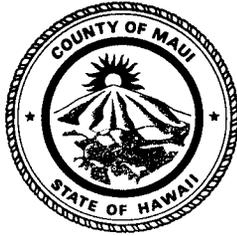


ALAN M. ARAKAWA  
Mayor



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Corporation Counsel

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DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
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OFFICE OF THE  
COUNTY COUNSEL

2013 JUL 23 AM 9:55

RECEIVED

July 23, 2013

MEMO TO: Honorable G. Riki Hokama, Chair  
Policy and Intergovernmental Affairs Committee

FROM: Moana M. Lutey *ML*  
Deputy Corporation Counsel

SUBJECT: LITIGATION MATTERS (PIA-1)  
Marie J. Kosegarten v. Dept. of the Prosecuting  
Attorney, County of Maui, Benjamin M. Acob, and Timothy  
T. Tate, Civil No. CV10-00321 LEK/KSC

Our Department respectfully requests the opportunity to convey Plaintiff's recent settlement demand. This matter is urgent, as a status conference has been set for August 26, 2013, at which time new trial dates will be issued if there is no settlement.

It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County and the individual defendants.

Copies of the Resolution and the Second Amended Complaint are attached. Our department would also like to request that a representative of the Department of the Prosecuting Attorney be present at the meeting to answer any questions that may arise.

Thank you for your anticipated assistance in this matter. Should you have any questions, please do not hesitate to contact me.

MML:ma  
Enclosures  
cc: John D. Kim, Prosecuting Attorney  
S:\SCREENED\KOSEGARTEN\USDC\Council\2013-07-23 memo to PIA.wpd

# Resolution

No. \_\_\_\_\_

AUTHORIZING SETTLEMENT OF  
MARIE J. KOSEGARTEN V. THE DEPARTMENT OF THE PROSECUTING  
ATTORNEY, COUNTY OF MAUI, BENJAMIN M. ACOB, AND TIMOTHY T. TATE,  
CIVIL NO. CV 10-00321 LEK/KSC

WHEREAS, Plaintiff Marie J. Kosegarten (hereinafter "Plaintiff") initially filed a lawsuit in the United States District Court on June 4, 2010, Civil No. CV10-00321 LEK/KSC, against the Department of the Prosecuting Attorney, County of Maui, Benjamin M. Acob, and Timothy T. Tate, claiming general and special damages related to her employment with the County, and thereafter filed a Second Amended Complaint on December 21, 2011; and

WHEREAS, on February 21, 2013, the Court dismissed Defendants Benjamin M. Acob and Timothy T. Tate as defendants pursuant to County's motion; and

WHEREAS, on December 16, 2011, the Council adopted Resolution No. 11-136, authorizing settlement of this case; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this entire case on behalf of the County of Maui by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Policy and Intergovernmental Affairs Committee; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby approves settlement of this entire case on behalf of the County of Maui under the terms set forth in an executive meeting before the Policy and Intergovernmental Affairs Committee; and

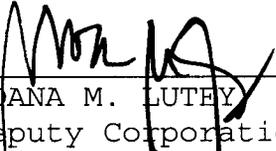
2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

4. That certified copies of this resolution be

transmitted to the Mayor, the Director of Finance, the Prosecuting Attorney, and the Corporation Counsel.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
MOANA M. LUTEY  
Deputy Corporation Counsel  
County of Maui

S:\SCREENED\KOSGARTENUSDC\Council\reso.settlement.7-23-13.wpd

CU 30M  
LKR

**ORIGINAL**

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

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DEC 21 2011  
at 3 o'clock and 15 min. M.  
SUE BEITIA, CLERK

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Attorneys for Plaintiff  
MARIE J. KOSEGARTEN

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

MARIE J. KOSEGARTEN,	)	CIVIL NO. CV10-00321 <del>SOM</del> <sup>LKR</sup> /KSC
	)	
Plaintiff,	)	
vs.	)	
	)	
THE COUNTY OF MAUI;	)	SECOND AMENDED COMPLAINT;
BENJAMIN M. ACOB, in his	)	DEMAND FOR JURY TRIAL;
individual capacity; TIMOTHY T.	)	SUMMONS
TATE, in his individual capacity;	)	
JOHN DOES 1-10; JANE DOES 1-10;	)	
DOE CORPORATIONS 1-10; DOE	)	
PARTNERSHIPS 1-10; and DOE	)	
ENTITIES 1-10.	)	
	)	
Defendants.	)	
	)	
	)	

**SECOND AMENDED COMPLAINT**

COMES NOW Plaintiff, MARIE J. KOSEGARTEN, by and through her attorneys, MICHAEL JAY GREEN, RICHARD D. GRONNA, and CAPRICE R. ITAGAKI, and as a second amended complaint against THE COUNTY OF MAUI; BENJAMIN M. ACOB, in his individual capacity; and TIMOTHY T. TATE, in his individual capacity; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; and DOE ENTITIES 1-10, hereby allege and aver as follows:

**INTRODUCTION**

1. This is an action to redress the discrimination against the Plaintiff based on her sex and sexual orientation against the Defendants for unlawful employment practices in violation of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1981, 42 U.S.C. § 2000(e) et seq., and Hawaii state law. Plaintiff alleges various state law causes of action under a common nucleus of operative facts for discriminatory practices, wrongful termination based on retaliatory discharge, Whistleblower's, and public policy.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction of the action under 28 U.S.C. Section 1343 and 42 USC Section 2000e et. seq. in order to protect rights guaranteed by 42 USC Section 1981, Title VII of the 1964 Civil Rights Act (42

USC § 2000e et seq.), the Fourteenth Amendment to the United States Constitution; and pendant jurisdiction over state law claims.

3. All of the matters as herein alleged occurred within this District.

4. Pendant jurisdiction is based on 28 U.S.C. Section 1367, and United Mine Workers v. Gibbs, 383 U.S. 715, 86 S.Ct. 1130 (1966), as the violation of the Civil Rights Law alleged herein is substantial and the pendent causes of actions derive from a common nucleus of operative facts.

#### PARTIES

5. Plaintiff MARIE J. KOSEGARTEN (“Plaintiff”) is a resident of the County of Maui, State of Hawai`i.

6. Defendant THE COUNTY OF MAUI (“Defendant COUNTY”), is a duly organized municipal corporation organized and existing under and by virtue of the laws of the State of Hawai`i. At all times mentioned herein Defendant County was the employer of Defendant BENJAMIN M. ACOB, and Defendant TIMOTHY T. TATE and performed all the herein acts for and in the name of the Defendant County.

7. Defendant BENJAMIN M. ACOB (“Defendant Acob”) was at all times relevant to the incidents which are the subject of this lawsuit, the Chief Prosecuting Attorney for the County of Maui. As such, he was the party

responsible for supervising the training, instruction, discipline, control, and conduct of the Deputy Prosecuting Attorneys and the staff. He was also the party responsible for promulgating all orders, rules, instructions, and regulations of Defendant County, including but not limited to those orders, rules, instructions, and regulations, concerning employment discrimination, harassment, retaliation, and work environment. At all times relevant herein, Defendant Acob was acting as an individual, in violation of, and under the color of the law. As such, he is sued in his individual capacity. Upon information and belief, Defendant Acob is a resident of the County of Maui, State of Hawai`i.

8. Defendant TIMOTHY T. TATE ("Defendant Tate", Defendant County, Defendant Acob, and Defendant Tate are collectively referred to as "Defendants") was at all times relevant to the incidents which are the subject of this lawsuit, a deputy prosecuting attorney for the County of Maui. At all times hereinafter alleged, Defendant Tate was acting as in individual, in violation of, and under the color of the law. As such, he is sued in his individual capacity. Upon information and belief, Defendant Tate is a resident of the County of Maui, State of Hawai`i.

9. Defendants JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; and DOE ENTITIES 1-10 are persons, corporations, partnerships, or entities (hereinafter collectively "Doe

Defendants”) sued under fictitious names for the reason that their true names and identities are presently unknown except that they are connected in some manner and/or were responsible for the actions of Defendants alleged herein. Plaintiff prays leave to amend this Complaint to insert the true names, identities, capacities, activities and/or responsibilities of Doe Defendants when they are ascertained.

**CONDITIONS PRECEDENT / ADMINISTRATIVE BACKGROUND**

10. Plaintiff has fulfilled all conditions precedent to the institution of this action under 42 U.S.C. Section 2000e.

11. Plaintiff has previously filed complaints regarding discriminatory practices occurring in the workplace pursuant to the County of Maui’s Policy Against Discrimination.

12. On or about October 17, 2008, June 10, 2009 and July 9, 2009, Plaintiff filed timely complaints with the Equal Employment Opportunity Commission (“EEOC”) and the Hawaii Civil Rights Commission (“HCRC”). The EEOC and HCRC provided Right to Sue letters on each of the Plaintiff’s claims, all of which were dated March 8, 2010.

13. On June 2, 2010, Plaintiff sent a Notice of Claim to the County of Maui, pursuant to Haw. Rev. Stat. § 46-72.

**FACTUAL BACKGROUND**

14. On November 12, 1991, Plaintiff was hired by Defendant

County as a Deputy Prosecuting Attorney.

15. Plaintiff began her practice as a deputy prosecuting attorney. In August 1997, she resigned her employment to relocate to the mainland.

16. On April 1, 2000, Plaintiff returned to Hawaii and was rehired by Defendant County as a felony screening Deputy Prosecuting Attorney.

17. In 2003, Plaintiff was promoted to the position of District Court Supervisor.

18. In July of 2003, Plaintiff received the Manager of the Year Award for outstanding work as a manager and supervisor.

19. In 2005, Plaintiff received another promotion and advanced to the prosecution of the higher level felony cases.

20. In or around 2006, Plaintiff was nominated as a finalist for the position of Judge of the Second Circuit District Court by the Judicial Selection Commission.

21. In January 2007, Defendant Acob became the Prosecuting Attorney for the County of Maui.

22. In or about January of 2007, without reason, Plaintiff was reassigned by Defendant Acob back to her old position as District Court Supervisor.

23. In the fall of 2007, upon information and belief, Defendant Tate

entered into a romantic relationship with Deputy Prosecuting Attorney Jacki Jura (“Ms. Jura”). Ms. Jura was assigned to the District Court Division, under Plaintiff’s supervision.

24. Sometime in September of 2007, Defendant Tate approached Plaintiff and requested Plaintiff “do him a favor” and give Ms. Jura a promotion.

25. Plaintiff declined to promote Ms. Jura because she had been having performance problems and was therefore not qualified for a promotion. Plaintiff later reported Defendant Tate’s inappropriate request to the County and the management team.

26. Shortly thereafter, Plaintiff learned that Defendant Tate began to refer to the Plaintiff as a “lesbian” and a “butch” to other members of Defendant County’s staff, including Ms. Jura, and/or made other inappropriate comments about Plaintiff. Plaintiff reported Defendant Tate’s conduct to the management team, as she had become the subject of office ridicule and mockery and Plaintiff’s work environment had become increasingly uncomfortable and hostile as a result of Defendant Tate’s name-calling.

27. In or around October of 2007, upon information and belief, Defendant Tate entered into another romantic relationship with Deputy Prosecuting Attorney Yukari Murakami (“Ms. Murakami”). Ms. Murakami was also assigned to the District Court Division, under Plaintiff’s supervision.

28. On or about October 29, 2007, Defendant Tate approached Plaintiff

again and demanded Plaintiff do him a "favor" and promote Ms. Murakami. Ms. Murakami was also having performance problems and Plaintiff believed she was not qualified for advancement or promotion. Plaintiff declined Defendant Tate's request and explained that it was inappropriate for him to ask Plaintiff to promote the women that he was involved with. Plaintiff recommended Defendant Tate speak with Defendant Acob or management to address his concerns.

29. On or about October 29, 2007, Plaintiff attended a management meeting with Defendant Acob, Personnel Manager Wayne Steel ("Mr. Steel"), and all managing Deputy Prosecuting Attorneys.

30. At the meeting, Plaintiff reported Defendant Tate's demands for promotions of Ms. Jura and Ms. Murakami to the management team for appropriate action. Immediately following the meeting, management informed Defendant Tate that Plaintiff had reported and/or complained about him and his inappropriate requests and conduct.

31. Upon information and belief, no action, or minimal action, was taken on Plaintiff's Complaint regarding Defendant Tate's conduct.

32. The following day, on or about October 30, 2007, Defendant Tate aided and abetted Defendant Acob and Defendant County in producing negative marks in her personnel file by filing a complaint against her alleging Plaintiff had committed discriminatory practices against Ms. Jura and Ms. Murakami. In his complaint,

Defendant Tate claimed that “no woman would be able to have a relationship” with Defendant Tate so long as Plaintiff was their supervisor, insinuating Plaintiff was acting in a discriminatory manner against all women he was involved with and creating a hostile work environment in violation of the County’s Policy Against Discrimination.

33. Based upon Defendant Tate’s complaint against Plaintiff, Defendant Acob and Defendant County initiated an internal investigation into Plaintiff’s alleged conduct, creating disparaging marks in her personnel file and putting her employment in a tenuous position.

34. Defendant Tate’s complaint damaged Plaintiff’s reputation as a supervisor because it insinuated she had been having, or wanted to have, inappropriate relations with Defendant Tate, her subordinates, and other staff members, and had engaged in discriminatory conduct against them in violation of the County’s Policy Against Discrimination.

35. Upon information and belief, Defendant Acob consulted with Ms. Jura and Ms. Murakami, and thereafter told Plaintiff that both women had praised Plaintiff as a supervisor and they had both flatly denied Plaintiff had ever discriminated against them or treated them improperly or unfairly.

36. On November 5, 2007, Plaintiff attended a meeting with Mr. Wayne

Steel ("Mr. Steel"), and Mr. Peter Hanano ("Mr. Hanano"). At the meeting, Plaintiff again complained about Defendant Tate's improper conduct and noted she had become the subject of continued office ridicule and harassment, which was attributed to Defendant Tate's name calling and frivolous complaints.

37. Defendant County instructed Plaintiff to file a written Complaint pursuant to County Policy and on November 18, 2007, Plaintiff submitted a sixteen page complaint to Mr. Steel of the management team for consideration.

38. In December of 2007, Plaintiff took personal leave from Defendant County at the time and discovered Ms. Murakami and Ms. Jura had been terminated from their employment.

39. On or about December 31, 2007, and upon Plaintiff's return, Defendants informed Plaintiff that they had worked with Corporation Counsel to investigate her complaint against Defendant Tate and had concluded he had done nothing wrong and her complaint against him was therefore dismissed.

40. On or about August 14, 2008, Plaintiff learned she had been nominated for the Manager of the Year award for her outstanding performance as a District Court supervisor. Plaintiff was the only person nominated to receive the award for that year.

41. Defendants later decided not to present any award for the Manager of the Year for that particular year.

42. On August 25, 2008, Defendant Acob summoned Plaintiff to his office. Defendant Acob explained that a framed drawing or picture had been left in the hallway by former employee James Masters. The picture was later placed in the hallway for the Salvation Army to pick up. Allegations had surfaced that Cynthia Sims ("Ms. Sims"), a deputy under Plaintiff's supervision, had taken the picture. Defendant Acob demanded to know why nothing was done about the situation. Plaintiff explained she had no specific knowledge of the picture but that she understood that Ms. Sims would be taking the picture with her on her flight to Oahu to return it to Mr. Masters at his request. Defendant Acob became irate and threatened to either discipline and/or terminate Plaintiff for failing to address the incident.

43. On August 27, 2008, Plaintiff informed Defendants that she considered the actions of the Defendant County Defendant Acob, and Defendant Tate to be harassing and retaliatory in nature, such that the work environment had become hostile. Plaintiff informed Defendants that she felt she had no choice but to file a formal complaint with EEOC/HCRC.

44. Sometime thereafter, Defendant Tate, to further aid and abet Defendant County, and in an effort to help create further blemishes in Plaintiff's personnel file and create an increasingly hostile work environment for Plaintiff, made statements to other office personnel and spread rumors amongst the office that

Plaintiff had earlier referred to Ms. Jura and Ms. Murakami (who were no longer employed by the County) as “idiots” and “morons”.

45. Plaintiff, in fact, denies ever calling Ms. Jura and Ms. Murakami names of this sort.

46. Thereafter, upon information and belief, Defendant Tate encouraged and prompted Ms. Jura and Ms. Murakami to pursue HCRC/EEOC complaints against Plaintiff and they did so.

47. On or about August 21, 2008, Defendant Tate, to further aid and abet Defendant County to blemish Plaintiff’s personnel file and ultimately cause Plaintiff to be disciplined, made two more complaints about Plaintiff to Defendant Acob, alleging she had: a) referenced to Ms. Jura and Ms. Murakami as “idiots” and “morons” to another deputy attorney (with Ms. Jura specifically being named in this derogatory way) and the deputy attorney was concerned that Plaintiff would retaliate against her; and b) she had stated to another employee that she “hated” another deputy, Robert Rivera, and she was in fact responsible for his demotion.

48. On August 27, 2008, only a few days before Plaintiff was scheduled to give testimony on Ms. Jura and Ms. Murakami’s EEOC complaints, and as a result of Defendant Tate’s complaints, Plaintiff was summoned into a meeting with management and Defendant Acob and was informed of Tate’s second and third complaints against her. Furthermore, as a result of Defendant Tate’s

complaints, Defendants Acob and County informed Plaintiff that they would be initiating a "management violation" investigation against her, implying she should be careful about what she said at the upcoming EEOC hearings, as her testimony might have a negative impact on her employment with County.

49. On September 9, 2008, an investigative report was submitted regarding Defendant Tate's second and third complaints against Plaintiff.

50. On September 17, 2008, by way of letter from Defendant Acob, it was determined that Defendant Tate's complaints against Plaintiff did not support a finding that Plaintiff violated the County's Policy Against Discrimination.

51. As set forth above, Defendant Tate made these statements in an effort to aid and abet Defendant Acob and Defendant County to create creating more disparaging and negative marks in her personnel file such that Plaintiff's employment would be placed in a position where she could be terminated.

52. Defendant Tate's complaint damaged Plaintiff's reputation as a supervisor because it insinuated she engaged in making disparaging remarks about those deputies who were under her supervision as well as any deputies whom she disliked, causing harm to their employment.

53. Defendant Acob's actions were made in an effort to aid and abet

Defendant County to create disparaging and negative marks in Plaintiff's personnel file such that Plaintiff, who had caused difficulty for management personnel, would receive negative marks in her personnel file and/or might be inclined to quit.

54. On October 15, 2008, Plaintiff filed her first complaint with the EEOC, under Charge No. 486-2008-00510 ("EEOC Complaint No.1") alleging discriminatory practices by Defendant County and recapping the negative occurrences which had happened to her since Defendant Acob had come into office.

55. When Plaintiff inquired with management and Defendant Acob as to who had been conducting the "investigations" of the departmental complaints involving herself and Defendant Tate, Defendant Acob told her Corporation Counsel had conducted the investigation.

56. Thereafter, Plaintiff met with Corporation Counsel to discuss the occurrences in the office and to find out the results of their investigation of Defendant Tate's inappropriate conduct. Plaintiff attended the meeting with attorney David Sereno. When Plaintiff and Mr. Sereno met with Corporation Counsel Cheryl Tipton in her office, she informed her that she never received the complaint and was not aware that one existed.

57. Plaintiff provided Ms. Tipton with a copy of her complaint and Ms. Tipton told her she would "look into it."

58. In late March 2009, Defendant Acob and Tate, in an effort to

aid and abet Defendant County and set Plaintiff up for termination, instructed Plaintiff to attend a narcotics training class led by Defendant Tate. Plaintiff informed Defendant County and Defendant Acob that due to her prior history with Defendant Tate, she was not comfortable being a student in his training class and would prefer alternative measures to receive the training and information. Her request was denied and she was instructed to attend Defendant Tate's training class or be disciplined.

59. Upon information and belief and in an effort to aid and abet and otherwise cause Plaintiff's termination from employment, Defendant Acob and/or County had chosen Defendant Tate to conduct the mandatory drug training presentation after Plaintiff had filed her complaints against Defendant Tate and after she had requested minimal contact with Defendant Tate.

60. Nevertheless, Plaintiff abided by Defendant Acob's orders to attend Defendant Tate's training class and went to the class on or about March 29, 2009.

61. In the middle of the training class, Plaintiff became physically ill, felt like vomiting, and excused herself to tend to her health in the bathroom.

62. Plaintiff was not able to return to the class that day, as she was feeling violently ill.

63. Later that day or shortly thereafter, Plaintiff later explained her

reasons for leaving the class to Defendants Acob and County and again requested her contact with Defendant Tate be minimized. Plaintiff inquired if she would be able to take any alternative measures to learn the material. Defendant Acob told her no other measures were available to learn the material.

64. On April 2, 2009, Defendants summoned Plaintiff to their office to reprimand her and present a disciplinary "report of conference" against Plaintiff for failure to attend the training class.

65. During the course of the meeting, Defendant Acob became visibly angered, raised his voice, and began pounding his fist on the desk, stood up and leaned toward Plaintiff in a menacing manner. Regarding her uncomfortable history with Defendant Tate, Defendant Acob told Plaintiff that she needed to "Get over it!" and told her she had a bad "attitude".

66. Defendant Acob then demanded Plaintiff confer with Defendant Tate and threatened immediate disciplinary action against her if she failed to do so.

67. Defendant Acob then threatened Plaintiff with a demotion to an inferior position under Defendant Tate's supervision.

68. When Plaintiff informed Defendant Acob that she hoped he would not do such a thing, and Defendant Acob replied, "Well, what are you gonna do if I put you there?".

69. Defendants thereafter warned Plaintiff that any failure to

maintain contact with Defendant Tate or to attend any of his training sessions would result in immediate disciplinary action against her.

70. As set forth above, Defendant Acob's threatening statements and conduct were intended to aid and abet Defendant County to create more negative marks on Plaintiff's personnel file, thereby setting her up for termination.

71. Plaintiff was forced to comply with Defendants' demands and began interacting with Defendant Tate, as ordered.

72. Shortly thereafter and contrary to Defendant Acob's prior statements, Defendants sent out an office wide e-mail stating Defendant Tate's presentation would be available on Power Point for those attorneys who were not able to attend the training.

73. In May of 2009, Plaintiff requested and was granted vacation leave for one week. Upon her return to work the following Monday, Defendant Acob contacted Plaintiff, and demanded to know if she had received approval to take vacation time. Plaintiff answered in the affirmative and presented proof.

74. In May of 2009, Plaintiff learned Deputy Prosecuting Attorney Cynthia Sims had not been present at work on Friday, May 15, 2009. Ms. Sims was under Plaintiff's supervision.

75. Plaintiff conducted an investigation and spoke with

Ms. Sims, who explained her absence was due to an approved sick leave in order to fly to O'ahu for a doctor's appointment.

76. Plaintiff knew Ms. Sims resided on Oahu and she regularly tried to complete all of her work by Friday at lunchtime, so she would be able to fly back to Oahu on Friday afternoons to see her physician. Plaintiff reviewed Ms. Sim's work performance, determined that she had not missed any court hearings and she had completed all of her work in a timely manner without inconveniencing any other deputies. Moreover, Ms. Sims had obtained the approval of Defendant Acob for each request to leave early on Fridays to fly to Oahu. Therefore, Plaintiff was satisfied that Ms. Sims had not violated any Department rules.

77. On May 19, 2009, Defendant Acob informed Plaintiff that he considered Ms. Sims to have gone "awol" and demanded immediate disciplinary action be taken against her.

78. Plaintiff explained she had already investigated the situation when it became apparent to her and verified Ms. Sims' excused absence (approved by Defendant Acob himself) and offered proof of the same.

79. Defendant Acob continued to demand Ms. Sims be formally disciplined.

80. Plaintiff objected to any disciplinary action against Ms. Sims, as

no Department rules had been broken, leave was approved, and no other attorneys were inconvenienced as a result of Ms. Sims' absence.

81. Defendant Acob demanded Plaintiff implement a new rule specific to Ms. Sims, which would require her to bring in a doctor's note for each time she was out sick, or requiring her to fly back to Maui for the latter half of the day after her Doctor's appointment, and then she could fly back to Oahu after the work day was completed.

82. Plaintiff objected again, as the department policy only requires employees to submit a doctor's note if they are out sick for five or more consecutive days, and noted that flying back to Maui for a few hours on a Friday afternoon after her doctor's appointments would place an undue hardship on Ms. Sims, as she resided on Oahu on the weekends. Plaintiff believed Defendant Acob's demand to implement a rule specific to Ms. Sims would be discriminatory and unfair to Ms. Sims.

83. Defendant Acob threatened disciplinary action against Plaintiff if he was not happy with Ms. Sims' attendance.

84. Through his conduct and demands as set forth above, Defendant Acob aided, and abetted Defendant County to set a pretext for Plaintiff's termination from Defendant County.

85. On June 8, 2009, Plaintiff filed a second EEOC/HCRC complaint

("EEOC Complaint No. 2"), noting that since the filing of her first EEOC/HCRC Complaint, she has been threatened and tormented with discipline, demotions, and other negative consequences, and had been subjected to inappropriate and menacing displays of anger by her superior, Defendant Acob.

86. On or about June 22, 2009, the Department of Corporation Counsel received Plaintiff's EEOC Complaint No. 2.

87. On June 23, 2009, Plaintiff received a mail notice from EEOC that Defendant Acob and Defendant County and Defendant Acob had been notified that Plaintiff filed EEOC Complaint No. 2.

88. On June 23, 2009, Plaintiff was summoned to the conference room by Defendant Acob and County. Defendant Acob, Mr. Steel, and Mr. Hanano were waiting for Plaintiff and proceeded to hand her a letter terminating her employment from Defendant County. The letter provided Plaintiff notice that she was officially terminated from her employment for "insubordination".

89. On or about July 9, 2009, Plaintiff filed a third EEOC/HCRC complaint ("EEOC Complaint No. 3"), documenting the foregoing occurrences.

90. Earlier, in approximately 2008, Defendant Acob and Defendant Department demoted (but did not immediately terminate) Circuit Court Supervisor Robert Rivera ("Mr. Rivera") for similar misconduct.

91. Mr. Rivera had been employed with the Department of the

Prosecuting Attorney for approximately nineteen years.

92. Mr. Rivera is a male.

93. In early 2009, Defendant Acob and Defendant County demoted Circuit Court Supervisor John D. Kim ("Mr. Kim") for similar misconduct.

94. Mr. Kim was not terminated from employment.

95. Mr. Kim is a male.

96. Upon Plaintiff's termination from employment, Defendants promoted Mr. Kenton Werk ("Mr. Werk") to fill Plaintiff's position as District Court Supervisor.

97. Plaintiff had previously trained and supervised Mr. Werk, who had only been employed as a District Court Prosecuting Attorney for approximately eight months prior to his promotion.

98. Mr. Werk was not qualified to be a District Court Supervisor.

99. Mr. Werk is a male.

100. Ms. Sims was terminated from her employment with Defendant County for "insubordination" by the end of 2009 or early 2010.

101. Most, if not all, of Plaintiff's pay increases occurred prior to 2007, when Defendant Acob became the Prosecuting Attorney for the County of Maui.

102. Throughout her time of employment with Defendant County, Plaintiff received numerous awards and commendations for her performance.

103. While Defendant Acob was Prosecuting Attorney for the County of Maui, Plaintiff received no awards or commendations.

104. Defendant County engaged in discriminatory practices against Plaintiff based upon her sex and sexual orientation, and retaliated against her for filing complaints with Defendant County and with the EEOC/HCRC.

105. Defendants, through the foregoing actions and practices, created a hostile work environment.

106. Defendant Acob and Defendant Tate, through the foregoing actions and practices, aided and abetted Defendant County to commit discriminatory practices against Plaintiff and set her up for discipline and termination from employment.

107. The illegal actions of the Defendants denied Plaintiff her profession as a career prosecuting attorney, her livelihood, and other benefits in the State of Hawaii and on the island of Maui.

108. Defendants, through the foregoing actions and practices, created a hostile work environment and defamed Plaintiff, which had an adverse result upon her career and reputation.

**COUNT I: Title VII Discrimination**  
(as to Defendant County)

109. Plaintiff incorporates and re-alleges the preceding paragraphs of the Complaint as if fully set forth herein.

110. Plaintiff is a member of a protected class, within the meaning of Title VII of the Civil Rights Act of 1964.

111. Plaintiff was qualified for the position she was in with Defendant County.

112. Plaintiff had adequately performed, and exceeded, her job duties and responsibilities and was within or above the normal standard of practice for a Deputy Prosecuting Attorney for the County of Maui.

113. Despite Plaintiff's qualifications and excellent performance, she was demoted, received negative and unfair treatment, threatened with disciplinary action, discriminated against, and ultimately terminated by Defendant County because of and on the basis of her protected class.

114. Defendant County filled Plaintiff's position with a male, who did not have the same qualifications and experience as Plaintiff.

115. Defendant County, their agents and employees, engaged in actions and practice in violation of Title VII of the Civil Rights Act of 1964, and 42 U.S.C. Section 2000 et seq.

116. As a direct and proximate result of Defendant County's

conduct, Plaintiff sustained damages, injury and/or harm, and is entitled to all remedies available under the law.

**COUNT II: Sexual Harassment / Hostile Environment**  
(as to Defendant County)

117. Plaintiff incorporates and re-alleges the preceding paragraphs of the Complaint as if fully set forth herein.

118. Plaintiff suffered intentional discrimination because of her sex caused by Defendant County.

119. The discrimination was pervasive and occurred regularly and over an extended period of time.

120. The discrimination detrimentally affected Plaintiff by subjecting her to demotions, negative and unfair treatment, constant treats of disciplinary action, and termination of employment.

121. A reasonable person of the same sex would be detrimentally affected.

122. Defendant County knew about, or should have known about the harassment, and did nothing to stop it and/or condoned it.

123. Defendant County and its agents and employees, engaged in actions and practice in violation of the law prohibiting sexual harassment / hostile work environment.

124. As a direct and proximate result of Defendant County's

conduct, Plaintiff sustained damages, injury and/or harm, and is entitled to all remedies available under the law.

**COUNT III: Retaliation**  
(as to Defendant County)

125. Plaintiff incorporates and re-alleges the preceding paragraphs of the Complaint as if fully set forth herein.

126. Plaintiff engaged in a protected activity by filing Departmental and EEOC/HCRC complaints and reports about discriminatory and/or harassing activities.

127. Defendant County knew about, or should have known about Plaintiff's complaints and reports.

128. As a direct and proximate result of Plaintiff filing her complaints and reports, Defendant County took adverse actions upon Plaintiff by subjecting her to demotions, negative and unfair treatment, constant threats of disciplinary action, and ultimately termination of employment.

129. As a direct and proximate result of Defendant County's conduct, Plaintiff sustained damages, injury and/or harm, and is entitled to all remedies available under the law.

**COUNT IV: Discriminatory Practices (Haw. Rev. Stat. Chap. 378)**  
(as to all Defendants)

130. Plaintiff incorporates and re-alleges the preceding paragraphs of

the Complaint as if fully set forth herein.

131. Defendants engaged in discriminatory acts and practices against Plaintiff in the terms, conditions, or privileges of her employment.

132. Defendants Acob and Tate, through their conduct, statements, complaints, and actions, aided, abetted, incited, compelled, and coerced Defendant County to commit discriminatory practices forbidden by Haw. Rev. Stat. Chap. 378, or attempted to do so.

133. Defendants did so, on the basis of, and because of Plaintiff's sex and sexual orientation, and because Plaintiff opposed their illegal practices and filed a complaint, testified, or assisted in proceedings respecting the discriminatory practices prohibited under the law.

134. As a direct and proximate result of Defendant County's conduct, Plaintiff sustained damages, injury and/or harm, and is entitled to all remedies available under the law.

**COUNT V: Hawaii Whistleblower's Protection Act**  
**(Haw. Rev. Stat. Chap. 378-61 et seq.)**  
(as to Defendant County)

135. Plaintiff incorporates and re-alleges the preceding paragraphs of the Complaint as if fully set forth herein.

136. By the foregoing acts and practices, Defendant County discharged, threatened, or otherwise discriminated against Plaintiff regarding her terms, conditions, and privileges of employment.

137. Defendants did so because Plaintiff reported, or was about to report, to Defendant County or a public body, a suspected violation a state or federal law, rule, ordinance, or regulation.

138. As a direct and proximate result of Defendant County's conduct, Plaintiff sustained damages, injury and/or harm, and is entitled to all remedies available under the law.

**COUNT VI: Defamation**  
(as to Defendant Tate)

139. Plaintiff incorporates and re-alleges the preceding paragraphs of the Complaint as if fully set forth herein.

140. Defendant Tate made false and defamatory statements about Plaintiff, who is a private individual.

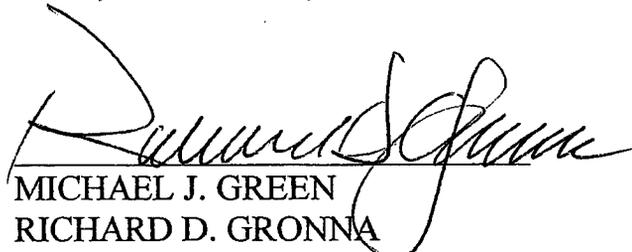
141. Defendant Tate, without authorization, negligently publicized these statements to third parties.

142. As a direct and proximate result of Defendant Tate's statements and publications, Plaintiff sustained damages, injury and/or harm to her reputation and character, and is entitled to all remedies available under the law.

WHEREFORE Plaintiff demands judgment against Defendants:

- a. Awarding Plaintiff back pay, prejudgment interest, and damages for all employment benefits she would have received but for the discriminatory and retaliatory acts and practices of the Defendants;
- b. An award of special damages;
- c. An award of compensatory damages;
- d. An award of punitive damages;
- e. Attorneys fees and costs of suit;
- f. Any and all such further relief as the Court deems just and proper in this action.

DATED: Honolulu, Hawai'i, December 21, 2011.



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