

Of Counsel:
Law Offices of Richard E. Wilson, LLC

RICHARD E. WILSON 5614
735 Bishop Street, Suite 306
Honolulu, Hawaii 96813
Telephone (808) 545-1311
Facsimile (808) 545-1388
Email: rewilson_law@yahoo.com

Of Counsel:
LAW OFFICES OF SCOTT K. COLLINS

SCOTT K. COLLINS 4375
55 Merchant Street, Suite 1850
Honolulu, HI 96813
Telephone: (808) 533-3335
Facsimile: (808) 533-3336
Email: attorney@scollinslaw.com

Attorneys for Plaintiff THOMAS AIU

Electronically Filed
FIRST CIRCUIT
1CCV-21-0001111
10-SEP-2021
03:12 PM
Dkt. 1 CMPS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

THOMAS K. AIU,)	CIVIL NO. _____
Plaintiff,)	(Other civil action)
)	
vs.)	
)	VERIFIED COMPLAINT; VERIFICATION;
)	DEMAND FOR JURY TRIAL; SUMMONS
HAWAIIAN AIRLINES INC; JOHN)	
DOES 1-10; JANE DOES 1-10; DOE)	
CORPORATIONS 1-10; DOE)	
PARTNERSHIPS 1-10; DOE)	
UNINCORPORATED ORGANIZATIONS)	
1-10; and DOE GOVERNMENTAL)	
AGENCIES 1-10;)	
Defendants.)	
_____)	

VERIFIED COMPLAINT

Plaintiff Thomas K. Aiu, by and through his counsel, Law Offices of Richard E, Wilson, LLC and Law Offices of Scott K. Collins, hereby alleges and avers the following verified complaint against Defendant Hawaiian Airlines, Inc:

1. Plaintiff Thomas K. Aiu ("Plaintiff") is a resident of the City and County of Honolulu, State of Hawaii.

2. Defendant Hawaiian Airlines, Inc. ("Hawaiian") is a Delaware corporation, licensed to conduct business in the State of Hawaii.

3. Defendants JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE UNINCORPORATED ORGANIZATIONS 1-10; and DOE GOVERNMENTAL AGENCIES 1-10 are persons, partnerships, corporations, associations, governmental units, trusts or entities whose names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff and his attorneys despite diligent and good-faith efforts to ascertain their true names, identities and capacities, who may be, or are, responsible and/or liable to Plaintiff (individually or collectively) for the injuries and damages sustained by Plaintiff by acting in a negligent, wrongful and/or tortious manner presently unknown to Plaintiff which proximately caused and/or contributed to the damages sustained by Plaintiff. Accordingly, Plaintiff has sued the unidentified Doe Defendants herein with fictitious names pursuant to Rule 17(d) of the Hawaii Rules of Civil Procedure. Plaintiff will seek leave of Court to amend this Complaint to allege the true names of the Doe Defendants and describe their activities, responsibilities and/or capacities when the same is ascertained.

4. On August 31, 2015, Hawaiian selected Plaintiff as Hawaiian's first Director, Corporate Security, in its 90-year history. Plaintiff, retired from the United States Department of Justice/DEA after 28 years of distinguished service, was hired by and initially reported to Patrick Sakole, Managing Director, Safety and Regulatory Security. Mr. Sakole retired on April 15, 2016, and Plaintiff then reported to Neil Schnaak. Mr. Schnaak was hired on March 31, 2016, as Managing Director, Safety, Security & Quality Assurance. On October 16, 2016, Plaintiff began reporting to Eric Kaler, the Senior Director, Airline Security. After Mr. Kaler was terminated on April 26, 2019, Plaintiff again reported to Mr. Schnaak until he terminated Plaintiff five months later.

5. Plaintiff's duties and responsibilities included, *inter alia*, overseeing all aspects of security investigations, loss prevention, physical security, and fraud, waste, abuse, misconduct, mismanagement, and representing Hawaiian in relevant industry forums. Four employees reported to Plaintiff: External Investigator; Internal Investigator; Manager, Credentialing & Access Control; and Specialist, Security Credentialing. Plaintiff also managed 15 security

vendor employees which provided facility security for the Corporate Headquarters and Hawaiian's Maintenance/Cargo Hangers.

6. Plaintiff was terminated on September 12, 2019, purportedly because "his behavior and performance [did] not meet the requirements of a Director level."

7. The reasons Hawaiian provided for Plaintiff's termination were pure pretext. Indeed, his termination had nothing to do with either his attitude or work performance. Plaintiff, who strived to ensure that Hawaiian fulfilled its obligations to the letter of the law, was discharged in order to preserve a corporate culture which eschewed transparency, and instead emphasized secrecy over compliance, loyalty over safety.

8. Throughout his tenure as Director of Corporate Security, Plaintiff's superiors intervened and interfered with his ability to properly perform his job. More problematic were the repeated instructions from his second line (and later direct) supervisor, Mr. Schnaak, to prematurely "close down investigations," and ignore federal laws, rules, and regulations *e.g.*, he repeatedly ordered Plaintiff to disregard and/or not to report violations to the relevant federal agencies, including but not limited to, the TSA, FAA, CBP, and FBI.

9. Plaintiff first observed Hawaiian's pattern and practice of enforcing a code of silence to the detriment of its customer, employees, shareholders, and investors shortly after he was hired in 2015.

10. The following examples illustrate the type of roadblocks Hawaiian's management placed to stymie Plaintiff's ability to properly perform his job.

THE DATA BREACH

11. In September 2015, Hawaiian's Reservations Database was compromised by an unknown third-party entity. The database contained highly sensitive employee, customer, and vendor travel information, a/k/a PII (personal identifiable information), *e.g.*, full legal names, names of children, parents, grandparents, and other family relationships, email, mailing, and residential addresses, telephone and mobile phone numbers, business addresses, birth dates, gender information, U.S. Passport information, foreign passport information, Global Entry information, Resident Alien Information, Redress information, frequent flier account numbers, known travel numbers, TSA precheck information, and partial credit card billing information, among others. Such sensitive information becomes the basis for identity theft, unlawful procurement, and fraud.

12. Upon becoming aware of the security breach, Plaintiff, as Director of Corporate Security, alerted colleagues at the Department of Homeland Security (“DHS”) who arrived to assess the breadth and severity of the breach. However, when the DHS agents sought additional information from Hawaiian, Hawaiian—through its corporate and legal departments—declined to further discuss the breach or provide any additional information.

13. Upon information and belief, the data breach, which likely touched almost every local traveler in the State of Hawaii (as Hawaiian was the only inter-island carrier at the time as Southwest had not yet entered the market), was not reported to the Federal Trade Commission (“FTC”), the Securities and Exchange Commission (“SEC”), Department of Consumer Protection (“DCP”), the Securities Enforcement Branch and Consumer Protection Units, both within the Department of Commerce and Consumer Affairs, State of Hawaii, as required by law, or the media, as a “good faith” gesture to protect the consumer.

14. Following his investigation and based upon the information that he had acquired therefrom, Plaintiff recommended as a precautionary and protective measure, that Hawaiian disclose the data breach to the general public, to include all customers, employees, and shareholders. Hawaiian rejected Plaintiff’s recommendation, and was specifically told by then General Counsel Hoyt Zia not to proceed with any further investigation. Unlike other companies, both large and small, which have taken proactive, good faith steps to disclose an unauthorized breach of sensitive PII and protect its customers from fraud and identity theft (*e.g.* Experian, Equifax, Marriot/Starwood, Yahoo, OPM, or even Zippy’s), on information and belief, Hawaiian has never notified authorities or disclosed this matter to consumers.

THE ASSAULT

15. In 2016, a male Hawaiian flight attendant brutally beat John Doe,¹ the CEO of several major California health organizations in a Sacramento hotel for complaining about the noise. Plaintiff personally investigated the assault.

16. His investigation concluded that several flight attendants, who had been on an extended layover, had engaged in a night of heavy drinking. Early in the morning, Mr. Doe knocked on their door and asked if they could keep the noise down because he had an early morning meeting. The subject flight attendant, an MMA (mixed martial arts) trained fighter shoved Mr. Doe to the ground, straddled him in the hallway, and then proceed to savagely beat

¹ While his real name is known, Plaintiff is using the “Doe” designation to protect his privacy.

him. Paramedics responded and Mr. Doe was taken to the emergency room for treatment. As a result of the assault, Mr. Doe suffered a concussion, facial lacerations, and severe bruising.

17. Plaintiff concluded from his investigation that the flight attendant was highly intoxicated, and that the attack was a felony criminal assault. Plaintiff recommended that the flight attendant be summarily terminated because Hawaiian had a zero-tolerance policy for workplace violence, and especially since this was not an isolated incident—this individual had prior complaints. Hawaiian chose to instead give the flight attendant several days off, and he was then reinstated to duty. The flight attendant was never ordered to undergo any counseling or anger management training.

18. Under the applicable federal law all Hawaiian crews on layover are considered “on duty” and on company premises, as Hawaiian pays for the lodging. Accordingly, the assault should have been reported as a safety issue involving a flight crew to the FAA. However, in order to circumvent its reporting obligations to the FAA, Hawaiian chose to prematurely terminate the investigation.

THE PUNCTURED A330

19. In 2017, an A330 originating from Los Angeles arrived in Lihue. Upon its arrival and before departure to Honolulu, it was discovered that the lower fuselage near the rear cargo door had a sizeable hole (3” x 4”) which penetrated the airframe. Upon an extensive investigation led by the Plaintiff and his Corporate Security Team, it was discovered that a third-party vendor’s cargo loader at LAX had caused the damage.

20. Essentially, a fully laden A330 with a compromised airframe, with approximately 300+ passengers and crew, flew 2500 miles over the Pacific Ocean. Neither the passengers nor the flight crew was informed of the breach and risk of harm.

21. Despite Plaintiff’s clear position that this must be reported to the FAA, perhaps TSA, but most importantly, the customers on the flight, Hawaiian refused to report the incident. This is a clear violation of federal law and complete disregard for the duty of care required for its customers.

THE PILOT-SHOOTER IN MAUI

22. Also, in 2017, a Hawaiian pilot, a friend, and their two female companions were joyriding in the late evening hours near Kihei, Maui. The two men were arrested after the Hawaiian pilot fired a semi-automatic pistol at oncoming vehicles and nearby residences.

23. The Maui Police Department was called to investigate and recovered bullets from residences and vehicles. The semi-automatic weapon and spent shells were recovered in the Hawaiian pilot's vehicle. Plaintiff, on behalf of Hawaiian, also performed an investigation, concluded that the Hawaiian pilot and his friend fired the shots while likely inebriated.

24. Hawaiian, despite having reviewed Plaintiff's internal investigation, took no disciplinary action against the pilot. In fact, Hawaiian, through Mr. Schnaak and Mr. Kaler, ordered Plaintiff to terminate the investigation. Hawaiian, which has statutory oversight of all commercial pilots, likewise failed to notify the FAA as required by federal law. However, in order to circumvent its reporting obligations to the FAA, Hawaiian chose to prematurely terminate the investigation.

THE FIRST PILOT/SEXUAL ASSAULT (SYDNEY)

25. In 2018 during a layover in Sydney, Australia, a Hawaiian pilot was alleged to have repeatedly raped a female flight attendant. Plaintiff sent his investigator to meet with detectives from the New South Wales Police Department, where the flight attendant victim filed a criminal complaint. After an investigation which spanned several months, Plaintiff's investigation confirmed that the sexual assault had occurred and that the Hawaiian pilot was responsible.

26. Plaintiff recommended that the Hawaiian pilot be immediately terminated, and that Hawaiian alert the FAA about the incident. Instead, Hawaiian allowed the pilot to resign in lieu of discipline. On information and belief, the subject pilot transferred to Delta Airlines. On further information and belief Hawaiian did not provide Delta with Plaintiff's investigative report—confirming that the pilot is a sexual predator—for the sexual assault of a female flight attendant on a layover.

27. However, in order to circumvent its reporting obligations to the FAA, Hawaiian again chose to prematurely terminate the investigation. On information and belief, the New South Wales' criminal case remained open.

THE SECOND PILOT/SEXUAL ASSAULT (LAS VEGAS)

28. In 2018, a Hawaiian pilot, who lives in Las Vegas, was accused of raping a woman while on layover in Orange County. Plaintiff reviewed the investigative report from the Orange County Sheriff's Department, and interviewed the detective assigned to the case. The detective informed the Plaintiff that an "undercover" call was initiated between the victim and

the pilot, wherein the pilot admitted the sexual assault and apologized for it. Hawaiian denied Plaintiff's request to open a full internal investigation.

29. Hawaiian did not discharge the pilot, who, as of Plaintiff's termination, remained gainfully employed by Hawaiian as a pilot. In an effort to protect Hawaiian's female flight attendant population, Plaintiff requested to conduct a full internal investigation but was told by his immediate supervisor, Mr. Kaler, that Neil Schnaak had ordered that no investigation occur. Following the alleged assault, Hawaiian has failed to take any steps to ensure female flight attendant safety when working with this pilot. Once again in order to circumvent its reporting obligations to the FAA, Hawaiian chose to prematurely terminate the investigation.

THE HONG KONG SCAM

30. In 2018, Hawaiian was victimized by a Business Email Compromise ("BEC") scam. Hawaiian's vendor, OPTIMARES (an Italian aircraft furniture company), supplied Hawaiian with its first-class lay-flat seats, replacement parts, and other related equipment. Invoicing had traditionally been conducted via wire transfers from Hawaiian's Bank of Hawaii account to OPTIMARES Italian bank of record.

31. Fraudsters, posing as OPTIMARES representatives, emailed Hawaiian and advised it that OPTIMARES had changed its financial institutions from its Italian based bank to one located in Hong Kong. The email provided new account numbers and routing numbers. Hawaiian did not question the abrupt change in OPTIMARES's routine and regular banking procedures. Hawaiian took no steps to verify the legitimacy of the instructions changing bank accounts

32. Hawaiian did not question the new bank account's name—Yao Ming. Yao Ming is also the famous name of former, now retired NBA center with the Houston Rockets. Notwithstanding what should have been a sea of red flags, Hawaiian wired \$750,000.00 to the Yao Ming account in Hong Kong.

33. When Hawaiian management learned of the email compromise, Plaintiff was requested to assist with an investigation. Although he immediately contacted the FBI and the FBI's BEC fraud unit, it was, by then, too late to initiate a wire transfer stop (known also as a SWIFT wire hold) because the wire transfer was more than 24 hours old.

34. At the FBI's suggestion, Plaintiff sought permission for his Corporate Security Department personnel to interview OPTIMARES staff to ascertain when and how email security

had been compromised. Hawaiian declined. Hawaiian Corporate leadership and Mr. Schnaak ordered Plaintiff and his Corporate Security Team not to further assist the FBI and terminate any internal investigation.

35. Hawaiian has never formally notified, as required by law, the SEC, FTC, or the DCCA's Securities Enforcement Division of the email scam.

THE ACTIVE SHOOTER

36. In 2018, Plaintiff learned that a Hawaiian employee's husband had threatened to shoot and kill her, and all Hawaiian employees around her desk at the corporate headquarters. The husband, a convicted felon, had in excess of 57 felony arrests, several drug convictions, two TROs by a former spouse and girlfriend, a federal firearms conviction, among other run-ins with the police.

37. In response, Plaintiff initiated an increased security protocol at corporate headquarters, notified HPD, and HPD Telecommunications Section and EMS Headquarters (both neighbors of Hawaiian's corporate headquarters). Later Corporate Security notified TSA's Pacific Region Headquarters of the threat as required by federal law, and for practical security reasons since it is located at the same facility.

38. In accordance with its internal directives, TSA posted a picture of the employee's suspect husband at every airport checkpoint with instructions to notify sheriffs or HPD if he was sighted.

39. In response, Hawaiian, through Mr. Schnaak, ordered recall of the issued "BOLO" and ordered Plaintiff to notify TSA to pull down the pictures of the husband from all checkpoints. Hawaiian, through Mr. Schnaak, then issued a "stand down" order notwithstanding that the threat had not abated a willful and intentional violation of applicable federal laws to include the FAA and TSA AOSSP (Aircraft Operator Standard Security Program) rules and regulations. Hawaiian and Mr. Schnaak's disregard for essential security safeguards, unreasonably placed Hawaiian employees, customers, and the general public in grave danger.

THE THIRD PILOT/SECUAL ASSAULT (NEW YORK)

40. In 2018, Plaintiff learned of a possible sexual assault involving a Hawaiian pilot in New York during a layover, and contacted a former NYPD colleague for assistance.

41. Plaintiff was informed that the NYPD Special Victims Unit was investigating the sexual assault, and determined that a Hawaiian pilot had likely sexually assaulted a woman in a

hotel room. Plaintiff was further advised that the woman was willing to press charges and could identify the pilot. Plaintiff received video surveillance of the Hawaiian pilot entering and leaving the hotel lobby with the woman/victim.

42. When Hawaiian management learned that the Plaintiff was assisting the NYPD and conducting an internal investigation of the pilot, he was ordered by Mr. Schnaak to terminate the investigation. The subject pilot is still employed by Hawaiian, and on information and belief, no disciplinary action has been taken against him. Keeping with its pattern and practice of circumventing its reporting obligations to the FAA, Hawaiian chose to prematurely terminate the investigation.

FLIGHT HA 47 EMERGENCY LANDING

43. In 2019, HA 47 inbound from Oakland to Honolulu declared an emergency when smoke began to fill the cockpit, cargo hold, and cabin. The aircraft was given priority landing authority and went to end of the runway near Lagoon Drive. HNL Fire Rescue and EMS Ambulances responded to the emergency as well. The pilot deployed the emergency chutes and ordered all passengers to deplane immediately as per flight attendant instructions.

44. After the passengers disembarked, Hawaiian Corporate Security, sheriffs, and the FBI secured the aircraft, which was towed to the Hawaiian hangar. All luggage was removed from the aircraft by TSA for screening of all carry on and checked luggage (in search of a possible incendiary device), and the FBI notified its Joint Terrorism Task Force to interview all passengers.

45. Hawaiian, through Mr. Schnaak, told Plaintiff that the FBI's involvement was unnecessary, and that the FBI should not have been contacted or involved it in connection with this, and any other investigation. Plaintiff responded, reminding Mr. Schnaak that with a declared emergency, 290 passengers on board, and an unknown smoke and potential fire sources, the FBI had primary jurisdiction to determine whether or not a criminal/terrorist act had occurred.

46. Hawaiian dismissed Plaintiff's response, and ordered that in any future type of occurrence, the FBI was not to be contacted. Plaintiff responded again, telling Mr. Schnaak that pursuant to TSA, FAA, and airport protocols, the FBI must be notified when an emergency landing is declared. Although the FBI and other agencies had sufficient time to perform a complete a thorough investigation without impact (since the aircraft had deployed its emergency

slides it was not flight-worthy), Mr. Schnaak refused to budge; he stood by its order not to call the FBI in any future emergency.

THE KIM INCIDENT

47. On February 27, 2019, Kyong Chol Kim, a Korean national, flew to HNL via HA 460, and attempted entry into the U.S. He was denied entry for failing to admit a prior sex assault/rape conviction in Chicago.

48. Two days later, he was placed on HA 459 destined for Incheon, Korea. While on flight, he became intoxicated and disruptive requiring the flight to return to HNL. HA 459 was met by the FBI, CBP, Sheriffs, and Plaintiff's Corporate Security Team. The FBI investigated the matter and the U.S. Attorney's Office determined that evidence existed to prosecute KIM for the Interference with Flight Crew, a federal felony.

49. On July 3, 2019, Kim was convicted of Interference with Flight Crew, sentenced to six months in the federal detention center, and ordered to pay \$170,000.00² in restitution to Hawaiian.

50. On August 19, 2019, Customs and Border Patrol ("CBP") advised the Plaintiff that Kim would be released on August 29, 2019 but would be held on a detainer. Federal law required that Kim be placed on the next HA available flight to his "country of origin," Korea.

51. On the day of Kim's release, Plaintiff obtained special permission from CBP to place Kim on a Korean Airline flight to Incheon, which departed at 12:30 p.m. Although Hawaiian was required by federal law to return Kim, Plaintiff obtained a waiver from CBP to use Korean Airlines instead (due to an internal directive wherein Hawaiian placed Kim on a "no fly" list). Korean Airlines agreed to transport Kim. However, when he was brought to the gate, the Korean Airlines representative refused to allow Kim to board without an escort. CBP thereafter issued a lawful order and informed the Plaintiff that Kim must be placed on the very next ICN flight, which was Hawaiian, HA 459, departing at 3:00 p.m.

52. Plaintiff, under his authority as Director of Corporate Security and in compliance with federal law, booked Kim's return on flight HA 459 as required by the lawful CBP order and

² The actual Restitution Order by the United States District Court was \$172,337.04 and is directly attributed to Plaintiff's initiative in maintaining a professional working relationship with the U.S. Attorney's Office without assistance from Hawaiian Legal, Hawaiian Corporate, or Mr. Schnaak. As of his termination, the Order represented the largest federal restitution order to any major United States commercial carrier (*e.g.*, American, Delta, Southwest, United).

underlying federal law. Plaintiff also secured Hoku Beltz, Hawaiian's Manager for International Security, as Kim's escort.

53. On the same day at 2:30 p.m., Mr. Schnaak contacted the Plaintiff and ordered him not to allow Kim to travel on HA 459 because Hawaiian had previously placed Kim on a "no flight" list. Plaintiff told Mr. Schnaak that under federal law, Kim was required to be placed on the next available flight—HA 459. Plaintiff reminded Mr. Schnaak that CBP had issued him a lawful directive to place Kim on the next available return flight.

54. In order to further reassure Mr. Schnaak, Plaintiff told him that all necessary precautions were already in place: 1) a no alcohol service order, 2) Kim would be placed in the aft of the aircraft, and 3) there would be an escort.

55. Mr. Schnaak, however, would not relent. In clear violation of federal law and the CBP directive, Mr. Schnaak insisted that Plaintiff remove Kim from flight HA 459's passenger manifest. Under duress, Plaintiff acceded—he removed Kim from flight HA 459.

56. Two days later on August 31, 2019, Plaintiff was finally permitted to place Kim on a Korean Airlines flight to Incheon, escorted by two members of Plaintiff's corporate security team. Kim arrived in Incheon without incident.

57. In response to the Plaintiff's actions in connection with the Kim incident, Mr. Schnaak warned the Plaintiff that "This is on you!" While Mr. Schnaak did not go on to explain what he meant, Plaintiff took Mr. Schnaak's statement as an explicit termination threat. It was one thing for Hawaiian to shut down investigations, and undermine the Plaintiff's authority, it was another for Mr. Schnaak to threaten his termination for reporting the Kim incident internally to upper management.

58. This was not the first time an issue arose with Mr. Schnaak. Plaintiff previously complained that Mr. Schnaak had created a hostile work environment and discriminated against Plaintiff and his team in June and December 2018. Both matters were reported to Hawaiian's HR department. Not surprisingly, Hawaiian's "internal" investigation, as with all complaints against Mr. Schnaak, failed to sustain Plaintiff's complaints.

59. In response to Plaintiff's second complaint, Hawaiian retaliated by placing the Plaintiff on a Personal Improvement Plan ("PIP") on February 8, 2019. Plaintiff refused to sign the PIP acknowledgement section, but he agreed to fully comply with the directives. Although Plaintiff's immediate supervisor at the time, Mr. Kaler, issued a last and final performance

warning letter to Plaintiff on March 25, 2019, Mr. Kaler himself was terminated a month later for theft. Mr. Schnaak closed the PIP on June 5, 2019, as having been “successfully completed” by the Plaintiff.

60. The Kim incident was different. It was one thing for Mr. Schnaak to repeatedly order Plaintiff to prematurely terminate internal investigations in order to circumvent reporting obligations to the FAA, but it was an entirely different matter for Mr. Schnaak to order Plaintiff to actually violate federal law and a CBP directive. Plaintiff realized that there would be consequences for his vocal opposition and abject refusal to simply go-along-with Mr. Schnaak’s instructions to disregard federal law.

61. Plaintiff also anticipated that Mr. Schnaak would retaliate because Plaintiff had involved, and correctly so, senior Hawaiian management in coordination with resolving the Kim incident. Mr. Schnaak made it crystal clear to the Plaintiff that he was angry that Plaintiff had “gone above his head.”

62. Accordingly, Plaintiff became very concerned that Mr. Schnaak would take steps to get rid of him once and for all. Plaintiff anticipated that Mr. Schnaak would attempt to terminate him in order to change the narrative with a coverup, *i.e.*, blame Plaintiff for any problems associated with the Kim incident by chalking it all up to insubordination.

63. Therefore, on September 10, 2019, Plaintiff prepared and transmitted a memorandum to Hawaiian’s legal department entitled: “Race Base/Age Discrimination, Hostile Work Environment, and Retaliation by Neil Schnaak.” In that memorandum, Plaintiff attempted to highlight some of Mr. Schnaak’s conduct, including the Kim incident, and closed with the following request:

“Given the past practice of Neil towards me and other subordinates (who were terminated), retaliation is anticipated and expected. As the party bringing forth these claims, I seek HA protective measures for both me and my CORPSEC Team.”

64. On September 12, 2019, less than 24 hours after filing his Complaint against Mr. Schnaak, Mr. Schnaak called Plaintiff into a meeting and summarily terminated him. Aside from vague and unspecific summary statements that Plaintiff’s “behavior and performance does not meet the requirements of a Director level,” the September 12th termination letter focused on Plaintiff’s handling of the Kim incident.

65. As Plaintiff expected, Mr. Schnaak narrative was that he terminated Plaintiff for insubordination, to wit: not keeping the Kim incident, and his directives to Plaintiff to violate federal law, a departmental secret.

66. In fact, Mr. Schnaak actually admitted that Plaintiff was being terminated for whistleblowing activities, *i.e.*, reporting to senior management that Hawaiian's handling of the Kim incident was a violation of federal law.

Additionally, your communication to me on August 29, 2019 concerning the transportation of Mr. Kim was unprofessional, uncooperative and not keeping with the items identified in the Performance Improvement Plan. **I repeatedly communicated with you about this matter via emails that were directed specifically to you and only you. Yet, in your replies, you chose to include many other employees, including Aaron Alter (Executive Vice President, Chief Legal Officer & Corporate Secretary), Jon Snook (Executive Vice President & Chief Operating Officer), Jeff Helfrick (Vice President, Airport Operations), Mike Navares, Michael Peters and your entire team. This escalated a matter that was already serious and tense to managers and officers who were not aware of the entire factual circumstances. Your decision to include them in the email thread unilaterally was inappropriate and displayed behaviors that are not acceptable of a Hawaiian Airlines employee, especially from an individual in the leadership position that you hold.**

67. However, contrary to Mr. Schnaak's conclusion, Plaintiff's decision to involve select members Hawaiian's senior management team in the Kim incident was entirely prudent. Plaintiff wanted to ensure that management had contemporaneous knowledge of the steps being taken to return Kim to Korea. As a first of its kind occurrence, Plaintiff wanted to report to both legal and operations that he had attempted to return Kim to his "country of record" as required by law, but was precluded from doing so.

COUNT I – VIOLATION OF THE HAWAII WHISTLEBLOWERS' PROTECTION ACT

68. Plaintiff reasserts and realleges the allegations set forth in paragraphs 1-67 as though fully set forth herein.

69. Throughout his employment with Hawaiian, Plaintiff observed numerous violations of state and federal law by Hawaiian for, *inter alia*, directing Plaintiff to prematurely terminate investigations in order to circumvent its reporting obligations to the FAA, and failing to provide a duty of care to properly safeguard employees, customers, and shareholders. Plaintiff always complained, and pushed for Hawaiian to properly report situations as required by law and Hawaiian's own internal policies. Hawaiian repeatedly retaliated against the Plaintiff by

changing the terms and conditions of his employment, *e.g.*, overriding his authority as Director, Corporate Security.

70. Hawaiian and Mr. Schnaak also specifically directed and ordered Plaintiff to violate federal law. The Kim incident is a prime example. Upon Kim's release, Hawaiian was mandated under federal law to place him on the next available flight to Incheon, South Korea. However, despite Plaintiff's repeated insistence that Kim be placed on Hawaiian HA 459, departing Honolulu on August 29, 2019, in accordance with federal law, Mr. Schnaak instead ordered Plaintiff to disregard and directly violate the federal statute.

71. An employer shall not retaliate against an employee based on his or her whistleblowing under Haw.Rev.Stat. § 378-62 which states in pertinent part as follows:

§ 378-62: An employer shall not discharge, threaten, or otherwise discriminate against an employee...because:

(1) The employee ... reports or is about to report to the employer ... verbally or in writing, a violation or suspected violation of:

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

72. Hawaiian's conduct as described above, including but not limited to changing the terms and conditions of his employment, and terminating the Plaintiff, is retaliation and a violation of Haw.Rev.Stat. § 378-62(1)(A).

73. Based upon the foregoing, Plaintiff has been damaged in an amount exceeding the statutory minimum of this court, which will be proven at trial.

COUNT II – DEFAMATION

74. Plaintiff reasserts and realleges the allegations set forth in paragraphs 1-73 as though fully set forth herein.

75. In his termination letter, Mr. Schnaak wrongfully accused Plaintiff, in connection with the Kim incident, of causing a "substantial and unjustifiable risk to [Hawaiian which was] in violation of House Rules, 5.3."

76. The aforementioned statement is patently false and untrue, and would be offensive to a reasonable person.

77. On information and belief, Plaintiff's termination letter was not sealed, but published to multiple third parties.

78. Mr. Schnaak knew or should have known that the statements regarding the reason for Plaintiff's termination were untrue.

79. Mr. Schnaak wrote and disseminated the termination letter in his representative capacity as the Managing Director, Safety, Security & Quality Assurance, with full authority and approval from Hawaiian. The letter has never been rescinded.

80. Based upon the foregoing, Plaintiff has been damaged in an amount exceeding the statutory minimum of this court, which will be proven at trial.

COUNT III – VIOLATION OF PUBLIC POLICY

81. Plaintiff reasserts and realleges the allegations set forth in paragraphs 1-81 as though fully set forth herein.

82. Plaintiff's termination as described herein constitutes a violation of clear mandates of public policies, pursuant to *Parnar v. Americana Hotels*, 65 Hawaii 370 (1982), including, but not limited to the following: retaliating against him for attempting to legally discharge his duties by following through with lawful investigations, and ultimately terminating the Plaintiff for these efforts, which might subject Hawaiian to further legal scrutiny, and ultimately, fines.

83. Based upon the foregoing, Plaintiff has been damaged in an amount exceeding the statutory minimum of this court, which will be proven at trial.

84. By reason of the above alleged acts, omissions, or conduct, Hawaiian acted willfully, wantonly, oppressively, and/or with such malice as to imply a spirit of mischief or criminal indifference to civil obligations, and/or with willful misconduct and/or that entire want of care which would raise a presumption of a conscious indifference to the consequences of their conduct. Hawaiian is therefore liable to Plaintiff for punitive damages in an amount to be proven at trial.

WHEREFORE, Plaintiff demands judgment in their favor against Hawaiian as follows:

A. Awarding Plaintiff compensatory damages against Hawaiian in an amount to be determined at trial together with prejudgment interest at the maximum rate allowable by law;

B. Awarding Plaintiff punitive damages against Hawaiian in an amount to be determined at trial; and

C. Granting such other and further relief, legal, equitable and/or declaratory, as this Court may deem just and proper.

DATED: Honolulu, Hawaii, September 10, 2021.

/S/ Richard E. Wilson
RICHARD E. WILSON
SCOTT K. COLLINS

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

THOMAS K. AIU,

Plaintiff,

vs.

HAWAIIAN AIRLINES INC; JOHN
DOES 1-10; JANE DOES 1-10; DOE
CORPORATIONS 1-10; DOE
PARTNERSHIPS 1-10; DOE
UNINCORPORATED ORGANIZATIONS
1-10; and DOE GOVERNMENTAL
AGENCIES 1-10;

Defendants.

) CIVIL NO. _____

) (Other civil action)

)

) VERIFICATION

)

)

)

)

)

)

)

)

)

)

)

)

VERIFICATION

I, THOMAS K. AIU, verify that the allegations set forth in the Verified Complaint are true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawaii, September 10, 2021.

/S/ Thomas K. Aiu

THOMAS K. AIU

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

THOMAS K. AIU,

Plaintiff,

vs.

HAWAIIAN AIRLINES INC; JOHN
DOES 1-10; JANE DOES 1-10; DOE
CORPORATIONS 1-10; DOE
PARTNERSHIPS 1-10; DOE
UNINCORPORATED ORGANIZATIONS
1-10; and DOE GOVERNMENTAL
AGENCIES 1-10;

Defendants.

) CIVIL NO. _____

) (Other civil action)

)

) DEMAND FOR JURY TRIAL

)

)

)

)

)

)

)

)

)

)

)

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all matters so triable before a jury.



DATED: Honolulu, Hawaii, September 10, 2021.

/S/ Richard E. Wilson

RICHARD E. WILSON

SCOTT K. COLLINS

Attorneys for Plaintiff

STATE OF HAWAII CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
PLAINTIFF THOMAS K. AIU	VS.	DEFENDANT(S) HAWAIIAN AIRLINES INC; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE UNINCORPORATED ORGANIZATIONS 1-10; and DOE GOVERNMENTAL AGENCIES 1-10
PLAINTIFF'S NAME & ADDRESS, TEL. NO. RICHARD E. WILSON 5614 735 Bishop Street, Suite 306 Honolulu, Hawaii 96813 Telephone (808) 545-1311 Facsimile (808) 545-1388 Email: rewilson_law@yahoo.com		
TO THE ABOVE-NAMED DEFENDANT(S) You are hereby summoned and required to file with the court and serve upon <hr/> plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS. A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.		
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us	Effective Date of 28-Oct-2019 Signed by: /s/ Patsy Nakamoto Clerk, 1st Circuit, State of Hawaii'i 	
 In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on OAHU- Phone No. 808-539-4400, TTY 808-539-4853, FAX 539-4402, at least ten (10) working days prior to your hearing or appointment date.		