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IN THE UNITED STATES DISTRICT COURT  
  
FOR THE DISTRICT OF HAWAII

HYUN JU PARK,	)	CIVIL NO. 17-00142
	)	
Plaintiff,	)	
	)	COMPLAINT FOR DAMAGES;
vs.	)	DEMAND FOR JURY TRIAL
	)	
CITY AND COUNTY OF HONOLULU;	)	
ANSON KIMURA, STERLING NAKI;	)	
JOSHUA OMOSO; DOE ASSOCIATIONS	)	
1-5; and JOHN and/or JANE DOES	)	
1-10,	)	
	)	
Defendants.	)	
_____	)	

COMPLAINT FOR DAMAGES

Plaintiff HYUN JU PARK (hereinafter "Plaintiff"), by and through her undersigned attorneys, alleges as follows:

I. Introduction

(1) This is an action to redress the deprivation under color of statutes, ordinances, rules, regulations, customs, policies, practices, and/or usages of rights, privileges, and immunities secured to Plaintiff by the Fourth and Fourteenth

Amendments to the Constitution of the United States, inter alia, Article I, Sections 5, 6, and 7, of the Constitution of the State of Hawaii, inter alia, and 42 U.S.C. Section 1983, et seq.

(2) Plaintiff contends that she was wrongfully and nearly fatally assaulted by Defendant ANSON KIMURA in violation of applicable provisions of the Constitution of the United States and the Constitution of the State of Hawaii, inter alia.

(3) Plaintiff contends that Defendants CITY AND COUNTY OF HONOLULU, DOE ASSOCIATIONS 1-5, and JOHN and/or JANE DOES 1-10 failed to adopt, implement, and enforce rules, procedures, regulations, policies, and/or practices to prevent the nearly fatal injuries Plaintiff suffered and have deliberately withheld information from Plaintiff and the public and affirmatively acted to cover up and distort the true facts and circumstances relating to the shooting incident in which Plaintiff nearly died.

## II. Jurisdiction and Venue

(4) This case arises under the Constitution and statutes of the United States of America and the State of Hawaii, inter alia.

(5) The claims asserted herein present a question of federal law thereby conferring jurisdiction upon the Court pursuant to 28 U.S.C. Sections 1331, 1343(3), 2201 and 2202, and

42 U.S.C. Section 1983, inter alia. Any and all state law claims contained herein form part of the same case or controversy as gives rise to Plaintiff's federal law claims and therefore fall within the Court's supplemental jurisdiction pursuant to 28 U.S.C. Section 1367.

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

### III. Parties

(7) Plaintiff HYUN JU PARK is and has been a resident of the City and County of Honolulu, State of Hawaii, at all times pertinent hereto.

(8) Defendant CITY AND COUNTY OF HONOLULU is and has been a duly organized municipal corporation of the State of Hawaii at all times pertinent hereto.

(9) Defendant ANSON KIMURA (hereinafter "Defendant KIMURA") is and has been a citizen and resident of the City and County of Honolulu, State of Hawaii, and was employed as a police officer by the Honolulu Police Department at all times pertinent hereto. Defendant KIMURA is sued herein both in his individual and official capacities.

(10) Plaintiff is informed and believes, and thereupon

alleges, that Defendants STERLING NAKI (hereinafter "Defendant NAKI") and JOSHUA OMOSO (hereinafter "Defendant OMOSO") are and have been citizens and residents of the City and County of Honolulu, State of Hawaii, and are and have been employed as police officers by the Honolulu Police Department at all times pertinent hereto. Defendants NAKI and OMOSO are sued herein both in their individual and official capacities.

(11) Defendants JOHN and/or JANE DOES 1-10 and DOE ASSOCIATIONS 1-5 (hereinafter "DOE DEFENDANTS") are individuals and/or entities whose true identities and capacities are as yet unknown to Plaintiff and her counsel, despite diligent inquiry and investigation, and who acted herein as described more particularly below in connection with the breaches of duties and/or violations of law alleged herein and who in some manner or form not currently discovered or known to Plaintiff may have contributed to or be responsible for the injuries alleged herein. The true names and capacities of DOE DEFENDANTS will be substituted as they become known. DOE DEFENDANTS are sued herein both in their individual and official capacities.

#### IV. Factual Allegations

(12) On or about April 3, 2015, at approximately 1:45 A.M., Plaintiff was performing her duties as a bartender/manager at the Kings Sports Bar in Honolulu, Hawaii.

(13) At the aforementioned time and place Defendant KIMURA was drinking alcoholic beverages and socializing with Defendants NAKI, OMOSO, and others.

(14) Plaintiff is informed and believes, and thereupon alleges, that while Defendant KIMURA was drinking he took out his Honolulu Police Department issued firearm and proceeded to handle the weapon in a reckless and dangerous manner until one bullet was discharged, striking Plaintiff.

(15) Plaintiff is informed and believes, and thereupon alleges, that at the time his weapon discharged Defendant KIMURA was intoxicated and/or suffering from emotional distress associated with his employment by Defendant CITY AND COUNTY OF HONOLULU.

(16) Plaintiff is informed and believes, and thereupon alleges, that prior to the shooting incident on April 3, 2015, Defendant KIMURA had a history of alcohol abuse and/or emotional distress which was or should have been known to JOHN and/or JANE DOES, his supervisors and superiors at the Honolulu Police Department, and other DOE DEFENDANTS.

(17) Despite their knowledge of Defendant KIMURA's history of alcohol abuse and/or emotional distress none of the DOE DEFENDANTS ever acted or attempted to take any actions to remove Defendant KIMURA's service weapon, to limit his access to

such weapons, to provide counseling and/or assistance, and/or to otherwise prevent the serious injuries suffered by Plaintiff.

(18) Plaintiff is informed and believes, and thereupon alleges, that based upon the previous acts of Defendant KIMURA it was entirely foreseeable that Defendant KIMURA would cause a serious and/or fatal injury if he were allowed to possess and handle a service weapon when he was drinking and/or suffering emotional distress.

(19) Plaintiff is informed and believes, and thereupon alleges, that immediately following the incident in which she nearly died, JOHN and/or JANE DOES, including ranking representatives of the Honolulu Police Department, agents of the police union, and other friends and associates of Defendant KIMURA arrived at the scene of the shooting to render assistance and provide support to Defendant KIMURA and to cover up and/or minimize his and their potential liability for the injuries suffered by Plaintiff.

(20) Plaintiff is informed and believes, and thereupon alleges, that the individually named Defendant Officers are authorized and/or required to carry their service firearms on a twenty-four hour basis as a condition of employment by Defendant CITY AND COUNTY OF HONOLULU.

(21) Plaintiff is informed and believes, and thereupon

alleges, that all of the individually named Defendant Officers were instructed pursuant to the Honolulu Police Department's Policy Number 2.38 entitled "Uniforms, Equipment, and Firearms."

(22) Pursuant to Policy Number 2.38, individual Defendant Officers are required to "exercise extreme care and caution in storing weapons and other equipment to ensure that none are. . .misused."

(23) Pursuant to Policy Number 2.38, Defendant Officers are further prohibited from "physically handl[ing] department-issued or supplemental firearms while consuming alcohol or any substance which is likely to impair their physical or mental processes."

(24) Plaintiff is informed and believes, and thereupon alleges, that the above described actions of Defendants KIMURA, NAKI, OMOSO, and other officers were without reasonable, just, and/or probable cause.

(25) Plaintiff is informed and believes, and thereupon alleges, that Defendant CITY AND COUNTY OF HONOLULU failed to immediately discipline any of the Defendant Officers in light of the egregious and outrageous misconduct that proximately caused Plaintiff's injuries.

(26) Plaintiff is informed and believes, and thereupon alleges, that insufficient formal reviews, investigations,

disciplinary proceedings, and/or retraining related to the conduct of Defendants KIMURA, NAKI, OMOSO, and/or JOHN and/or JANE DOES were initiated or conducted by Defendant CITY AND COUNTY OF HONOLULU with respect to their failure to comply with Honolulu Police Department policies and procedures, including Policy Number 2.38.

(27) As a direct and proximate result of the foregoing Plaintiff suffered serious, life threatening, painful, and permanent injuries

(28) As a direct and proximate result of the foregoing, Plaintiff required and continues to require medical treatment in amounts to be proven at trial.

(29) As a direct and proximate result of the foregoing, Plaintiff has suffered loss of earnings and income in amounts to be proven at trial.

(30) As a direct and proximate result of the foregoing Plaintiff has suffered great mental pain, anguish and suffering, severe emotional distress, anxiety, embarrassment, humiliation, worry and anger.

V. First Cause of Action  
(Fourth Amendment and/or  
42 U.S.C. Section 1983 Violations)

(31) Plaintiff hereby incorporates all of the allegations contained in Paragraphs 1 through 30, above.



(32) Plaintiff is informed and believes, and thereupon alleges, that Defendants KIMURA, NAKI, OMOSO and certain of the DOE DEFENDANTS acted and/or purported to act herein under color of statutes, ordinances, rules, regulations, customs, policies, practices, and/or usages of the City and County of Honolulu, State of Hawaii, and within the scope and course of their employment as police officers in the Honolulu Police Department.

(33) Plaintiff is informed and believes, and thereupon alleges, that she was assaulted and suffered serious injuries without any probable, sufficient, just, or reasonable cause in violation of rights guaranteed to her by the Fourth Amendment to the United States Constitution and Article I of the Constitution of the State of Hawaii, inter alia.

(34) As a direct and proximate result of the acts and omissions of Defendants KIMURA, NAKI, OMOSO, and certain of the DOE DEFENDANTS Plaintiff sustained substantial damages in amounts to be proven at trial.

VI. Second Cause of Action  
(Fourteenth Amendment and/or  
42 U.S.C. Section 1983 Violations)

(35) Plaintiff hereby incorporates all of the allegations contained in Paragraphs 1 through 30, 32, and 33, above.

(36) Defendants KIMURA, NAKI, OMOSO, and certain of

the DOE DEFENDANTS knew or should have known that their actions were unreasonable and/or excessive and violated Plaintiff's clearly established constitutional rights.

(37) Defendants KIMURA, NAKI, OMOSO, and certain of the DOE DEFENDANTS were deliberately indifferent to Plaintiff's clearly established constitutional rights.

(38) As a direct and proximate result of the foregoing Plaintiff sustained damages in amounts to be proven at trial.

VII. Third Cause of Action  
(Constitutional and/or 42 U.S.C.  
Section 1983 Violations: Municipal Liability)

(39) Plaintiff hereby incorporates all of the allegations contained in Paragraphs 1 through 30, 36, and 37, above.

(40) Plaintiff is informed and believes, and thereupon alleges, that it is the policy, practice, and custom of the Honolulu Police Department, its supervisors, and police officers to tolerate and ratify the unauthorized use of force, misconduct, and/or negligent handling of firearms by its police officers, employees, and/or agents.

(41) Plaintiff is informed and believes, and thereupon alleges, that despite the clear prohibitions against unauthorized use of force, misconduct, and/or negligent handling

of firearms by its police officers contained in Policy Number 2.38, inter alia, Defendants KIMURA, NAKI, OMOSO, and certain of the DOE DEFENDANTS were not adequately trained, investigated, supervised, disciplined, counseled, and/or retrained by the Honolulu Police Department in the handling of their service weapons while consuming alcoholic beverages and/or while suffering from emotional distress.

(42) Plaintiff is informed and believes, and thereupon alleges, that the Honolulu Police Department's failure to adopt, implement, and enforce rules, procedures, regulations, policies, and/or practices to promptly remove service weapons from police officers who are known or suspected to be suffering from alcohol abuse and/or emotional distress directly and proximately resulted in the injuries of which Plaintiff complains herein.

(43) As a direct and proximate result of the foregoing Plaintiff sustained substantial damages in amounts to be proven at trial.

VIII. Fourth Cause of Action  
(Assault and Battery)

(44) Plaintiff hereby incorporates all of the allegations contained in Paragraphs 1 through 30, above.

(45) Defendant KIMURA acted herein outside the scope of his employment as a police officer with the Honolulu Police

Department.

(46) Plaintiff is informed and believes, and thereupon alleges, that Defendant KIMURA intentionally, willfully, knowingly, maliciously, and deliberately assaulted and attacked Plaintiff without provocation and/or lawful justification.

(47) As a direct and proximate result of the foregoing Plaintiff sustained substantial damages in amounts to be proven at trial.

IX. Fifth Cause of Action  
(Intentional Infliction of Emotional Distress)

(48) Plaintiff hereby incorporates all of the above allegations contained in Paragraphs 1 through 30 and 45, above.

(49) Plaintiff is informed and believe, and thereupon alleges, that Defendant KIMURA maliciously, knowingly, intentionally, willfully, deliberately, and without regard for the rights, interests, and well-being of Plaintiff proximately caused Plaintiff to suffer severe emotional distress in amounts to be proven at trial.

X. Sixth Cause of Action  
(Negligence Claims)

(50) Plaintiff hereby incorporates all of the allegations contained in Paragraphs 1 through 30, above.

(51) Plaintiff is informed and believes, and thereupon alleges, that the Defendants acted herein negligently thereby

proximately and directly causing Plaintiff to suffer serious physical injuries, pain, mental anguish, severe emotional distress, anxiety, embarrassment, humiliation, worry, and anger in amounts to be proven at trial.

WHEREFORE, Plaintiff prays for relief as follows:

(1) For general damages in amounts to be proven at trial;

(2) For special damages in amounts to be proven at trial;

(3) For punitive damages against the individually named Defendants;

(4) For reimbursement of Plaintiff's costs and expenses herein, including reasonable provision of her attorneys' fees; and

(5) For such further and additional relief as the Court deems appropriate and just.

DATED: Honolulu, Hawaii, March 30, 2017.

/s/ Eric A. Seitz  
ERIC A. SEITZ  
DELLA A. BELATTI

Attorneys for Plaintiff