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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII ORGANIZATION OF  
POLICE OFFICERS (SHOPO),

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU,

Defendant.

Civil No. \_\_\_\_\_  
(Declaratory Judgment)

COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE  
RELIEF; SUMMONS

**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff, the STATE OF HAWAII ORGANIZATION OF POLICE  
OFFICERS (“SHOPO”), for its complaint against Defendant City and County of Honolulu  
 (“Defendant City”), alleges and avers as follows:

**PARTIES**

1. At all times relevant herein, SHOPO is the statutory and exclusive collective bargaining representative for Bargaining Unit 12 employees (“members”), consisting of all police officers employed by the four (4) counties in the State of Hawaii up to the rank of lieutenant. Haw. Rev. Stat. (“HRS”) § 89-6 (a)(12).

2. Defendant City is a municipal corporation, established by Article VIII,

Section 1 of the Hawaii State Constitution, which may be sued in its name pursuant to HRS § 46-1.5(22).

### **JURISDICTION AND VENUE**

3. Jurisdiction is conferred on this Court by Hawaii Revised Statutes (HRS) § § 632-1, 603-21.5 (3), 603-21.9(6) and other relevant statutory provisions.

4. Venue is proper in this court pursuant to 603-36(5).

### **BACKGROUND**

5. The Uniform Information Practices Act (“UIPA”) and Hawaii Supreme Court precedent recognize a significant privacy interest in police officers’ disciplinary suspension records, which means that such information must be kept private and confidential unless the public’s interest in disclosure outweighs the privacy interest of the individual police officers. HRS § 92F-14; Peer News LLC v. City & Cty. of Honolulu, 138 Haw. 53, 61, 376 P.3d 1, 9 (2016).

6. On or about 9/15/2020, Hawaii State Governor David Ige signed H.B. 285 and enacted into law Act 47 which, among other things, amended certain aspects of HRS § 52D–3.5 and HRS § 92F–14 (a provision of the UIPA) which relate to the privacy interests of county police officers in their disciplinary suspension records and the mandatory reporting requirement that applies to Defendant City and its county police chiefs.

7. Act 47 removed from the non-exhaustive list of “examples of information in which the individual has a significant privacy interest” contained in HRS § 92F–14 the following information related to a county police officer’s disciplinary suspension records: “(i) The name of the employee; (ii) The nature of the employment related misconduct; (iii) The agency’s summary of the allegations of misconduct; (iv) Findings of fact and conclusions of law; and (v) The disciplinary action taken by the agency[.]”

8. Act 47 added to the mandatory information that county police chiefs must disclose in their annual HRS § 52D-3.5 reports to the legislature, “the identity of the police officer upon the police officer’s suspension or discharge.”

9. Importantly, under HRS § 92F-14, information regarding a police officer’s disciplinary suspension records may only be disclosed once “the highest nonjudicial grievance adjustment procedure timely invoked by the employee or the employee’s representative has concluded; a written decision sustaining the suspension or discharge has been issued after this procedure; and thirty calendar days have elapsed following the issuance of the decision or, for decisions involving county police department officers, ninety days have elapsed following the issuance of the decision[.]” HRS § 92F-14.

10. In contrast, Act 47 amended HRS § 52D-3.5 to require the disclosure of a police officer’s name “upon” suspension or discharge and before the officer’s due process rights provided by the grievance process have been exercised and exhausted.

11. “Collective bargaining” means the performance of the mutual obligations of the public employer and the exclusive representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, amounts of contributions by the State and counties to the Hawai‘i public employees health fund, and other terms and conditions of employment, except that by any such obligation neither party shall be compelled to agree to a proposal, or be required to make a concession.

12. The constitutional right “to organize for the purpose of collective bargaining” is a fundamental right under Article XIII, Section 1 of the Hawaii State Constitution.

13. HRS § 89-10 states in relevant part, “Any collective bargaining agreement reached between the employer and the exclusive representative shall ... be reduced to writing and executed by both parties. Except for cost items and any non-cost items that are tied to or

bargained against cost items, all provisions in the agreement that are in conformance with this chapter, including a grievance procedure and an impasse procedure culminating in an arbitration decision, shall be valid and enforceable and shall be effective as specified in the agreement[.]”

14. The collective bargaining agreement (“CBA”) between SHOPO and Defendant City contains a “grievance adjustment procedure” which was negotiated and agreed to by the parties.

15. The CBA is an enforceable contractual agreement between SHOPO and Defendant City which is effective and binding on the parties.

16. Under Article 1.A. of the CBA, the Employer recognized SHOPO “as the exclusive representative for public employees in the police officers unit, both supervisory and non-supervisory, except for officers and employees who are excluded or may be excluded from the bargaining unit by law and/or the Hawaii Labor Relations Board.”

17. Article 12.B.2.c. of the CBA states, “No materials concerning a complaint shall be entered in any personnel file of the employee in cases where the employee has been exonerated, or in which the complaint is determined to be unfounded.”

18. Under Article 13.A. of the CBA:

The discipline and/or discharge of regular employees shall be for cause. When it becomes necessary for the Employer to initiate and impose disciplinary actions against any employee, such actions shall be administered in a fair and impartial manner, with due regard to the circumstances of the individual case. Discipline shall be deemed to include written reprimands, suspensions, dismissals, disciplinary transfers and disciplinary demotions.

19. Article 2.L. defines “Discipline” as an “administrative action taken against an employee for violation of a department rule, Standard of Conduct, directive, policy, or for other just cause[.]”

20. The essential requirements of due process are notice and an opportunity to respond to allegations and disciplinary actions which is reflected in the CBA's grievance procedure.

21. Due process includes a substantive component that guards against arbitrary and capricious government action, even when the government takes that action pursuant to a facially constitutional law.

22. SHOPO's members are entitled to a grievance procedure under the CBA and pursuant to their due process rights to challenge whether complaints made against them are unfounded and/or whether discipline has been issued for "just cause."

23. Under Article 13 of the CBA, the parties agreed that records and information related to the grievance process, including investigations, "shall be considered confidential[.]"

24. Under the CBA's grievance procedure, SHOPO or its members can file a grievance alleging a violation of the CBA, including a claim that discipline was administered without "just cause."

25. The grievance procedure can include up to four (4) steps, including a step 4 arbitration proceeding wherein an arbitrator is selected to adjudicate a grievance that involves alleged violations, misinterpretations or misapplications of a provision of the CBA, including a claim that discipline was administered without "just cause."

26. Under Article 32.L.9.b., "The award of the Arbitrator shall be accepted as final and binding. There shall be no appeal from the Arbitrator's decision by either party, if such decision is within the scope of the Arbitrator's authority[.]"

27. Under Article 32.L.9.b.2., SHOPO and Defendant City agreed that an arbitrator:

...shall decide whether the Employer has violated, misinterpreted or misapplied any of the terms of this Agreement and in the case of any action

which the Arbitrator finds unfair, unjust, improper or excessive on the part of the Employer, such action may be set aside, reduced or otherwise changed by the Arbitrator. The Arbitrator may, in the Arbitrator's discretion, award back pay to recompense in whole or in part, the employee for any salary or financial benefits lost, and return to the employee such other rights, benefits, and privileges or portions thereof as may have been lost or suffered.

28. Article 32 grants and invests the Arbitrator with wide discretion to rule on matters presented to him or her and to interpret and apply the CBA, including sealing and/or ordering that their decision be kept confidential.

29. An Arbitrator's interpretation and application of the CBA is given great legal deference such that the Hawaii courts at the highest appellate levels are "powerless" and lack the judicial authority to correct clearly erroneous findings of fact, legal errors or clear mistakes made by an Arbitrator.

30. If the arbitrator or other decisionmaker during the grievance process finds that discipline is unfounded or issued without "just cause", then such discipline may be set aside, reduced, or otherwise changed, including removing the discipline and/or complaint from the Grievant's personnel file and record.

31. When a complaint is unfounded and/or discipline issued without "just cause", then such complaints and discipline may be removed from a police officer's personnel file and record, and therefore retains its privacy protections and confidentiality and is no longer subject to mandatory disclosure under the UIPA.

32. Other similarly situated public employees have similar, if not identical, police powers as SHOPO's member and yet SHOPO's members have been singled out by Act 47 to have their due process rights taken away despite the obvious equal protection violation.

33. On 10/23/2020, Honolulu Police Chief Susan Ballard notified SHOPO that she intended to release "arbitration decisions that have resulted in the suspension or discharge of officers."

34. Chief Ballard further stated that the “release of the arbitration decision [is] the result of the passage of Act 47, Session Laws of Hawaii 2020, which amended the Uniform Practices Act (Hawaii Revised States Chapter 92F) regarding the disclosure of information related to the suspension or discharge of a police officer.”

### **CLAIMS**

35. Act 47 is unconstitutional on its face, internally inconsistent, and will deprive SHOPO’s members of the same due process rights enjoyed by other similarly situated public employees.

36. Act 47 is unconstitutional as it requires the disclosure of a police officer’s name and other disciplinary information “upon” suspension or discharge and before the officer’s due process rights provided by the grievance process have been exercised and exhausted.

37. SHOPO and Defendant City negotiated, agreed to, and executed a CBA pursuant to the fundamental right to organize for the purpose of collective bargaining.

38. Act 47 is unconstitutional as it circumvents and renders ineffective the valid and enforceable CBA that SHOPO and Defendant City negotiated, agreed to and executed pursuant to the fundamental right to organize for the purpose of collective bargaining, including the agreed upon grievance procedure.

39. Act 47 is unconstitutional as it substantial impairs the contractual relationship between SHOPO and Defendant City, is not designed to promote a significant and legitimate public purpose, and is not a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose.

40. Act 47 is unconstitutional because it is clearly arbitrary and unreasonable and has no substantial relation to the public health, safety, morals, or general welfare.

41. Act 47 is unconstitutional because it does not treat persons similarly circumstanced alike.

42. In the alternative, even if constitutional, Act 47 amended HRS § 92F-14 by removing from the list of examples of significant privacy interests the following information related to county police officers' suspension records: "(i) The name of the employee; (ii) The nature of the employment related misconduct; (iii) The agency's summary of the allegations of misconduct; (iv) Findings of fact and conclusions of law; and (v) The disciplinary action taken by the agency[.]" This list pertains to information and not records per se.

43. Defendant City is not permitted to disclose an arbitrator's decisions and related disciplinary records outside of this list without the proper application and consideration of the UIPA statutes and relevant privacy rights, especially considering that these articles of information can still be disclosed by less evasive means and without an overlybroad disclosure of records found in an employee's personnel file.

44. Under Act 47, Defendant City is not permitted to disclose an arbitrator's decisions and related disciplinary records without consideration of the CBA and arbitrator's deferential authority, as applicable.

45. Among other things, a declaratory judgment will terminate the uncertainty and controversy giving rise to this proceeding and prevent irreparable harm from befalling on SHOPO and its members.

46. SHOPO is entitled to temporary, preliminary and permanent injunctive relief to prevent and enjoin Defendant City from releasing private and confidential records pursuant to an unconstitutional law and/or in violation of the UIPA, CBA and/or the arbitrators' deferential authority, where applicable.

47. Absent injunctive relief, SHOPO's members will suffer irreparable harm.



WHEREFORE, Plaintiff prays:

- A. For entry of a declaratory judgment holding that Act 47 is unconstitutional.
- B. In the alternative, for entry of a declaratory judgment holding that Defendant City's public disclosure of the subject records violates the UIPA, privacy rights, the CBA and/or the arbitrator's authority.
- C. A temporary, preliminary and permanent injunction against Defendant City prohibiting it from releasing the subject records.
- D. That the Court award Plaintiff its reasonable attorneys' fees and costs incurred in bringing this action and sanctions against Defendant City; and
- E. That the Court grants such other and further relief as it deems just and equitable in the circumstances.

DATED: Honolulu, Hawaii, November 9, 2020.

/s/ Keani Alapa

VLADIMIR P. DEVENS

KEANI ALAPA

Attorneys for Plaintiff

SHOPO

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SUMMONS

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TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to file with the court and serve upon Plaintiff's attorney, the Law Offices of Vladimir P. Devens, LLC, whose address is 707 Richards Street, Suite PH-1, Honolulu, Hawai'i, 96813, an answer to the Complaint for Declaratory Judgment and Injunctive Relief, which is attached, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint for Declaratory Judgment and Injunctive Relief.

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, Hawaii, \_\_\_\_\_.

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CLERK OF THE ABOVE-ENTITLED COURT