

LAW OFFICE OF CARL M. VARADY

CARL M. VARADY 4873
American Savings Bank Tower
1001 Bishop Street, Suite 2870
Honolulu, Hawai'i 96813
Telephone: (808) 523-8447
e-mail: carl@varadylaw.com

Attorney for Plaintiff

IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT

STATE OF HAWAI'I

DEEANN KOANUI,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU
AND DOE ENTITIES 1-10,

Defendants.

CIVIL No.
(Other Civil Action)

COMPLAINT; JURY DEMAND;
SUMMONS

COMPLAINT

Plaintiff DEEANN KOANUI, through her attorney, Carl M. Varady, files this Complaint against Defendants and alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over the claims set forth in this Complaint pursuant to Hawaii Revised Statutes § 603-21.5, and has personal jurisdiction over Defendants pursuant to Hawaii Revised Statutes § 634-35. The venue is appropriate in the First Circuit of the State of Hawai'i pursuant to Hawai'i Revised Statutes § 603-36.

PARTIES

2. Plaintiff DEE ANN KOANUI ("Plaintiff") is a resident of Honolulu, Hawai'i and a commissioned police officer employed by the City and County of Honolulu, holding the rank of Sergeant.

3. Defendant City and County of Honolulu (the "City") is a body politic, with its business offices located in Honolulu, Hawai'i.

4. The Defendants designated as JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10 and DOE GOVERNMENTAL ENTITIES 1-10 (hereinafter collectively referred to as "Doe Defendants") are sued herein under fictitious names for the reason that their true names and identities are presently unknown to Plaintiffs, despite Plaintiffs' diligent and good faith efforts to obtain this information, except that said Doe Defendants were connected in some manner with the named Defendants and were individuals, corporations, parent corporations, divisions, subsidiaries, entities, agents, representatives, associations, affiliates, associates, co-venturers, business entities, employers, employees, servants, vendors, suppliers, manufacturers, subcontractors and contractors, or governmental entities, agencies or bodies, responsible in some manner presently unknown to Plaintiffs for the injuries and damages to Plaintiffs. Plaintiffs hereby pray for leave to certify the true names and capacities, activities and/or responsibilities of said Doe Defendants when the same are ascertained.

SUMMARY OF THE ACTION

5. In this action Sgt. DeeAnn Koanui alleges that she was subjected to intentional and unlawful discrimination, harassment, hostile work environment and retaliation in violation of Hawai'i law.

6. Sgt. Koanui is a 22-year veteran of the Honolulu Police Department ("HPD"). During the course and scope of her employment, Sgt. Koanui has received numerous commendations and awards. Her work has met or exceeded expectations. Among other honors, she was selected as the subject of a recruiting campaign designed to recruit more women police officers and her photograph was used on posters placed throughout the City and County of Honolulu to encourage women to consider a career with HPD.

7. Most recently, Sgt. Koanui was in charge of physical fitness and other training for recruits, officers and civilian employees of HPD and was supervising the HPD physical fitness program. Sgt. Koanui received special training that permitted HPD officer training programs to be certified by nationally recognized training organizations. Certain of these certifications assured professional standards were met and resulted in HPD officers being covered by a \$10 million insurance policy. This policy was through the company ASP, Inc., which is the manufacturer of HPD's expandable baton.

8. In April 2008, Sgt. Koanui's assignment changed and her superior removed her as the supervisor of the physical fitness program.

9. While at the Training Academy, Sgt. Koanui observed or otherwise became aware of violations of training protocols and standards, as well as other improper conduct by her superiors, in violation of established policies, procedures, regulations, orders, contracts and laws:

- a. Falsification and/or alteration of written test scores on tests designed to assess recruits' knowledge of Hawai'i criminal statutes;
- b. Falsification an/or alteration of physical fitness results in the recruit training and fitness program;
- c. Orders requiring officers to use an incomplete and unsafe indoor firearms range that resulted in toxic exposure and workers' compensation claims being made;
- d. Orders requiring recruits to park their vehicles in an area prone to flooding and, when flooding occurred damaging these vehicles and rendering them inoperable, ordering the recruits to expose themselves to the contaminated water, retrieve their vehicles, waive insurance claims, and rent vehicles. The recruits' vehicles were total losses as a result of the water exposure. The "brown" water exposure led to workers' compensation claims being filed by approximately 27 recruits, who were exposed to water that may have contained fecal matter and other contaminants;

- e. A number of women who were subjected to harsher treatment than their male counterparts in the dojo;
- f. A number of recruits who were injured in the dojo due to unsafe and improper practices; and
- g. A general disregard for adherence to established protocols, policies, procedures, regulations, contracts and laws applicable to the HPD Training Division, including destruction of files and records that document these alleged events.

10. Sgt. Koanui reported these and other improper and potentially unlawful events and actions to HPD Internal Affairs (“IA”) and well as other government agencies.

11. When her superiors Maj. Susan Ballard and Lt. Steven Gerona became aware of her opposition to these actions and events, Sgt. Koanui became the target of discrimination, harassment, hostile environment and retaliation, and was forced to transfer out of the Training Division.

12. While Sgt. Koanui was on injury leave, Maj. Ballard eliminated the position of Sergeant, assuring that Sgt. Koanui would not hold position again.

13. After reporting these events and actions to IA, Sgt. Koanui received her first “Below Satisfactory Performance” letter.

14. These events and actions were discriminatory and constituted, harassment, hostile environment and retaliation, for Sgt. Koanui's opposition to and reporting of the improper conduct by her superiors, in violation of established policies, procedures, regulations, orders, contracts and laws.

15. Sgt. Koanui has been ostracized by superiors who have created a climate of fear and retribution that has sabotaged Sgt. Koanui's career, and undermined the morale and proper governance of the HPD Training Division.

16. These events and actions caused Sgt. Koanui economic, general and special damages, including lost income and employment opportunities and impeded her opportunities for future advancement within HPD, effectively ending her career.

DETAILED FACTUAL ALLEGATIONS

17. Sgt. Koanui is a highly qualified police officer who has excelled in her field since the date she was appointed as a police officer, on February 19, 1987. She has held the rank of Sergeant since October 10, 2004.

18. Prior to being promoted to Sgt., Koanui was assigned to the Training Division for five years, first assigned to the dojo and then running the Physical Fitness program.

19. During her time in the Training Division, Sgt. Koanui was chiefly responsible for fitness training of police officers and recruits and conducted annual fitness evaluations for police officers for the City.

20. Throughout her employment as a police officer, Sgt. Koanui's work met performance expectations and her work reviews were satisfactory or above. In fact, she was selected to appear on a poster representing the Honolulu Police Department in its campaign to recruit female police officers that was displayed prominently at public locations throughout the City and County of Honolulu.

21. Additionally, Sgt. Koanui received numerous commendations from her superior officers based on the quality of her work.

22. Maj. Susan Ballard ("Ballard") is an employee of City and acted for and on City's behalf regarding the events alleged in this complaint, as supervised Sgt. Koanui.

23. Lt. Steven Gerona ("Gerona") is an employee of the City and acted for and on City's behalf regarding the events alleged in this complaint and supervised Officer Koanui.

24. Among other tasks, Sgt. Koanui was responsible for evaluating and testing police recruits on their physical fitness for duty through physical testing. For her first five years in Training Division, Sgt. Koanui was also a member of the HPD dojo staff. Sgt. Koanui had been trained in appropriate protocols for testing recruits' physical fitness for duty as well as

proper physical restraint techniques to be taught in the dojo used by HPD officers.

25. In April 2008, there was a shortage of police officers in the HPD. This shortage dated to the prior year. According to a 2007 City Auditor's Report, the number of officers "available for patrol has been reduced by the number of vacancies and special assignments or about 18 percent of [955] authorized positions not available for patrol." *See*, Rept. No. 07-04 (August 2007).

26. In April 2008, Maj. Ballard reassigned Lt. Gerona to oversee the dojo. After his assignment to the dojo, Lt. Gerona instituted invalid protocols and techniques that rendered training results invalid and voided the \$10 million insurance policy that otherwise applied if the appropriate protocols and techniques that Sgt. Koanui had been trained in and had implemented were being used for the ASP extendable baton.

27. Sgt. Koanui reported the problems with the improper dojo protocols and techniques to IA, and Maj. Ballard subsequently became aware of this report.

28. On April 29, 2008, the 160th recruit class was administered their examinations on their knowledge of property crimes under Haw. Rev. Stat. Chapter 708. Sgt. Koanui became aware that seven recruits failed this exam.

29. On April 30, 2008, the recruits who failed were administered the re-test and five failed the re-test. Those five recruits should have been

terminated as stated in the Recruit Guide and Foundations Manual (“RGFM”). They were not; instead they were given passing scores by Maj. Ballard and/or Lt. Gerona. Sgt. Koanui became aware of the failures and was extremely concerned that requirements RGFM had not been followed and the recruits’ ability to perform their duties police officers safely and according to law and department policies.

30. On information and belief, Sgt. Koanui alleges that the recruits were passed because of personal considerations of Maj. Ballard and/or Lt. Gerona unrelated to the recruits’ ability to perform their duties as a police officers safely and according to law and department policies.

31. Sgt. Koanui expressed her concerns to her co-workers. Maj. Ballard and Lt. Gerona were aware of Sgt. Koanui’s concerns that the recruits were passed because of personal considerations of Maj. Ballard and/or Lt. Gerona unrelated to the recruit’s ability to perform their duties as police officers safely and according to law and department policies.

32. On May 8, 2008, Sgt. Koanui informed Maj. Ballard and Lt. Gerona that five recruits failed to complete their physical fitness examination successfully.

33. HPD's physical fitness testing and standards were developed by a company called FitForce and coincide with the testing norms established by the Cooper Institute. Sgt. Koanui was sent by HPD to the Cooper Institute

for two weeks to obtain her certification from FitForce and Cooper as “Master Fitness Specialist” certified.

34. The standards established by FitForce and the Cooper Institute in which Sgt. Koanui was trained, require all failed events must be tested on the same day, in order for any results of the fitness test to be valid.

35. Following the established FitForce protocol, Sgt. Koanui directed the recruits to re-test. One of the two recruits failed the re-test in two categories: (1) the bench press; and (2) push ups.

36. Maj. Ballard then questioned Sgt. Koanui about the process of how the re-examination should be administered. Sgt. Koanui explained the need to follow protocol in order for the testing to be valid.

37. Maj. Ballard changed the protocol to require re-testing only of the failed events on the day of failure, which invalidated the entire process according to the FitForce protocol. When Sgt. Koanui had pointed out that changing the protocol voided the results of the testing, Maj. Ballard replied “When we get sued, we’ll deal with it then.”

38. Even though she understood the effect of changing the protocol, Maj. Ballard made a special exception to the protocol and instructed Sgt. Koanui to re-test the recruit on push ups at a later date.

39. Without Maj. Ballard’s order, the recruit would have failed the physical fitness examination on the date of the original re-test.

40. On May 13, 2008, Sgt. David Caraulia, the class supervisor and Sgt. Koanui, informed Maj. Ballard that the recruit had failed her re-examination.

41. Maj. Ballard ordered the recruit to be given a passing score, contrary to the facts and in direct violation of the existing protocol and policy.

42. Although the recruit had been told she failed, Sgt. Koanui was instructed to tell the recruit she now had “passed” the push up requirements. Maj. Ballard ordered the recruit’s bench-press re-test for a later date.

43. On May 14, 2008, immediately after questioning the manner in which the recruit’s re-testing was altered, Sgt. Koanui was informed by Maj. Ballard that she was being given additional work, in addition to her usual work load. Maj. Ballard merged three units of Annual Recall Training (“ART”) into one unit, for which Sgt. Koanui now was responsible and reduced her staff.

44. On May 15, 2008, Lt. Gerona informed Sgt. Koanui there would be “more changes” to the physical fitness protocol.

45. On May 15, 2008, Sgt. Koanui saw Lt. Gerona speaking with the two recruits who failed the re-test. Lt. Gerona was personally rescheduling the re-test at a time when he knew Sgt. Koanui would have difficulty supervising it.

46. On May 16, 2008, Sgt. Koanui asked another supervisor to cover her conflicting assignment so Sgt. Koanui could re-test the female recruit

and her classmate. Sgt. Koanui tested the female four times and the female could not pass the test. Sgt. Koanui gave the recruit a five to ten minute rest before her final lift. Sgt. Koanui then left the re-test area briefly. When she returned, she was told by Lt. Gerona that the recruit had passed the bench press testing without Sgt. Koanui having observed recruit.

47. The policy on recruit fitness is designed to assure that police officers are fit for duty and able to perform their assignments in a manner that assures public safety.

48. On information and belief, Sgt. Koanui alleges that the recruit was passed because of personal considerations of Maj. Ballard and/or Lt. Gerona unrelated to the recruit's ability to perform her duties as a police officer safely and according to department policies.

49. Through her conduct and speech, Sgt. Koanui made it clear to both Maj. Ballard and Lt. Gerona that she opposed altering the testing protocol to permit recruits to pass the physical fitness examination for reasons of validity of the test and public safety.

50. On May 17, 2008, Sgt. Koanui learned from another officer that she had been reassigned by Lt. Gerona and no longer would be supervising the physical training program.

51. On May 20, 2008, Lt. Gerona informed Sgt. Koanui that she was being reassigned to "special projects," an assignment she did not seek and which was less desirable than her work as the physical training supervisor, and

that this assignment would continue “indefinitely.” No explanation was given for the reassignment.

52. It was apparent to Sgt. Koanui from the manner in which the unwanted reassignment occurred, proximately in time to her questioning and opposing the manner in which recruits’ failed written and physical examinations were being altered and manipulated by Maj. Ballard and Lt. Gerona, that she was being subjected to substantial changes in working conditions as a result of her attempt to follow policy and questioning her superiors for failing to do so. Sgt. Koanui witnessed other instances in which recruits should not have passed testing, but whose failures were overlooked.

53. Prior to Sgt. Koanui’s reassignment to ART I, II and III, which was for the entire HPD, ART I, II and III, used to be staffed by nine officers and two Sergeants total. After her reassignment to ART I, II and III, there were only four officers and Sgt. Koanui assigned to conduct this training.

54. On information and belief, Sgt. Koanui alleges this cut in ART staffing was at the direction and control of Maj. Ballard and/or Lt. Gerona to punish Sgt. Koanui for her opposition to passing unqualified recruits from the Training Academy and injuries at the dojo, the risks posed by the shooting range and harassment of women in the dojo.

55. When she asked why ART staffing had been cut, Lt. Gerona told Sgt. Koanui it was his prerogative to do so and that he would now be performing “unannounced” checks of the ART program. Sgt. Koanui

understood this to be a threat and further punishment for her opposition to passing unqualified recruits from the police academy, harsh treatment of women recruits and the discrimination, harassment, hostile work environment and retaliation being directed toward her.

56. By May 29, 2008, Sgt. Koanui was experiencing difficulty sleeping and eating do to the punitive reassignment, hostile environment and the intense scrutiny to which she was being subjected by Lt. Gerona. She met with Maj. Ballard to discuss the hostile environment and retaliation and the fact that Sgt. Koanui believed it was due to her opposition to his failure to enforce test protocols selectively and her gender. After the meeting Sgt. Koanui was summoned to a meeting that would be held on June 2, 2008, with Maj. Ballard.

57. On May 30, 2008, Maj. Ballard informed Lt. Gerona of the complaint Sgt. Koanui had made about his abusive hostile behavior and interviewed Sgt. Koanui's personnel. Maj. Ballard also falsely told staff members that Sgt. Koanui made allegations that they were not doing their work, thereby increasing the hostility in the Training Division directed toward Sgt. Koanui.

58. On June 2, 2008, Maj. Ballard directed Sgt. Koanui to her office. Officer Harold Quinata, from Peer Support was in attendance. Maj. Ballard explained that she had requested the presence of Peer Support and that she felt Sgt. Koanui needed "psychiatric counseling." As Sgt. Koanui was sitting down, Maj. Ballard handed her a two and a-half page written reprimand and began explaining she was being reprimanded for many of the issues of

harassment, retaliation and improper conduct she had called to Maj. Ballard's attention.

59. This was Sgt. Koanui's first such reprimand for poor management; her management had never been mentioned before verbally or in written documentation until after she began opposing breaches of testing protocols for recruits.

60. Sgt. Koanui had never received verbal or written counseling and was never told of any problems with her performance. Sgt. Koanui had no negatives on her Annual Performance Appraisal Report for the seven years she had been assigned to the Training Division, nor the twenty-two years she was an employee of HPD.

61. Maj. Ballard presented a disciplinary notice to Sgt. Koanui accusing Sgt. Koanui of making false comments to Maj. Ballard about Lt. Gerona and staff concerns about ART under-staffing. These accusations were false and Sgt. Koanui denied them. Maj. Ballard then accused Sgt. Koanui of lying. Sgt. Koanui immediately offered to submit to a polygraph examination.

62. Maj. Ballard recommended Sgt. Koanui make an appointment for a psychological examination. Officer Quinata suggested she should see the doctor "just to show that she was a team player."

63. After the meeting with Maj. Ballard, Sgt. Koanui requested a transfer to Human Resources Division, which was denied. On information and

belief, the denial was the result of negative information given to that division by Maj. Ballard and/or Lt. Gerona.

64. Maj. Ballard told Sgt. Koanui that she would have to go to the Central Receiving Desk (CRD) if she wanted a transfer.

65. On June 9, 2008, Sgt. Koanui reported to CRD. CRD was an undesirable assignment for Sgt. Koanui, but she accepted it to avoid the discrimination, harassment, hostile work environment and retaliation she experienced at the Training Division. CRD is the prisoner cell block for HPD and is staffed by rookie officers, because it is so unsavory.

66. Sgt. Koanui saw other officers from Training Division and staff, who told her they heard she was “kicked out” of Training Division, that she went out on stress leave and that she was removed from Physical Training for disciplinary reasons.

67. Sgt. Koanui subsequently spoke to several HPD supervisors about the score and protocol changing at the Training Division, including officers at IA

68. Sgt. Koanui also spoke to superior officers at Human Resources Division about the gender bias, harassment, hostile environment and retaliation she was experiencing. Sgt. Koanui asked to make a formal complaint about these matters but her request was denied.

69. On June 25, 2008, Sgt. Koanui was informed she had been ordered by Maj. Ballard to go for a fitness-for-duty psychiatric evaluation. On

information and belief, Sgt. Koanui alleges that Maj. Ballard was harassing and retaliating against her for reporting the altering test results and violating of testing protocols to IA.

70. Sgt. Koanui was evaluated by Dr. Herb Gupton, who cleared her as being fit for duty. At the evaluation, Dr. Gupton permitted Sgt. Koanui to read the memorandum Sgt. Ballard sent to the Chief of Police, attempting to justify why the evaluation was needed. Maj. Ballard falsely stated she offered Sgt. Koanui a chance to stay at Training Division in an administrative position. Maj. Ballard made other false allegations in the memorandum.

71. On July 15, 2008, after requesting a transfer to Internal Affairs ("IA"), Sgt. Koanui was informed the transfer would be denied because of the "hassle" she was having with Maj. Ballard was ongoing.

72. On or about July 22, 2008, IA filled five open positions with five brand new Detectives, who have no investigative background. Sgt. Koanui had seven years of investigative background. On information and belief, Sgt. Koanui alleges she was passed over due to harassment and retaliation by Maj. Ballard.

73. On August 5, 2008, Human Resources Division was informed by Sgt. Koanui about the score changing and protocol changes by Maj. Ballard.

74. On August 11, 2008, Sgt. Koanui was transferred back to the Training Division. Upon returning, Lt. Gerona informed her she was moved from Annual Recall Training (ART) I, to ART 2. She was assigned to be the lead

instructor for Sexual Harassment, Legal Updates, CPR and secondary for Hazzardous Materials. Sgt. Koanui would be overseeing all personnel, who would be teaching the classes. She was also assigned to do all the paper work, all the database maintenance and other administrative duties, all within her work shift, and supervise all classes she was not teaching. Lt. Gerona also informed Sgt. Koanui that she and her personnel must not leave campus (except for lunch), without getting permission, in person, from their immediate supervisor. These restrictions applied only to Sgt. Koanui and her staff in the Training Division, not other Training Division officers.

75. On August 14, 2008, Sgt. Caraulia informed Sgt. Koanui that she would not be permitted to work night shifts with the rest of the Training Staff for Field Exercises. These Exercises comprised the recruit's final testing phase. This restriction limited Sgt. Koanui's effectiveness and interfered with her ability to perform her job duties. This limitation further alienated Sgt. Koanui from other staff.

76. During the week of August 24, 2008, Lt. Gerona assigned Sgt. Koanui additional teaching responsibility for the CPR class, even though Sgt. Koanui expressly informed him that she was not current in her own training and needed to refresh her knowledge. Sgt. Koanui's request to observe the lead instructor to refresh her knowledge was denied by Lt. Gerona and he ordered Sgt. Koanui to begin teaching CPR without refreshing her knowledge, causing Sgt. Koanui further distress.

77. On August 27, 2008, a woman recruit, who had just graduated from the academy, informed Sgt. Koanui that Lt. Gerona was imposing “extra hard” training in the dojo on women recruits and was physically and verbally harassing women, including her.

78. On August 29, 2008, Sgt. Koanui became aware of a large number of injuries that were occurring in the dojo among recruits and the fact that the dojo staff under Lt. Gerona’s direction were intentionally failing recruits to obtain overtime assignments to work the failed recruits. When she investigated these facts Sgt. Koanui was told by five Training Division staff members as well as woman recruits that they observed Lt. Gerona targeting women for harsher training in the dojo, compared to male recruits, including verbal abuse.

79. On September 22, 2008, Sgt. Koanui was told by Capt. Clyde Ho that she was no longer under the supervision of Lt. Gerona, but would report directly to Capt. Clyde Ho. This reassignment outside the usual chain of command was highly unusual and further escalated the scrutiny and subsequent distress Sgt. Koanui was experiencing at work.

80. Capt. Ho stated Maj. Ballard had told him Sgt. Koanui had asked to leave the Training Division because she “was not happy.” This assertion was false; Sgt. Koanui asked to transfer because she was falsely accused by Maj. Ballard of wrongdoing and subjected to discipline based on

those false accusations, discrimination, harassment, hostile work environment and retaliation.

81. On October 1, 2008, Sgt. Koanui left work early with permission from Capt. Ho. Sgt. Koanui forgot to sign out on the time sheet. At 3:38 p.m., Maj. Ballard sent Sgt. Koanui and another Sergeant, an e-mail reminding them that not signing out they violated the Fair Labor Standards Act. On October 2, 2008, after reading the e-mail Sgt. Koanui reviewed the time sheet in question and identified 20 other staff and officers who had not signed out. Only one of the other 20 staff or officers received a similar e-mail from Maj. Ballard.

82. On October 6, 2008, because of the continued and unfounded scrutiny, discrimination, harassment, hostile work environment, and retaliation directed at her by Maj. Ballard and Lt. Gerona, Sgt. Koanui filed an official report with IA about their improper conduct toward her because she opposed changing recruits' written and physical test scores.

83. October 22, 2008, Capt. Ho told Sgt. Koanui that another Sergeant was taking vacation and that she would have to teach his classes, as well as those for which she already was personally responsible. It was not physically possible to complete this work within an 8 hour work day and Sgt. Koanui was not being offered overtime. Sgt. Koanui had been denied overtime routinely by Maj. Ballard who controlled all overtime assignments.

84. October 22, 2008, Capt. Ho, per Maj. Ballard, ordered Sgt. Koanui to sit in on all classes taught in ART I or II. When Sgt. Koanui stated the additional assignment would prevent her from getting paperwork done within ordinary work hours, Capt. Ho informed Sgt. Koanui that Maj. Ballard may reassign her and her staff, to patrol for the months of November and December, if they are not busy. Sgt. Koanui's staff was scheduled to work with the recruits for three weeks in December, but Sgt. Koanui was not. Thus, only Sgt. Koanui would be reassigned to patrol. This threat of reassignment further escalated the distress Sgt. Koanui was experiencing at work.

85. On October 22, 2008, Sgt. Koanui was assigned additional investigatory paperwork for her IA report and requested time away (3-5 days) from the Training Division to work on it. Her request was denied even though inter-departmental cooperation to assist in IA investigations was ordinarily routine. IA suggested that Sgt. Koanui consider transferring out of the Training Division. This suggested unwanted reassignment further escalated the distress Sgt. Koanui was experiencing at work.

86. On October 27, 2008, Sgt. Koanui took leave for a pre-approved parent-teacher conference for her children. Capt. Ho told Sgt. Koanui that Maj. Ballard was "on him" the first thing this morning asserting that Sgt. Koanui was away from work with out excuse. This assertion that she was away from work without excuse further escalated the distress Sgt. Koanui was experiencing at work.

87. On October 27, 2008, Maj. Ballard informed Sgt. Koanui that she was now assigned ART I, II and III, and that Maj. Ballard would be assigning Sgt. Koanui only four staff, compared to the usual contingent of 9 staff. Maj. Ballard and Lt. Gerona knew these staffing shortages would interfere with Sgt. Koanui's ability to perform her duties and conduct the ART training according to protocols. This cut in her staff was harassing and retaliatory and further escalated the distress Sgt. Koanui was experiencing at work.

88. On November 3, 2008, Lt. Baldwin met with Sgt. Koanui and told her that she needed to "find something to do" in the Training Division or she would be reassigned to Patrol Division in November and December. This unwanted reassignment was harassing and retaliatory and further escalated the distress Sgt. Koanui was experiencing at work.

89. On November 4, 2008, Lt. Baldwin informed Sgt. Koanui that Maj. Ballard was "not happy" about Sgt. Koanui taking vacation in December and informed her for the first time that an ART session was beginning on December 3, 2008. Sgt. Koanui informed Lt. Baldwin that December was her vacation month, that Maj. Ballard was aware of her scheduled vacation but scheduled the December 3 ART class without consulting with Sgt. Koanui. Maj. Ballard demanded that Sgt. Koanui submit a calendar for her vacation days, which Sgt. Koanui was not able to do that day due the need to resolve child care problems. This rescheduling was extraordinary, harassing and retaliatory and further escalated the distress Sgt. Koanui was experiencing at work.

90. On November 14, 2008, Sgt. Koanui met with the Hawai'i Civil Rights Commission and initiated a charge against the City and Maj. Ballard for discrimination and retaliation. The charge asserted that Maj. Ballard did not treat women fairly, including, without limitation, assignment of overtime, and the fact that Maj. Ballard did assign women employees take leading roles with recruit classes. In 2008, there were five women assigned to the Training Academy and none of them were assigned to train recruit classes.

91. Sgt. Koanui was subsequently informed by Lt. Baldwin that she would no longer be directly teaching recruits, even though this was part of her job assignment, because she would be "too busy." Sgt. Koanui was the only Training Division staff member who was not directly teaching recruits. This change in her assignment, eliminating her direct training responsibilities was extraordinary, harassing and retaliatory and further escalated the distress Sgt. Koanui was experiencing at work.

92. Subsequently, Capt. Ho was directed by Maj. Ballard to physically check on Sgt. Koanui's whereabouts almost daily and report back to Maj. Ballard. No other Training Division officer was scrutinized in this way. This enhanced scrutiny was extraordinary, harassing and retaliatory and further escalated the distress Sgt. Koanui was experiencing at work.

93. On November 17, 2008, Lt. Baldwin told Sgt. Koanui that Maj. Ballard had decided that beginning November 24, 2008, Sgt. Koanui and her staff would have to change their work schedules to begin work at 7:45

a.m., instead of 6:30 a.m. Lt. Baldwin knew that this change would interfere with her and her staff's child care duties. Lt. Baldwin's response was that Sgt. Koanui and her staff would have use to compensatory time if they needed to pick up their children after school or make other arrangements. This change in scheduling was extraordinary, harassing and retaliatory and further escalated the distress Sgt. Koanui was experiencing at work.

94. On December 11, 2008, the junior recruit class was ordered by Maj. Ballard to park their vehicles on Waipahu Depot Rd., next to wetland area. Due the heaving flooding later that morning the levee broke and approximately 27 cars were declared total losses. Maj. Ballard ordered the recruits to swim and wade in the water and to push the cars out to higher ground, which were by then total losses. On information and belief, all of these recruits were ordered Maj. Ballard to: (1) bear the costs of their insurance deductible; and (2) rent cars to get to work. According to HPD policy, all of them had to file workers' compensation claims for exposure to "brown" water that may have contained fecal matter and other organic and inorganic pollutants. Sgt. Koanui reported these events to IA.

95. On January 12 and 13, 2009, the first ART of the year, Maj. Ballard ordered Sgt. Koanui to have the officers shoot at the new indoor range at a time when it did not have proper ventilation causing officers to be exposed to toxic gases and/or materials resulting in them filing workers' compensation claims. Maj. Ballard knew or should have known at the time the indoor range

was incomplete and unsafe to use. Sgt. Koanui reported the condition of the shooting range to IA. The OSHA office within IA shut down the shooting range immediately because of safety and health concerns. The range has not reopened. Maj. Ballard was aware of Sgt. Koanui's report to IA.

96. From January 26, 2009 until May 11, 2009, Sgt. Koanui was on medical leave, due to an injury suffered at work.

97. After she returned to the work, on May 11, 2009, the discrimination, harassment, hostile work environment and retaliation continued.

98. Maj. Ballard rewrote the supervisory requirements for Training Division, abolishing the Sergeant's position as supervisor of Physical Training. This change ensured that Sgt. Koanui could not return to her position as supervisor of the Physical Training program again.

99. On May 21, 2009, Sgt. Koanui was served her Personnel Evaluation Report ("PER"). She received 13 negative scores out of 24. During the preceding three months, however, Sgt. Koanui received 4 commendations, 1 letter of appreciation and one other Commendation. The negative PER was extraordinary, harassing and retaliatory and further escalated the distress Sgt. Koanui was experiencing at work.

100. Because of the ongoing discrimination, harassment, hostile work environment and retaliation, Sgt. Koanui was forced by Maj. Ballard to transfer from Training to Records Division on May 11, 2009.

101. On information and belief, Chief Boisse Correa and two deputies intervened in the IA investigation instituted by Sgt. Koanui.

102. On information and belief Maj. Ballard ordered that the recruit test results be shredded, thereby destroying evidence that would have corroborated that the test results had been changed under her command.

103. On information and belief Chief Correa had ordered Maj. Ballard to fill unfilled police officer positions to avoid having unfilled officer positions at a time when they would be lost if unfilled. Rather than finding and training qualified recruits, Maj. Ballard chose to alter written and physical testing results, promoting unqualified recruits to officers as a means of addressing Chief Correa's concerns.

104. Sgt. Koanui filed a timely charge of discrimination with the Hawai'i Civil Rights Commission and, subsequently timely filed this complaint. All predicate acts have been taken by Sgt. Koanui to initiate this action.

FIRST CLAIM FOR RELIEF

(Whistle Blower Protection Act, Haw. Rev. Stat. § 378-62)

105. Plaintiff incorporates by reference the paragraphs above.

106. Defendants have threatened or otherwise discriminated against Plaintiff regarding the terms, conditions, location, or privileges of her employment because, she reported to the Defendants or reports and to a public body, verbally or in writing: (A) a violation or a suspected violation of laws, rules, ordinances, or regulations, adopted pursuant to law of this State, a

political subdivision of this State, or the United States; or (B) a contract executed by the State, a political subdivision of the State, or the United States.

107. Defendants have violated Haw. Rev. Stat. § 378-62 by threatening and otherwise discriminating against Plaintiff regarding the terms, conditions and privileges of her employment because of her reports of unlawful conduct and/or violations of contract.

108. As a direct and proximate result of Defendant's threats and other discrimination, Plaintiff has suffered economic, general and special damages, including physical and emotional distress, lost income and employment opportunities, in an amount to be proved at trial.

109. As a further result of Defendants' actions, Plaintiff has necessarily retained attorneys to prosecute this action. Plaintiff is therefore entitled to an award of reasonable attorney's fees and litigation expenses incurred in bringing this lawsuit.

SECOND CLAIM FOR RELIEF

(Public Policy)

110. Plaintiff incorporates by reference the paragraphs above.

111. The Legislature of the State of Hawai'i has expressly declared that discrimination on the basis of gender and retaliation for opposing such discrimination are against public policy. Haw. Rev. Stat. §378-2.

112. The Legislature of the State of Hawai'i has expressly declared that retaliation for reporting violations of law and contract are against public policy. Haw. Rev. Stat. §378-62.

113. Defendants' actions toward Plaintiff were unlawful and in violation of public policy as set forth in *Parnar v. Americana Hotels. Inc.*, 65 Haw. 370, 652 P.2d 625 (1982).

114. As a direct and proximate result of Defendant's actions, Plaintiff has suffered economic, general and special damages, including physical and emotional distress, lost income and employment opportunities, in an amount to be proved at trial.

115. As a further result of Defendants' actions, Plaintiff has necessarily retained attorneys to prosecute this action. Plaintiff is therefore entitled to an award of reasonable attorney's fees and litigation expenses incurred in bringing this lawsuit.

THIRD CLAIM FOR RELIEF

(Employment Discrimination, Haw. Rev. Stat. § 378-2)

116. Plaintiff incorporates by reference the paragraphs above.

117. In acting as alleged, Defendants discriminated against Plaintiff on the basis of her gender and retaliated against Plaintiff, in violation of Haw. Rev. Stat. § 378-2.

118. Defendants' actions were willful and wanton.

119. By reason of Defendants' conduct, Plaintiff has suffered economic, general and special damages, including physical and emotional distress, lost income and employment opportunities, in an amount to be proved at trial.

120. As a further result of Defendants' actions, Plaintiff has necessarily retained attorneys to prosecute this action. Plaintiff is therefore entitled to an award of reasonable attorney's fees and litigation expenses incurred in bringing this lawsuit.

WHEREUPON, Plaintiff prays for relief as follows:

1. A declaration that Defendants' actions were unlawful;
2. Compensatory damages in an amount to be proved at trial;
3. General, special and punitive damages in an amount to be proved at trial;
4. Attorneys' fees;
5. Prejudgment and post-judgment interest;
6. Such other and further relief as this Court deems just and proper.

DATED: Honolulu, Hawai'i, October _____, 2009.

CARL M. VARADY

Attorney for Plaintiff
DEEANN KOANUI

IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT

STATE OF HAWAI'I

DEEANN KOANUI,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU
AND DOE ENTITIES 1-10,

Defendants.

CIVIL No.
(Other Civil Action)

JURY DEMAND

JURY DEMAND

Plaintiff above-named, by and through her attorney, Carl M. Varady,
hereby requests trial by jury in the above-entitled matter.

Dated: Honolulu, Hawai'i, October _____, 2009.

CARL M. VARADY

Attorney for Plaintiff
DEEANN KOANUI

IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT
STATE OF HAWAII

DEEANN KOANUI,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU
AND DOE ENTITIES 1-10,

Defendants.

CIVIL No.

SUMMONS

SUMMONS TO ANSWER CIVIL COMPLAINT

STATE OF HAWAII

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiff's attorney, whose address is Carl M. Varady, ASB, 1001 Bishop Street, Suite 2870, Honolulu, Hawaii 96813, an answer to the Complaint which is attached. This action must be taken within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to make your answer within the twenty (20) day time limit, judgment by default will be taken against you for the relief demanded in the Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawai'i, October _____, 2009.

CLERK OF THE ABOVE-ENTITLED COURT