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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERARD K. PUANA, and
RICKY L. HARTSELL as Trustee
of the Florence M. Puana Trust,

Plaintiffs,

vs.

CITY AND COUNTY OF
HONOLULU, KATHERINE P.
KEALOHA, LOUIS M. KEALOHA,
MINH-HUNG "BOBBY" NGUYEN,
NIALL SILVA, WALTER
CALISTRO, DRU AKAGI, JOHN
and/or JANE DOES 1-50,

Defendants.

CIVIL No. 16-00659 JMS-WRP
(Other Civil Action)

PLAINTIFFS' MOTION FOR
DEFAULT JUDGMENT AS TO
DEFENDANT LOUIS M.
KEALOHA; DECLARATION OF
ERIC A. SEITZ; EXHIBITS 1-3;
MEMORANDUM OF LAW;
CERTIFICATE OF SERVICE

PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT
AS TO DEFENDANT LOUIS M. KEALOHA

Plaintiffs GERARD K. PUANA and RICKY L. HARTSELL, as Trustee of the Florence M. Puana Trust, by and through their undersigned attorneys, hereby files their Motion for Default Judgment on proof as to Defendant Louis M. Kealoha. This motion is based on the declaration of counsel attached hereto, the records and files herein, and the evidence and arguments to be presented at a hearing upon the motion.

DATED: Honolulu, Hawaii, March 3, 2023.

/s/ Eric A. Seitz
ERIC A. SEITZ
DELLA A. BELATTI
JONATHAN M.F. LOO
KEVIN YOLKEN

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERARD K. PUANA, and
RICKY L. HARTSELL as Trustee
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CITY AND COUNTY OF
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MINH-HUNG "BOBBY" NGUYEN,
NIALL SILVA, WALTER
CALISTRO, DRU AKAGI, JOHN
and/or JANE DOES 1-50,

Defendants.

CIVIL No. 16-00659 JMS-WRP
(Other Civil Action)

DECLARATION OF ERIC A.
SEITZ; EXHIBITS 1-3

DECLARATION OF ERIC A. SEITZ

ERIC A. SEITZ declares under penalty of perjury as follows:

(1) I am an attorney licensed to practice in the District of Columbia and the States of California and Hawaii, and I have been admitted and am a member in good standing of numerous federal courts including the United States Supreme Court, Courts of Appeal for the Eighth, Ninth, District of Columbia, and Federal Circuits, and numerous District Courts.

(2) I was retained in this matter in mid-2016 and have served continuously as the principal attorney for the Plaintiffs.

(3) The initial Complaint for Damages in this case was filed on December 14, 2016, based upon the Defendants' violation of our clients' rights that culminated in the dismissal of criminal charges against Gerard Puana in the infamous "mailbox case" two years earlier. The Complaint for Damages was served on Louis Kealoha through personal service on his attorney, Kevin P.H. Sumida, Esq. on March 9, 2017. (ECF No. 24). On behalf of Louis M. Kealoha, Kevin P.H. Sumida, Esq. filed an Answer to Complaint for Damages (ECF No. 32) on November 3, 2017.

(6) Within weeks after we filed our initial complaint, Louis Kealoha received a target letter and was placed on leave, and one of the named co-conspirators entered guilty pleas to the misconduct described in our complaint.

(7) Thereafter, the Kealohas and their co-defendants were indicted in Cr. No. 17-00582 JMS-WRP, and our civil litigation was stayed until the criminal proceedings were completed. By agreement of the parties, this civil case was stayed pending the outcome of the criminal case. (ECF Nos. 34, 37, 41, 42, 46). Thereafter, on September 9, 2019, the court issued an Order Staying this Litigation (ECF No. 56) until January 3, 2020.

(8) On September 3, 2020, with leave of Court, Plaintiffs filed their First Amended Complaint for Damages (ECF No. 80). Louis Kealoha was served with Plaintiffs' First Amended Complaint for Damages via U.S. Mail at his

Kahala Avenue residence on September 3, 2020. On December 11, 2020, the Court lifted the stay in this case and ordered the defendants to answer or otherwise respond by January 4, 2021. (ECF No. 97). On February 18, 2021, Louis Kealoha answered Plaintiffs' First Amended Complaint for Damages. (ECF No. 120).

(9) On August 1, 2021, with leave of Court, Plaintiffs filed their Second Amended Complaint for Damages (ECF No. 207). Louis Kealoha was served with the Second Amended Complaint for Damages via U.S. Mail on August 2, 2021 at FCI Sheridan and failed to answer or otherwise respond.

(10) On May 13, 2022, with leave of Court, Plaintiffs filed their Third Amended Complaint for Damages (ECF No. 307). Louis Kealoha was served with the Third Amended Complaint for Damages via U.S. Mail on August 3, 2022 at FCI Sheridan and failed to answer or otherwise respond.

(11) On February 10, 2023, at Plaintiffs' request, the Clerk of Court entered a default against Louis Kealoha for failing to answer or otherwise respond to Plaintiffs' Third Amended Complaint for Damages. (ECF No. 455).

(12) Attached hereto as Exhibit 1 to Plaintiffs' Motion for Default Judgment is a true and correct copy of the Clerk of Court's Entry of Default against Louis Kealoha.

(13) Attached hereto as Exhibit 2 to Plaintiffs' Motion for Default Judgment is a true and correct copy of the excerpts of Louis Kealoha's Presentence Report in Criminal No. 17-00582 JMS-WRP which he stipulated were true and accurate and should be considered at his sentencing. The facts contained therein constitute judicial admissions by Louis Kealoha and establish his liability to Plaintiffs.

(14) Exhibit 3 to Plaintiffs' Motion for Default Judgment is a true and correct copy of a Report of Independent Psychological Examination of Gerard K. Puana by Marvin Acklin, Ph.D., dated September 9, 2022. Dr. Acklin was retained by Defendant City and County of Honolulu, and his report establishes the causal link between Gerard Puana's PTSD and severe emotional distress and his malicious prosecution in the "mailbox case" at the hands of Louis Kealoha, Katherine Kealoha, and the officers under his command. Exhibit 3 will be filed under seal once the Court rules on Plaintiffs' Ex Parte Motion for Leave to File Exhibit Under Seal.

(15) Dr. Acklin's Independent Psychological Examination also establishes the severe and profound nature of Gerard Puana's PTSD and emotional distress resulting from his malicious prosecution at the hands of Louis Kealoha and others and his claim for general damages.

(16) Based on Dr. Acklin's examination and report and the abuse of power and misuse of Honolulu Police Department resources admitted to by Louis Kealoha in his Presentence Report, we believe, conservatively, that a judgment in the amount of \$250,000.00 in general damages and \$250,000.00 in punitive damages is reasonable and appropriate.

DATED: Honolulu, Hawai'i, March 3, 2023.

/s/ Eric A. Seitz
ERIC A. SEITZ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERARD K. PUANA, and	)	CIVIL NO. 16-00659 LEK/WRP
RICKY L. HARTSELL as Trustee)	
of the Florence M. Puana Trust,)	
)	
Plaintiffs,)	
	)	ENTRY OF DEFAULT AS TO
vs.	)	DEFENDANT LOUIS M.
	)	KEALOHA
CITY AND COUNTY OF)	
HONOLULU: KATHERINE P.)	
KEALOHA; LOUIS M. KEALOHA)	
MINH-HUNG "BOBBY")	
NGUYEN, DANIEL SELLERS,)	
DEREK WAYNE HAHN, NIALL)	
SILVA, WALTER CALISTRO,)	
DRU AKAGI, JOHN and/or JANE)	
DOES 1-50,)	
)	
Defendants.)	
_____)	

ENTRY OF DEFAULT AS TO DEFENDANT
LOUIS M. KEALOHA

Defendant Louis M. Kealoha having failed to plead or otherwise defend as to the Third Amended Complaint filed by Plaintiff in this action as shown by the Request to Clerk for Entry of Default and the affidavit of counsel, and good cause appearing therefore,

EXHIBIT 1

IT IS HEREBY ORDERED that Defendant Louis M. Kealoha be and hereby is declared to be in default and foreclosed from answering or otherwise pleading herein as to the Third Amended Complaint.

DATED: Honolulu, Hawaii, February 10, 2023.



/s/ John A. Mannle, Clerk by EA, Deputy Clerk

Clerk of the above-entitled Court

Activity in Case 1:16-cv-00659-LEK-WRP Puana v. Kealoha Court's Certificate of Service

From: hid_resp@hid.uscourts.gov (hid_resp@hid.uscourts.gov)

To: hawaii_cmecf@hid.uscourts.gov

Date: Friday, February 10, 2023 at 08:52 AM HST

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered on 2/10/2023 at 8:50 AM HST and filed on 2/10/2023

Case Name: Puana v. Kealoha

Case Number: 1:16-cv-00659-LEK-WRP

Filer:

Document Number: No document attached

Docket Text:

COURT'S CERTIFICATE of Service - a copy of [455] Entry of Default as to Louis M. Kealoha has been served by First Class Mail to Katherine P. Kealoha and Louis M. Kealoha at the addresses of record on February 10, 2023. Registered Participants of CM/ECF received the document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). (eta)

1:16-cv-00659-LEK-WRP Notice has been electronically mailed to:

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1:16-cv-00659-LEK-WRP Notice will not be electronically mailed to:

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06014-122
FCI VICTORVILLE MEDIUM II
FEDERAL CORRECTIONAL INSTITUTION
Inmate Mail/Parcels
P.O. BOX 5300
ADELANTO, CA 92301

Louis M. Kealoha
06015-122
FCI SHERIDAN
FEDERAL CORRECTIONAL INSTITUTION
Inmate Mail/Parcels
P.O. BOX 5000
SHERIDAN, OR 97378

THIS DOCUMENT FILED UNDER SEAL

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

UNITED STATES OF AMERICA)	
	)	DRAFT
vs.	)	PRESENTENCE INVESTIGATION
	)	REPORT (1)
)	
	)	Case No.: CR 17-00582JMS-02
Louis M. Kealoha)	
)	

Prepared for: The Honorable J. Michael Seabright
Chief U.S. District Judge

Prepared by: Darsie J.T. Ing-Dodson
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EXHIBIT 2

7.

8.

9.

The Offense Conduct

10. The investigation in this case was conducted by the Federal Bureau of Investigation (FBI). The investigation was initiated in December 2014, after the Court declared a mistrial in United States v. Gerard K. Puana, Case No. CR 13-00735LEK-01, U.S. District Court, District of Hawaii, due to improper testimony by the defendant, **Louis M. Kealoha**. In that case, G. Puana was charged with Destruction of a Letterbox or Mail, in violation of 18 U.S.C. § 1705, a Class E felony punishable by up to 3 years imprisonment, for allegedly stealing the mailbox belonging to L. Kealoha and his wife, the defendant, Katherine P. Kealoha (collectively the "**Kealohas**"). After the mistrial, G. Puana's attorney, First Assistant Federal Defender (FAFD) Alexander Silvert provided evidence to the FBI which indicated that G. Puana may have been framed for the mailbox theft.
11. As background information, G. Puana was K. Kealoha's uncle. K. Kealoha was an attorney who worked in the Department of the Prosecuting Attorney for the City and County of Honolulu as a Deputy Prosecuting Attorney (DPA), from 1993 to 2001, 2006 to 2008, and 2010 to 2018. K. Kealoha eventually became a supervisor in the office. In October 2017, she was placed on involuntary leave without pay, pending the outcome of the instant federal case, and she subsequently resigned in August 2018. From 2008 to 2010, K. Kealoha served as Director of the State of Hawaii Office of Environmental Quality Control.
12. **L. Kealoha** was an officer in the Honolulu Police Department (HPD) for over 30 years, and served as HPD's Chief of Police from 2009 to 2017. He was placed on paid leave in January 2017 and accepted a \$250,000.00 severance payment

to retire in February 2017. His term as Chief was scheduled to expire in November 2019.

13. Prior to the federal investigation, the **Kealohas** were publicized as a local power couple, who served and protected the public. Due to their high-ranking government positions and the wide scope of the alleged public corruption allegations against them, this case received an extraordinary amount of media attention. In this regard, the case made national headlines, and local reporters were onsite daily at the federal courthouse “live-blogging” and otherwise documenting the jury trial and other proceedings.
14. HPD is the largest police department in the State of Hawaii, and is responsible for providing law enforcement to close to one million residents on the island of Oahu. HPD is divided into different divisions/units tasked with different functions. The Criminal Investigation Division (CID) was tasked with investigating and assisting in the prosecution of criminal offenses. The Criminal Intelligence Unit (CIU), was a special federally-authorized and federally-funded unit that was responsible for gathering intelligence and data on organized crime, terrorism, and gang threats facing the City and County of Honolulu. The CID was separate from the CIU. The members of the CIU did not collect evidence to be used in the investigation and prosecution of criminal cases, but instead, passed intelligence information about criminal threats to other units in HPD and federal law enforcement partners. CIU officers typically shared information via word-of-mouth, and did not write police reports. Because of their specialized duties and responsibilities, CIU officers were supervised by a lieutenant, who reported to a captain, who ultimately reported to the Chief of Police (**L. Kealoha** between 2009 and 2017). In addition, the Chief of Police played a direct role in selecting and appointing officers to the CIU.
15. Derek Wayne Hahn, Minh-Hung Nguyen, Gordon Shiraishi, Daniel Sellers, and Niall Silva were members of the CIU. Hahn joined HPD in 1997, and was appointed as a Lieutenant in the CIU in 2013, at **L. Kealoha’s** suggestion. He was elevated to Acting Captain and commanding officer of the CIU in 2014, and remained in that position until being placed on “restriction of police authority” (ROPA) status in December 2016. After the verdict in this case, in July 2019, Hahn was placed on involuntary leave without pay. Additionally, in approximately 2014, Hahn, K. Kealoha, and a third individual formed a residential solar company, Discount Energy Solutions, LLC.
16. Nguyen joined HPD as an officer in 2006. From 2012 to 2017, he was assigned to the CIU at the rank of a footman. Nguyen was placed on ROPA status in December 2016, and was placed on involuntary leave without pay in July 2019. From approximately 2010 to 2014, Nguyen was married to K. Kealoha’s niece, MN. For a period of time, Nguyen lived at the **Kealohas’** residence in a pool house.

17. Shiraishi joined HPD in 1983, after graduating in the same Police Academy class as L. Kealoha. In 2011, L. Kealoha promoted Shiraishi to the rank of Captain and assigned him to be the commanding officer of the CIU. In 2013, L. Kealoha promoted Shiraishi to the rank of Manor and assigned him to lead HPD's Training Division. Shiraishi was latter reassigned to District 7, and held the rank of Major until his retirement in March 2017, due to the instant federal investigation. He was the only defendant acquitted in this case.
18. Sellers joined HPD in 1997, worked as a corporal in the CIU from 2001 to 2011, became a detective in the CID, and eventually returned to the CIU as a detective in 2011. He was placed on ROPA status in December 2016, and has been on paid leave since December 2018. After being convicted of a misdemeanor offense in a separate related case, in August 2019, he received notice that HPD intends to terminate him. However, Sellers stated that he plans to challenge HPD's decision. Sellers and K. Kealoha met in high school, and continued a friendship and professional relationship for over 20 years.
19. Silva joined HPD in 1988 and rose to the rank of Corporal. From 2012 to until his retirement in December 2013, Silva was assigned to the CIU as a technician.
20. In March 2013, G. Puana and his mother, Florence Puana (collectively the "Puanas"), filed a civil lawsuit against K. Kealoha under Case No. CV 13-1-000686, First Circuit Court, State of Hawaii. The lawsuit alleged that K. Kealoha mismanaged funds belonging to the Puanas. FAFD Silvert opined to investigators in the instant federal case that the Kealohas conspired with HPD officers to frame G. Puana in CR 13-735, in order to discredit him in the civil case. Further, FAFD Silvert asserted that, after Silva gave testimony that undercut the government's case against G. Puana, L. Kealoha deliberately caused a mistrial to prevent FAFD Silvert from exposing the conspiracy against G. Puana in open court.
21. Due to the voluminous nature of the discovery materials in this case, complete investigative materials were not provided to the Probation Office. Rather, the government instructed the undersigned to rely upon the admitted trial exhibits, available witness testimony (select transcripts provided), and other documents filed in this case.

The Initiation of the Puanas' Civil Lawsuit Against K. Kealoha

K. Kealoha's "Investments" for the Puanas

22. The evidence presented in the instant federal trial (including G. Puana's testimony and the Kealohas' bank records) reflected that, in January 2007, K. Kealoha told G. Puana that she had access to an investment club (or "hui") that would generate significant monthly returns on any funds G. Puana invested. On 02/22/2007, G. Puana gave K. Kealoha \$25,000.00 cash from his safety deposit

box as an initial investment. Rather than investing the money, however, K. Kealoha deposited the cash into a bank account she controlled.

23. To give the false appearance of investment returns, K. Kealoha periodically withdrew \$600.00 cash from the bank account holding G. Puana's money, and paid the money to G. Puana as a "return" on his investment. Later, K. Kealoha gave G. Puana a debit card linked to the bank account that could be used to withdraw between \$100.00 and \$800.00 per month as "returns" on his investment. After receiving several false investment returns, G. Puana gave more money to K. Kealoha to invest, including \$15,000.00 on 11/13/2008 and \$30,000.00 on 10/16/2009. In total, G. Puana provided K. Kealoha with approximately \$70,000.00 to invest, and received \$23,739.00 as purported investment "returns." Instead of investing G. Puana's money, however, K. Kealoha used the remaining approximately \$46,261.00 to pay for the Kealohas' personal expenses.
24. Additionally, the trial evidence demonstrated that, in January 2009, K. Kealoha's grandmother, F. Puana, then 89 years old, asked her about ways to purchase a condominium ("condo") for her son, G. Puana. Specifically, F. Puana testified (via a video deposition, due to her age and ailing health) that she wanted to help G. Puana with such a purchase because he cared for F. Puana for many years, and he did not have sufficient credit to purchase the condo. K. Kealoha recommended a five-step process: 1) F. Puana would secure a "reverse mortgage" on her personal residence, located on Nioi Place in Honolulu, Hawaii; 2) F. Puana would use a portion of the loan proceeds to purchase the condo and pay expenses for the transaction; 3) F. Puana would use a portion of the proceeds to help the Kealohas "consolidate" their bills and improve their credit; 4) the Kealohas would use their newly-improved credit to purchase the condo from F. Puana; and 5) the Kealohas would sell the condo to G. Puana by "taking back" a mortgage so G. Puana would make monthly mortgage payments to the Kealohas instead of to a bank. [A "reverse mortgage" typically describes a loan taken by a homeowner who is age 62 or older and has considerable home equity they can borrow against the value of their home. Funds are received as a lump sum, fixed monthly payment, or line of credit. Unlike a traditional forward mortgage used to purchase a home, a reverse mortgage does not require the homeowner to make any loan payments. Instead, the entire loan balance becomes due and payable when the borrower dies, moves, or sells the residence.] K. Kealoha assured F. Puana that she would pay off the reverse mortgage in 3 to 6 months.
25. Based on K. Kealoha's representations, F. Puana agreed to the plan, and allowed K. Kealoha to negotiate with a lender to obtain a reverse mortgage on F. Puana's property. K. Kealoha requested that F. Puana execute a Durable Power of Attorney (POA), appointing K. Kealoha as her attorney-in-fact. In October 2009, K. Kealoha caused a lump sum reverse mortgage to be executed on F. Puana's property. The net loan proceeds of \$513,474.20 were deposited into Bank of Hawaii (BOH) bank account #1502, which was held jointly by K. Kealoha

and F. Puana. Thereafter, approximately \$360,150.66. was used to purchase a unit at the Greenwood Condominium in Honolulu ("Greenwood Condo"), for G. Puana, and the remaining \$153,323.54 was to be used to "consolidate" the **Kealohas'** debts and pay F. Puana's expenses. However, bank records showed that K. Kealoha did not use the BOH #1502 account as planned. Rather, she withdrew and transferred funds from the account to pay for the **Kealohas'** personal expenses, including: a Police Chief induction brunch for L. Kealoha (\$26,394.80); luxury car payments for a Mercedes Benz and a Maserati (\$10,663.58); air conditioning installation at the **Kealohas'** residence (\$7,800.00); a realtor payment (\$7,000.00); insurance payments (\$5,846.00); travel expenses (\$3,596.12); concert tickets (\$2,161.70); and a cashier's check payable to a friend of K. Kealoha, Jesse Ebersole (\$1,387.12). [Regarding the realtor payment, the Greenwood Condo realtor initially gave K. Kealoha the bulk of the realtor's commission; however, K. Kealoha later returned the commission, stating that she did not want a penny of her grandmother's money. In fact, bank records showed that the money K. Kealoha sent back to the realtor was F. Puana's money from the BOH #1502 account, and the money received from the realtor was deposited into K. Kealoha's personal account.] Other items included expensive restaurants, hotel stays, jewelry, Disneyland tickets and other entertainment, and clothing stores. K. Kealoha was credited for \$17,910.60, which she spent on the Greenwood Condo. In total, the government asserted that K. Kealoha spent approximately \$135,412.94 from the BOH #1502 account on the **Kealohas'** personal expenses in an approximately 6-month period.

26. At trial, the government proved that K. Kealoha made several false statements about the transactions associated with the purchase of the Greenwood Condo. For example, in a "Tax Clarification Affidavit" that K. Kealoha convinced F. Puana to sign on 07/30/2010, K. Kealoha claimed she "initiated this transaction with \$83,600 of her own funds, which were the result of a residential home sale in 2005." However, as previously mentioned, financial records related to the Greenwood Condo showed that the **Kealohas** only contributed approximately \$17,910.60 towards the purchase. Moreover, the records indicated that at least \$7,200.00 of the contributions came from loan proceeds obtained by pledging funds owned by a third party (and not the **Kealohas'** personal funds).

Alison Lee Wong Alias

27. G. Puana testified that, as part of the Greenwood Condo purchase, K. Kealoha created a living trust document in G. Puana's name and made herself trustee – without G. Puana's knowledge. At the close of escrow, the Greenwood Condo was transferred to that trust, which was controlled by K. Kealoha. G. Puana stated that the first time he saw the alleged trust document was when K. Kealoha produced copies of it during CV 13-1-686. The trust document was allegedly signed by a notary public, Alison Lee Wong.
28. According to the government's evidence, Wong was a fictitious notary created and utilized by K. Kealoha as an alias to forge documents, avoid scrutiny, and

assist the **Kealohas** in their rise to power. For instance, in February 2008, "Alison L.Y.F. Wong" emailed a letter in support of K. Kealoha's nomination as Director of the Hawaii Office of Environmental Quality Control to the Senate Committee on Energy and Environment. K. Kealoha subsequently received Senate confirmation. In another example, a Facebook account named "Alison Leewong" voiced her support for L. Kealoha's Police Chief campaign on a Facebook page created by a Kealoha family acquaintance. Shortly after, "Alison Leewong" sent the acquaintance a private message thanking the acquaintance for creating the Facebook page, and stating, "I can't wait to meet you in person." The acquaintance confirmed that she had no recollection of meeting Wong. Several weeks later, L. Kealoha was sworn in as HPD Chief of Police.

29. At the instant federal trial, the government introduced evidence that there was no notary public named Alison Lee Wong in the State of Hawaii. Further, records showed that in May 2008, an online order for a "Hawaii Notary Seal Metal Embosser" was placed for "Alison Lee Wong" and shipped to "Kathryn Aloha" at the address of the Office of Environmental Quality Control. Additionally, Rick Ornellas, a longtime friend of K. Kealoha, testified that he received several emails purportedly from Wong at "alisonleewong@yahoo.com" in 2011. In the emails, Wong identified herself as K. Kealoha's secretary. However, when Ornellas asked Wong to call him on multiple occasions, she never did. The government also retained a forensic document examiner to review the G. Puana trust document and handwriting samples from G. Puana and K. Kealoha. The examiner testified that G. Puana's signatures and initials appeared to be written by someone else. Moreover, Wong's signature was likely forged by K. Kealoha. Lastly, internet provider (IP) records indicated that the Alison Lee Wong Facebook account and email address were logged into by the City and County of Honolulu IP address, at the same time K. Kealoha was employed as a Honolulu DPA. "Alison Lee Wong" was not a City and County of Honolulu employee.
30. However, during the Puanas' civil lawsuit against her, on 01/22/2015, K. Kealoha stated in a deposition that she was with G. Puana when they signed the living trust document. Further, K. Kealoha stated that she knew an "Alison Wong," and last saw her in 2008 or 2009, but that person was not the notary on the trust document.

The Puanas' Discovery of the K. Kealoha's Alleged Financial Crimes

31. The government also presented financial records demonstrating that from 2009 to 2012, the **Kealohas** lived lavishly and spent more money than they earned. Further, K. Kealoha did not pay off F. Puana's reverse mortgage.
32. Eventually, the Puanas began to suspect that something was amiss about K. Kealoha's financial investments. In 2011, G. Puana asked K. Kealoha for investment return money to purchase a vehicle, but K. Kealoha told him his money was "tied up." Further, after K. Kealoha told the Puanas that the reverse mortgage was paid off, F. Puana received a mortgage document indicating that

the reverse mortgage was still outstanding. In fact, the document indicated that the balance of the mortgage was actually increasing every month, due to accumulated interest fees. Additionally, during this time, G. Puana was making false mortgage payments for the Greenwood Condo directly to K. Kealoha, per her instructions. However, financial records showed that K. Kealoha pocketed the majority of G. Puana's payments, less some monthly maintenance fees.

33. The Puanas repeatedly reached out to K. Kealoha for an explanation. F. Puana testified that she believed K. Kealoha was a "loving and gentle person," whom she trusted would not hurt her grandmother. The Puanas testified that they called K. Kealoha, tried to meet with her, and spoke to other relatives, but were met with silence and no answers. By April 2011, K. Kealoha directed BOH to only mail monthly statements for BOH account #1502 to a Post Office Box she controlled, and refused G. Puana's requests for a return of his investment funds.

34. On 09/10/2012, F. Puana wrote a letter to K. Kealoha, stating, in part:

I am brokenhearted and have been anxious and worried since I discovered that there is a balance owed on my home of over \$637,000. As you know, I've tried again and again to talk to you by phone, offered to meet with you at any time or place. But you've refused my requests. You have not been truthful, have turned your back on me and will not return my calls. I'm confused by your actions and worried sick. I don't understand what you've done and why.

I trusted you when you came to me in October 2009 with the idea of a reversed mortgage on my house so I could buy a condo at the Greenwood and you could borrow around \$300,000 which you said was to consolidate your debts. You promised you'd repay the money within 3 to 6 months at most. Since then, I've many times requested copies of the papers that I signed. You promised to supply them but I still don't have them.

F. Puana's letter further advised K. Kealoha that effective immediately, she was no longer F. Puana's attorney, and attached a POA Revocation document. She asked K. Kealoha to return all legal and financial documents, as well as money owed, to F. Puana by 09/18/2012, or she would have to "take whatever steps necessary to legally correct this mess." In closing, F. Puana stated that she was "still willing to work this out" with K. Kealoha, and signed the letter, "Your grandmother, Florence Puana." A copy of the letter was also sent to L. Kealoha.

35. In response, on 09/15/2012, K. Kealoha sent a letter to the Puanas stating that she agreed to help the Puanas obtain a reverse mortgage on F. Puana's residence in order to purchase the Greenwood Condo for G. Puana. However, K. Kealoha claimed, "That was the extent of that ENTIRE transaction." She stated

that the assertion that she asked F. Puana to borrow money from the transaction was an "ABSOLUTE LIE!". K. Kealoha wrote (verbatim):

I HAVE NEVER, WILL NEVER OR WOULD NEVER BORROW, TAKE OR EVEN REQUEST to BORROW ANY MONEY FROM FLORENCE PUANA!

...

I WILL seek the highest form of legal retribution against ANYONE and EVERYONE who has written or verbally uttered these LIES about me! In addition, I will incorporate by legal association those individuals who have PERPETUATED these False, Malicious and BOGUS claims against me! They will rue the day that they decided to state these TWISTED LIES!

...

As much of my time, effort, legwork and love that I put into these transactions, putting forth my own money for them, taking time to make sure everything was in place and the right people were consulted with, both Florence and Gerard SHOULD BE ASHAMED OF THEMSELVES FOR MAKING THOSE FALSE CLAIMS AGAINST ME! I HAVE SHOWN NOTHING BUT LOVE, RESPECT, AND GENEROSITY TO EVERYONE IN THE PUANA FAMILY, HOW DARE ANYONE THINK OR SUGGEST THAT I HAVE DONE ANYTHING AGAINST ANY OF YOU! FOR SHAME!

36. In January 2013, G. Puana went to BOH and attempted obtain bank statements for BOH account #1502. However, since he was not a signatory on the account, BOH would not release the statements to him. Rather, BOH notified K. Kealoha, and she closed the account. However, F. Puana subsequently obtained the statements, which showed numerous personal expenditures by K. Kealoha, which were not authorized by F. Puana. Thereafter, the Puanas hired an attorney to assist in recovering the money K. Kealoha allegedly stole from them. After a demand letter went unanswered, the Puanas filed the aforementioned civil lawsuit against K. Kealoha on 03/07/2013. The Complaint requested damages and relief ordering K. Kealoha to pay the full amount of the reverse mortgage and the \$70,000.00 G. Puana entrusted to K. Kealoha to invest. On 04/29/2013, K. Kealoha filed a counterclaim against the Puanas, alleging that they misrepresented their need for a reverse mortgage and G. Puana's ability to make monthly mortgage payments to K. Kealoha. She further claimed their lawsuit against her was an "abuse of process," designed to defraud and "publicly embarrass" her.

K. Kealoha's Efforts to Discredit G. Puana

June 2011 Arrest – Unlawful Entry into a Dwelling Prosecution

37. On 06/27/2011, G. Puana got into a dispute about street parking with neighbors at F. Puana's residence (where G. Puana also used to reside). Without knocking, G. Puana entered the neighbor's enclosed lanai and verbally confronted the neighbor about the parking situation. After a few minutes, HPD officers arrived, spoke to the neighbor, and arrested G. Puana for Unlawful Entry into a Dwelling, a Class C felony under state law. Although the incident occurred entirely on the neighbor's property, later that day, K. Kealoha led an HPD search of G. Puana's residence, without a search warrant. Nguyen was also present during the search. At the time of the search, K. Kealoha called her cousin, Jeanette DeMello, who lived four houses away from G. Puana, and told her that "Uncle Gerry" was about to be arrested. Upon K. Kealoha's direction, J. DeMello left her residence. Upon her return, she saw several police officers inside G. Puana's residence. K. Kealoha told DeMello that the officers were at the residence because "Uncle Gerry was selling drugs" as part of a drug ring, and K. Kealoha had just "confiscated over 100 tablets of pure Ecstasy." J. DeMello asked to see the drugs, but K. Kealoha responded that the pills were on their way to HPD. J. DeMello also inquired as to how K. Kealoha knew the drugs were "pure," but K. Kealoha changed the subject.
38. After his arrest, G. Puana called his son and asked him to retrieve bail money from his residence, stating that he had \$15,000.00 cash in a filing cabinet in his bedroom. However, his son could not locate the money in the residence. K. Kealoha subsequently told G. Puana's sister, Carolyn DeMello, not to let anyone in the family bail G. Puana out of jail, because he "needed to get help." K. Kealoha represented to family members that she was checking up on G. Puana and visiting him in jail. K. Kealoha also told C. DeMello that G. Puana was a methamphetamine addict, and he tested positive for methamphetamine use when he was arrested. C. DeMello testified that K. Kealoha's statement shocked her, because she had never seen any indication of methamphetamine use during her numerous prior interactions with G. Puana. A few days later, K. Kealoha asked C. DeMello for access to G. Puana's residence to retrieve some clothes for him. When they entered, they saw that the residence appeared to have been "tossed," and K. Kealoha told C. DeMello that there must have been a "burglary" and pulled a gun from her waistband. Then, K. Kealoha picked locks on G. Puana's file cabinet and a safe, took some unspecified items, and said to DeMello, "Shh. It's a secret."
39. The evidence also established that K. Kealoha used her position as a DPA to admit G. Puana into a residential drug treatment program at the Sand Island Treatment Center (SITC). A deputy sheriff with the Hawaii Department of Public Safety, Thomas Cayetano, testified that while G. Puana was in jail, K. Kealoha asked Cayetano to set up secret meetings with her uncle in the basement of the courthouse. In order for the meetings to occur, Cayetano stated that he put G.

Puana's name on the court calendar, even when he did not have a court hearing, so that G. Puana would be transported from his jail cell to the courthouse. Cayetano also related that he "pulled some strings" to get G. Puana into SITC, where he stayed for a week before being transferred out of the program for refusing to admit that he had a methamphetamine problem. Ultimately, G. Puana was held in custody for approximately 71 days, and his case was later dismissed via a deferred prosecution. G. Puana's state defense lawyer testified that she was not aware of the secret meetings between K. Kealoha and G. Puana. Further, she was later told by the assigned DPA that K. Kealoha directed him to file a motion opposing the dismissal.

40. When G. Puana returned home, he discovered that in addition to the missing \$15,000.00, a cap gun, two switchblade knives, credit cards from his wallet, a camera memory card, his father's will and other documents, and HPD clothing were also missing from his residence. In October 2012, G. Puana received a parcel in the mail, with a return address label with K. Kealoha's name and the address of a UPS Store where K. Kealoha had a P.O. Box. Inside the parcel were some of the missing items from G. Puana's residence, such as the cap gun, knives, camera memory card, and his father's will. The parcel did not contain the missing \$15,000.00. Handwriting analysis confirmed that K. Kealoha was the author of the label on the parcel.

March 2012 – First False Burglary Report

41. On 03/30/2012, Hahn wrote an HPD Incident Report stating that Nguyen's residence was burglarized. The report did not mention that Nguyen's residence was owned by the Kealohas. Nguyen did not identify a suspect for the burglary, and there was no video of the incident, despite six surveillance cameras set up around the residence. According to the government, Nguyen falsely claimed that the video surveillance was disabled. Further, as a member of the CIU, Hahn did not write these types of reports. The government opined that the report was made in an effort to discredit G. Puana in the civil lawsuit against K. Kealoha.

June 2013 Arrest – False Mailbox Theft Report

42. In June 2013, the Puanas' civil lawsuit against K. Kealoha was fully underway. On 06/19/2013, from approximately 8:55 a.m. to 1:00 p.m., K. Kealoha was deposed in the civil lawsuit in an office building in Honolulu. That day, K. Kealoha had a series of phone contacts with Nguyen, who was downstairs in the lobby. Specifically, phone records showed that K. Kealoha and Nguyen exchanged 10 text messages before the deposition, 3 during the deposition, and had 13 phone contacts in the hours following the deposition. At approximately 11:30 a.m., the Puanas left the deposition. Immediately thereafter, the following communications occurred:

- 11:32 a.m. – Nguyen phone call to Hahn (1 minute)
- 11:40 a.m. – Nguyen text message to K. Kealoha

- 11:41 a.m. – Nguyen text message to K. Kealoha
 - 11:46 a.m. – Nguyen phone call to Hahn (3 minutes)
43. While Nguyen was waiting in the lobby, he encountered the Puanas. When G. Puana left to get his car, Nguyen asked F. Puana (who recognized Nguyen as her relative's husband) what color car G. Puana drove. F. Puana responded that he drove a white car. In actuality, G. Puana drove a silver Pontiac.
44. On the afternoon of 06/21/2013, the **Kealohas'** postman delivered their mail as usual. He testified that the mailbox fronting their residence was sturdy when he delivered the mail. Later that day, the government alleged that an unknown individual altered the mechanism securing the **Kealohas'** mailbox so it could be easily removed. At approximately 6:00 p.m., phone records indicate that Hahn was in G. Puana's neighborhood, where the government asserted Hahn saw a white Acura parked on the street. At approximately 11:31 p.m., grainy surveillance video depicted a white vehicle pull up to the front of the **Kealohas'** residence. A male driver exited the vehicle, lifted the unsecured mailbox from its post, placed it in the vehicle, and drove away. The male did not use tools to detach the mailbox, and appeared to use very little effort. The entire incident took less than 1 minute. The license plate of the vehicle was illegible in the video, even after it was enhanced by investigators; however, it was subsequently determined that the vehicle was a white Lexus.
45. On 06/22/2013, prior to any official report to HPD of the alleged mailbox theft, Nguyen secretly removed the hard drive from the video surveillance system at the **Kealohas'** residence and transported it to HPD headquarters. At approximately 1:28 p.m., Nguyen spoke to K. Kealoha on the phone. Immediately thereafter, at approximately 1:31 p.m., K. Kealoha called 911 and falsely reported that the **Kealohas'** mailbox was stolen. In her handwritten statement that afternoon, K. Kealoha stated, "We will be reviewing our security camera and will give that information to the police when it becomes available." She did not reveal that the surveillance video had already been retrieved by Nguyen. Additionally, K. Kealoha identified her mailbox as a Gaines brand mailbox, with an estimated value of \$380.00.
46. At the instant federal trial, the government presented Google Maps images showing that the **Kealohas'** mailbox was actually a Gibraltar brand mailbox, with an estimated value of \$150.00. Further, a handwriting expert indicated that K. Kealoha originally wrote that the value of the mailbox was \$300.00 but subsequently changed it to \$380.00. According to the government, K. Kealoha made the change because under Hawaii law, theft of property worth more than \$300.00 is a felony offense; whereas, theft of property worth \$300.00 or less is a misdemeanor. Further, a Gibraltar mailbox expert testified that the way the mailbox came apart in the surveillance video was not physically possible, given the way Gibraltar mailboxes were constructed. Additionally, a person would need to exert approximately 25 pounds of force to break the pedestal, as opposed to the minimal effort exerted by the male in the video.

47. After K. Kealoha's written report, HPD opened an investigation into the alleged theft, and assigned two homicide detectives to investigate the crime, along with the assistance of the CIU. According to one of the homicide detectives, Dru Akagi, he was surprised to receive the assignment, because he did not typically investigate thefts, and he worried about whether HPD officers investigating the theft of the Chief of Police's mailbox presented a conflict of interest. Akagi testified that Hahn told him that G. Puana was a person of interest in the case, because the Kealohas were having "problems" with him.
48. During his testimony in this case, Silva stated that he did not get involved in the alleged mailbox theft case until approximately 2:30 p.m. on 06/22/2013, when he received a phone call from his supervisor, Hahn, directing him to go to HPD headquarters to help process the surveillance video of the Kealohas' alleged mailbox theft. When he arrived, Silva met with Hahn and Nguyen, and Hahn told Silva to falsely claim that he retrieved the video that morning. According to Silva, Hahn and Nguyen stated that it "wouldn't look good" if Nguyen was involved in the investigation, because he was married to K. Kealoha's niece and previously lived at the Kealohas' residence. While Silva was processing the video, Nguyen blurted out, "That's Uncle Gerry!" Hahn also instructed Silva to violate HPD protocols and not log the original hard drive video into evidence, but instead to create compact discs (CDs) with excerpts of the video. Silva created the CDs as directed, gave them to Hahn and Sellers, and placed the original hard drive in his desk. Silva then prepared an official HPD report falsely stating that he retrieved the video that morning, even though he was actually at the bank at the time. Phone records also demonstrated that on 06/22/2013, K. Kealoha, Hahn, Nguyen, Silva, and Shiraishi communicated 53 times.
49. As part of their investigation, CIU members conducted continuous 24-hour surveillance of the Kealohas' and G. Puana's residences from 06/22/2013 to 06/29/2013. In fact, immediately after processing the video on 06/22/2013, Silva and Nguyen initiated surveillance at G. Puana's residence. At trial, Sellers estimated that there were approximately 25 to 30 HPD officers following G. Puana. Another HPD officer testified that the CIU staked out G. Puana's residence with four or five vehicles in two 12-hour shifts. During that time, however, they did not see any suspicious activity by G. Puana. G. Puana eventually figured out that he was being surveilled and called HPD to complain that people were following him. Additionally, the Honolulu Ethics Commission received several calls from individuals inquiring about the appropriateness of using of HPD resources to surveil the Kealohas' residence. After the Ethics Commission began investigating, the Kealohas filed 12 complaints against the investigators, and ultimately filed a civil lawsuit in June 2016 against the Commission and the investigators. The lawsuit was subsequently dismissed in December 2018.
50. CIU members, including Silva, Hahn, and Sellers, also performed searches on confidential electronic databases for information regarding G. Puana, his residence address, his relatives, and his neighbors. During his Change of Plea

hearing, Sellers admitted that these searches revealed that G. Puana did not have any white vehicles registered under his name, and the white Acura belonged to one of G. Puana's neighbors. Further, the Acura was not used in the alleged theft of the **Kealohas'** mailbox, because the surveillance video depicted a Lexus. Sellers admitted that he illegally communicated the confidential information he learned about the Acura and G. Puana to K. Kealoha. Specifically, Sellers was not authorized to disclose this information, because K. Kealoha was a purported victim of the crime.

51. On 06/24/2013, **L. Kealoha** falsely identified G. Puana as the individual depicted in the surveillance video allegedly stealing the **Kealohas'** mailbox. **L. Kealoha** also reported that he noticed the mailbox was missing when he left his residence to go surfing at approximately 5:30 a.m. on 06/22/2013, and told K. Kealoha about it when he returned at approximately 9:30 a.m. As previously noted, K. Kealoha did not call 911 about the alleged mailbox theft until 1:31 p.m.
52. After Sellers illegally disclosed the confidential information about G. Puana to K. Kealoha, on 06/29/2013, K. Kealoha falsely identified G. Puana as the individual depicted in the surveillance video allegedly stealing the **Kealohas'** mailbox. HPD officers arrested G. Puana, who was still under continuance surveillance, approximately 10 minutes after K. Kealoha's identification, at approximately 5:00 p.m. On the date of G. Puana's arrest, phone records showed dozens of contacts between K. Kealoha, **L. Kealoha**, Hahn, Nguyen, and Shiraishi.
53. G. Puana denied stealing the **Kealohas'** mailbox and told investigators that he was home alone at the time of the alleged theft. At the instant trial, numerous witnesses, including G. Puana, F. Puana, Silva, and G. Puana's family members and associates testified that the individual depicted in the surveillance video was not G. Puana. Further, the enhanced surveillance video showed that the male had visible facial hair; however, photos of G. Puana dated in the days before and after the alleged mailbox theft showed that he was cleanshaven. Moreover, although the government could not account for G. Puana's exact whereabouts at the time of the alleged theft, phone records indicated that G. Puana's cell phone was used on 06/21/2013, at 2:18 p.m., near his residence, and no other calls were made until 8:25 a.m. the next morning, again near his residence.
54. The **Kealohas'** mailbox was never recovered, and the identity of the male in the surveillance video remains unknown.

June 2013 – False Elder Abuse Allegations

55. Shortly after the alleged mailbox theft, K. Kealoha requested to meet with HPD officer John McCarthy, then the head of the white collar crime division. On 06/24/2013, they met at HPD headquarters, where K. Kealoha presented McCarthy with a box filled with financial documents that she said would prove that G. Puana committed elder abuse against F. Puana. However, when McCarthy started looking through the documents, he noticed that K. Kealoha's

name was on the majority of the bank statements. According to McCarthy, the conversation ended when he told K. Kealoha that he would need to obtain the original financial documents to pursue a legitimate investigation, and would need the victim, F. Puana, to file a complaint. McCarthy testified that K. Kealoha was "very nervous," was hurried in her speech, and at one point stated, "I screwed up."

56. In late July 2013, McCarthy tried following up with K. Kealoha about the alleged elder abuse, but K. Kealoha stated that **L. Kealoha** wanted to drop the case. Further, on 09/25/2014, the night before K. Kealoha's second deposition in the Puanas' civil lawsuit, Hahn called McCarthy to check on the status of the elder abuse investigation. The next day, K. Kealoha sent an email to Hahn and **L. Kealoha** directing them not to follow up with McCarthy.

June 2013 – Second False Burglary Report

57. A few days after K. Kealoha's meeting with McCarthy, on 06/28/2013, Nguyen and Hahn created an HPD Incident Report regarding an alleged burglary at the **Kealohas'** residence on 06/23/2013 or 06/24/2013. In the report, the **Kealohas** stated that their garage was broken into and the taillight of K. Kealoha's vehicle was damaged. **L. Kealoha** identified G. Puana as a possible suspect in the break-in, due to an "on going civil dispute" with K. Kealoha. However, as previously discussed, G. Puana was under continuous surveillance at the time of the alleged burglary. Further, there is no video of the incident. Lastly, as members of the CIU, Nguyen and Hahn did not typically write reports.

The Criminal Trial Against G. Puana for Theft of the Kealohas' Mailbox

58. After G. Puana was arrested by HPD officers on 06/29/2013, he was detained until the case was transferred to federal investigators under CR 13-735 on 07/01/2013. On that date, G. Puana appeared in federal court and was released under U.S. Pretrial Services (PTS) supervision. His bail conditions included random drug testing and a restriction of travel to the island of Oahu, Hawaii. G. Puana remained under PTS supervision for more than 17 months, until CR 13-735 was dismissed on 12/16/2014. During that period, he was subjected to 24 drug tests, which all resulted negative for illicit drugs.
59. During the federal investigation, 06/18/2014, Silva falsely confirmed to U.S. Postal Inspection Service (USPIS) inspector Brian Shaughnessy that he personally recovered the video from the **Kealohas'** residence. Silva repeated this false information throughout G. Puana's criminal investigation, and testified at the instant trial that he coordinated with Nguyen regarding his statements to investigators and at G. Puana's criminal trial.
60. Additionally, Shaughnessy testified that the **Kealohas** and Nguyen identified G. Puana on multiple occasions as the person depicted in the video allegedly stealing the **Kealohas'** mailbox. Shaughnessy stated that the **Kealohas** and

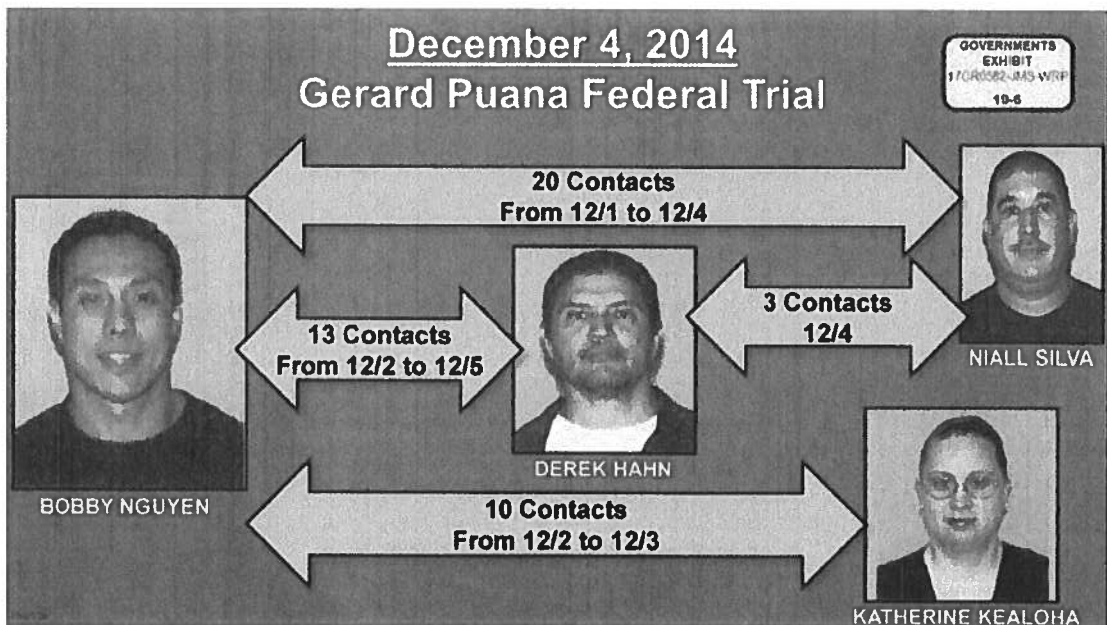
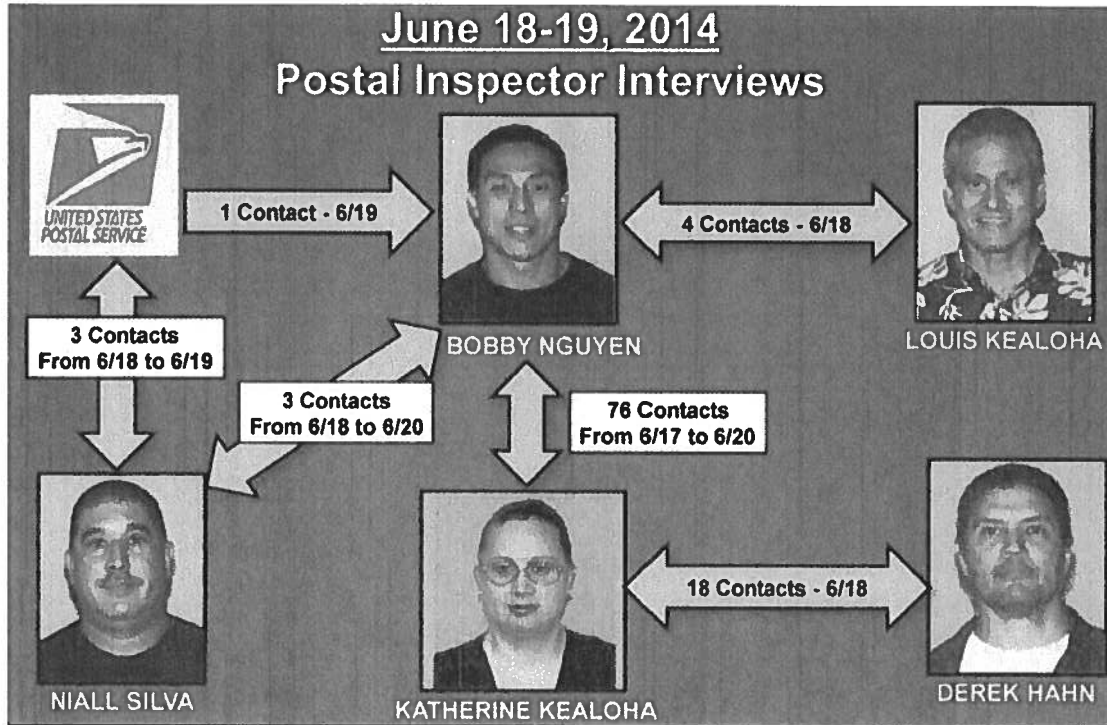
Nguyen said that G. Puana and the male in the video had a similar build, wore similar clothes, and walked in a similar manner. However, as previously mentioned, the video quality was grainy and it was difficult to positively identify the male. According to Shaughnessy, he recommended to the Assistant U.S. Attorney (AUSA) that they not pursue the case against G. Puana because it was a "loser," due to insufficient evidence. However, the AUSA later instructed Shaughnessy to proceed with the case, at the direction of his boss.

61. G. Puana was indicted under CR 13-735 on 07/11/2013. On 05/20/2014, his attorney, FAFD Silvert, was granted a subpoena for the surveillance video footage of the days preceding the alleged mailbox theft until the time it was stolen. FAFD Silvert previously received only edited versions of the video, which depicted only the alleged theft (totaling a few minutes worth of footage). However, FAFD Silvert never received the Kealohas' original hard drives. In 2016, in response to an FBI subpoena in this case, the Kealohas' original hard drives were located at the CIU office, but the requested footage was erased. Federal investigators were able to recover some of the missing footage, but not the footage of the days immediately preceding the alleged mailbox theft. Rather, the recovered footage began on 06/17/2013 and ended on 06/21/2013, at 9:00 a.m., on the morning of the alleged theft. That footage showed Nguyen deliver a hard drive to the Kealohas' residence on 06/17/2013. In the place of the missing footage was a recording of six days of the ceiling and a wall inside the CIU offices, dated 05/21/2014 (the day after FAFD Silvert's subpoena) and 05/27/2014. At the instant federal trial, an FBI expert testified that the only way to permanently delete video footage from a hard drive is to record over it. Additionally, a CIU member testified that when the FBI asked him to search for any records related to the mailbox investigation in January 2018, he found the records in a "burn pile" (meant for documents HPD wanted to destroy securely) within the CIU offices. Among the documents in the burn pile were vehicle reports run on G. Puana on 06/22/2013, one day after the alleged mailbox theft and seven days before K. Kealoha officially identified him as a suspect.
62. On 12/04/2014, the federal criminal jury trial against G. Puana commenced under CR 13-735. The prosecution's first witness was Silva. He falsely testified that, following instructions from CIU superiors, Hahn and Shiraishi, he arrived at the Kealohas' residence at approximately 9:00 a.m. on 06/22/2013, verified the security system was in good working order on the date and time of the alleged theft of the mailbox, that recordings were made, and he retrieved the recordings from the residence. Silva stated that Nguyen was at the residence when he arrived. Further, Silva confirmed that he prepared reports documenting his retrieval of the hard drive and gave them to USPIS investigators.
63. The prosecution's second witness was L. Kealoha. He claimed to have noticed that the mailbox was missing when he left the residence early on the morning of 06/22/2013. However, he chose to not report it at that time, and waited until he returned from surfing at approximately 9:30 a.m. to tell his wife, K. Kealoha, about the missing mailbox. K. Kealoha then reported the alleged mailbox theft to

HPD. **L. Kealoha** further testified that he recognized the person in the surveillance video as G. Puana. When asked by the prosecutor how he knew it was G. Puana, **L. Kealoha** stated that he recognized his cargo shorts. **L. Kealoha** then testified, "How [G. Puana] looks in this video is how he looked when he was charged and convicted for breaking into his neighbor's house." Due to this improper, prejudicial statement about G. Puana, the Court immediately declared a mistrial. In this regard, G. Puana's deferral case did not qualify as a "conviction" under state law, which **L. Kealoha** knew from his years of experience and training as an HPD officer. Subsequently, FAFD Silvert presented evidence to the FBI indicating that G. Puana may have been framed, and CR 13-735 was dismissed with prejudice on 12/16/2013. **(Count 2)**

64. After the mistrial and after the federal investigation into the instant case was initiated, the Honolulu Ethics Commission's investigation was also ongoing. On 04/30/2015, Shiraishi falsely told the Commission that on 06/22/2013, at approximately 9:00 a.m., he was at home and received a phone call from **L. Kealoha** about his missing mailbox. Shiraishi also stated that he called Hahn to tell Silva to collect the surveillance video from the **Kealohas'** residence. Shiraishi repeated these statements to the FBI during interviews on 11/16/2015 and 01/06/2016, and again before the federal grand jury on 01/07/2016. However, phone records indicated that Shiraishi did not receive a call from **L. Kealoha** that day. Rather, he spoke to Hahn at 2:50 p.m. and 3:56 p.m. Further, Shiraishi was not at home, as he was participating in a golf tournament that morning.
65. Additionally, Nguyen also testified falsely before the federal grand jury. First, on 04/21/2016, Nguyen stated that he was standing next to Silva at the **Kealohas'** residence when the original hard drive containing the surveillance video of the alleged mailbox theft was retrieved from the residence. On the same date, Nguyen also testified that G. Puana was the person depicted in the video. **(Count 6)** Thereafter, on 05/19/2016, Nguyen falsely stated that he did not recall his repeated communications with Silva about the false information they were providing to federal investigators and in G. Puana's criminal trial in CR 13-735. Specifically, phone records showed that Nguyen and Silva infrequently communicated after Silva's retirement from HPD in December 2013. However, their communications noticeably increased during critical events in this case. For example, after Silva's retirement, they did not communicate until June 2014, when USPIS interviews occurred. On the date of the interviews, 06/18/2014 and 06/19/2014, Nguyen and Silva communicated 3 times. Thereafter, they did not communicate until December 2014, when Silva testified in G. Puana's federal criminal case. From 12/01/2014 to 12/04/2014, they had 20 contacts. After that, they did not communicate until November 2015, when Nguyen was interviewed by the FBI in this case. On the day before the interview, they had two phone contacts, including a 4 minute and 28 second call. **(Count 8)**
66. Phone records also showed a similar pattern of contacts between Silva and Hahn. Specifically, they did not communicate for months, and their communications noticeably increased during the same three key periods of the

case. Notably, 12/04/2014, the day of G. Puana's federal criminal trial, Silva and Hahn had phone call that lasted for more than 18 minutes. During these key periods, phone records also showed dozens of contacts between K. Kealoha, L. Kealoha, Hahn, Nguyen, and Silva, as follows:





Conclusion of the Puanas' Civil Lawsuit Against K. Kealoha

67. Shortly before the trial in the Puanas' civil lawsuit against K. Kealoha, in December 2014, K. Kealoha filed a petition for conservatorship for F. Puana in Hawaii state court. The petition alleged that F. Puana was legally incompetent to manage her finances due to her age (then 95 years old), and that G. Puana had "manipulated" and "co-opted" her. F. Puana was examined by medical doctors, and the petition was denied.
68. Following G. Puana's false arrest for the theft of the **Kealohas'** mailbox, K. Kealoha used the arrest to attempt to discredit him in the Puanas' civil lawsuit against her. For example, on 01/05/2015, she filed an opposition to a motion in limine, which stated, "[E]vidence regarding the mailbox itself and its removal by Gerard Puana is directly relevant in this case, and provides an example of 'unclean hands' directly related to the issues for which the plaintiffs now sue."
69. In January 2015, the Puanas' civil case under CV 13-1-686 proceeded to jury trial. On 02/12/2015, K. Kealoha prevailed in the lawsuit. According to media reports, the jury award consisted of: 248,787.66 in special damages; \$200,000.00 in general damages, \$210,000.00 in punitive damages, for a total of \$658,787.66. K. Kealoha was subsequently awarded attorney's fees and costs, as follows: F. Puana - \$80,448.00; G. Puana - \$30,750.00; and costs - \$18,523.41, for a total of \$129,721.41. Thereafter, pursuant to a state court order, in December 2016, F. Puana's bank account was garnished to pay \$108,041.02 for K. Kealoha's attorney's fees. The balance of the civil award remains unpaid. Media reports indicate that the Puanas are attempting to overturn K. Kealoha's civil lawsuit award, in light of the guilty verdicts for the instant offenses. Moreover, on 12/14/2016, G. Puana filed a civil lawsuit against

K. Kealoha, L. Kealoha, Nguyen, Sellers, Silva, and others, asserting deprivation of civil rights claims based upon G. Puana's false arrest and surveillance by HPD officers, in the District of Hawaii under Case No. CV 16-00659JMS-WRP. The case is presently stayed.

70. At the instant federal trial, F. Puana, then age 99, testified that her residence on Nioi Place was built by her late husband, and they raised their nine children there. She stated that she had an 8th grade education, and needed magnifying glasses to read from documents she was asked to review. According to F. Puana, after her husband died, her youngest son, G. Puana, moved back into the family home to take care of her. To repay him, F. Puana wanted to help him buy a condominium, and asked K. Kealoha to assist her. When presented with the idea of a reverse mortgage, F. Puana related that she was "confused" about the process, but agreed to allow K. Kealoha to obtain one on F. Puana's residence, because she considered K. Kealoha to be a smart and honest person. F. Puana stated: "[K. Kealoha] promised that she'd help me and I believed her. She said to trust her. She said, 'Grandma, don't worry.' She said, 'I'm the attorney and you can trust me.'" After F. Puana realized that K. Kealoha did not pay off the reverse mortgage as promised and made numerous unauthorized personal expenditures with her money, F. Puana attempted to contact K. Kealoha for an explanation on numerous occasions. Finally, K. Kealoha sent her an "angry" letter, which made F. Puana "very depressed," because she discovered that K. Kealoha "wasn't the person that [she] thought [she] knew and [she] respected." Ultimately, F. Puana decided to sell her residence, rather than lose it to the bank, and moved in with her daughter. F. Puana also considered K. Kealoha's attempts to have the courts declare her as incompetent as hurtful.
71. G. Puana testified that he and his mother were skeptical when K. Kealoha approached them about obtaining a reverse mortgage on his mother's residence. However, even though he did not quite understand the reverse mortgage process, he "trusted her wholeheartedly" when K. Kealoha told them that the mortgage would be paid off in 6 months. G. Puana stated that the living trust document used to purchase the Greenwood Condo was forged. He also described the difficulties he faced when he was incarcerated for 71 days for entering his neighbor's lanai, the illegal search and surveillance conducted by HPD, and his ultimate false arrest for the theft of the Kealohas' mailbox. G. Puana categorically denied taking their mailbox. According to media reports, G. Puana still owns and resides at the Greenwood Condo, but he is unable to sell it or take a loan against it because it is still owned by the fraudulent trust (controlled by K. Kealoha).

Arrest of K. Kealoha and Codefendants

72. Silva voluntarily appeared before the Court and pled guilty to an Information on 12/16/2016. Thereafter, the following arrests occurred: 10/15/2017 – Nguyen and Shiraishi; 10/18/2017 – Hahn; and 10/20/2017 – the Kealohas. They declined to make post-arrest statements.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERARD K. PUANA, and
RICKY L. HARTSELL as Trustee
of the Florence M. Puana Trust,

Plaintiffs,

vs.

CITY AND COUNTY OF
HONOLULU, KATHERINE P.
KEALOHA, LOUIS M. KEALOHA,
MINH-HUNG "BOBBY" NGUYEN,
NIALL SILVA, WALTER
CALISTRO, DRU AKAGI, JOHN
and/or JANE DOES 1-50,

Defendants.

CIVIL No. 16-00659 JMS-WRP
(Other Civil Action)

EXHIBIT 3

EXHIBIT 3
Report of Independent Psychological Examination of
Gerard K. Puana by Marvin Acklin, Ph.D., dated September 9, 2022
(To be filed under seal)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERARD K. PUANA, and	)	CIVIL NO. 16-00659 LEK/WRP
RICKY L. HARTSELL as Trustee)	
of the Florence M. Puana Trust,)	
)	
Plaintiffs,	)	MEMORANDUM OF LAW
)	
vs.)	
)	
CITY AND COUNTY OF)	
HONOLULU; KATHERINE P.)	
KEALOHA; LOUIS M. KEALOHA;)	
MINH-HUNG “BOBBY” NGUYEN;)	
WALTER CALISTRO; DRU)	
AKAGI; JOHN and/or JANE DOES)	
1-50,)	
Defendants.)	
_____)	

MEMORANDUM OF LAW

Plaintiffs GERARD K. PUANA and RICKY L. HARTSELL, as Trustee of the Florence M. Puana Trust (hereinafter “Plaintiffs”) filed this action pursuant to 42 U.S.C. § 1983 to, among other things, vindicate their constitutional rights under the Fourth and Fourteenth Amendments for acts committed under color of law by Defendant Louis M. Kealoha and others while he served as Chief of Police of the City and County of Honolulu (hereinafter “Louis Kealoha”). Because Louis Kealoha failed to appear and answer or otherwise reply to Plaintiffs’ Third Amended Complaint, the Clerk of the Court entered a default

against him. (ECF No. 455). As set forth in this memorandum in support of Plaintiffs' Motion for Default Judgment, Plaintiffs meet the factors set forth in *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986) and therefore requests that the Court grant Plaintiffs' Motion for Default Judgment.

BACKGROUND

The Complaint for Damages in this matter was filed on December 14, 2016. The Complaint for Damages was served on Louis Kealoha through personal service on his attorney, Kevin P.H. Sumida, Esq. on March 9, 2017. (ECF No. 24). On behalf of Louis M. Kealoha, Kevin P.H. Sumida, Esq. filed an Answer to Complaint for Damages (ECF No. 32) on November 3, 2017.

On October 18, 2017, Louis Kealoha, along with Katherine P. Kealoha, Minh-Hung "Bobby" Nguyen, Daniel Sellers, and Derek Wayne Hahn were indicted in Criminal No. 17-00582 JMS-WRP and charged with, among other things, violating the civil rights of Plaintiff Gerard K. Puana. By agreement of the parties, this civil case was stayed pending the outcome of the criminal case. (ECF Nos. 34, 37, 41, 42, 46). Thereafter, on September 9, 2019, the court issued an Order Staying this Litigation (ECF No. 56) until January 3, 2020. On September 11, 2019, Kevin P.H. Sumida, Esq., filed a motion to withdraw as counsel for Louis Kealoha (ECF No. 57) which motion was granted on October 7, 2019 (ECF No. 59).

On September 3, 2020, with leave of Court, Plaintiffs filed their First Amended Complaint for Damages (ECF No. 80). Louis Kealoha was served with Plaintiffs' First Amended Complaint for Damages via U.S. Mail at his Kahala Avenue residence on September 3, 2020. On December 11, 2020, the Court lifted the stay in this case and ordered the defendants to answer or otherwise respond by January 4, 2021. (ECF No. 97). On February 18, 2021, Louis Kealoha answered Plaintiffs' First Amended Complaint for Damages. (ECF No. 120). On August 1, 2021, with leave of Court, Plaintiffs filed their Second Amended Complaint for Damages (ECF No. 207). Louis Kealoha was served with the Second Amended Complaint for Damages via U.S. Mail on August 2, 2021 at FCI Sheridan and failed to answer or otherwise respond. On May 13, 2022, with leave of Court, Plaintiffs filed their Third Amended Complaint for Damages (ECF No. 307). Louis Kealoha was served with the Third Amended Complaint for Damages via U.S. Mail on August 3, 2022 at FCI Sheridan and failed to answer or otherwise respond.

On February 10, 2023, at Plaintiffs' request, the Clerk of Court entered a default against Louis Kealoha for failing to answer or otherwise respond to Plaintiffs' Third Amended Complaint for Damages. (ECF No. 455). On February 13, 2023, the Court directed Plaintiffs to file their Motion for Default Judgment by March 3, 2023 (ECF No. 456).

ANALYSIS

I. Jurisdiction

First, the Court has subject matter jurisdiction over Plaintiffs' claims related to the violation of their constitutional rights pursuant to the Civil Rights Act of 1871, as amended. *See* 42 U.S.C. § 1983. Second, the Court has personal jurisdiction over Louis Kealoha. Personal jurisdiction can be acquired by personal service pursuant to Rules 4 and 5 of the Federal Rules of Civil Procedure. *Direct Mail Specialists, Inc. v Eclat Computerized Techs, Inc.* 840 F.2d 685, 688 (9th Cir. 1988) (citing *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982)).

A. Subject-Matter Jurisdiction

The claims asserted by Plaintiffs herein present a question of federal law thereby conferring jurisdiction upon the Court pursuant to 28 U.S.C. §§ 1331, 1343(3), 18 U.S.C. § 1964(c), and 42 U.S.C. § 1983, inter alia. Plaintiffs' state law claims contained herein form part of the same case or controversy as gives rise to Plaintiffs' federal law claims and therefore fall within the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

B. Personal Jurisdiction

Louis Kealoha was served with Plaintiffs' original Complaint for Damages which he answered. He was served via U.S. Mail with Plaintiffs' Second and Third Amended Complaints for Damages to which he failed to answer

or otherwise respond. At Plaintiffs' request, the Clerk of Court has already entered a default against him for failing to answer the Third Amended Complaint for Damages.

II. Plaintiffs Meet the *Eitel* Factors

Following a determination that jurisdiction is proper, the Court must consider whether default judgment is appropriate under the factors outlined in *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986) below. Plaintiffs will address each factor in turn.

Default judgment may be entered for the plaintiff if the defendant has defaulted by failing to appear or otherwise defend against the plaintiff's complaint, and the plaintiff's claim is for a "sum certain or for a sum which can by computation be made certain[.]" Fed. R. Civ. P. 55(a), (b). Whether to grant or deny a motion for default judgment is within the discretion of the court. *Haw. Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 511-12 (9th Cir. 1986); *Aldabe v Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In exercising its discretion, this Court should consider the following (collectively, "*Eitel* factors"):

(1) the possibility of prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action[,], (5) the possibility of a dispute concerning material facts[,], (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decision on the merits.

Eitel, 782 F.2d at 1471-72 (citation omitted).

In deciding a motion for default judgment, “the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.” *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (quoting *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)).

Although allegations in the complaint regarding liability are taken as true, the plaintiff must establish the relief to which it is entitled. *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002).

A. Possibility of Prejudice

The first *Eitel* factor considers whether Plaintiffs would suffer prejudice if default judgment is not entered. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). Here, absent entry of default judgment, Plaintiff would be without recourse for recovery since Louis Kealoha is without counsel, imprisoned in a federal correctional institution, and unwilling to cooperate, defend, or otherwise participate in this litigation. Accordingly, the first *Eitel* factor favors entry of default judgment.

B. Merits of Substantive Claims

Merits of claims and the allegations in the complaint are taken as true for purposes of determining liability. *See TeleVideo Sys., Inc.*, 826 F.2d at 917-18; *Fair Hous. of Martin*, 285 F.3d at 906. Taking Plaintiffs' allegations in the Third Amended Complaint for Damages as true, this Court should find that

Plaintiffs have established that they are entitled to default judgment against Louis Kealoha on all claims. Further, there were judicial admissions made by Louis Kealoha when he stipulated in his Sentencing Agreement and Appellate Waiver in Cr. No. 17-00582 JMS-WRP to the truth and accuracy of the facts presented in his Presentence Report for purposes of sentencing. *American Title Insurance Company v. Lacelaw Corporation*, 861 F.2d 224, 226 (9th Cir. 1988). Excerpts of his Presentence Report were ordered disclosed to Plaintiffs in this case, are attached to this motion as an exhibit, and clearly establishes his liability regarding their constitutional claims.

C. Sufficiency of complaint

In response to motions to dismiss filed by various defendants, this Court has consistently ruled that Plaintiff Gerard Puana's Fourth Amendment malicious prosecution claim is adequately pled and valid (ECF Nos. 289 at p. 48, ECF No. 379 at p. 8). Accordingly, the third *Eitel* factor is satisfied. *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F.Supp.2d 1172, 1175 (C.D. Cal. 2002) (citing *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978)).

D. Sum of money at stake.

Under the fourth *Eitel* factor, "the court must consider the amount of money at stake in relation to the seriousness of Defendant's conduct." *PepsiCo, Inc.*, 238 F.Supp.2d at 1177. In this case, Plaintiffs seek a significant amount of

general damages, i.e., \$250,000.00, and a significant amount of punitive damages, i.e., \$250,000.00 against Louis Kealoha for the egregious abuse of his power and authority as Chief of Police of the Honolulu Police Department. Plaintiffs' damages requests are tailored to Louis Kealoha's specific wrongful conduct. Under these circumstances, this factor favors the entry of default judgment.

E. Possibility of dispute concerning material facts

The fifth factor, regarding the possibility of dispute concerning material factors, weighs in favor of default judgment. As noted above, the Court should accept the well-pled allegations of the Third Amended Complaint as true, except those relating to the amount of damages. *TeleVideo Sys., Inc.*, 826 F.2d at 917-18. Despite being given a fair opportunity to defend against Plaintiffs' claims, Louis Kealoha has not done so. Although Plaintiffs personally served Louis Kealoha with the Third Amended Complaint, he has failed to make an appearance in this action or otherwise respond to the Plaintiffs' claims. Because no dispute has been raised regarding Plaintiffs' material factual allegations, this factor favors default judgment. Further, there were judicial admissions made by Louis Kealoha when he stipulated in his Sentencing Agreement and Appellate Waiver in Cr. No. 17-00582 JMS-WRP to the truth and accuracy of the facts presented in his Presentence Report for purposes of sentencing.

F. Default due to excusable neglect

Regarding the sixth factor, it is apparent that Louis Kealoha's default was not the result of excusable neglect. He failed to defend against this action, and the Clerk of Court entered default against him. *See* ECF No. 455. The record indicates that his default was not the result of any excusable neglect, but rather due to his conscious and willful decision not to defend this action further. Consequently, this factor weighs in favor of default judgment.

G. Policy favoring decision on the merits

Louis Kealoha's default makes a decision on the merits impractical, if not impossible. Under Federal Rule of Civil Procedure 55, “termination of a case before hearing the merits is allowed whenever a defendant fails to defend an action.” *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177; *see also Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 501 (C.D. Cal. 2003) (“the mere existence of Fed. R. Civ. P. 55(b) indicates that the seventh *Eitel* factor is not alone dispositive.”). Here, Louis Kealoha has failed to defend against this action, and has thus rendered adjudication on the merits before this Court impracticable. Although the policy favoring decisions on the merits generally weighs against default judgment, this factor alone does not preclude the Court from entering default judgment against him. Accordingly, this factor does not weigh against default judgment.

CONCLUSION

Based on the foregoing, Plaintiffs have established that the totality of the *Eitel* factors weigh in favor of entering a default judgment in their favor and against Defendant Louis Kealoha. Accordingly, Plaintiffs respectfully request that the Court enter judgment in their favor and against Louis Kealoha.

DATED: Honolulu, Hawaii, March 3, 2023.

/s/ Eric A. Seitz
ERIC A. SEITZ
DELLA A. BELATTI
JONATHAN M.F. LOO
KEVIN YOLKEN

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was duly served on this date electronically, via CM/ECF to the following at the addresses listed below:

PAGE C.K. OGATA, ESQ.
Deputy Corporation Counsel
City and County of Honolulu
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Attorney for Defendant
MINH-HUNG “BOBBY” NGUYEN,
in his individual capacity

and was served on this date to the following parties by U.S. Mail at their last known address:

Katherine P. Kealoha
BOP No. 06014-122
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Federal Correctional Institution
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Adelanto, CA 92301

Defendant pro se

Louis M. Kealoha
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Defendant pro se

DATED: Honolulu, Hawaii, March 3, 2023.

/s/ Eric A. Seitz
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