the "light up helicopters" worked.

20. Defendant CHO stated that Plaintiff related that the "light up helicopters" were \$10.00 for three or \$20.00 for nine.

21. Defendant CHO allegedly presented Plaintiff with a pre-recorded twenty-dollar bill (\$20.00) and Plaintiff handed Defendant CHO three pieces of the "light up helicopters", gave operating instructions and a ten-dollar bill (\$10.00) back to CHO.

22. According to Defendant CHO, Plaintiff placed the twenty-dollar bill in his shirt pocket.

23. Defendant CHO then informed Defendants PAHIA-LEWIS and TAMONDONG of the alleged transaction.

24. Thereafter Defendants PAHIA-LEWIS approached Plaintiff and identified himself as a City and County of Honolulu Police Officer and informed Plaintiff why he was being detained; that he had sold a product to a plain clothes police officer.

25. Defendant PAHIA-LEWIS next asked Plaintiff to produce identification and Plaintiff complied by producing an identification that was a "Polynesian Kingdom of Atooi" identification card.

26. Plaintiff inquired with Defendant PAHIA-LEWIS as to why he was being detained when Defendant TAMONDONG came up to Plaintiff and informed Plaintiff that he was being placed under arrest.

27. As Plaintiff turned to address Defendant TAMONDONG Defendants TAMONDONG and PAHIA-LEWIS grabbed Plaintiff and took him by his shoulders and forced him to the ground pushing Plaintiff face first into the sand.

28. Defendant CHO assisted Defendants PAHIA-LEWIS and TAMONDONG taking down Plaintiff by coming up to Plaintiff's head and placing his left arm around Plaintiff's head placing him in a headlock and pushed Plaintiff's body down on the ground with his body weight while keeping Plaintiff's face buried in the sand.

29. As Defendants PAHIA-LEWIS, TAMONDONG, and CHO took down Plaintiff, Defendant WHARTON then grabbed Plaintiff by his legs as he lay face down in the sand.

30. As a result of the force that was used on Plaintiff by Defendants, and each of them, Plaintiff sustained injury to his right shoulder, and due to Defendant's use of force Plaintiff

was forced to inhale and swallow sand causing Plaintiff to vomit and cough up sand that he had inhaled.

31. Defendants took Plaintiff to the hospital for care and treatment as a result of the excessive force that was used in effectuating the arrest.

32. Following the discharge from the hospital Defendants took Plaintiff to the Police Station for processing as a result of being placed under arrest for peddling.

33. At the Police Station Defendants prepared reports and submitted all the evidence related to the Plaintiff's arrest.

34. At the time Plaintiff was booked Plaintiff did not have in his possession the prerecorded \$20.00 that Defendant CHO stated he had given Plaintiff.

35. From the time that Plaintiff allegedly sold Defendant CHO the three "light up helicopters" Plaintiff was in plain view or otherwise in police custody.

36. Defendants did not produce or submit any documentation showing that the twenty dollars (\$20.00) that was allegedly given to Plaintiff by Defendant CHO was in fact pre-recorded funds from Defendant Honolulu Police Department.

37. Defendants failed to submit into evidence the twenty dollars (\$20.00) that was allegedly given to Plaintiff by Defendant CHO that was in his possession at the time of his arrest.



38. Defendants and Defendant CHO failed to enter into evidence the ten dollars (\$10.00) that Plaintiff allegedly gave back to Defendant CHO.

39. Due to the injury Plaintiff and complaint of pain Plaintiff complained of Plaintiff was taken to Straub Hospital for treatment.

40. According to the medical evaluation by Dr. Fredrick Ching of Straub Hospital, the injury sustained by the Plaintiff was pain to the right shoulder, vomiting, and foreign body in mouth.

41. At no time did Plaintiff resist the Defendants commands.

42. Said named Defendants either generated false reports, or, approved false reports that stated Plaintiff was physically aggressive, or, to the extent that the Plaintiff was injured, the injuries were caused by the Plaintiff's own wrongdoing in order to cover-up Defendant's unlawful conduct.

43. Defendants, and each of them, took steps to write reports that altered the events as they actually took place so as to appear that the other Defendants could not avoid the need to use force against the Plaintiff to effectuate his arrest and that the Plaintiff was not injured by the Defendants.

44. As a result of the excessive force that was used on Plaintiff by Defendants Plaintiff was severely injured and has

ever since suffered from serious medical conditions and continues to suffer physical, pain and distress.

COUNT I  
(Violation of Civil Rights)

45. Plaintiff realleges and incorporates by reference paragraphs 1 - 44 of the Complaint as though fully set forth and made a part hereof.

46. Acting under color of law and the authority of the Defendant Municipality, Defendant Police Officers, and each of them, intentionally, wantonly, willfully, with malice, deliberate indifference, and in negligence for Plaintiff's rights caused Plaintiff to be deprived of his Constitutional rights, including but not limited to those under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments of the United State Constitution by:

- a. Arresting the Plaintiff while he was engaged in speech that was Constitutionally protected under the First Amendment of the Constitution;
- b. Using a degree of force that was unreasonable under the circumstances, and in violation of the Plaintiff's rights to be free of an unreasonable seizure under the Fourth and Fourteenth Amendments of the United States Constitution;

- c. Depriving the Plaintiff of his liberty by subjecting him to unwarranted and unreasonable restraints in his person without due process in violation of his rights under the Fifth and Fourteenth Amendments of the Constitution;
- d. Subjecting the Plaintiff to punishment without the benefit of a trial by jury in violation of his rights under the Sixth Amendment of the Constitution.

47. Defendants, and each of them, under color of law, wantonly, willfully intentionally, with malice, deliberate indifference and in negligence to Plaintiff's rights, caused Plaintiff to be deprived of his constitutional rights including but not limited to the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution by:

- a. Failing to supervise properly the training and conduct of Defendant Police Officers;
- b. Failing to enforce the laws of the State of Hawaii, and the City and County of Honolulu;
- c. Failing to promulgate and issue rules of the Police Manual;
- d. Inadequately supervising the training and conduct of Defendant Police Officers;

- e. Failing to enforce the laws of the State of Hawaii and the City and County of Honolulu;
- f. Issuing vague, confusing, and contradictory policies concerning the use of force that are inconsistent with the requirements of the first, fourth, fifth, sixth, eighth, and fourteenth amendments of the United States Constitution.

48. Defendant City and County of Honolulu, under color of law, wantonly, willfully, intentionally, with malice, deliberate indifference for Plaintiff's rights, authorized, permitted, and tolerated the custom and practice of the unconstitutional and excessive use of force by members of the Honolulu Police Department, in particular, by Defendant Police Officers and their agents by failing to:

- a. Appoint, promote, train, and supervise members of the Honolulu Police Department who would enforce the laws in effect in the State of Hawaii and the City and County of Honolulu and who would protect the constitutional rights of the people of the City and County of Honolulu.
- b. Require the Police Chief of the Honolulu Police Department to promulgate procedures and policies for the use of force that were consistent with

the First, Fourth, Fifth, Sixth, and Fourteenth Amendments of the Constitution; and

- c. By permitting the policy and custom of using unreasonable force to exist and to be followed by the Honolulu Police Department.

49. All the aforesaid acts thereby proximately causing the deprivation of Plaintiff's rights under the First, Fourth, Fifth, Sixth, and Fourteenth amendments to the United States Constitution.

COUNT II  
(Conspiracy to Violate Civil Rights)

50. Plaintiff incorporates by reference paragraphs 1 - 50 of the Complaint as though fully set forth and made a part hereof.

51. Plaintiff, as was alleged by Defendants, was not engaged in a manner of disorderly conduct or other such conduct that justified or required the use of force by the Defendants at the time of Plaintiff's arrest.

52. The criminal charges filed against the Plaintiff by Defendant Police Officers WHARTON, PAHIA-LEWIS, TAMONDONG and CHO was a mere pretext to provide color for the arrest and punishment of the Plaintiff.

53. In order to justify the excessive use of force by Defendants WHARTON, PAHIA-LEWIS, TAMONDONG and CHO Defendants

WHARTON, PAHIA-LEWIS, TAMONDONG and CHO prepared reports and other documents that stated that the Plaintiff was acting in a manner that justified their use of force to effectuate the arrest, and to contain the Plaintiff.

55. In order to further justify the unconstitutional acts of the Defendants as set forth, Defendants WHARTON, while acting in his supervisory position as Sergeant overseeing and approving acts of the Defendants signed off on the reports prepared by Defendants PAHIA-LEWIS, TAMONDONG and CHO to justify their excessive use of force.

56. Plaintiff has been subjected, by the above recited acts, to the deprivation by Defendants, under color of law and of the customs and usages of the State of Hawaii, of rights, privileges and immunities secured to him by the Constitution and law of the United States, particularly his right of association and speech guaranteed under the First Amendment of the Constitution, his right to security of person and freedom from arrest, except on probable cause, supported by oath or affirmation, guaranteed by the Fourth Amendment, his right to be informed of the true nature and cause of the accusation against him, guaranteed by the Sixth Amendment to the Constitution; his right not to be deprived of liberty without due process of law, guaranteed by the Fifth Amendment; and his right to the equal

protection under the laws guaranteed under the Fourteenth Amendment to the Constitution.

57. In doing the acts and things above complained of, Defendants were conspirators engaged in a scheme and conspiracy designed and intended to deny and deprive Plaintiff of rights guaranteed to him under the Constitution and laws of the United States, as hereinabove enumerated and to cover up their unlawful excessive use of force against the Plaintiff.

58. As a direct consequence and result of the acts of Defendants hereinabove complained of, Plaintiff was deprived of liberty for a substantial period of time, suffered anxiety, distress, discomfort, and embarrassment. His reputation was impaired and he had to spend sums of money and time in traveling to and from the Courthouse to defend himself against the charges brought against him and to obtain medical care and treatment for the injuries that he suffered.

COUNT III  
(Assault and Battery)

59. Plaintiff incorporates by reference paragraphs 1 - 58 of the Complaint as though fully set forth and made a part hereof.

60. The above-described excessive force that was used against the Plaintiff by Defendants on the above referenced date

constitutes assault and battery against the Plaintiff under the laws of the State of Hawaii.

61. As a result of the assault and battery upon the Plaintiff by the Defendants, Plaintiff has suffered severe and permanent physical injuries and distress.

62. In doing the aforesaid acts, Defendants WHARTON, PAHIA-LEWIS, TAMONDONG and CHO acted in an intentional, malicious, wanton and willful manner with a conscious disregard for the rights of the Plaintiff entitling the Plaintiff to an award of punitive damages.

COUNT IV  
(Gross Negligence/Negligence)

63. Plaintiff incorporates by reference paragraphs 1 - 62 of the Complaint as though fully set forth and made a part hereof.

64. The above describe acts of the Defendants and each of them on the above describe date constitute negligence and gross negligence under the laws of the State of Hawaii.

65. Defendant, WHARTON was grossly negligent and/or negligent in that he supported the above described injuries to Plaintiff by failing to properly supervise and control the conduct of Defendants PAHIA-LEWIS, TAMONDONG and CHO and other unknown officers.



66. Defendants PAHIA-LEWIS, TAMONDONG and CHO, and other unknown officers were negligence and grossly negligent by their failure to adhere to department policy and by causing severe personal injury to the Plaintiff.

67. As a direct and proximate result of the injuries sustained by the Plaintiff, Plaintiff has suffered damages all in an amount according to proof.

68. In doing the aforesaid acts, Defendants WHARTON, PAHIA-LEWIS, TAMONDONG and CHO acted in an intentional, malicious, wanton and willful manner with a conscious disregard for the rights of the Plaintiff entitling the Plaintiff to an award of punitive damages.

COUNT V

(Intentional/Negligent Infliction of Emotional Distress)

69. Plaintiff incorporates by reference paragraphs 1 - 68 of the Complaint as though fully set forth and made a part hereof.

70. Defendants WHARTON, PAHIA-LEWIS, TAMONDONG and CHO in doing the aforementioned acts acted in an extreme and outrageous manner, intentionally and with reckless disregard for Plaintiff's welfare, inflicted severe and permanent emotional distress in Plaintiff.

71. As a proximate result of the injuries sustained by the Plaintiff, Plaintiff has suffered damages all in an amount according to proof.

72. In doing the aforesaid acts, Defendants WHARTON, PAHIA-LEWIS, TAMONDONG and CHO acted in an intentional, malicious, wanton and willful manner with a conscious disregard for the rights of the Plaintiff entitling the Plaintiff to an award of punitive damages.

COUNT VI  
(False Imprisonment)

73. Plaintiff incorporates by reference paragraphs 1-72 of the Complaint as though fully set forth and made a part hereof.

74. Defendants WHARTON, PAHIA-LEWIS, TAMONDONG and CHO, and other unknown officers and their agents, in doing the aforementioned acts arrested the Plaintiff as a pretext to cover up the fact that the Plaintiff was not engaged in disorderly conduct or otherwise interfering in the execution of their duties. Said Defendants falsely detained and imprisoned the Plaintiff.

75. As a proximate result of the injuries sustained by the Plaintiff, Plaintiff has suffered damages all in an amount according to proof.

76. In doing the aforesaid acts, Defendants WHARTON, PAHIA-LEWIS, TAMONDONG and CHO acted in an intentional,

malicious, wanton and willful manner with a conscious disregard for the rights of the Plaintiff entitling the Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff demands judgment:

1. For general damages as to all Defendants according to proof;
2. For special damages as to all Defendants according to proof;
3. For compensatory damages as to all Defendants according to proof;
4. For Punitive Damages as to Defendants WHARTON, PAHIA-LEWIS, TAMONDONG and CHO;
5. For attorney's fees pursuant to 43 U.S.C. Section 1988
6. For costs and fees of bringing suit;
7. For such other and further relief as the Court is just and proper.

DATED: Honolulu, Hawaii, October 29, 2019.

/S/ Richard D. Gronna  
RICHARD D. GRONNA  
Attorney for Plaintiff  
RHYS NAKAKURA

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAI'I

RHYS NAKAKURA,	)	CIVIL NO. 19-00320 DKW-KJM
	)	
Plaintiff,	)	DEMAND FOR JURY
	)	
vs.	)	
	)	
CITY AND COUNTY OF HONOLULU, a	)	
Municipal Corporation;	)	
NATHAN L.Y. WHARTON;	)	
COURTNEY PAHIA-LEWIS;	)	
JANGHOON J. CHO;	)	
TRACY N. TAMONDONG;	)	
	)	
Defendants.	)	
	)	

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DEMAND FOR JURY

COMES NOW, RHYS NAKAKURA, by and through his undersigned attorney, and hereby demands a trial by jury on all issues trial herein.

DATED: Honolulu, Hawaii October 29, 2019.

/S/ Richard D. Gronna  
RICHARD D. GRONNA  
Attorney for Plaintiff  
RHYS NAKAKURA

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAI'I

RHYS NAKAKURA,	)	CIVIL NO. 19-00320 DKW-KJM
	)	
Plaintiff,	)	SUMMONS
	)	
vs.	)	
	)	
CITY AND COUNTY OF HONOLULU, a	)	
Municipal Corporation;	)	
NATHAN L.Y. WHARTON;	)	
COURTNEY PAHIA-LEWIS;	)	
JANGHOON J. CHO;	)	
TRACY N. TAMONDONG;	)	
	)	
Defendants.	)	
	)	

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**SUMMONS**

TO: ALL NAMED DEFENDANTS

CITY AND COUNTY OF HONOLULU, a Municipal Corporation;  
NATHAN L.Y. WHARTON;  
COURTNEY PAHIA-LEWIS;  
JANGHOON J. CHO;  
TRACY N. TAMONDONG;

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 First Amended 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:

RICHARD D. GRONNA #5391  
Attorney at Law  
841 Bishop Street, Suite 2201  
Honolulu, Hawaii 96813  
Telephone (808) 523-2441  
e-mail: rgronna@hawaii-personal-injury.com

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

CLERK OF COURT

DATED: \_\_\_\_\_