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JORGE RIVERA and JENNIFER RIVERA, Individually,
and on Behalf of Their Minor Child, J.R.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JORGE RIVERA AND JENNIFER)	CIVIL NO. 20-00458
RIVERA, Individually, and on)	(Other Civil Rights)
Behalf of Their Minor Child, J.R.,)	
)	COMPLAINT FOR DECLARA-
Plaintiffs)	TORY AND INJUNCTIVE RELIEF
)	AND DAMAGES; DEMAND FOR
vs.)	JURY TRIAL
)	
CITY AND COUNTY OF)	
HONOLULU; KIRK UEMURA;)	
ARTIE KENDALL; and)	
DOE DEFENDANTS 1-10,)	
)	
Defendants.)	
_____)	

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND DAMAGES**

I.

INTRODUCTION

“[T]he power of arrest is an awesome one and is subject to abuse.”¹

1. On November 9, 2018, Justice Marshall’s cautionary reminder became reality for then fifteen-year-old J.R. when a Honolulu Police Department (“HPD”) officer—motivated solely by a personal vengeance—followed J.R.’s

¹ *U.S. v. Santana*, 427 U.S. 38, 48, 96 S.Ct. 2406 (1976) (Marshall, J., dissenting).

school bus to campus in his patrol car, forcibly seized J.R., and subjected him to an unlawful search, detention, and harassing interrogation in plain view of surrounding students and staff.

2. The police officer—in uniform and acting with the authority of the law—called another HPD officer to ask if he was nearby and could come arrest someone for him. Shortly thereafter the officer arrived, arrested J.R., and transported him to the police station where J.R. was left shackled and handcuffed in a cell. The officers neglected to notify J.R.’s parents of his arrest until well after he had been fingerprinted, photographed, and his arrest had been processed.

3. This extensive and traumatic intrusion into J.R.’s constitutionally protected liberty interests occurred even though the officers lacked any probable cause whatsoever to detain and/or arrest J.R. Rather, fifteen-year-old J.R. was targeted in a malicious attack by Officer Kirk Uemura, the father of a fellow student who bullied and taunted J.R. for several months and initiated a fight with J.R. just one day prior.

4. Although no legitimate law enforcement purpose motivated the officers’ conduct, the officers acted as though their law enforcement status gave them authority to unlawfully search, interrogate, and arrest a fifteen-year-old child for personal retribution—here, to punish the enemy of an officer’s son—in an outrageous abuse of power.

5. When J.R.'s parents arrived at the police station and asked why Officer Uemura was permitted to interrogate and arrest their son when such a blatant conflict of interest existed, the sergeant in charge tapped his badge and exclaimed "that's what gives [officer Uemura] the right to do what he did," implying that HPD officers systematically abuse their authority with impunity.

6. The severe intrusions into J.R.'s constitutionally protected rights are in stark contrast with that of Officer Uemura's son, A.U., who, despite his violent behavior and role as the initial aggressor, was not arrested, interrogated, or charged with any crimes. Such selective enforcement violates J.R.'s equal protection rights.

7. Plaintiffs contend that J.R. was wrongfully deprived of his constitutional right to substantive due process, including his rights to liberty and bodily integrity; wrongfully denied equal protection of the law; and unlawfully arrested and interrogated in violation of his rights under the Fourth Amendment, Fifth Amendment, and Fourteenth Amendment of the Constitution of the United States and Article I of the Constitution of the State of Hawaii, *inter alia*.

8. Plaintiffs further contend that the Honolulu Police Department has failed to implement any policies or procedures to prevent police officers from influencing or participating in investigations, interrogations, arrests, or any law enforcement function when the officer has an actual or apparent conflict of interest.

Such conflicts of interest necessarily arise when personal interests, including the interests and/or involvement of family members, friends, and associates, conflict with the officer's public duty, thus creating a significant risk of misconduct.

9. HPD's refusal to implement a conflicts of interest policy constitutes a deliberate indifference to J.R.'s constitutional rights because of the predictable risk that constitutional violations will occur in the absence of any compulsory reporting and management system to prevent the risk of misconduct.

10. Additionally, the Honolulu Police Department has demonstrated a pattern of permitting HPD officers' selective enforcement of the law and abuse of law enforcement powers in connection with private and/or personal interests by consistently refusing to follow, apply, and equally enforce the law against police officers and their immediate family. Officers routinely seek and are called upon and expected to provide indiscriminate police authority in aid of fellow officers without regard for the law. This pattern or practice is so long-standing and widespread as to constitute an official or *de facto* policy, practice, or custom.

11. As part of this *de facto* policy, practice, or custom, officer Uemura was emboldened to file a malicious police report that omitted critical facts about his son, to unconstitutionally detain and interrogate fifteen-year-old J.R., and to enlist the aid of his fellow officers to intimidate and arrest J.R. The support that officer Uemura expected to, and did, receive from other officers—including from

the sergeant who defended his blatant abuse of power—is characteristic of this *de facto* policy and denies J.R. equal protection of the law.

II.

PARTIES

12. Plaintiffs JORGE RIVERA and JENNIFER RIVERA (“Plaintiffs”) are and have been residents of the City and County of Honolulu, State of Hawai‘i at all times pertinent hereto and are the parents of minor J.R.

13. Defendant CITY AND COUNTY OF HONOLULU is and has been a duly organized municipal corporation of the State of Hawai‘i at all times pertinent hereto.

14. Defendant KIRK UEMURA (“Defendant Uemura”) is and has been a citizen and resident of the City and County of Honolulu, State of Hawai‘i, and has been employed as a police officer by the Honolulu Police Department at all times pertinent hereto.

15. Defendant ARTIE KENDALL (“Defendant Kendall” or “Sergeant Kendall”) is and has been a citizen and resident of the City and County of Honolulu, State of Hawai‘i, and has been employed as a police officer by the Honolulu Police Department at all times pertinent hereto.

16. DOE DEFENDANTS 1-10 (“DOE Defendants”) are individuals whose true identities and capacities are as yet unknown to Plaintiffs and their

counsel, despite diligent inquiry and investigation, and who acted herein as described more particularly below in connection with the breaches of duties and/or violations of law alleged herein and who in some manner or form not currently discovered or known to Plaintiff may have contributed to or be responsible for the injuries alleged herein. The true names and capacities of DOE Defendants will be substituted as they become known.

III.

JURISDICTION

17. This action arises under the Constitution and laws of the United States of America and the State of Hawai‘i and is brought pursuant to 42 U.S.C. § 1983, *inter alia*.

18. This Court has subject matter jurisdiction over Plaintiffs’ claims involving questions of federal law under 28 U.S.C. §§ 1331 and 1343, *inter alia*. Any state law claims contained herein form part of the same case or controversy as gives rise to Plaintiffs’ federal law claims and therefore fall within the Court’s supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

19. Jurisdiction supporting Plaintiffs’ claims for attorneys’ fees and costs is conferred by 42 U.S.C. § 1988.

20. Venue is proper in the United States District Court for the District of Hawai‘i under 28 U.S.C. § 1391(b) as all of the events or omissions giving rise to Plaintiffs’ claims occurred in the District of Hawai‘i.

IV.

FACTS

A. J.R. is Bullied and Taunted by Officer Uemura’s Son

21. During the 2018/2019 school year J.R. was a student attending Kalaheo High School in Kailua, Hawai‘i, located nearby the Kaneohe Marine Corps Base where Plaintiff Jorge Rivera is stationed and where the Plaintiffs reside.

22. In or around September, 2018, tensions between J.R. and fellow student A.U. began to develop that stemmed from perceived interactions between J.R. and a female student who was A.U.’s girlfriend at the time.

23. A.U. began spreading rumors around campus about J.R.’s alleged involvement with his girlfriend, and in late September, accompanied by several of his friends, A.U. confronted J.R. at school and accused J.R. of trying to undermine his relationship.

24. J.R. felt immediately threatened by A.U.’s outward hostility and intimidating comments, prompting J.R. to report the incident to a school faculty

member and to his parents. J.R. told them he did not feel safe on campus anymore and feared that A.U. would physically hurt him.

25. Plaintiffs contacted the Vice Principal to discuss A.U.'s threatening actions, but despite J.R.'s report, the escalating hostility, and the Plaintiffs' attempts to resolve the situation, school administration did nothing other than to issue a verbal instruction that the two students stay away from each other.

B. A.U. Instigates and Initiates a Fight with J.R.

26. Several weeks later J.R. began hearing from other students that A.U. was talking about fighting J.R. after school.

27. On November 8, 2018, just before lunch, A.U. sent a text message to J.R. that said "trails after school we solve this drama."

28. When J.R. left his last class of the day several of A.U.'s friends were waiting outside for him and told J.R. he was coming with them to the "trails" to fight A.U.

29. A.U.'s friends corralled J.R. in the direction of the "trails" leaving J.R. with no other choice but to confront A.U.

30. When J.R. arrived at the trails a large group of students already was gathered around A.U. waiting to watch the fight and recording on cell phones.

31. Almost immediately, A.U. initiated a fight by lunging at J.R. and striking him in the face.

32. Upon information and belief, students who are friends of A.U. repeatedly prevented J.R. from attempting to restrain A.U. on the ground and instead forced the two boys to “square off” standing up, where A.U. would again lunge at J.R. with punches, and J.R. primarily defended himself.

33. The altercation eventually ended with J.R. sustaining several injuries from A.U.’s strikes.

C. Defendant Uemura Maliciously Abuses his Authority as a Law Enforcement Officer to Submit a False and Misleading Statement, Detain and Search J.R., Subject him to a Harassing Interrogation, and Cause his Unconstitutional Arrest

34. On November 9, 2018—the very next morning after A.U. initiated the after-school fight—J.R. boarded his school bus around 7:45 a.m. as he normally did from Kaneohe Marine Corps Base heading to Kalaheo High School, approximately a ten-minute bus ride away.

35. Shortly after the bus left the Kaneohe Marine Corps Base a student sitting behind J.R. commented aloud that a police vehicle appeared to be following the bus.

36. J.R. turned around along with other students on the bus and observed what appeared to be a blue Toyota 4runner SUV with a police light on top following directly behind the school bus.

37. At the time, J.R. was not aware that the individual driving the police vehicle was Defendant Kirk Uemura, the father of A.U.

1. Defendant Uemura Files a False and Misleading Report

38. Plaintiffs are informed and believe, and thereupon allege, that earlier that same morning, Defendant Uemura went to the Kailua Police Station and while on duty, Defendant Uemura provided a written statement to another HPD officer which was recorded on a Honolulu Police Department Form 252 in accordance with HPD Policy Number 4.31.

39. HPD Policy Number 4.31 states that “[r]educing oral statements to written form is desirable because it provides a permanent record of the interview or interrogation” and that the HPD-252 form should be used “whenever possible to record statements.”

40. In the statement he provided, Defendant Uemura alleged that J.R. criminally harassed his son.

41. Pursuant to HPD Policy Number 2.21, HPD officers are prohibited from “knowingly falsify[ing] (either orally or in writing) official reports or enter[ing] or caus[ing] to be entered (either orally or in writing) any inaccurate, false or improper information on any records of the department.”

42. Plaintiffs are informed and believe, and thereupon allege, that Defendant Uemura knowingly and maliciously provided false, inaccurate, and/or

misleading and incomplete information on an official report by omitting exculpatory facts as they related to J.R. and failing to include any inculpatory facts about his son in violation of HPD Policy Number 2.21.

43. HPD Policy Number 4.31 also directs that an officer receiving a complaint and recording a statement should first determine that an offense has been committed and then should “clarify understandings, correct discrepancies, establish elements of the crime and identities of the persons involved, and determine instrumentalities and evidence.”

44. Upon information and belief, in accordance with the Honolulu Police Department’s *de facto* policy, practice, or custom of permitting officers to abuse their law enforcement powers for private interests and/or to aid fellow police officers with private or personal interests, the HPD officer who received the complaint ignored the conflict of interest that was present by way of Defendant Uemura’s relationship as the father of the alleged victim.

45. In addition to HPD’s *de facto* policy, practice, or custom that aided Defendant Uemura in making the false and misleading police report, HPD did not and does not have any affirmative policies or procedures in place to require that officers identify and report their own actual or apparent conflicts of interest, or directing officers to abstain from becoming or remaining involved in decisions or actions where such a conflict exists.

46. Likewise, HPD had no policies or procedures to guide the actions of the officer receiving the complaint from Defendant Uemura, including, for example, a policy requiring that officers: (1) identify actual conflicts of interest, such as relationships with family, friends, or associates, and any potential conflicts of interest; (2) generate a report to document the actual or potential conflict of interest; (3) notify a supervisor that an actual or apparent conflict of interest exists; and (4) follow proper management protocols to avoid misconduct, including selective enforcement and other abuses of law enforcement power that violate the United States Constitution.

2. Defendant Uemura Unconstitutionally Detains, Searches, Interrogates, and Arrests J.R.

47. Plaintiffs are informed and believe, and thereupon allege, that after filing his report at the Kailua Police Station, Defendant Uemura drove his police vehicle in uniform and followed J.R.'s school bus to Kalaheo High School—the same vehicle that J.R. and the other students saw behind the bus when it left the Kaneohe Marine Corps Base.

48. When the bus arrived at the school Defendant Uemura pulled alongside and activated the flashing lights on top of his police vehicle.

49. As J.R. exited the bus he saw Defendant Uemura in his police uniform approaching him and recognized Defendant Uemura as A.U.'s father.

50. Being polite, J.R. said good morning to the officer.

51. Defendant Uemura curtly responded, “don’t look at me, why are you looking at me, look at the ground.”

52. Defendant Uemura then forcibly seized J.R. by his arm and directed him to the nearby curb where he ordered J.R. to sit down and be quiet.

53. Several students nearby began to video the encounter which took place on school grounds and in plain view of the students, but Defendant Uemura made no attempts to contact school staff or administration at any point.

54. Without conducting any investigation, without any probable cause, and without informing J.R.—a minor—of any of his rights, Defendant Uemura began interrogating J.R., asking him for personal information and if he knew why he was under arrest.

55. J.R. responded by inquiring if it was because of the fight that occurred the day prior, and Defendant Uemura told him no, it was because he had harassed his son.

56. Defendant Uemura ordered J.R. to stand up and conducted a pat down of J.R. before seizing J.R.’s cell phone and other personal items, including his school bag.

57. After searching through J.R.’s belongings, Defendant Uemura ordered that J.R. sit back down on the curb and continued his harassing interrogation, asking J.R. questions about his son.

58. Defendant Uemura became notably upset and accusatory, asking J.R. if he was calling the officer's son a liar.

59. Plaintiffs are informed and believe, and thereupon allege, that Defendant Uemura then used his personal cell phone to make a phone call wherein Defendant Uemura asked the person on the other end "are you in the area" because he "needed someone arrested."

60. Upon information and belief, in that phone call Defendant Uemura contacted another HPD officer to come and arrest J.R.

61. In reality, Defendant Uemura already had unlawfully detained, searched, and interrogated J.R. without reading him his *Miranda* rights, and placed him under arrest without probable cause.

62. From the moment J.R. stepped off the school bus Defendant Uemura's statements and actions made J.R. reasonably believe that he was never free to leave at any point.

63. At all times Defendant Uemura purported to act under the color of law in his police uniform, with his gun and badge displayed, and the lights on his police vehicle actively flashing, while he issued orders to J.R., told him that he was under arrest, searched him, and interrogated him.

64. Plaintiffs are informed and believe, and thereupon allege, that officer Steven Kaolulo responded to the phone call from Defendant Uemura to come and arrest J.R.

65. When officer Kaolulo arrived at Kalaheo High School Defendant Uemura ordered J.R. to remain on the curb while he spoke privately with officer Kaolulo.

66. Plaintiffs are informed and believe, and thereupon allege, that in accordance with HPD's *de facto* policy, practice, and custom of permitting officers to abuse their law enforcement powers for private interests and/or to aid fellow police officers with private or personal interests, Officer Kaolulo then assisted Defendant Uemura by placing J.R. under arrest and transporting J.R. to the Kailua Police Station without probable cause and without complying with applicable Honolulu Police Department policies and procedures for arresting juveniles or for arrests that occur at public schools.

67. While in transit to the Kailua Police Station Officer Kaolulo told J.R. he "did not know why" he had been arrested.

68. Plaintiffs are informed, believe, and thereupon allege that at the time he arrested J.R., Officer Kaolulo had no knowledge of the basis for the arrest or even what the alleged crime was that J.R. supposedly had committed.

69. Upon information and belief, despite having no basis to do so, Officer Kaolulo carried out the arrest of J.R. with knowledge that it was to assist his fellow officer with a private and/or personal interest—actions that Plaintiffs contend are emblematic of HPD’s *de facto* policy.

70. Upon arrival at the Kailua Police Station, J.R. was required to change into clothing provided by HPD and was led handcuffed and in leg shackles to a locked cell.

71. After a short while in the cell another HPD officer arrived and took J.R. to a different room where he was photographed and fingerprinted.

72. Still in leg shackles and handcuffs, J.R. then was taken back to the locked cell where he remained for the next hour.

73. HPD Policy Number 4.33, entitled “Handling Juveniles,” identifies procedures specific to the arrest and/or detention and interrogation of persons under the age of eighteen when officers have probable cause to suspect a juvenile of committing a crime.

74. Pursuant to HPD Policy Number 4.33, “[w]hen it is appropriate to do so in handling juvenile offenders, officers shall use the least coercive action among reasonable alternatives while preserving public safety, order, and individual liberty,” including: (1) releasing the juvenile with no further action; (2) verbally

warning the juvenile; (3) counseling the juvenile; and (4) consulting with and arranging for corrective action by the parents, among others.

75. If necessary to arrest a juvenile at school, HPD Policy Number 4.33 provides specific instructions on apprehending juveniles in the educational setting, mandating that officers “shall be sensitive to the age of the youth and the circumstances surrounding the incident” and requiring that officers consider any and all information from educational professionals, teachers, and others before determining whether a youth will be apprehended.

76. If an arrest is necessary, HPD Policy Number 4.33 also mandates that an “officer’s supervisor shall be consulted and briefed on any facts and circumstances before an apprehension is made,” and that “[t]he officer shall ensure and document that every effort is made to notify the youth’s parents or guardian before a youth is apprehended.” (emphasis added).

77. Plaintiffs are informed and believe, and thereupon allege, that Defendant Uemura was trained and instructed pursuant to HPD Policy Number 2.21, which requires that officers are “expected to establish and maintain a working knowledge” of the rules, ordinances, and laws they enforce, and of the standards of conduct to which they are expected to adhere.

78. Plaintiffs are informed and believe, and thereupon allege, that Defendant Uemura deliberately and maliciously violated HPD Policy Number 4.33

by failing to notify or consult with any of the staff at Kalaheo High School and by deliberately ignoring the policy preamble that officers should use the least coercive action among reasonable alternatives when dealing with juveniles.

79. Plaintiffs are informed and believe, and thereupon allege, that Defendant Uemura deliberately and maliciously violated HPD Policy Number 4.33 by failing to apprise a supervising officer of the facts before effecting J.R.'s arrest and failing to document or make any effort to notify Plaintiffs of their son's arrest before it occurred.

80. Title 8 of the Hawaii Administrative Rules, §§8-19-22, 8-19-23, and 8-19-24, entitled Police Interviews and Arrests, provides further guidance for school administration and HPD officers' actions as they relate to the interview and arrest of students during school hours or on school grounds.

81. Pursuant to the applicable Hawaii Administrative Rules, police officers "shall contact the school" to advise the principal of any intent to interview and/or arrest a student and to request permission, and "[w]henever possible the student shall be sent to the principal's office for the police officer to effect the pending arrest."

82. The Hawaii Administrative Rules provide an additional requirement that the school administration—in addition to the police officers—contact the parents of any student before making an arrest or conducting an interview.

83. Plaintiffs are informed and believe, and thereupon allege, that Defendant Uemura intentionally and maliciously violated the Hawaii Administrative Rules applicable to police interviews and arrests in public schools by arresting J.R. on school grounds, during school hours, without contacting or attempting to contact any school staff, without making any effort to notify Plaintiffs, and without any exigency that justified arresting J.R. without following the procedures of Section 8-19-22 through 8-19-24.

84. Nearly ninety minutes after J.R.'s arrest and transport to the Kailua Police Station Plaintiffs received a phone call from a Honolulu Police Department officer informing them J.R. had been arrested.

85. Plaintiffs are informed and believe, and thereupon allege, that this phone call was the first attempt from anyone at HPD to reach Plaintiffs and inform them of their son's arrest—a phone call that HPD officers were required to make *before* J.R. was apprehended pursuant to HPD Policy 4.33.

86. The officer calling Plaintiffs identified himself as Officer Steven Kaolulo and informed Plaintiffs that J.R. had been arrested and was at the Kailua Police Station.

87. Officer Kaolulo also informed Plaintiffs that Officer Uemura requested to speak with them, and he gave Plaintiffs a phone number at which to reach Defendant Uemura.

88. Plaintiffs called the phone number and spoke with Defendant Uemura who said J.R. was not arrested for the fight that occurred the day prior, but that he had been arrested for harassing Defendant Uemura's son, A.U.

89. During that phone call Defendant Uemura concealed from Plaintiffs that he was the officer who had filed a report, given a statement, searched and interrogated J.R., and then effected his arrest.

90. Plaintiffs are informed and believe, and thereupon allege, that Defendant Uemura knowingly, deliberately, and maliciously concealed his actions and involvement in the events that led up to the arrest of J.R.

91. When Plaintiffs arrived at the Kailua Police Station Officer Kaolulo was the first HPD officer to whom they spoke.

92. Officer Kaolulo could not explain to Plaintiffs why J.R. was arrested and could not articulate any facts that provided a basis for the arrest.

93. While speaking to Officer Kaolulo Plaintiffs learned for the first time of Defendant Uemura's extensive involvement in J.R.'s arrest and all of the events preceding the arrest.

94. Upset by this newly discovered information, Plaintiffs questioned Officer Kaolulo who responded by repeatedly apologizing to Plaintiffs and stating "I know how this looks, this looks really bad."

3. Sergeant Kendall Condoned Defendant Uemura's Abuse of Power

95. Plaintiffs continued to press Officer Kaolulo for an explanation as to why Defendant Uemura was permitted to abuse his position as a law enforcement officer until at Plaintiffs' request, Officer Kaolulo summoned the supervising officer on duty, Sergeant Kendall.

96. When Defendant Kendall finally came to speak with Plaintiffs it was approximately 11:30 a.m., and Plaintiffs already had been at the police station for close to two hours.

97. Plaintiff Jorge Rivera asked Sergeant Kendall for an explanation why Defendant Uemura—the father of J.R.'s bully—was permitted by the Honolulu Police Department to make a report and then to search, interrogate, and arrest J.R. under circumstances where Defendant Uemura's son was the alleged victim and Defendant Uemura himself the complaining witness.

98. Despite awareness of Defendant Uemura's abuses of police power, Sergeant Kendall approached and stood directly in front of Plaintiff Jorge Rivera, and with his right forefinger he tapped on his police badge, exclaiming "that's what gives [Defendant Uemura] the right to do what he did."

99. After Sergeant Kendall expressly ratified the actions of Defendant Uemura, Officer Kaolulo, and the other officers who violated J.R.'s constitutional rights, Plaintiffs are informed, believe, and thereupon allege that Sergeant Kendall

took no corrective actions to discipline or reprimand any of the subordinate officers.

100. Plaintiffs are informed and believe, and thereupon allege, that Sergeant Kendall made no effort to implement any sort of ameliorative action whatsoever to prevent similar occurrences in the future.

101. Plaintiffs are informed and believe, and thereupon allege, that Defendant Kendall's action of condoning and approving Defendant Uemura's abuse of law enforcement powers is part and parcel of HPD's longstanding and widespread *de facto* policy, practice, and custom.

102. Plaintiffs left the police station and before driving away Officer Kaolulo came outside to notify Plaintiffs that Defendant Uemura was there and wanted to speak with them.

103. Plaintiffs conveyed that under no circumstances did they wish to speak with Defendant Uemura or for him to make any attempts to contact them.

104. Despite this, Plaintiffs received a text message from Defendant Uemura a short while later indicating that he wanted to speak with them.

105. Plaintiffs are informed and believe, and thereupon allege, that despite evidence that Defendant Uemura blatantly violated several of HPD's policies, including HPD Policy 2.31 and 4.33, *inter alia*, Defendant Uemura was not

disciplined or subjected to any restrictions placed upon his duties as a law enforcement officer immediately following J.R.'s arrest.

106. Accordingly, Defendant Uemura was permitted to and did continue to patrol Kalaheo High School while on duty.

107. Plaintiffs are informed, believe, and thereupon allege that shortly after Defendant Uemura received notice that Plaintiffs' written complaint was being investigated, Defendant Uemura appeared at Kalaheo High School in uniform.

108. On several other occasions after November 9, 2018, J.R. saw Defendant Uemura at Kalaheo High School in his police uniform and felt intimidated and unprotected from further violations of his constitutional rights, causing J.R. to avoid being seen by Defendant Uemura out of fear.

109. On November 14, 2018, five days after J.R. was arrested, Plaintiffs received a letter from the Family Court of the First Circuit.

110. The letter stated that because J.R. had been arrested, J.R. and both of his parents would be required to attend a 1.5 hour long counseling session or the arrest and alleged charges would be referred for prosecution.

111. Plaintiffs had to take time off from work during the day and were required to take J.R. out of school to attend the mandatory counseling session.

112. Only after Plaintiffs obtained legal counsel and filed written complaints with both the Honolulu Police Commission and the Professional

Standards Office did HPD finally take steps to prevent Defendant Uemura from intimidating J.R. or threatening his safety and well-being at Kalaheo High School.

113. On February 27, 2019—15 weeks after J.R.’s arrest—HPD notified Plaintiffs counsel that “HPD has restricted Officer Uemura’s presence at Kalaheo High School and its vicinity unless exigencies of law enforcement and crime prevention require him to be present along with other officers.”

114. However, in that same letter HPD reiterated that they “cannot prevent Mr. Uemura” from appearing at Kalaheo High School during his off-duty hours.

115. HPD stated that it would evaluate whether to adopt additional policies to prevent misconduct from occurring in the future.

116. Plaintiffs are informed and believe, and thereupon allege, that HPD expressly declined to adopt any policies or procedures to address its grossly deficient conflicts of interest policy.

117. Months later HPD eventually notified Plaintiffs it had sustained allegations of misconduct against Officer Uemura and only provided that “appropriate action” would be taken.

118. In light of the trauma that the incident and ongoing intimidation caused J.R., Plaintiffs were compelled to remove J.R. from Kalaheo High School and transfer him to Kailua High School where he would no longer be exposed to intimidation, harassment, and abuse from Defendant Uemura or his son, A.U.

119. However, after J.R. transferred to Kailua High School he saw Defendant Uemura on at least one occasion at the Kailua High School campus on February 13, 2020.

120. As J.R. walked towards class the door of a nearby police vehicle suddenly opened and Defendant Uemura exited the vehicle, standing in uniform and locking eyes with J.R.

121. Plaintiffs are informed, believe, and thereupon allege that the February 13, 2020 encounter with Defendant Uemura occurred less than one week after the date on which Plaintiffs' written complaint was to be heard.

122. Defendant Uemura's retaliatory animus towards J.R. and Defendant Kendall's express ratification of his actions gives rise to a reasonable probability that the same or similar harms may occur in the future.

123. Plaintiffs are informed and believe, and thereupon allege, that HPD has not implemented any reasonable measures or adopted any policies to prevent Defendant Uemura from harassing, intimidating, and/or violating J.R.'s constitutional rights again in the future.

D. Defendant City and County of Honolulu was Deliberately Indifferent to Plaintiffs' Fourth, Fifth, and Fourteenth Amendment Rights

1. Defendant City and County Failed to Affirmatively Enact Policies and Procedures to Prevent Conflicts of Interest From Interfering With Law Enforcement

124. Defendant City and County of Honolulu has a duty to adequately supervise and train its employees and to take reasonable steps to protect the public from foreseeable harm caused by its employees.

125. In addition to general guidelines such as the Standards of Conduct contained in HPD Policy 2.21, the City and County has an affirmative duty to enact specific policies and procedures that provide guidance for HPD officers and supervisors to prevent foreseeable harm from occurring.

126. Plaintiffs are informed and believe, and thereupon allege, that Defendant City and County of Honolulu breached its duty by failing to enact any affirmative policies or procedures to recognize, manage, and prevent actual and potential conflicts of interest in law enforcement.

127. Defendant City and County of Honolulu breached its duty by not implementing any policies or procedures to prevent police officers from participating in any law enforcement process involving an officer's private and/or personal interests, including interests that are financial or relate to family, friends, or associates and their own personal affairs, unless an emergency exists that necessitates immediate law enforcement action.

128. Defendant City and County of Honolulu breached its duty by failing to enact affirmative policies or procedures requiring that police officers identify, disclose, and document actual and potential conflicts of interest including, at a minimum, when an officer or an officer's family members are involved in a law enforcement matter and when any other private and/or personal interests may conflict with an officer's public duty.

129. Defendant City and County of Honolulu breached its duty by failing to enact affirmative policies or procedures requiring that police officers identify and document when another police officer has an actual or potential conflict of interest and report that conflict to a designated superior officer.

130. Defendant City and County of Honolulu breached its duty by failing to enact affirmative policies or procedures that direct superior officers to follow specific protocols when an identified or apparent conflict of interest arises designed to assess, evaluate, and mitigate the potential for misconduct.

131. Plaintiffs are informed and believe, and thereupon allege, that at minimum, HPD has a duty to enact specific policies that prevent police officers from influencing or participating in any law enforcement process such as an investigation, interview, interrogation, or arrest to which the conflict of interest relates except under circumstances in which immediate law enforcement intervention is necessary.

132. Defendant City and County of Honolulu failed to adequately develop and implement any specific policies that address conflicts of interest beyond the generalized Oath of Office and Standards of Conduct contained in Honolulu Police Department Policy 2.21—namely, articles III and V of the Standards of Conduct of the Honolulu Police Department—and Honolulu Police Department Policy 8.06 Section II.D. which prevents officers from investigating cases in which the officer themselves is the victim or suspect.

133. HPD's deficient policies do not prohibit police officers from influencing, initiating, participating, or otherwise being involved in law enforcement actions where an actual and/or apparent conflict of interest arises; do not require any disclosure, documenting, or reporting of conflicts of interest either before or after the fact, and do not direct or instruct supervisors to take any action that would prevent an officer's participation when a conflict exists to mitigate the risk of foreseeable misconduct.

134. As an example taken from the Seattle Police Department—one of many police departments across the country that do have a conflicts of interest policy—the Seattle Police Department Manual, Title 5, Section 5.001 §§18 and 19 provides in part that:

18. Employees Must Avoid Conflicts of Interest

Employees will not engage in enforcement, investigative, or administrative functions that create or give the appearance of conflicts of interest.

Employees will not investigate events where they are involved. This also applies where any person with whom the employee has a personal relationship is involved in the event.

Except in cases of emergency, officers will not arrest family members, business associates, or social acquaintances.

19. Employees Must Disclose Conflicts

Employees will immediately disclose to the Chief of Police, via their supervisor, any activities or relationships that may present an actual, potential, or apparent conflict of interest for themselves or other Department employees.

135. Plaintiffs are informed and believe, and thereupon allege, that the gross deficiencies in Defendant City and County of Honolulu's policies as they relate to conflicts of interest constitute a deliberate indifference to J.R.'s constitutional rights under the Fourth, Fifth, and Fourteenth Amendment, and proximately resulted in the aforementioned violations of J.R.'s constitutionally protected rights.

136. Had Defendant City and County of Honolulu developed and implemented sufficient policies to identify, report, and prevent conflicts of interest from interfering with legitimate law enforcement objectives, Defendant Uemura would have been required to identify and disclose his own conflict of interest in the arrest of J.R.; the HPD officer who took Defendant Uemura's written statement

and the officer that helped arrest J.R. would have been required to identify and report the conflict of interest to a supervisor; and Defendant Uemura's supervisor would have been required to follow identified protocols to prevent Defendant Uemura's involvement and thereby protect J.R.'s constitutional rights.

137. Accordingly, Plaintiffs are informed and believe, and thereupon allege, that Defendant City and County of Honolulu's grossly deficient policies and procedures were the moving force behind the violation of J.R.'s constitutional rights.

2. Defendant City and County of Honolulu's *De Facto* Policy, Practice, or Custom of Permitting HPD Officers' Selective Enforcement of the Law and Abuse of Law Enforcement Power in Connection with Personal Matters

138. Plaintiffs are informed and believe, and thereupon allege, that from the Chief of Police down through high-level, mid-level, and low-level supervisors, and amongst the general ranks of HPD officers, the Honolulu Police Department has had and continues to have a *de facto* policy, practice, or custom of encouraging, permitting, defending, and otherwise supporting selective enforcement of the law and outrageous abuses of power in connection with the private and/or personal affairs of HPD officers and their family members, and of enlisting the aid of other HPD officers and using HPD resources towards those ends.

139. Plaintiffs are informed and believe, and thereupon allege, that Defendant City and County of Honolulu's *de facto* policy of permitting and supporting selective enforcement of the law and abuses of power in connection with private and/or personal affairs is a constitutional deprivation under the Equal Protection Clause of the Fourteenth Amendment because it irrationally and unreasonably discriminates against victims such as J.R. who are victimized by Honolulu Police Department officers and their family and/or friends.

140. Plaintiffs are informed and believe, and thereupon allege, that had A.U. been any other person, and not a police officer's son, A.U. would have been investigated, arrested, and charged with a crime, and Defendant Uemura's unconstitutional detention, interrogation, and arrest of J.R. would not have occurred.

141. As an example of the disparate treatment resulting from Defendant City and County of Honolulu's *de facto* policy, Plaintiffs are informed, believe, and thereupon allege that former Honolulu Police Department Chief of Police, Louis Kealoha, recently was convicted of charges that involved flagrant abuses of power, including conspiracy and obstruction of official proceedings. The First Superseding Indictment alleged that Louis Kealoha: (1) conspired to target members of the community; (2) sought to discredit and intimidate such persons by falsely accusing them of criminal activity; (3) attempted to secure evidence by

misusing resources of an elite police unit, executing unconstitutional searches and seizures, and abusing his official position as law enforcement; (4) fabricated, altered, or concealed evidence to support false claims of criminal conduct; and (5) conducted numerous overt acts in furtherance of the conspiracy, *inter alia*.

142. Plaintiffs are informed and believe, and thereupon allege, that former Chief Louis Kealoha committed the aforementioned abuses of his power as a law enforcement officer for the benefit of himself and his family's personal circumstances and to the grave detriment of regular citizens who suffered constitutional violations as a result.

143. Plaintiffs further allege that in accordance with Defendant City and County of Honolulu's *de facto* policy, fellow HPD Officers provided substantial assistance to former Chief Louis Kealoha by abusing their powers as law enforcement officers without regard for the law or the constitutional rights of citizens.

144. Plaintiffs further allege that despite former Chief Louis Kealoha's material involvement in several egregious abuses of power and criminal acts, including conspiring to obstruct justice, the Police Commission refused to open its own investigation into Chief Kealoha and later approved a \$250,000 severance payment to Chief Kealoha, allowing him to resign in "good standing" notwithstanding his status as a target in a federal investigation.

145. As another example of disparate treatment resulting from Defendant City and County of Honolulu's *de facto* policy, Plaintiffs are informed, believe, and thereupon allege, that Honolulu Police Officer Lianne Wolfram abused her position as a Honolulu Police Officer in order to resolve a personal dispute by utilizing the assistance of fellow HPD Officers to effect an unconstitutional seizure of a horse on Officer Wolfram's behalf.

146. Plaintiffs are informed and believe, and thereupon allege, that Officer Wolfram gave a horse to Kimberly Hollandsworth but later changed her mind and sought to take back possession of the horse.

147. Upon information and belief, on October 28, 2017, Officer Wolfram notified her supervisors of her intention to retrieve the horse and in accordance with Defendant City and County of Honolulu's *de facto* policy, Officer Wolfram sought—and was provided with—law enforcement assistance to carry out an unconstitutional seizure.

148. When Honolulu Police Officer Joseph Lum and another HPD officer accompanied Officer Wolfram—who was off-duty—to retrieve the horse from Ms. Hollandsworth, Officer Lum used his status as law enforcement to intimidate Ms. Hollandsworth and abused his authority to declare that the horse belonged to Officer Wolfram, thereby effectuating the unconstitutional seizure of the horse on behalf of Officer Wolfram.

149. As another example of disparate treatment because of Defendant City and County of Honolulu's *de facto* policy, Plaintiffs are informed and believe, and thereupon allege, that in 2014, Officer Darren Cachola violently assaulted his then girlfriend in a public restaurant—an incident caught on surveillance footage in which Officer Cachola is seen repeatedly punching his girlfriend in the face. On April 23, 2017, HPD Officer Cachola again violently assaulted his ex-wife by strangling her, and two years later he assaulted her yet another time.

150. In accordance with HPD's *de facto* policy, when the police arrived on April 23, 2017, HPD Officer Kevin Bailey, accompanied by his supervising sergeant and lieutenant, intimidated Officer Cachola's ex-wife and insisted that she sign a false statement exclaiming that she had no injuries despite Officer Bailey's observation of strangle marks on her neck and a written report from another responding officer that there were "reasonable grounds to believe that physical abuse or harm was inflicted by [Officer Cachola]."

151. In keeping with HPD's *de facto* policy of permitting selective enforcement of the law, Officer Cachola was not arrested and the responding officers did not photograph or document the physical injuries Officer Cachola had inflicted upon his ex-wife or conduct any investigation of the incident.

152. Because of HPD's *de facto* policy, Officer Cachola was emboldened to continue committing further acts of domestic violence with impunity, and with

the expectation that he would receive assistance from fellow HPD officers to cover up, support, and carry out unlawful actions by abusing their police powers.

153. In passing HB 2133 on May 1, 2018, the Hawaii Legislature criticized the Honolulu Police Department for the 2014 incident in which Officer Cachola repeatedly punched his then-girlfriend on video, noting that Officer Cachola was not arrested at the scene, no responding officers reported the incident, and an investigation was not initiated until a citizen came forward with the video.

154. Citing the Hawaii State Commission of the Status of Women, the Hawaii Legislature further found that between May 2013 and September 2014, approximately one third of cases where women accused HPD officers of not responding appropriately to domestic violence involved an officer or an officer's family member as the alleged abuser. The Commission referred to the incidents with Officer Cachola as part of a systemic "pattern" of misconduct from responding officers.

155. Plaintiff is informed and believes that the responding officers acted in accordance with the *de facto* policy because Officer Cachola was a police officer, and had he been a regular citizen he would have been investigated and arrested for the conduct described herein.

156. Upon information and belief, the abuse of law enforcement powers and other misconduct described herein are reinforced by HPD's *de facto* policy and

are but a fraction of the countless instances where officers have committed, covered up, defended, or otherwise supported gross misconduct and abuses of power.

157. Plaintiffs are informed and believe, and thereupon allege, that the actions of the former Chief of Police, supervisors, and officers within the Honolulu Police Department, including Defendants Uemura and Kendall, of approving, defending, covering up, committing, and otherwise supporting unconstitutional abuses of law enforcement power in connection with private and/or personal interests is so long-standing, widespread, and pervasive as to constitute an official policy, practice, or custom.

158. HPD's *de facto* policy is not limited in scope or isolated amongst a handful of officers, but is deeply systemic—that is, the support that officers routinely provide and expect to receive in return is so entrenched in the culture of HPD and its day-to-day operations that misconduct is unavoidable and happens with such frequency and severity that Defendant City and County of Honolulu knows it is happening and deliberately chooses to ignore it.

159. HPD's *de facto* policy is rampant among low-level and mid-level supervisors such as Defendant Kendall who ratify, condone, defend, and support the unlawful and abusive actions of their subordinate officers with impunity and

are thus empowered to perpetuate their own unlawful actions and encourage those of other HPD officers.

160. In circumstances where citizens file written complaints and charges are brought against an individual officer—such as the case with Plaintiffs and the complaints brought against Defendant Uemura—the systemic mechanism of HPD’s *de facto* policy is not identified or addressed by holding the other officers that enabled the misconduct accountable, including the supervisors who encourage, condone, or defend unconstitutional actions of subordinate officers.

161. As a direct and proximate result of Defendant City and County of Honolulu’s *de facto* policy, J.R.’s constitutional rights under the Fourth, Fifth, and Fourteenth Amendments and under the Hawaii Constitution were violated.

162. As a direct and proximate result of all of the foregoing, Plaintiffs and J.R. have suffered physical pain, mental anguish, worry, anxiety, fear, helplessness, embarrassment, anger, and severe emotional distress in amounts to be proven at trial.

163. As a direct and proximate result of all of the foregoing, Plaintiffs and J.R. have required medical treatment and care and have incurred economic and other damages in amounts to be proven at trial.

FIRST CAUSE OF ACTION
(42 U.S.C. Section 1983 – Unreasonable Search and Seizure)
(Against Defendant Uemura)

164. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

165. 42 U.S.C. § 1983 provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

166. At all times relevant hereto, Defendant Uemura was a person who purported to act under color of law.

167. Defendant Uemura violated J.R.'s rights under the Fourth Amendment of the Constitution of the United States and Article I, Section 7 of the Constitution of the State of Hawaii to be free from unreasonable searches and seizures by unlawfully and forcibly seizing J.R., detaining him, and searching his person and his property without his consent, without a warrant to do so, and without probable cause.

168. Defendant Uemura acted knowingly, willfully, with malicious intent, and in reckless disregard for J.R.'s constitutional rights.

169. J.R.'s constitutional rights under the Fourth Amendment and Article I, Section 7 are clearly established rights that any reasonable officer knew or should

have known, thus Defendant Uemura is not entitled to qualified and/or conditional immunity.

SECOND CAUSE OF ACTION
(42 U.S.C. Section 1983 – Fourth Amendment False Arrest/Imprisonment)
(Against Defendant Uemura, Kendall, and DOE Defendants)

170. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

171. At all times relevant hereto Defendants were persons purporting to act under color of law.

172. At no point did any of the Defendants have a warrant authorizing the seizure and arrest of J.R., nor did Defendant Uemura or any other officer have a reasonable basis for believing that J.R. committed a crime or offense that would permit J.R.'s arrest and/or detention.

173. After J.R.'s arrest and transport to the Kailua Police Station Defendant Kendall and/or DOE Defendants who supervised and were responsible for monitoring the actions of Defendant Uemura failed to intervene to prevent the continued unlawful detention and arrest of J.R.

174. Although Defendant Kendall and/or DOE Defendants knew that J.R. was unlawfully detained, searched, interrogated, and arrested, in violation of his Fourth, Fifth and Fourteenth Amendment rights, and that probable cause did not exist to warrant J.R.'s continued confinement in jail, Defendant Kendall and/or

DOE Defendants gave express approval of the juvenile arrest report and authorized the charges against J.R. to justify his unlawful arrest and prolong his confinement in jail for several hours in handcuffs and shackles.

175. At the time J.R. was unlawfully arrested and imprisoned J.R. had a clearly established constitutional right under the Fourth Amendment to the United States Constitution and Article I, Section 7 of the Hawaii Constitution to be free from unreasonable seizures.

176. Defendants acted knowingly, willfully, with malicious intent, and in reckless disregard for J.R.'s constitutional rights and are not entitled to qualified and/or conditional immunity.

THIRD CAUSE OF ACTION
(42 U.S.C. Section 1983 – Supervisory Liability)
(Against Defendant Kendall and DOE Defendants)

177. Plaintiffs hereby incorporate all of the allegations contained in paragraphs 1 through 163, above.

178. Defendant Kendall, and DOE Defendants, were acting in their capacity as supervising officers at all times relevant hereto.

179. Defendants expressly condoned, defended, and ratified Defendant Uemura's actions with knowledge that the search, seizure, interrogation, and arrest violated J.R.'s constitutional rights and constituted an improper abuse of power.

180. Defendants reviewed and/or approved of J.R.'s arrest report and approved of his continued confinement with knowledge that there was no probable cause for his arrest, thereby directly acting and/or failing to act to prolong J.R.'s confinement and violate J.R.'s constitutional rights.

181. Defendants failed to personally reprimand or otherwise discipline Defendant Uemura and other HPD officers involved in blatant abuses of power and failed to adequately evaluate the need for and establish policies, practices, or procedures to avoid future incidents of misconduct because of an HPD officer's influence or involvement in a law enforcement procedure pertaining to the officer's private and/or personal interests and those of the officer's immediate family members.

182. Defendants acted knowingly, willfully, with malicious intent, in reckless disregard for J.R.'s constitutional rights and the constitutional rights of others and are not entitled to qualified and/or conditional immunity.

FOURTH CAUSE OF ACTION

**(42 U.S.C. Section 1983 – Malicious Prosecution, Fourteenth Amendment)
(Against Defendants Uemura, Kendall, and DOE Defendants)**

183. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

184. Defendants Uemura, Kendall, and DOE Defendants never had any reasonable basis for believing that J.R. had committed the criminal offense of harassment.

185. Acting without probable cause, Defendants utilized the baseless charge of harassment against J.R. to maliciously cause J.R.'s arrest and prosecution.

186. As supervisory officers, Defendant Kendall and/or DOE Defendants who knew that J.R. was unlawfully seized, searched, interrogated, and arrested in violation of his constitutional rights nonetheless approved J.R.'s continued confinement and pursuit of charges against J.R.

187. Defendants acted herein knowingly, intentionally, maliciously, and without regard for J.R.'s constitutionally protected rights.

188. Defendants were motivated by malice and an improper purpose to punish Plaintiffs and J.R. in an effort to vindicate Defendant Uemura's son and to distract from and dissuade Plaintiffs from pursuing claims against Defendants.

189. Any and all proceedings relating to the alleged harassment offense terminated in J.R.'s favor.

190. As a result of Defendants malicious prosecution, J.R. spent time incarcerated, Plaintiffs and J.R. were required to attend mandatory counseling and

were fearful of a criminal conviction, and J.R. has a record of his arrest that may have far-reaching consequences throughout his lifetime.

FIFTH CAUSE OF ACTION
(Malicious Prosecution – Fourth Amendment)
(Against Defendants Uemura, Kendall, and DOE Defendants)

191. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

192. At no time did Defendants Uemura, Kendall, or DOE Defendants have a reasonable basis for believing that J.R. had committed the criminal offense of harassment.

193. Acting without probable cause, Defendants utilized the baseless charge of harassment against J.R. to maliciously cause J.R.'s arrest and prosecution.

194. As supervisory officers, Defendant Kendall and/or DOE Defendants who knew that J.R. was unlawfully seized, searched, interrogated, and arrested in violation of his constitutional rights nonetheless approved J.R.'s continued confinement and pursuit of charges against J.R.

195. Defendants acted herein knowingly, intentionally, maliciously, and without regard for J.R.'s constitutionally protected rights.

196. Defendants were motivated by malice and an improper purpose to punish Plaintiffs and J.R. in an effort to vindicate Defendant Uemura's son and to distract from and dissuade Plaintiffs from pursuing claims against Defendants.

197. Any and all proceedings relating to the alleged harassment offense terminated in J.R.'s favor.

198. Because of the legal process initiated by Defendants, J.R. spent time incarcerated in handcuffs and leg shackles, Plaintiffs and J.R. were required to attend mandatory counseling and feared criminal conviction, and J.R. has a record of his arrest that may have far-reaching consequences throughout his lifetime.

SIXTH CAUSE OF ACTION
(42 U.S.C. Section 1983 – Equal Protection, Fourteenth Amendment)
(Against Defendants Uemura, Kendall, and DOE Defendants)

199. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

200. At all times relevant hereto Defendants purported to act under color of law.

201. Defendant Uemura, with assistance and support from the other Defendants, knowingly, intentionally, maliciously, and with reckless disregard for J.R.'s constitutional rights under the Fourteenth Amendment of the Constitution of the United States filed a false and misleading report omitting exculpatory facts

about A.U. and unlawfully seized, interrogated, searched, and arrested J.R. without probable cause.

202. Defendant Uemura acted herein despite knowledge that his son, A.U., had threatened, bullied, and violently assaulted J.R. and was never charged or arrested.

203. The Defendants' selective enforcement of the law violates J.R.'s clearly established constitutional right to equal protection of the law under the Fourteenth Amendment and constitutes a clear abuse of law enforcement power.

204. There was no rational basis for the disparate treatment between J.R. and A.U. except for A.U.'s status as Defendant Uemura's family member.

SEVENTH CAUSE OF ACTION
(42 U.S.C. Section 1983 – Municipal Liability - Grossly Deficient Policies)
(Against Defendant City and County of Honolulu)

205. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

206. Defendant City and County of Honolulu has a duty to enact specific affirmative policies and procedures to prevent constitutional harms from occurring, and to sufficiently supervise and train HPD officers to protect the public from harm.

207. Defendant City and County of Honolulu breached its duty by failing to enact any policies or procedures to prohibit police officers from influencing or

participating in law enforcement actions where an officer has an actual or potential conflict of interest, including when an officer's personal interests and the interests of immediate family members are at issue.

208. Officials from Defendant City and County of Honolulu and HPD have been on notice of countless instances involving a police officer's conflicts of interest with family or personal affairs, several of which are described in detail herein, and by failing to adopt any policy or procedure to address the foreseeable misconduct and constitutional harms therefrom, have tacitly approved of the wholly deficient policies.

209. With knowledge of prior misconduct and when presented with the circumstances of J.R.'s unlawful arrest, Defendant City and County of Honolulu expressly declined to implement or enact any policies or procedures to correct the present deficiencies as they relate to conflicts of interest.

210. Under the current grossly deficient policies, Honolulu Police Department officers are permitted to initiate and/or remain involved in law enforcement actions, including investigating, interrogating, detaining, and arresting citizens, without regard for existing conflicts of interest that foreseeably result in outrageous and harmful constitutional violations such as those perpetrated against J.R.

211. Under the current grossly deficient policies, Honolulu Police Department officers are not required or expected to identify their own actual or apparent conflicts of interest, and police officers are likewise not required or expected to identify when a fellow HPD officer has an actual or potential conflict of interest.

212. Under the current grossly deficient policies, Defendant City and County of Honolulu has not developed any guidance, instruction, or protocol for police officers to report conflicts of interest, or any guidance, instruction, or protocol for supervisors to effectively remove and prohibit an officer from participating in a law enforcement process involving themselves or family members that would foreseeably cause constitutional harms.

213. Defendant City and County of Honolulu's failure to address the fundamental deficiencies identified herein by developing and enacting affirmative policies and procedures amounts to deliberate indifference to J.R.'s constitutional rights.

214. Defendant City and County of Honolulu's failure to prohibit and prevent conflicts of interest in the enforcement of the law was the moving force behind the deprivation of J.R.'s constitutional rights under the Fourth, Fifth and Fourteenth Amendment of the United States Constitution and Article I, Section 7 of the Hawaii Constitution.

EIGHTH CAUSE OF ACTION
(42 U.S.C. Section 1983 – Municipal Liability - Policy, Practice, or Custom)
(Against Defendant City and County of Honolulu)

215. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

216. Defendant City and County of Honolulu and the Honolulu Police Department have maintained a policy, practice, or custom of permitting, condoning, encouraging, or covering up police officer's selective enforcement of the law and abuses of law enforcement power in matters involving the private and/or personal affairs of HPD officers and their family members.

217. Defendant City and County of Honolulu's *de facto* policy is pervasive, widespread, and so long-standing and prevalent as to rise to the level of official policy.

218. Defendant's *de facto* policy violates the Equal Protection Clause of the Fourteenth Amendment because it irrationally and impermissibly discriminates against ordinary citizens as opposed to those who are police officers and/or family members of police officers.

219. Defendant's *de facto* policy violates the Fourth Amendment and the Substantive Due Process Clause of the Fourteenth Amendment because it permits, condones, encourages, and/or conceals acts committed under color of law which violate citizen's constitutional rights, including the right to bodily integrity, the

right to be free from unreasonable searches and seizures, and the right to equal protection under the law, *inter alia*.

220. Defendant City and County of Honolulu knew or should have known that because of its longstanding adherence to its *de facto* policy, practice, or custom, it encouraged and emboldened Defendant Uemura to act with reckless disregard and/or deliberate indifference to J.R.'s constitutional rights.

221. Defendant City and County of Honolulu knew or should have known that because of its *de facto* policy, practice, or custom, Defendant Kendall, Officer Kaululo, and DOE Defendants would be encouraged and emboldened to permit, cover up, ratify, condone, defend, and otherwise assist Defendant Uemura in violating J.R.'s constitutional rights by themselves acting with reckless disregard and/or with deliberate indifference to J.R.'s constitutional rights.

NINTH CAUSE OF ACTION

**(42 U.S.C. Section 1983 – Malicious Abuse of Process)
(Against Defendants Uemura, Kendall, and DOE Defendants)**

222. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

223. Defendants Uemura, Kendall, and DOE Defendants intentionally, knowingly, and maliciously initiated and maintained a criminal complaint against

J.R. without probable cause to do so, and for the ulterior purpose of using the criminal legal process to target and retaliate against an enemy of Defendant Uemura's son.

224. Defendants did not seek to pursue legitimate criminal charges, but instead maliciously and deliberately misused and abused their authority to maintain a criminal proceeding to intimidate, threaten, and dissuade Plaintiffs from pursuing legitimate claims against Defendants.

225. Defendants intentional, willful, and malicious use of the criminal legal process was not proper in the regular conduct of such process, and did proximately cause the injuries alleged herein.

TENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
(Against Defendants Uemura and Kendall)

226. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

227. Defendants' conduct towards and treatment of J.R. was extreme, outrageous, and beyond all bounds of decency expected from officers of the law.

228. Defendants Uemura and Kendall acted herein maliciously, knowingly, deliberately, and with reckless disregard for the constitutional rights and well-being of Plaintiffs and J.R.

229. Defendants' conduct was intended to and did proximately cause Plaintiffs and J.R. to suffer severe emotional trauma and distress.

ELEVENTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)
(Against Defendants Uemura and Kendall)

230. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

231. Defendants Uemura and Kendall acted herein negligently and/or with willful and reckless disregard for the constitutional rights and well-being of J.R., thereby proximately causing Plaintiffs and J.R. to suffer severe emotional trauma and distress.

TWELFTH CAUSE OF ACTION
(Negligence)
(All Defendants)

232. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

233. Defendants owed Plaintiffs a duty to act reasonably and to refrain from causing Plaintiffs harm.

234. The Defendants violated duties imposed upon them by Honolulu Police Department policies 2.21, 4.31, and 4.33, *inter alia*, and thereby denied J.R.'s clearly established constitutional rights under the Fourth, Fifth, and

Fourteenth amendments of the United States Constitution and Article I of the Constitution of the State of Hawaii, *inter alia*.

235. Defendants knew or should have known that their actions and failures to act would subject Plaintiffs and J.R. to the injuries and other abuses alleged herein.

236. Defendant City and County of Honolulu had a duty to prevent reasonably foreseeable injury from occurring by enacting adequate policies and procedures and training, supervising, counseling, and disciplining its officers for violating existing policies and procedures.

237. Defendant City and County of Honolulu breached its duty to enact affirmative policies and procedures and to supervise, counsel, and discipline its officers in accordance with existing Honolulu Police Department policies and procedures, to include Policy Numbers 2.21, 4.31, and 4.33, *inter alia*.

238. Defendant City and County of Honolulu knew or should have known that its omissions and failures to act would cause violations and the abuse of powers alleged herein against Plaintiffs and J.R.

239. Defendants' negligent acts and/or omissions detailed herein did proximately cause Plaintiffs and J.R. to suffer the constitutional deprivations and other damages alleged herein.

THIRTEENTH CAUSE OF ACTION
(Assault and Battery)

(Against Defendant Uemura and DOE Defendants)

240. Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 163, above.

241. Defendants intended to and did cause J.R. apprehension of an imminent harmful and offensive contact with his person to which he did not consent.

242. Defendants acted herein willfully, maliciously, and with conscious disregard for J.R.'s rights, and knew or should have known that their conduct was offensive and certain to cause injury, pain, fear, apprehension, and humiliation.

FOURTEENTH CAUSE OF ACTION

(Civil Conspiracy – Defendants Uemura, Kendall, and DOE Defendants)

243. Plaintiffs hereby incorporate all of the allegations contained in paragraphs 1 through 163, above.

244. Each of the Defendants conspired with one another to cause the unlawful arrest of J.R. and to promote his criminal prosecution.

245. Each of the Defendants' acts of collusion and conspiracy proximately caused the damages alleged herein.

FIFTEENTH CAUSE OF ACTION

(Declaratory Judgment and Injunctive Relief – All Defendants)

246. Plaintiffs hereby incorporate all of the allegations contained in paragraphs 1 through 163, above.

247. Plaintiffs and J.R. continue to be fearful that they will be subjected to unconstitutional abuses from Defendants pursuant to the Honolulu Police Department's *de facto* policy and/or grossly deficient policies and procedures.

248. Based on the facts set forth above, there exists a sufficient degree of immediacy and concern to warrant issuance of a declaratory judgment and/or injunction: (1) preventing and restraining the Defendants from continuing to violate Plaintiffs' rights; (2) requiring that Defendant City and County of Honolulu enact affirmative policies and procedures to identify, disclose, and prevent conflicts of interest in law enforcement; and (3) requiring Defendants to expunge any and all criminal and/or arrest records for J.R. generated as a result of Defendants' unconstitutional conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- A. Declaratory relief;
- B. Injunctive relief;
- C. General and special damages;
- D. Punitive damages;
- E. Reimbursement of attorneys' fees and costs;

F. Any other relief the Court deems just and proper.

DATED: Honolulu, Hawai‘i, October 26, 2020.

/s/ Kevin A. Yolken

ERIC A. SEITZ

DELLA A. BELATTI

GINA SZETO-WONG

JONATHAN M.F. LOO

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