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Attorney for Plaintiffs/Appellants

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI‘I

SONIA DAVIS, JESSICA LAU,  
LAURALEE B. RIEDELL, and ADAM M.  
WALTON,

Plaintiffs/Appellants,

v.

MICHAEL P. VICTORINO, County of Maui  
Office of the Mayor, SCOTT TERUYA,  
County of Maui Department of Finance, and  
COUNTY OF MAUI,

Defendants/Appellees.

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

Agency Docket/Case No. n/a

NOTICE OF APPEAL TO THE CIRCUIT  
COURT; STATEMENT OF THE CASE;  
DESIGNATION OF RECORD ON  
APPEAL; ORDER FOR CERTIFICATION  
AND TRANSMISSION OF RECORD;  
CERTIFICATE OF SERVICE

**NOTICE OF APPEAL TO THE CIRCUIT COURT**

Notice is hereby given that SONIA DAVIS, JESSICA LAU, LAURALEE B. RIEDELL, and ADAM M. WALTON (together, “Plaintiffs/Appellants”), pursuant to Hawai‘i Revised Statutes § 91-14 and/or § 632-1, and Rule 72 of the Hawai‘i Rules of Civil Procedure, appeal to the Circuit Court of the Second Circuit from the final decision of MICHAEL P. VICTORINO, County of Maui Office of the Mayor, SCOTT TERUYA, County of Maui Department of Finance, and COUNTY OF MAUI (together, “Defendants/Appellees”) to execute the forced eviction and vacatur of people and their belongings from putative County of Maui property—*i.e.*, property near “Amala Place and Keoneone Street, along with the portion known as the Kahului

Wastewater Treatment Plant” in Kahului, Maui (the “Kānahā Area”)—on or about September 20, 2021 through September 22, 2021 (the “Kānahā Sweep”), for which final decision was entered on or about September 20, 2021.

Plaintiffs/Appellants were among the dozens of houseless individuals<sup>1</sup> residing in the Kānahā Area who filed formal, written requests for a contested case with Defendants/Appellees before the Kānahā Sweep began. By allowing the Kānahā Sweep to move forward on September 20, 2021—thereby immediately causing both the eviction and vacatur of Plaintiffs/Appellants (and other houseless individuals) from the Kānahā Area, as well as the impoundment, disposal, and destruction of their personal property—without ruling upon Plaintiffs/Appellants’ requests for a contested case, Defendants/Appellees effectively denied Plaintiffs/Appellants’ requests for a contested case and prejudiced their substantial rights for all the reasons given in HRS § 91-14(g)(1), (3), (5), and (6). Additionally, Defendants/Appellees’ actions in conducting the Kānahā Sweep further violated Plaintiffs/Appellants’ rights under both the Hawai‘i and U.S. constitutions. This appeal is also made upon the grounds elaborated in the Statement of the Case, which is filed on this date and attached here. This Court has jurisdiction to hear and decide this Appeal pursuant to the bases set forth above.

DATED: Honolulu, Hawai‘i, October 20, 2021.

Respectfully submitted,

/s/ Jongwook “Wookie” Kim  
JONGWOOK “WOOKIE” KIM

ACLU OF HAWAII FOUNDATION  
Attorney for Plaintiffs/Appellants

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<sup>1</sup> Plaintiffs/Appellants prefer the term “houseless” (over the more stigmatized label “homeless”) because the term more accurately describes their situations—*i.e.*, they do not have physical *houses* in which to live, but they each have a *home* in Hawai‘i. Accordingly, Plaintiffs/Appellants generally use “houseless” to refer to people experiencing homelessness.

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

SONIA DAVIS, JESSICA LAU,  
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WALTON,

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v.

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County of Maui Department of Finance, and  
COUNTY OF MAUI,

Defendants/Appellees.

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

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STATEMENT OF THE CASE

**STATEMENT OF THE CASE**

SONIA DAVIS, JESSICA LAU, LAURALEE B. RIEDELL, and ADAM M. WALTON (together, “Plaintiffs/Appellants” or “Houseless Appellants”) respectfully seek relief against MICHAEL P. VICTORINO, County of Maui Office of the Mayor, SCOTT TERUYA, County of Maui Department of Finance, and COUNTY OF MAUI, (together, “Defendants/Appellees” or “County Appellees”) regarding their final decision to execute the forced eviction and vacatur of people and their belongings from putative County of Maui property—*i.e.*, property near “Amala Place and Keoneone Street, along with the portion known as the Kahului Wastewater Treatment Plant”<sup>2</sup> in Kahului, Maui (the “Kahahā area”)—on or about September 20, 2021 through September 22, 2021 (the “Kahahā Sweep”). Specifically, Houseless Appellants allege that County Appellees (1) violated Houseless Appellants’ procedural due process rights under article

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<sup>2</sup> Undated County of Maui “NOTICE TO VACATE COUNTY PROPERTY,” a copy of which is viewable on Ka Hale A Ke Ola Homeless Resource Centers’ Facebook page: [facebook.com/1444544482501919/photos/a.1472512969705070/3011376889151996](https://www.facebook.com/1444544482501919/photos/a.1472512969705070/3011376889151996).

I, section 5 of the Hawai‘i Constitution and the Fourteenth Amendment to the U.S. Constitution by failing to provide adequate notice and/or providing defective notice before executing the Kanahā Sweep; (2) violated Houseless Appellants’ procedural due process rights by failing to hold a contested case hearing before depriving Houseless Appellants of their constitutionally protected rights to their personal property, despite County Appellees having received formal, written requests for a contested case from Houseless Appellants before the sweep; and (3) violated Houseless Appellants’ rights under article I, section 7 of the Hawai‘i Constitution and the Fourth Amendment to the U.S. Constitution by searching and seizing their homes, vehicles, and personal property without a warrant, and thereby also invading their privacy, in executing the Kanahā Sweep. If necessary, this Statement may be construed as an original Complaint. *See* Chapter 632, Haw. Rev. Stat. and *In re Eric G.*, 65 Haw. 219 (1982).

## **I. INTRODUCTION**

1. Houseless Appellants are houseless individuals who have resided in the encampment called “Pu‘uhonua o Kanaha” located on Amala Place near Kanaha Beach Park on Maui, Hawai‘i.

2. Due to circumstances beyond their control, Houseless Appellants were unable to retrieve all of their belongings and find adequate, alternative shelter before County Appellees conducted a sweep of the area—*i.e.*, the Kanahā Sweep—that deprived Houseless Appellants (as well as other houseless people in the area) of the only shelter and belongings they possessed starting on or around September 20, 2021.

3. Instead, County Appellees either did not provide notice or, if they did, provided defective notice about the sweep before executing it.

4. County Appellees also denied *both* a pre-deprivation hearing *and* a post-deprivation hearing regarding Houseless Appellants’ constitutionally protected property interests, even though Houseless Appellants had filed written requests for contested case hearings before the sweep began.

5. Finally, throughout the Kanahā Sweep, County Appellees violated Houseless Appellants’ constitutional protections regarding privacy and freedom from unreasonable searches and seizures.

6. Had County Appellees, before the sweep occurred, afforded Houseless Appellants the protections guaranteed by the Hawai‘i and U.S. constitutions, and relevant state law, Houseless Appellants would have had the opportunity to challenge the County Appellees’ course of action, or otherwise work with the County to gather their belongings and relocate to safe, adequate housing.

7. Houseless Appellants now seek a declaratory judgment that County Appellees violated Houseless Appellants’ constitutional rights, an order remanding the matter for a contested case consistent with the decision of the Court, and an order requiring County Appellees—and their employees, agents, and representatives—to comply with the Hawai‘i and U.S. constitutions in conducting any future evictions or vacatur of Houseless Appellants and other houseless people from County of Maui property (including by providing a *pre-deprivation* contested case hearing).

## **II. PARTIES**

8. Plaintiff/Appellant SONIA DAVIS (“Ms. Davis”) is a 64-year-old Native Hawaiian woman born and raised on Maui, Hawai‘i. Ms. Davis has been houseless for about 12 years after no longer being able to afford rent, and had been residing in the Kanahā area for the

last 4-5 years. Ms. Davis was arrested in December 2019 for possession of drugs, but has since become sober and completed a rehabilitation course. Ms. Davis was living at Pu‘uhonua o Kanaha in the Kanahā Area before and during the Kanahā Sweep. However, Ms. Davis was incarcerated in jail for three weeks in September 2021 for missing a phone call from her probation officer. On the day of her release in mid-September, she learned of the impending Kanahā Sweep from others living in the area. She thus had only a few days to gather her personal belongings, which included numerous vehicles, shelter, and items stored in those vehicles. She was unable to move all of her items before the Kanahā Sweep began, and thus lost many items during the sweep—including four vehicles (several of which contained and stored various personal property), tents, a tarp, pots and pans, folding tables, diapers, a stroller, a playpen, and a baby’s car seat. Ms. Davis filed a contested case request with County Appellees on or about September 20, 2021.

9. Plaintiff/Appellant JESSICA LAU (“Ms. Lau”) is a 52-year-old woman of Hawaiian, Filipino, and Chinese descent. Ms. Lau become houseless for the first time in her life in March 2020, right as the COVID-19 pandemic began. Until that point, Ms. Lau had been a driver and tour guide for Polynesian Adventure Tours and Robert’s Hawaii for about 4 years. Since being evicted from her rental unit for nonpayment of rent and becoming houseless, Ms. Lau has continued working throughout the pandemic, primarily finding employment through Jobline X-Press, an alternative staffing company. Ms. Lau has generally worked two jobs at a time at companies including the Maui Family YMCA, Uptown Chevron, Enterprise Rent-A-Car, and Kihei Rent A Car. Because she also cares for her adult son, who has a series of disabilities, being houseless has been particularly challenging for her. Ms. Lau was living at Pu‘uhonua o Kanaha in the Kanahā Area before and during the Kanahā Sweep. While Ms. Lau was able to

move most of her belongings beforehand, she lost several items of personal property during the Kanahā Sweep. Ms. Lau filed a contested case request with County Appellees on or about September 6, 2021.

10. Plaintiff/Appellant LAURALEE B. RIEDELL (“Ms. Riedell”) is a 48-year-old Native American woman (of the Mono people from Big Sandy Rancheria) who has lived in Hawai‘i for over 20 years along with her domestic partner, Plaintiff/Appellant Adam M. Walton. Ms. Riedell and Mr. Walton first became houseless about 10 years ago after they were evicted from their rental housing for nonpayment of rent. Since that time, Ms. Riedell and Mr. Walton have cycled in and out of houselessness because of the lack of available affordable housing on Maui. Ms. Riedell was living at Pu‘uhonua o Kanaha in the Kanahā Area before and during the Kanahā Sweep. Currently, Ms. Riedell works as a cleaner of vacation rental units on Maui. Because of Ms. Riedell’s cleaning schedule, she never received written notice from County Appellees about the Kanahā Sweep. Ms. Riedell filed a contested case request with County Appellees on or about September 16, 2021.

11. Plaintiff/Appellant ADAM M. WALTON (“Mr. Walton”) is a 40-year-old man. Mr. Walton is Ms. Riedell’s domestic partner. Mr. Walton was living at Pu‘uhonua o Kanaha in the Kanahā Area before and during the Kanahā Sweep. Currently, Mr. Walton works as a cleaner of vacation rental units on Maui. Because of Mr. Walton’s cleaning schedule, he never received written notice from County Appellees about the Kanahā Sweep. Mr. Walton filed a contested case request with County Appellees on or about September 16, 2021.

12. Along with about 60 other houseless people, Houseless Appellants had been residing at a houseless encampment called “Pu‘uhonua o Kanaha” which was located on Amala Place near Kanaha Beach Park on Maui. All Houseless Appellants submitted formal, written

requests for contested cases with County Appellees before the Kanahā Sweep began. None of Houseless Appellants received a contested case (or other hearing)—or even a response to their requests—either before, during, or after County Appellees executed the Kanahā Sweep.

13. Defendant/Appellee MICHAEL P. VICTORINO, County of Maui Office of the Mayor (“Mayor Victorino”), is the “chief executive officer of the county” and is authorized, under Articles 2, 6, and 7 of the Charter of the County of Maui (“Maui County Charter”), to supervise and direct County of Maui departments.<sup>3</sup> Mayor Victorino is an “Agency” within the meaning of Haw. Rev. Stat. § 91-1(1) because he is an “officer authorized by law to make rules.” Mayor Victorino is authorized to—and did in fact—order the Kanahā Sweep.

14. Defendant/Appellee SCOTT TERUYA, County of Maui Department of Finance (“Director Teruya”), is responsible for managing County of Maui finances and is specifically authorized, under Article 8, Chapter 4 of the Maui County Charter, to prescribe and supervise procedures and administrative functions of the County of Maui Department of Finance, which has the authority to contract for services for public works and maintains an inventory of all lands owned by the County.<sup>4</sup> On information and belief, Director Teruya approved of the Kanahā Sweep and the County resources allocated and expended to conduct it.

15. Defendant/Appellee COUNTY OF MAUI (“County” or “County of Maui”) is and has been a duly organized municipal corporation of the State of Hawai‘i governed by an elected mayor and a nine-member County Council. It has employed Defendant/Appellee MICHAEL P. VICTORINO and Defendant/Appellee SCOTT TERUYA at all relevant times.

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<sup>3</sup> County of Maui Charter (Jan. 2, 2021), *available at* <https://www.mauicounty.gov/DocumentCenter/View/126103/Charter-2021-Edition> (last visited Oct. 20, 2021).

<sup>4</sup> *Id.*



### III. FACTUAL ALLEGATIONS

16. On September 1, 2021, the County of Maui announced via press release that it would be conducting a “clean-up of public lands surrounding the Kanaha Pond Wildlife Sanctuary and Wailuku-Kahului Wastewater Treatment Plant”—*i.e.*, the Kanahā Sweep.<sup>5</sup>

17. In the same press release, the County of Maui stated that it “ha[d] been working with social workers and service providers to assist 53 individuals living in the homeless encampment in the area” and that it was “in the process of making emergency shelter resources available” to houseless people in the area.<sup>6</sup> County Appellee Mayor Victorino also stated “[o]nce the unsheltered residents have settled into new accommodations, we will start the clean-up.”<sup>7</sup>

18. The planned “clean-up” area covered the Kanahā Area. The Kanahā Area in turn included the houseless encampment called “Pu‘uhonua o Kanaha” located on Amala Place near Kanaha Beach Park. As of September 2021, there were about 60 houseless people—including Houseless Appellants—residing in Pu‘uhonua o Kanaha inside the Kanahā Area.

19. To “prepare for area clean-up,” the County of Maui also stated in its September 1 press release that it would be installing “no trespassing signage” on both sides of Amala Place.<sup>8</sup>

20. On or around September 14, 2021, County of Maui officials and police officers—acting under the direction of County Appellees—delivered copies of a “Notice to Vacate County Property” flyer (“Notice-to-Vacate”) to some people in the Kanahā Area.

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<sup>5</sup> Maui County Press Release, “Amala Place clean-up to begin this month,” Sep. 1, 2021, <https://www.mauicounty.gov/CivicAlerts.aspx?AID=11143>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

21. County of Maui officials did not deliver the Notice-to-Vacate to all residents of Pu ‘uhonua o Kanaha. Many such residents did not receive the Notice-to-Vacate. Houseless Appellants Riedell and Walton also did not receive the Notice-to-Vacate.

22. The Notice-to-Vacate described the County Appellees’ plans for the Kanahā Sweep.

23. The Notice-to-Vacate defined the Kanahā Area as the subject of impending County action (*i.e.*, the Kanahā Sweep).

24. Although the Notice-to-Vacate did not state this, the Kanahā Area includes private property that is not owned by the County of Maui and/or subject to County Appellees’ control.

25. The Notice-to-Vacate stated that the Kanahā Area “premises will be cleared of personal property and vehicular access will be restricted between MONDAY, SEPTEMBER 20, 2021 at 6:00 am – WEDNESDAY SEPTEMBER 22, 2021 at 4:30 pm.”<sup>9</sup>

26. The Notice-to-Vacate also stated that “all campsites, personal property, and vehicles must be removed from these Premises by or before the above date and time.”

27. The Notice-to-Vacate stated that any person who remained in the Kanahā Area during this time could be cited for criminal trespass under Haw. Rev. Stat. § 708-815.

28. The Notice-to-Vacate did not include any information on what the County Appellees would do with vehicles and personal property taken during the Kanahā Sweep. Specifically, the Notice-to-Vacate did not state whether any property seized by the County

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<sup>9</sup> Undated County of Maui “NOTICE TO VACATE COUNTY PROPERTY.” A copy of which is viewable on Ka Hale A Ke Ola Homeless Resource Centers’ Facebook page: [facebook.com/1444544482501919/photos/a.1472512969705070/3011376889151996](https://www.facebook.com/1444544482501919/photos/a.1472512969705070/3011376889151996).

Appellees would be destroyed, impounded, or otherwise stored. The Notice-to-Vacate also did not state, if such seized property were to be stored, where and how long such property would be stored, and how people could reclaim such property.

29. The Notice-to-Vacate did not include any information on any procedures available for requesting an accommodation, including, for example, for people with disabilities, or for more time due to extenuating circumstances. This was particularly harmful given that County Appellees were providing written notice for the first time merely 6 days before they planned to execute the Kanahā Sweep.

30. The Notice-to-Vacate did not include any information on any procedures available for challenging the planned County action, including whether the Kanahā Sweep complied with the requirements of the Hawai‘i Constitution, the U.S. Constitution, and/or the Hawai‘i Administrative Procedure Act, as well as whether the Kanahā Sweep was an appropriate use of the County’s limited resources.

31. Between September 6, 2021 and September 20, 2021, about 40 houseless people residing in Pu‘uhonua o Kanaha—including Plaintiffs/Appellants—filed “REQUEST[S] FOR A CONTESTED CASE” with the County of Maui Office of the Mayor, the County of Maui Department of Finance, and the County of Maui Corporation Counsel regarding the Kanahā Sweep.

32. In their contested case requests, the houseless residents of Pu‘uhonua o Kanaha stated that they had constitutionally protected property interests “that must be afforded procedural due process before the County may terminate” such interests. The requests also claimed that their property interest was protected under the Hawai‘i Constitution’s “right to due process, right to privacy and the Kanawai Mamalahoe.”

33. Upon information and belief, no houseless person who submitted a contested case request to County Appellees received a response—written or otherwise—to their contested case requests.

34. Houseless Appellants did not receive a response—written or otherwise—to their contested case requests.

35. Upon information and belief, no houseless person who submitted a contested case request to County Appellees was afforded a contested case hearing, either before or after County Appellees deprived the houseless person of property.

36. Houseless Appellants were not afforded a contested case hearing, either before or after County Appellees deprived them of their property.

37. Mayor Victorino personally met with some people residing at Pu‘uhonua o Kanaha, including some Houseless Appellants, on at least one occasion before the Kanahā Sweep. At one meeting, Mayor Victorino stated that residents, including Houseless Appellants, would be afforded an opportunity to find alternate shelter and safeguard their personal belongings from seizure or destruction from the County before the sweep would occur. The Houseless Appellants took his word and believed these promises. However, by the time the Kanahā Sweep began, not all residents had been relocated to safe, alternate shelter. As a result, some of the Houseless Appellants were not able to save their belongings because they were not allowed to enter the Kanahā Area during the sweep, and their property (which they had marked with caution tape or other instruments to indicate that they were not abandoned property) was seized or destroyed by County Appellees.

38. County Appellees (in conjunction with the State of Hawai‘i Department of Land and Natural Resources (“DLNR”)) directed County of Maui officials to lock the Amala Place

gate entrance to Kanaha Beach Park from Sunday, September 19, 2021 through Friday, September 24, 2021.

39. On the morning of September 20, 2021, the County brought in heavy equipment, including bulldozers and garbage trucks, to remove vehicles, items, and debris from the area.

40. About 8 to 10 houseless individuals were still residing in the Kanahā Area when the Kanahā Sweep began. Under threat of arrest by County officials, those houseless individuals—which included Houseless Appellants Riedell and Walton—left the Kanahā Area.

41. On September 21, 2021—after the Kanahā Sweep had begun—the ACLU of Hawai‘i Foundation sent a letter to Mayor Victorino, the Hawai‘i Department of Land and Natural Resources, Maui Police Department, County of Maui’s Department of the Corporation Counsel, and County of Maui’s Department of Housing and Human Concerns expressing its concerns about the sweep’s unconstitutionality and demanding that the County of Maui immediately cease the sweep. The letter outlined the ways in which the sweep violated the Fourth, Eighth, and Fourteenth Amendments of the United States Constitution and article I, sections 5, 7, and 12 of the Hawai‘i Constitution. The ACLU of Hawai‘i Foundation received no response to its letter.

42. By September 22, 2021, the County stated that it had seized, discarded, or impounded at least 54 vehicles and 58 tons of personal property from the Kanahā Area during the Kanahā Sweep.<sup>10</sup>

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<sup>10</sup> Maui County Press Release, “Amala Place clean-up continues in Kahului,” Sep. 21, 2021, <https://www.mauicounty.gov/CivicAlerts.aspx?AID=11168>; Maui County Press Release, “Amala Place Clean-up Nearly Complete,” Sep. 22, 2021, <https://www.mauicounty.gov/CivicAlerts.aspx?AID=11171>.

43. Although County Appellees promised in a public press release as well as in private meetings to work with social workers and service providers to provide housing and other services to houseless people residing in the Pu‘uhonua o Kanahā encampment *before* starting the Kanahā Sweep, County Appellees did not hold to that written commitment. Specifically, County Appellees did not provide safe, adequate alternative shelter or housing options to all people residing in the area before executing the Kanahā Sweep.

44. Houseless Appellants have constitutionally protected interests in their liberty, privacy, and property. By not responding to Houseless Appellants’ contested case requests prior to conducting the sweep and seizing or destroying their property and invading their privacy, County Appellees deprived Houseless Appellants of their constitutionally protected rights.

45. Houseless Appellants have been harmed by County Appellees’ unlawful actions.

#### **IV. CLAIMS FOR RELIEF**

##### **Claim 1: Violation of Constitutional Provisions (HRS 91-14(g)(1))**

46. Houseless Appellants reallege and incorporate all previous allegations.

47. Houseless Appellants hold constitutionally protected property interests in their belongings that were affected by County Appellees’ execution of the Kanahā Sweep.

48. Houseless Appellants were entitled to due process protections for their constitutional rights, including through contested case procedures.<sup>11</sup>

49. Procedural due process is required under the Hawai‘i and U.S. constitutions to protect individuals against the state’s deprivation of liberty and property interests.<sup>12</sup> Procedural

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<sup>11</sup> See *Flores v. Bd. Of Land of Nat. Resources*, 143 Haw. 114, 124, 424 P.3d 469, 479 (2018) (A contested case is required by law when it is required by (1) statute, (2) administrative rule, or (3) constitutional due process).

<sup>12</sup> *Brown v. Thompson*, 91 Haw. 1, 9, 979 P.2d 586, 594 (1999), as amended (July 13, 1999); *In re Herrick*, 82 Hawai‘i 329, 342, 922 P.2d 942, 956 (1996).

due process of law requires “notice and an opportunity to be heard at a meaningful time and in a meaningful manner.”<sup>13</sup>

50. Houseless Appellants have protected property interests in their personal possessions, including for unabandoned personal possessions stored on public property.<sup>14</sup>

51. County Appellees are “agenc[ies]” within the meaning of Haw. Rev. Stat. chapter 91 because they are authorized by law to make rules. Haw. Rev. Stat. § 91-1.

52. Houseless Appellants followed proper Hawaii Administrative Procedure Act procedure by filing a request for a contested case addressed to the relevant agencies executing the impending sweep pursuant to Haw. Rev. Stat. §§ 91-1 and 91-9.

53. County Appellees did not respond to Houseless Appellants’ request for a contested case before the sweep that began on September 20, 2021.

54. Houseless Appellants were entitled to notice and a hearing before permanent deprivation of their property, including information about procedures available for challenging actions to be taken.<sup>15</sup>

55. Houseless Appellants were not afforded adequate notice because the Notice-to-Vacate did not mention “procedures available for challenging that action.” *Brown* at 10.

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<sup>13</sup> *Sandy Beach Defense Fund v. City Council of City and County of Honolulu*, 70 Haw. at 378, 773 P.2d at 261.

<sup>14</sup> *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 571–72 (1972) (stating that “property interests protected by procedural due process extend” to include “chattels”); *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1031 (9th Cir. 2012) (stating that homeless “Appellees maintained a protected interest in their personal property” that was not abandoned).

<sup>15</sup> *Brown v. Thompson*, 91 Haw. 1, 9, 979 P.2d 586, 594 (1999), as amended (July 13, 1999); *In Re Herrick*, 82 Hawai‘i at 343, 922 P.2d at 956 (citing *Atkins v. Parker*, 472 U.S. 115, 152 (1985)).

56. Houseless Appellants’ procedural due process rights were violated because County Appellees did not provide them an adequate opportunity to be heard by failing to hold contested case hearings before the County conducted the sweep, even though Petitioners had filed written requests for a contested case.

57. County Appellees violated Houseless Appellants’ rights to privacy and freedom from unreasonable seizures protected under the Hawai‘i and U.S. constitutions.

58. Houseless Appellants’ property was seized because there was a “meaningful interference with [their] possessory interests in that property,” and there is a seizure even when that property is stored in public areas and it belongs to houseless people.<sup>16</sup>

59. The removal and destruction of property that was momentarily unattended by some of the Houseless Appellants—and not by choice, because Houseless Appellants were threatened with arrest if they were in the area at the time of the sweep—such as their vehicles, shelters, cooking supplies, and other personal effects, constitutes a seizure.

**Claim 2: Unlawful Procedure (HRS 91-14(g)(3))**

60. Houseless Appellants reallege and incorporate all previous allegations.

61. County Appellees’ decision to execute the Kanahā Sweep affected Houseless Appellants’ constitutional rights.

62. Houseless Appellants were entitled to adequate notice regarding County Appellees’ planned Kanahā Sweep to properly afford Plaintiffs/Appellants due process for their protected interests in their personal property and chattels.

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<sup>16</sup> *Russell v. City & Cty. of Honolulu*, No. CIV. 13-00475 LEK, 2013 WL 6222714, at \*15 (D. Haw. Nov. 29, 2013); *Garcia v. City of Los Angeles*, 11 F.4th 1113 (9th Cir. 2021); *Recchia v. City of Los Angeles Dep’t of Animal Servs.*, 889 F.3d 553, 558 (9th Cir. 2018).



63. Houseless Appellants either did not receive any notice from County Appellees before the Kanahā Sweep or received constitutionally insufficient or defective notice.

64. A hearing was required before County Appellees' decision to execute the Kanahā Sweep to properly afford Houseless Appellants due process for their protected interests in their personal property and chattels.

65. County Appellees were prohibited from executing the Kanahā Sweep without first holding a contested case on impacts to Houseless Appellants' constitutionally protected rights.

66. Houseless Appellants submitted formal written requests for a contested case to County Appellees.

67. Houseless Appellants received no response from County Appellees to their separate requests for a contested case.

68. In failing to respect Houseless Appellants' constitutional rights, County Appellees took final agency action regarding the execution of the Kanahā Sweep under unlawful procedure.

69. Houseless Appellants are entitled to declaratory and injunctive relief against County Appellees' actions.

**Claim 3: Clearly Erroneous (HRS 91-14(g)(5))**

70. Houseless Appellants reallege and incorporate all previous allegations.

71. Houseless Appellants were clearly entitled to constitutionally adequate notice regarding County Appellees' decision and actions regarding the Kanahā Sweep.

72. Houseless Appellants were clearly entitled to a hearing before County Appellees executed the Kanahā Sweep.

73. County Appellees clearly erred by ordering the Kanahā Sweep and thereby depriving Houseless Appellants of their constitutional rights and protections.

**Claim 4: Arbitrary, Capricious, Characterized by Abuse of Discretion, or Clearly Unwarranted Exercise of Discretion (HRS 91-14(g)(6))**

74. Houseless Appellants reallege and incorporate all previous allegations.

75. In light of County Appellees' decision to authorize and execute the Kanahā Sweep in violation of Houseless Appellants' constitutional rights, County Appellees' actions were arbitrary, capricious, an abuse of discretion, and/or a clearly unwarranted exercise of discretion.

**V. RELIEF REQUESTED**

WHEREFORE, Houseless Appellants SONIA DAVIS, JESSICA LAU, LAURALEE B. RIEDELL, and ADAM M. WALTON respectfully pray that this Court:

1. Enter a declaratory judgment against County Appellees MICHAEL P. VICTORINO, County of Maui Office of the Mayor, SCOTT TERUYA, County of Maui Department of Finance, and COUNTY OF MAUI that declares that:
  - a. County Appellees violated Houseless Appellants' procedural due process rights under article I, section 5 of the Hawai'i Constitution and the Fourteenth Amendment to the U.S. Constitution by failing to provide adequate notice and/or providing defective notice before executing the Kanahā Sweep;
  - b. County Appellees violated Houseless Appellants' procedural due process rights by failing to hold a contested case hearing before depriving Houseless Appellants of their constitutionally protected rights to their personal property, despite having received formal, written requests for a contested case from Houseless Appellants;
  - c. County Appellees violated Houseless Appellants' rights under article I, section 7 of the Hawai'i Constitution and the Fourth Amendment to the U.S.

Constitution by searching and seizing their homes, vehicles, and personal property without a warrant, and thereby also invading their privacy, in executing the Kanahā Sweep;

- d. County Appellees were required to conduct a contested case that included Houseless Appellants as parties;
  - e. The Kanahā Sweep was conducted upon unconstitutional procedure and in an unconstitutional manner.
2. Enter an order remanding the matter for a contested case consistent with the decision of the Court (including, in this instance, a post-deprivation hearing).
  3. Enter an order requiring County Appellees, and their employees, agents, and representatives, to comply with article I, sections 5 and 7 of the Hawai‘i Constitution, and the Fourteenth and Fourth Amendments to the U.S. Constitution in conducting any future evictions or vacatur of Houseless Appellants and other houseless people— and their shelter, vehicles, and personal property—from County of Maui property.
  4. Retain continuing jurisdiction to review County Appellees’ compliance with all judgments and orders entered herein.
  5. Make such additional judicial determinations and orders as may be necessary to effectuate the foregoing.
  6. Award the costs of suit herein, including reasonable attorneys’ fees; and
  7. Enter such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between the parties.

DATED: Honolulu, Hawai'i, October 20, 2021.

Respectfully submitted,

/s/ Jongwook "Wookie" Kim  
JONGWOOK "WOOKIE" KIM

ACLU OF HAWAII FOUNDATION  
Attorney for Plaintiffs/Appellants

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI‘I

SONIA DAVIS, JESSICA LAU,  
LAURALEE B. RIEDELL, and ADAM M.  
WALTON,

Plaintiffs/Appellants,

v.

MICHAEL P. VICTORINO, County of Maui  
Office of the Mayor, SCOTT TERUYA,  
County of Maui Department of Finance, and  
COUNTY OF MAUI,

Defendants/Appellees.

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

Agency Docket/Case No. n/a

DESIGNATION OF RECORD ON APPEAL

**DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rule 72(d) of the Hawai‘i Rules of Civil Procedure, Plaintiffs/Appellants hereby designate as the Record on Appeal the entire file of Defendant/Appellee MICHAEL P. VICTORINO, County of Maui Office of the Mayor, Defendant/Appellee SCOTT TERUYA, County of Maui Department of Finance, and Defendant/Appellee COUNTY OF MAUI, in the above-captioned matter, as defined in Hawai‘i Revised Statutes § 91-9(e), including the letters by Plaintiffs/Appellants and other houseless people requesting a contested case concerning the Kanahā Sweep, and other correspondence or other documents exchanged, considered, or relied upon by Defendants/Appellees in deciding to both deny the requests for contested case and proceed with the Kanahā Sweep.

DATED: Honolulu, Hawai‘i, October 20, 2021.

Respectfully submitted,

/s/ Jongwook “Wookie” Kim  
JONGWOOK “WOOKIE” KIM  
ACLU OF HAWAII FOUNDATION  
Attorney for Plaintiffs/Appellants

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

SONIA DAVIS, JESSICA LAU,  
LAURALEE B. RIEDELL, and ADAM M.  
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v.

MICHAEL P. VICTORINO, County of Maui  
Office of the Mayor, SCOTT TERUYA,  
County of Maui Department of Finance, and  
COUNTY OF MAUI,

Defendants/Appellees.

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

Agency Docket/Case No. n/a

ORDER FOR CERTIFICATION AND  
TRANSMISSION OF RECORD

**ORDER FOR CERTIFICATION AND TRANSMISSION OF RECORD**

TO:

MICHAEL P. VICTORINO, County of Maui Office of the Mayor  
C/o Moana Lutey, Maui Corporation Counsel  
200 S. High St.  
Kalana O Maui Bldg, 9th Fl.  
Wailuku, HI 96793

SCOTT TERUYA, County of Maui  
Department of Finance  
C/o Moana Lutey, Maui Corporation Counsel  
200 S. High St.  
Kalana O Maui Bldg, 2nd Fl.  
Wailuku, HI 96793

COUNTY OF MAUI  
C/o Moana Lutey, Maui Corporation Counsel  
200 S. High St.  
Kalana O Maui Bldg, 2nd Fl.  
Wailuku, HI 96793

In accordance with Hawai'i Revised Statutes § 91-14(d), and Rule 72(d) of the Hawai'i  
Rules of Civil Procedure, you are hereby ordered to certify and transmit to this Court, within

twenty (20) calendar days of the date of this Order, or within such further time as may be allowed by this Court, the entire record as defined by Hawai‘i Revised Statutes § 91-9(e), and as set forth in the Designation of Record on Appeal. Any request to enlarge time shall be submitted to the Court prior to the expiration of the above 20-day period.

DATED: Wailuku, Hawai‘i, \_\_\_\_\_, 2021

\_\_\_\_\_  
CLERK OF THE ABOVE-ENTITLED COURT

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

SONIA DAVIS, JESSICA LAU,  
LAURALEE B. RIEDELL, and ADAM M.  
WALTON,

Plaintiffs/Appellants,

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MICHAEL P. VICTORINO, County of Maui  
Office of the Mayor, SCOTT TERUYA,  
County of Maui Department of Finance, and  
COUNTY OF MAUI,

Defendants/Appellees.

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

Agency Docket/Case No. n/a

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, a copy of the document within was served via

JEFS/JIMS to the following:

MOANA LUTEY  
Corporation Counsel  
County of Maui  
200 S. High Street  
Kalana O Maui Bldg, 2nd Fl.  
Wailuku HI 96793

Attorney for Defendants/Appellees  
MICHAEL P. VICTORINO, SCOTT TERUYA and COUNTY OF MAUI

DATED: Honolulu, Hawai'i, October 20, 2021.

Respectfully submitted,

/s/ Jongwook "Wookie" Kim  
JONGWOOK "WOOKIE" KIM

ACLU OF HAWAII FOUNDATION  
Attorney for Plaintiffs/Appellants