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AMMON FEPULEAI, SARAH POPPINGA,
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

AMMON FEPULEAI, SARAH POPPINGA, and
TANNER PANGAN, on behalf of themselves and
others similarly situated,

Plaintiffs,
vs.

CITY AND COUNTY OF HONOLULU,
ARTHUR J. LOGAN, DARREN CACHOLA,
DALLAS PAUU, DAVID FERREIRA, RIDGE
NEWCOM, JACOB BRINDLEY, DRAE MOON,
KELSEY MESSMER, AND DOE
DEFENDANTS 1-10,

Defendants.

Case No.
(Declaratory Judgment)

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF; DEMAND FOR JURY TRIAL**

I. INTRODUCTION

1. Plaintiffs Ammon Fepuleai, Tanner Pangan, and Sarah Poppinga (“Named Plaintiffs”) bring this class action complaint on behalf of themselves and other class members against the City and County of Honolulu (“City”), Honolulu Police Department (“HPD” or “Department”) Chief Arthur J. Logan, and several of its officers—including Darren Cachola, Dallas Pauu, David Ferreira, Ridge Newcom, Jacob Brindley, Drae Moon, and Kelsey Messmer (collectively, “Officer Defendants”)—based on HPD’s egregious and longstanding pattern and practice of arresting people for “operating a vehicle under the influence of an intoxicant” (“OVUII” or “DUI”) without probable cause and/or without due process.

2. Over the past few years, HPD has arrested scores of drivers despite not having adequate probable cause to believe their ability to drive was impaired. Namely, HPD officers continually arrest drivers who show no outward signs of impairment, perform well on field sobriety tests, and who often blow **0.000** on breathalyzer tests. From 2022 through 2024, HPD arrested 127 people who had a blood alcohol content (“BAC”) of 0.000 after a breath or blood test for OVUII. Of those 127 arrests, only about 15 (or 11.8%) were even given a traffic ticket, and only about 3 people (2.3%) were charged with OVUII for drugs.

3. HPD’s unlawful OVUII arrests follow a similar pattern: drivers are stopped either without any problematic driving at a sobriety checkpoint, or for minor traffic infractions. In many cases, officers learn that the driver is coming from a venue or social event where alcohol may have been served. From there, officers follow a script: the driver’s eyes are “red,” “watery,” and/or “bloodshot”; the driver has slurred speech; and the officer smells alcohol.

4. Yet, these allegations are contradicted by their body camera footage, which shows no outward manifestations of impairment: drivers do not have red, watery, or bloodshot eyes; are

not speaking incoherently or slurring their words; are not acting confused; and are not experiencing balance, coordination, or motor function problems—hallmark evidence of “impairment.”

5. And the officers’ “observations” are contradicted by other evidence as well. For example, for all three Named Plaintiffs, officers stated in their reports that they smelled alcohol while interacting with them, but, shortly after their arrests (and before one driver’s arrest), *all three* blew 0.000 on breathalyzer tests administered by HPD officers, showing there was in fact no alcohol officers could have been smelling.

6. With few exceptions, OVUII arrests must be based on impairment under Hawai‘i law, meaning officers are only supposed to arrest drivers if they believe they cannot safely operate a vehicle.¹ Yet HPD has a pattern and practice of making DUI arrests without indicia or actual evidence of impairment—and in situations where evidence plainly shows the opposite.

7. To supports arrests for which there is no evidence of impairment, HPD has fostered a widespread practice of officers including fabricated information in police reports—such as the driver having “red, watery, bloodshot eyes,” or slurred speech—and improperly administering Standardized Field Sobriety Tests (“SFSTs”) to generate technical errors that the officer can use as the basis for an arrest.

8. HPD also has a pattern and practice of misleading, coercing, or misinforming drivers about their right to a breath, blood, or urine test (“chemical test”) and the consequences of a refusal to comply with a test—thereby discouraging exculpatory chemical tests in violation

¹ HRS § 291E-61(1), (2). The law presumes that a person whose BAC is above 0.08 is impaired, making that a *per se* OVUII offense. *State v. Nesmith*, 127 Hawai‘i 48, 58, 276 P.3d 617, 627 (2012). And for people under 21 years of age, a BAC above 0.02 is treated with “zero tolerance.” HRS § 291E-64.

of Hawai‘i due process guarantees. For example, HPD officers mislead drivers about whether it’s “best” to refuse testing or tell drivers they will be held in custody overnight if they want a blood test. Many HPD officers do not thoroughly explain the consequences—namely, a two-year suspension of the driver’s license—of refusing a breath or blood test, even though they are obligated to do so by statute.

9. These unconstitutional seizures are driven by HPD’s singular focus on making DUI arrests—regardless of whether those arrests are proper or lawful or lead to actual convictions.

10. HPD uses its arrest numbers and statistics to justify continued receipt of federal funding for sobriety checkpoints and other OVUII enforcement, receipt of which is conditioned on showing the checkpoints’ efficacy through arrest statistics.

11. To achieve these arrest statistics, HPD has created—through both official policy and unofficial practice and custom—significant financial and other work incentives for officers to make OVUII arrests. These incentives, in turn, have led officers to make arrests regardless of whether they have probable cause to do so. For example, supervisors in the Night Enforcement Unit (“NEU”) of HPD’s Traffic Division, which handles DUI enforcement, have implemented a “one-and-done” policy, under which officers can end their shift early after making only one arrest. These shifts run from approximately 10:00 PM until 7:00 AM—but under the “one-and-done” policy, officers who make a DUI arrest soon after their shifts begin can go home and still be paid for the full shift.

12. As a result of its arrest-focused approach, HPD has devalued prosecutions and convictions of those arrested for OVUII, and thereby affirmatively *increased* the risk of harm to the community. By diverting limited police resources to arresting drivers regardless of their

sobriety, HPD is forgoing its mandate to investigate drivers who are actually impaired, leaving dangerous drivers on the road. By improperly and prematurely shutting down checkpoints after arresting sober drivers, HPD is eliminating the opportunity to identify truly intoxicated drivers still on the road. Moreover, policies that allow officers to end their shifts early by making an arrest take officers off the road during their regular shifts, time they should be using to make genuine efforts to find drivers who are impaired.

13. HPD's practices have caused immense harm to Named Plaintiffs and hundreds of class members who have driven, and currently drive in, the City and County of Honolulu.

14. Through this action, Named Plaintiffs seek to represent a class of hundreds of other drivers who have been or will be falsely arrested by HPD. They seek declaratory and injunctive relief to end HPD's pattern and practice of false arrests without due process.

II. JURISDICTION AND VENUE

15. This court has jurisdiction over the claims in this action pursuant to Hawai'i Revised Statutes ("HRS") § 603-21.5 and § 632-1, and Article I, sections 5 and 7 of the Hawai'i Constitution.

16. Venue is proper in this court pursuant to HRS § 603-36 because the claims for relief arose within this circuit.

III. PARTIES

17. Plaintiff AMMON FEPULEAI is an American Samoa resident who was arrested for OVUII in the City of County of Honolulu on or around November 7, 2023. Mr. Fepuleai visits Oahu frequently. He is concerned that he will be falsely re-arrested by HPD in the future.

18. Plaintiff SARAH POPPINGA is and has been a resident of the City and County of Honolulu, State of Hawai'i, who was arrested for OVUII in the City and County of Honolulu on

or around June 15, 2023. She is concerned that she will be falsely re-arrested by HPD in the future.

19. Plaintiff TANNER PANGAN is and has been a resident of the City and County of Honolulu, State of Hawai‘i, who was arrested for OVUII in the City and County of Honolulu on or around January 25, 2024. He is concerned that he will be falsely re-arrested by HPD in the future.

20. Defendant CITY AND COUNTY OF HONOLULU (“City”) is a municipality established by the laws of the State of Hawai‘i. The City is a state actor and therefore bound to uphold the guarantees of the Hawai‘i Constitution. The Honolulu Police Department (“HPD”) is a department and agency of the City.

21. Defendant ARTHUR J. LOGAN is and has been employed as the police chief of the Honolulu Police Department at all relevant times.

22. Defendant DARREN CACHOLA is and has been employed as a police sergeant by the Honolulu Police Department at all relevant times.

23. Defendant DALLAS PAUU is and has been employed as a police officer by the Honolulu Police Department at all relevant times.

24. Defendant DAVID FERREIRA is and has been employed as a police officer by the Honolulu Police Department at all relevant times.

25. Defendant RIDGE NEWCOM is and has been employed as a police officer by the Honolulu Police Department at all relevant times.

26. Defendant JACOB BRINDLEY is and has been employed as a police officer by the Honolulu Police Department at all relevant times.

27. Defendant DRAE MOON is and has been employed as a police officer by the Honolulu Police Department at all relevant times.

28. Defendant KELSEY MESSMER is and has been employed as a police officer by the Honolulu Police Department at all relevant times.

29. DOE DEFENDANTS 1-10 (collectively, “Doe Defendants”) are individuals whose true identities and capacities are currently unknown to Plaintiffs and their counsel, despite diligent inquiry and investigation, and who acted as described more particularly below in connection with the breaches of duties and/or violations of law alleged here and who in some manner or form not currently discovered or known to Plaintiffs may have contributed to or be responsible for the injuries alleged here. The true names and capacities of Doe Defendants will be substituted as they become known.

IV. FACTUAL ALLEGATIONS

A. HPD’s DUI Arrest Data Shows a Troubling Pattern

30. From January 2022 through December 2024, HPD officers arrested 127 people for OVUII who had a 0.000 BAC after being tested by HPD. Only three of those people were charged with OVUII for drugs, and only one person was charged with OVUII for impairment (which was later dismissed with prejudice).

31. 88% of the people arrested with a 0.000 BAC were ultimately released without any charges—not even a traffic ticket—being filed.

32. This very high percentage of uncharged cases is not unique to OVUII arrests in which a driver has a 0.000 BAC.

33. In 2023, the Honolulu Prosecutor’s Office declined to file charges for about

80.9% of HPD's 1,283 DUI arrests made that year.²

34. Overall, the number of people being arrested with a 0.000 BAC has increased from 28 in 2022, to 41 in 2023, to 58 in 2024.

35. Further, in 2024, HPD data reflects several clusters of 0.000 BAC arrests within a short period of time at a single location. For example, on February 15, 2024, at 11:44 PM, two different drivers were arrested on Kapiolani Boulevard and both blew 0.000 BAC on a breath test. Neither driver was charged with OVUII for drugs.

36. Similarly, on August 31, 2024, three people were arrested at 450045 Kamehameha Highway at 9:31 PM, 9:52 PM, and 10:39 PM. All three drivers blew 0.000 BAC when tested. None of those drivers were charged with OVUII for drugs.

37. HPD arrest statistics show that certain HPD officers make an unusually high number of arrests where the driver has a BAC of 0.000.

38. For example, between 2023 and 2024, Officer Joshua Zara arrested 10 people who ultimately had a BAC of 0.000 when tested. Officer Zara was also one of the officers involved in the arrests on February 15, 2024 and August 31, 2024.

39. In 2024, out of all of Officer Zara's arrests in which a driver took a breathalyzer test (as opposed to refusing or taking a blood test), the drivers blew 0.000 in **30%** of cases.

40. In 2024, Officer Derek Tran arrested 10 people with a 0.000 BAC. In 2024, out of all of Officer Tran's arrests in which a driver took a breathalyzer test, the drivers blew 0.000 in **32%** of cases.

² Lynn Kawano, *Dozens of Oahu drivers arrested, jailed for DUI despite tests showing no alcohol in their systems*, Hawaii News Now (Apr. 22, 2024), <https://www.hawaiinewsnow.com/2024/04/23/dozens-drivers-arrested-jailed-dui-despite-test-results-showing-no-alcohol-their-system>.

41. From 2022 to 2024, Officer Janghoon Jason Cho—who was involved in the arrest of Named Plaintiff Tanner Pangan discussed below—arrested at least 14 people with a 0.000 BAC. In 2024, out of all of Officer Cho’s arrests in which a driver took a breathalyzer test, the drivers blew 0.000 in **25%** of cases.

42. When an arrestee has a 0.000 BAC, if an officer still has probable cause that the arrestee is under the influence (presumably for drugs), then HPD may proceed with a driver’s license revocation through the Administrative Driver’s License Revocation Office (“ADLRO”) and require an arrestee to take a blood or urine test. *See* HRS § 291E-11(e).

43. But of the 127 OVUII arrests where the arrestee blew 0.000, HPD officers initiated an ADLRO proceeding in only 36 cases, or about 28% of the time.

44. And in 67% of those ADLRO proceedings, the revocation was not sustained or affirmed: In 42% of the proceedings, the license revocation was rescinded after the ADLRO hearing officers’ initial document review—before any hearing took place—and in 25% of the cases, the driver’s license revocation was reversed after a hearing. In other words, in only about 9.4% of these OVUII arrests did the proceeding end with a license revocation.

45. A driver’s license suspension is only overturned if the ADLRO determines (1) there was no reasonable suspicion to stop the driver, (2) there was no probable cause for OVUII, or (3) the driver was likely not operating a vehicle while under the influence. HRS §§ 291E-37(d), 38(e).

46. The fact that so many drivers who blow 0.000 are being arrested and 67% of these driver’s license suspensions are rescinded or reversed shows there is a serious problem with the OVUII arrests that HPD officers are making.

47. Similarly, the outcomes of cases in which drivers refuse chemical testing reveal

the same arrest problem, particularly since a driver's license revocation after a refusal does not require proof of OVUII.

48. In a refusal case, a driver's license is suspended if: (1) there was reasonable suspicion to stop the driver, (2) there was probable cause for OVUII, and (3) the driver refused chemical testing after being advised of the consequences. HRS §§ 291E-37(d), 38(e).

49. But in almost 30% of the revocations for refusal submitted by HPD officers in 2024, this standard was not met.

50. This means that in almost 30% of the refusal cases submitted to the ADLRO, either HPD officers are making bad stops and arrests (thus violating Article I, Section 7 of the Hawai'i Constitution) or HPD officers are not properly advising arrestees of the consequences of refusing chemical testing (thus violating due process, Article I, Section 5 of the Hawai'i Constitution, and HRS § 291E-15).

51. Overall, this preliminary data analysis of HPD's OVUII arrest records demonstrates a significant underlying problem with the decisions HPD officers are making in arresting drivers and advising them about chemical testing post-arrest.

B. HPD's Policies and Procedures Foster an Environment Where Arrests Without Probable Cause And/Or Due Process Have Become Commonplace

52. The concerning trend of false OVUII arrests by HPD stems from a combination of official and unofficial policies that incentivize officers to cut corners during their investigations to make more OVUII arrests (without regard to whether such arrests lead to prosecutions or convictions), as well as a lack of proper training and supervision by HPD.

53. First, HPD has a singular focus on OVUII arrests because it reports those numbers for a variety of purposes.

54. The agency reports OVUII arrest numbers to demonstrate to the public that it is

addressing serious public safety concerns. For example, on a page about DUIs on HPD's website, HPD says: "In 2024, HPD investigated **53** traffic fatalities. An overwhelming **23** of them were related to some form of impairment. In that same time period, [t]he Honolulu Police Department apprehended **1,509** drivers for Operating a Vehicle Under the Influence of an Intoxicant (OVUII)."³

55. Similarly, in a May 2025 post on its website about "Drive With Aloha Day," HPD reported: "The number of impaired driving arrests has increased by 30%. Officers joined the community for a sign-waving in front of Honolulu Hale to raise awareness."⁴

56. In its 2023 Annual Report, HPD highlighted the Traffic Division's enforcement by reporting the number of felony OVUII arrests that year (40, of which only 8 cases were charged) and asserting that HPD's efforts were making roadways safer.⁵ In 2023 and in 2024, HPD included the total number of OVUII arrests as part of its annual report, alongside other serious crimes such as domestic violence, assaults, and arson.⁶

57. Further, local media reports on HPD's DUI arrests numbers, taking note when the numbers are high.⁷

58. In that sense, DUI arrests are politically beneficial for HPD.

³ *Motor Vehicle Safety: DUI*, Honolulu Police Department, <https://www.honolulupd.org/information/motor-vehicle-safety/> (visited May 27, 2025) (emphasis in original).

⁴ *May 8 Proclaimed as "Drive With Aloha Day,"* Honolulu Police Department, <https://www.honolulupd.org/may-8-proclaimed-as-drive-with-aloha-day/> (May 9, 2025).

⁵ Honolulu Police Department, *Annual Report 2024*, at 20, https://www.honolulupd.org/wp-content/uploads/2024/05/HPD_-AR_2023_FINAL_PDF-A_REDUCED.pdf.

⁶ See, e.g., *id.* at 26 https://www.honolulupd.org/wp-content/uploads/2025/05/HPD_-AR_2024_WEB_Archive.pdf.

⁷ See, e.g., Bryce Moore, *Honolulu Police: 10 Overnight DUI Arrests*, KHON2.com, <https://www.khon2.com/local-news/honolulu-police-10-overnight-dui-arrests> (June 15, 2024).

59. And unlike other threats to public safety, such as arson or assault, DUI arrests can be obtained quickly and frequently if officers follow a pre-determined script and improperly administer the SFSTs so that a driver makes mistakes.

60. But while HPD publicly emphasizes its DUI arrest numbers, HPD rarely (if ever) publicly reports the number of OVUII arrests that lead to conviction.

61. Upon information and belief, HPD does not formally track the number of OVUII arrests that lead to conviction.

62. The number of DUI arrests made also impacts HPD's funding. The agency reports OVUII arrest statistics to the State of Hawai'i, which in turn reports those numbers to the public and the federal government, as required by federal highway safety funding grants.⁸

63. Notably, in 2024, Hawai'i Department of Transportation submitted a grant application for Honolulu Police Department to receive \$1,247,440.00 in federal funding for impaired driving enforcement.⁹

64. This federal highway safety funding pays for HPD's overtime enforcement of OVUII law, Drug Recognition Experts ("DREs") and related drug-enforcement activities, supplies for trainings, educational activities, and travel for trainings and conferences.¹⁰

⁸ See Hawai'i State Department of Transportation, *Highway Safety Annual Report: 2021*, at 32 <https://hidot.hawaii.gov/highways/files/2023/03/HDOT-2021-Highway-Safety-Annual-Report-FINAL-single-pages.pdf> [hereinafter HDOT, *2021 Annual Report*] (emphasizing that Hawai'i's federally-funded sobriety checkpoints produced "over 829 OVUII alcohol and drug arrests" in the 2021 fiscal year).

⁹ Hawai'i Department of Transportation, *Annual Grant Application: Federal Fiscal Year 2024*, at 37, https://www.nhtsa.gov/sites/nhtsa.gov/files/2024-04/HI_FY24_AGA-tag.pdf.

¹⁰ Hawai'i Department of Transportation, *Hawaii's Annual Report for Federal Fiscal Year 2023 National Highway Traffic Safety Administration Funded Programs*, at 38 <https://www.nhtsa.gov/sites/nhtsa.gov/files/2024-12/HI%20FY23%20Annual%20Report-tag.pdf> [hereinafter HDOT, *2023 Annual Report*].

65. Importantly, as part of its grant reporting, the Hawai‘i Department of Transportation emphasizes OVUII *vehicle stop* and *arrest* numbers but does not report on OVUII *prosecutions* or *convictions*.¹¹

66. Grant-funded traffic enforcement—which includes sobriety checkpoints and “saturation” patrols (which are heightened OVUII enforcement used “during holidays and time periods known for drinking”)—is paid as overtime and highly sought after by HPD officers.

67. To incentivize higher OVUII arrest numbers and justify the receipt of federal funding, HPD has an official policy (*i.e.*, Policy 1.18) that sets a “minimum level of grant activity” for federal-grant related enforcement, instructing officers to “focus on and strive to achieve the minimum level of grant activity particular to the grant being worked.”¹²

68. Under HPD Policy 1.18, officers who do not meet the grant “activity goals” for three consecutive operations could lose their ability to work future grant hours (and therefore future opportunities to receive overtime pay).¹³

C. HPD Supervisors Nurture A Culture That Pressures Officers To Make DUI Arrests

69. HPD supervisors use unofficial incentives to encourage and pressure their officers to make more OVUII arrests.

70. Supervisors of the Traffic Enforcement Division, which has primary responsibility for enforcing OVUII laws through the Night Enforcement Unit, implemented a “one-and-done” policy for OVUII arrests. Under this unofficial policy, if an officer arrests a driver for OVUII, that officer can go home upon making the arrest but still receive full pay for

¹¹ *Id.* at 37.

¹² Honolulu Police Department Policy 1.18 at 3, <https://www.honolulupd.org/wp-content/uploads/2020/08/HPD-Policy-118-12-24-2019.pdf>.

¹³ *Id.*

their entire shift, regardless of when in the shift the arrest was made.

71. A similar, unofficial “one-and-done” policy also exists for intoxication control roadblocks and sobriety checkpoints, which is a function how such roadblocks and checkpoints are operated.

72. Roadblocks are staffed with four officers: an HPD supervisor and three officers.¹⁴

73. According to HPD policy, a full checkpoint shift is 3 hours.¹⁵

74. But because four officers is a minimum staffing requirement, if a driver is arrested and has to be transported to the station by one of the officers, then the entire roadblock must be shut down.

75. However, under the “one-and-done” policy, officers get paid for the full shift even if the roadblock is shut down (after an arrest) before the shift ends. Thus, officers are incentivized to arrest a driver as quickly as possible, so they can then go home.

76. As one example, Plaintiff Fepuleai was the *first vehicle* to enter the checkpoint staffed by Defendants Cachola, Pauu, Ferreira, and Newcom. As explained further below (§D.i.), even though Mr. Fepuleai had not consumed any alcohol or other controlled substance, and even though he showed no signs of impairment, HPD officers arrested him for OVUII. Soon after detaining Mr. Fepuleai, the rest of the officers took down the roadblock and returned to the station. Upon information and belief, they still received full overtime pay for their entire shift.

77. HPD data shows that it is rare for a roadblock to result in more than one OVUII arrest. Notably, the statewide average is 1.16 arrests per sobriety checkpoint.¹⁶

¹⁴ Honolulu Police Department Policy 6.03 at 2, <https://www.honolulupd.org/wp-content/uploads/2020/08/HPD-Policy-603-05-12-2025.pdf>.

¹⁵ *Id.* at 3.

¹⁶ See HDOT, *2023 Annual Report* at 37.

78. In addition to the one-and-done policies, supervisors have implemented other unwritten incentives for their officers to get OVUII arrests.

79. For example, supervisors tell officers that if they do not make a certain number of OVUII arrests, they will have their HPD-subsidized patrol car taken away.

80. Supervisors tell officers that people who “bring me DUIs” will be given more overtime opportunities.

81. One HPD Division held a competition about the number of DUI arrests.

82. Further, because OVUII arrests can result in two different proceedings—a criminal case and an ADLRO driver’s license revocation proceeding—officers can (and do) earn overtime after each OVUII arrest by participating in those proceedings, even if the case is ultimately dismissed.

83. For officers in the Night Enforcement Unit, all ALDRO or court hearings are paid as overtime hours outside of their normal shift, which means they are paid time-and-a-half for attending hearings.

84. While not all officers take advantage of the ample opportunities to receive overtime pay—*e.g.*, many do not show up for court hearings, resulting in charges being dismissed—some officers rely on overtime from OVUII arrests as a lucrative opportunity.

85. Finally, problematic OVUII arrests are also the result of insufficient training and supervision.

86. Police academy trainings on DUI enforcement are conducted by members of the Night Enforcement Unit, meaning those responsible for ongoing problematic DUI arrest practices are training the next generation of officers.

87. While federal funding exists for HPD to train officers in OVUII enforcement, few

trainings are conducted.

88. For example, in fiscal year 2023, *statewide* only 141 officers participated in SFST trainings; by comparison, in fiscal year 2021, 114 officers *from HPD alone* participated in SFST trainings.¹⁷

89. Further, in fiscal year 2023, there was less than one SFST refresher training offered.¹⁸

90. Upon information and belief, the lack of trainings is due, at least in part, to a lack of certified instructors. In 2023, only six officers in the state participated in trainings to become SFST instructors.

91. Similarly, statewide, only 23 officers participated in DRE training, which qualifies an officer to assess whether a driver is impaired by a controlled substance.

92. This relative dearth of DREs could account for why, out of the 1,437 statewide arrests for OVUII-drug in fiscal year 2023, a DRE was called out only 111 times.¹⁹

93. Additionally, because HPD only tracks OVUII arrests—and does not assess whether an officer’s arrest results in a conviction (or plea)—there is little incentive for officers to improve their ability to investigate DUIs and make proper arrests.

94. Because no one in HPD’s leadership is assessing OVUII convictions, officers are not afraid of making wrongful arrests.

95. As a result of HPD’s official and unofficial policies, and a culture that prioritizes arrests over convictions, HPD officers are conducting shoddy investigations, jumping to

¹⁷ Compare HDOT, *2023 Annual Report* at 37 with HDOT, *2021 Annual Report* at 31.

¹⁸ HDOT, *2023 Annual Report* at 37.

¹⁹ HDOT, *2023 Annual Report* at 37.

conclusions without sufficient evidence, fabricating incriminating observations, and ultimately arresting scores of Oahu drivers for OVUII without probable cause and/or without due process.

D. HPD Arrests Plaintiffs, And Others Similarly Situated, Without Probable Cause And Due Process

i. Stop and Arrest of Ammon Fepuleai

96. Ammon Fepuleai is a resident of American Samoa who serves as the Director of the American Samoa Council on Arts, Culture, & Humanities.

97. Mr. Fepuleai does not drink or use controlled substances.

98. On or about November 7, 2023, Mr. Fepuleai was visiting Hawai‘i to serve as the wedding planner for his cousin’s wedding. That night, while driving home from the bridal shower on Kamehameha Highway in Waipio, he was pulled over at an HPD “sobriety checkpoint.”

99. Mr. Fepuleai was the first vehicle to go through the checkpoint.

100. According to HPD records, the checkpoint was conducted pursuant to a federal grant. As discussed above, such checkpoints require the participation of at least four officers.

101. The officers who ran the checkpoint that night were Defendants Sergeant Darren Cachola, Officer Dallas Pauu, Officer David Ferreira, and Officer Ridge Newcom.

102. The checkpoint ran for 30 minutes from 11:30 PM to 12:00 AM. Mr. Fepuleai was pulled over at about 11:37 PM.

103. As Mr. Fepuleai approached the checkpoint, Officer Pauu “flagged” him down and directed him to pull over.

104. The checkpoint’s “protocol” was to stop *all* approaching vehicles. Mr. Fepuleai had not committed any traffic infractions and was not driving in a way that was erratic, problematic, unusual, or any other manner that suggested he was intoxicated, including when

officers observed Mr. Fepuleai pull his car to the side of the road.

105. Neither Officer Pauu, nor the other officers involved in the checkpoint or Mr. Fepuleai's eventual arrest, stated during the incident or in police reports that Mr. Fepuleai was driving in a way that suggested he was intoxicated.

106. After Mr. Fepuleai pulled over, Officer Ferreira approached his vehicle, requesting Mr. Fepuleai's driver's license and registration.

107. After taking Mr. Fepuleai's American Samoa driver's license and learning that Mr. Fepuleai was coming from his cousin's bridal shower, Officer Ferreira suddenly told Mr. Fepuleai that he "detect[ed] the odor of alcohol."

108. Stunned, Mr. Fepuleai immediately responded: "I don't drink."

109. Officer Ferreira then asked Mr. Fepuleai if he was willing to take SFSTs.

110. There was no reasonable suspicion to extend Mr. Fepuleai's stop for him to take the SFSTs.

111. Mr. Fepuleai, knowing he was sober and believing he could perform well on the test, agreed to participate.

112. Despite extending the stop and initiating an OVUII investigation on the basis of smelling alcohol, Officer Ferreira later stated in his police report for the arrest that he did *not* smell *any* odor of alcohol during his interactions with Mr. Fepuleai.

113. Officer Ferreira then administered the SFSTs to Mr. Fepuleai.

114. In administering the battery of tests, however, Officer Ferreira improperly instructed Mr. Fepuleai on the balance and coordination tests and included observations in his police report that are contradicted by his body camera footage:

- a. Officer Ferreira's report states that Mr. Fepuleai began the walk-and-turn test too

soon, but body camera footage shows he started right when Officer Ferreira told him to;

- b. Officer Ferreira's report states that Mr. Fepuleai turned in the "wrong direction," but Officer Ferreira did not instruct Mr. Fepuleai that turning in a particular direction was part of the test.

115. Body camera footage shows that Mr. Fepuleai had no balance or coordination problems on the tests, correctly followed the instructions that were given to him, and had no issues dividing his attention between simultaneous mental and physical tasks. Indeed, Officer Ferreira's report confirms Mr. Fepuleai did not have any of the following indicators of coordination or motor function problems:

- a. Mr. Fepuleai never stepped off the line during the walk-and-turn test;
- b. Mr. Fepuleai never raised his arms to help maintain balance during the walk-and-turn test;
- c. Mr. Fepuleai never stopped walking during the walk-and-turn test;
- d. Mr. Fepuleai did not "sway" or "hop" during the one-leg-stand test;
- e. Mr. Fepuleai did not use his arms to balance during the one-leg-stand test.

116. After completing the SFSTs, Officer Ferreira walked away from Mr. Fepuleai to talk to Officer Newcom, presumably to discuss whether there was sufficient evidence of impairment from the tests to continue extending the stop.

117. However, right before starting this conversation, Officer Ferreira turned off his body camera, violating HPD policy, which requires officers to turn on and keep their body

cameras turned on during a “law enforcement or investigative encounter.”²⁰

118. Meanwhile, Officer Newcom did not have his body camera on at all, also violating the same policy.

119. Upon information and belief, these officers turned their body cameras off to conceal their discussion, which would have revealed that they were continuing their investigation and arrest, and further extending the traffic stop, despite not having sufficient evidence to do so.

120. Following Ferreira’s discussion with Newcom, Officer Pauu had Mr. Fepuleai take a preliminary alcohol screening (“PAS” or “breathalyzer”) test. Mr. Fepuleai took the test and blew a **0.000**.

121. Despite Mr. Fepuleai’s negative test, officers decided to continue the OVUII investigation, purportedly to try and determine whether he was on drugs. Officer Pauu then administered two “Advanced Roadside Impaired Driving Enforcement” (“ARIDE”) tests, which are designed to test for drug impairment.

122. Importantly, the “Modified Romberg Test,” which was the first test administered to Mr. Fepuleai, has never been scientifically validated for detection of intoxication.

123. In administering the ARIDE tests, Officer Pauu also did not properly instruct Mr. Fepuleai and included observations in his police report that are contradicted by his body camera footage:

- a. Officer Pauu wrote in his report that Mr. Fepuleai’s head was “swaying”—an indicator of impairment on the “Modified Romberg Test” (“MRT”)—but he had never informed Mr. Fepuleai that he needed to keep his head still.

²⁰ See HPD, *Policy Number 2.57: Body-Worn Cameras*, Honolulu Police Department (Sept. 24, 2021), <https://www.honolulupd.org/wp-content/uploads/2020/08/HPD-Policy-257-3-7-2023.pdf>.

- b. Further, Officer Pauu wrote in his report that Mr. Fepuleai had “body tremors” during the MRT, but body camera video shows this is false. Moreover, Officer Pauu also never instructed Mr. Fepuleai that he needed to keep any part of his body still during the test.
- c. Officer Pauu wrote in his report that Mr. Fepuleai had estimated 30 seconds in only 19 seconds during the MRT. But after Mr. Fepuleai finished the test, Officer Pauu did not ask “how much time was that?” as the ARIDE instructor manual directs.²¹ Mr. Fepuleai showed he did not understand that he was supposed to be estimating 30 seconds because when he finished the test, he asked Officer Pauu if he was supposed to be counting “1-100, 2-100.” Officer Pauu did not clarify or verify that Mr. Fepuleai was estimating time.

124. Immediately after concluding the ARIDE tests, Officer Pauu instructed Officer Newcom to arrest Mr. Fepuleai.

125. According to police reports, even though HPD officers extended the stop to investigate OVUII based on Officer Ferreira purportedly smelling alcohol, Mr. Fepuleai was arrested for suspicion of OVUII for “marijuana and/or perscription [sic] medication.” Officers did not arrest Mr. Fepuleai based on suspicion that he was intoxicated from alcohol.

126. Officers did not call for a DRE to assess Mr. Fepuleai, either at the scene or at the station, even though DREs are trained to detect impairment due to controlled substances.

127. Officers’ police reports contain other fabricated statements about Mr. Fepuleai’s appearance and demeanor that are disproven by body camera evidence. All three officers stated

²¹ National Highway Traffic Safety Administration, *ARIDE: Advanced Roadside Impaired Driving Enforcement Instructor Guide*, at 14 (2023), https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-04/15941-2023_ARIDE_Instructor%20Guide-tag.pdf.

that his eyes were “red,” “bloodshot,” “watery,” and/or “glassy,” but body camera footage shows this is false:



128. Officers also described Mr. Fepuleai in their reports as having “delayed responses to . . . questions,” having “a difficult time focusing,” and as acting “confused.” Again, body camera footage disproves this. Throughout officers’ 30-minute interaction with Mr. Fepuleai before his arrest, Mr. Fepuleai spoke clearly and coherently and understood and followed directions correctly. Indeed, he often responded to them very quickly. During their interactions with Mr. Fepuleai, the officers never suggested that they could not understand him, asked him to repeat himself, or suggested that he did not follow their instructions.

129. HPD records from the checkpoint show Mr. Fepuleai was the first car pulled over during the checkpoint, and he was the only driver arrested during the checkpoint.

130. Moreover, while the same records state that 16 cars were “stopped,” body camera footage confirms that Mr. Fepuleai was the only car asked to pull over for a full traffic stop; all other drivers only briefly pulled up to other officers, then were allowed to continue on.

131. Upon information and belief, when they first pulled Mr. Fepuleai over, officers had already determined that they would arrest Mr. Fepuleai so they could end the checkpoint

early and be paid for a full shift under the “one and done” policy.

132. After Mr. Fepuleai was arrested—only 30 minutes after the checkpoint began—officers closed it down.

133. Officer Ridge Newcom arrested Mr. Fepuleai and put him in his patrol car.

134. Right before getting into his car to drive Mr. Fepuleai to the station, Officer Newcom turned his body camera video off, again against HPD policy.

135. During the ride to the police station, Officer Newcom persuaded Mr. Fepuleai to decline further testing, in the form of a breathalyzer machine at the station or a blood test.²² He told Mr. Fepuleai that this was the easiest option, and that choosing otherwise would require him to stay in a jail cell overnight.

136. But Officer Newcom did not tell Mr. Fepuleai that declining further testing would mean making a legal admission that he was intoxicated, or that this would lead to the revocation of his driver’s license.

137. Upon information and belief, Officer Newcom turned his body camera off before the car ride to conceal his improper efforts to persuade Mr. Fepuleai to decline further testing.

138. Mr. Fepuleai, influenced by Officer Newcom’s manipulative statements and being unaware of the consequences, had his sister bail him out.

139. As a result of this encounter, Mr. Fepuleai’s driver’s license was revoked.

140. Upon information and belief, by persuading and misleading Mr. Fepuleai into

²² “If there is probable cause to believe that a person is in violation of [the OVUII statute], *as a result of having consumed alcohol*, then the person shall elect to take a breath or blood test, or both, for the purpose of determining the alcohol concentration.” HRS § 291E-11(c) (emphasis added). It is unclear why Mr. Fepuleai was offered the opportunity to take a breath test at the police station, when officers purportedly arrested him due to belief that he was intoxicated due to controlled substances—if officers truly believed he was using drugs, only a blood or urine test should have been offered. *See* HRS § 291E-11(d).

declining the breathalyzer and blood tests, Officer Newcom intended to prevent the creation of objective exculpatory evidence that Mr. Fepuleai was intoxicated.

141. The breathalyzer available to arrestees at police stations is more accurate than the PAS, and—unlike the PAS—is admissible in court.

142. Upon administrative review by the ADLRO, Mr. Fepuleai’s driver’s license suspension was rescinded without a hearing due to “insufficient documentation.”

143. The arrest has had a series of harmful consequences for Mr. Fepuleai: The night of the incident was, by itself, extremely emotionally distressing and traumatizing. The incident also negatively impacted his trip and work as a wedding planner. Since the incident, he has felt embarrassment, shame, and humiliation, especially given his status as a community leader and educator in American Samoa. Given that he has never been arrested before, HPD’s arrest of Mr. Fepuleai has harmed his reputation. Mr. Fepuleai also lost his driver’s license for one month. He now fears further mistreatment by HPD every time he returns to Hawai‘i.

ii. Stop and Arrest of Sarah Poppinga

144. On June 15, 2023, Sarah Poppinga left the Whole Foods parking lot at Ward Center, after spending a night out with a friend to watch *The Little Mermaid* at Consolidated Theatres Ward and hanging out at Dave & Buster’s.

145. Ms. Poppinga forgot to turn her headlights on before she pulled out of the parking lot.

146. Officer Jacob Brindley, an officer in the Night Enforcement Unit, noticed her tail-lights were out, and he stopped her near the intersection of Waimanu Street and Piikoi Street in Ala Moana.

147. Ms. Poppinga was driving normally, and not erratically or in any way that would

suggest she was intoxicated.

148. Officer Brindley's police report did not mention any problematic driving.

149. As soon as Officer Brindley activated his blue and white lights to pull her over, Ms. Poppinga turned her car lights on. Ms. Poppinga then pulled over promptly.

150. Ms. Poppinga was wearing a yellow paper wristband from Dave & Buster's, which is given to patrons over the age of 21.

151. After speaking to Ms. Poppinga for approximately thirty seconds and obtaining Ms. Poppinga's license and car insurance, Officer Brindley went back to his squad car and radioed that he's "got a possible" at Waimanu and Piikoi.

152. Shortly thereafter, Officer Drae Moon, also on the Night Enforcement Unit, arrived at the scene.

153. Officer Brindley apprised Officer Moon of the reason for the traffic stop and told him that Ms. Poppinga was wearing a yellow wristband and that he smelled a "strong odor" coming from the vehicle.

154. Officer Moon proceeded to speak with Ms. Poppinga. After Ms. Poppinga told him she had been at Dave & Buster's, Officer Moon immediately asked if she would be "willing to participate" in SFSTs "just to make sure" she was "okay to drive."

155. Officer Moon did not tell Ms. Poppinga that she was being investigated for OVUII.

156. While Officer Moon was speaking with Ms. Poppinga in her car, his body camera was turned away from Ms. Poppinga, just enough so that it did not capture her face (meaning he either turned his camera to the side or his body was turned away from Ms. Poppinga while he was speaking with her).

157. Upon information and belief, Officer Moon prevented his body camera from capturing Ms. Poppinga's face, which would have shown her eyes were not "bloodshot," a claim later made in the police report documenting the arrest.

158. Confused, Ms. Poppinga asked if the SFST was optional.

159. In a reassuring voice, Officer Moon responded, "no, it is optional." But he did not explain that he planned to arrest her if she declined.

160. Ms. Poppinga, knowing she was sober and that she had not done anything indicating otherwise, said she would "pass" on taking the SFSTs.

161. Within two seconds of her decision, Officer Moon ordered her out of her vehicle and instructed Officer Brindley to place her under arrest for OVUII.

162. Shocked by this development, Ms. Poppinga explained that she had not understood that she would be arrested if she declined the test and asked if she could still take it.

163. Officer Moon rejected her request, telling her she could not "renegotiate" after she already decided to "pass" on the test.

164. Officer Moon thus prevented Ms. Poppinga from providing exculpatory evidence via an on-scene breathalyzer and the SFSTs.

165. In total, the officers spent *less than two minutes* interacting with Ms. Poppinga before deciding to arrest her for OVUII.

166. After arresting Ms. Poppinga, Officer Brindley drove her back to the police station.

167. Knowing that she was sober, Ms. Poppinga agreed to take a breathalyzer test at the station.

168. Less than 30 minutes after the traffic stop, she blew a **0.000** on the breathalyzer

test.

169. Officer Brindley repeated his statement that he smelled alcohol in his police report.

170. Officer Brindley's report also stated that he "observed" Ms. Poppinga's eyes to be "bloodshot." As with others, body camera footage disproves this claim:



171. Further, throughout her interactions with both officers, Ms. Poppinga spoke clearly and coherently and did not slur her words. She was responsive to the officer's questions.

172. Officer Brindley's police report did not state that she was slurring her words and neither officer ever asked her to repeat himself or gave any other indication that they could not understand her.

173. Throughout their interaction, Ms. Poppinga had no balance, coordination, or dexterity problems, including when retrieving her license and other documents or when exiting her vehicle.

174. After blowing 0.000 on the breathalyzer test at the police station, Ms. Poppinga was released.

175. Ms. Poppinga did not have her driver's license revoked and was not prosecuted for OVUII.

176. As a result of the arrest, Ms. Poppinga experienced substantial emotional distress

and left her feeling traumatized. Since the arrest, she's felt embarrassment and shame. She feels nervous and uneasy being out after dark and has had to turn down invitations to events with friends and family. She feels extremely anxious about further mistreatment by law enforcement, which has impacted her sense of safety and trust in the police.

iii. Stop and Arrest of Tanner Pangan

177. On January 25, 2024, Tanner Pangan was merging onto H-201 East near 105 E Moanalua Freeway in Aiea when, due to rain that had slickened the roads, he “fishtailed” his truck, causing him to briefly cross over the broken white lines before he regained control and turned back into his lane.

178. Soon after this occurred, Officer Kelsey Messmer, an officer with the Night Enforcement Unit of HPD's Traffic Division, pulled Mr. Pangan over.

179. After initiating the stop, Officer Messmer told Mr. Pangan that his eyes looked “a little red and watery.” As with the other Named Plaintiffs, body camera footage disproves this:



180. Officer Messmer asked Mr. Pangan if he had had anything to drink that night, and he said no.

181. Mr. Pangan also explained to Officer Messmer what had caused him to fishtail his car: the roads were slick from the rain.

182. Body camera footage confirms that the roads were wet at the time Mr. Pangan was pulled over.

183. Officer Messmer then asked Mr. Pangan if he was willing to participate in SFSTs.

184. Believing his participation in SFSTs was voluntary and not being informed otherwise, Mr. Pangan declined.

185. Within seconds, Officer Messmer ordered Mr. Pangan out of his car and arrested him.

186. Mr. Pangan, who was 18 years old at the time, was arrested under HRS § 291E-64, which prohibits drivers under the age of 21 from driving “with a measurable amount of alcohol,” which the statute defines as being at least “.02 but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of blood.”

187. Officer Messmer only spoke with Mr. Pangan for approximately *three minutes* before making the decision to arrest him.

188. Throughout his conversation with her, Mr. Pangan spoke clearly and coherently.

189. Officer Messmer’s police report did not state that he was slurring his words, and she never asked him to repeat himself or gave any other indication that she could not understand him.

190. Throughout their interaction, Mr. Pangan showed no balance, coordination, or dexterity problems, including when retrieving his license or when exiting his vehicle and

walking to Officer Messmer's squad car, and Officer Messmer's police report does not say otherwise.

191. After Mr. Pangan was arrested, Officer Janghoon Jason Cho arrived on scene, and Officer Messmer explained to him why she made the arrest.

192. Officer Messmer also explained the basis for the arrest to a supervising sergeant over the phone.

193. As with other Named Plaintiffs, Officer Messmer's police report includes fabricated statements that are contradicted by body camera footage and other evidence.

194. Her report states that she "smelled a light odor of what appeared to be an alcoholic type beverage coming from within [Mr. Pangan's] vehicle." But less than an hour after the traffic stop, Mr. Pangan blew a **0.000** on the breathalyzer test at the police station.

195. Moreover, Officer Messmer never mentioned smelling alcohol in *two* separate explanations for why she made the arrest that she gave while speaking with other officers (including a sergeant). She also never told Mr. Pangan that she smelled alcohol. Rather, she only made this statement in her report, which she wrote *after* learning that Mr. Pangan had blown a 0.000.

196. Also, like other Named Plaintiffs, Officer Messmer tried to prevent the creation of (further) objective exculpatory evidence while at the station.

197. When she was explaining the implied consent form to Mr. Pangan, which explains to arrested drivers that they have the right to a breathalyzer or blood test at the station, she initially tried to persuade Mr. Pangan to decline further testing, stating that things would move "faster" if he just refused.

198. She also did not fully explain the options set out in the informed consent form—

including the fact that Mr. Pangan's driver's license would be suspended for two years if he refused (compared to only a year if he was OVUII)—and Mr. Pangan was confused about what she was saying.

199. As a result of Officer Messmer's deceptive explanation, Mr. Pangan initially intended to decline further testing.

200. It was only after Mr. Pangan's father, who is a police officer, arrived at the police station and explained why it was important to take a test that Mr. Pangan decided to take the breathalyzer test.

201. After blowing 0.000 on the breathalyzer test, Mr. Pangan was released.

202. Officers at the station, including Officer Messmer, declined to investigate Mr. Pangan for being under the influence of drugs.

203. Mr. Pangan did not have his driver's license revoked and was never prosecuted for OVUII.

204. As a result of the arrest, Mr. Pangan has experienced substantial emotional distress. While being detained and arrested, he was distraught and felt great shame. Since the arrest, when he drives on any road and sees an HPD officer, he experiences heightened anxiety and fear, as if he is re-living the arrest from January 25, 2024. Mr. Pangan also now avoids driving later in the evening because he is afraid NEU officers will stop and arrest him again.

iv. HPD's Pattern of Stopping and Arresting Similarly Situated Individuals

205. In addition to Named Plaintiffs, other drivers' arrests for OVUII provide further evidence that HPD has a pattern and practice of arresting sober drivers without probable cause and due process, and that these trends are caused by financial incentives for making DUI arrests.

E. HPD Will Continue to Rely On Its Unlawful Policy and Practice of Arresting Oahu Drivers For DUI Without Probable Cause and/or Due Process

206. Despite its unlawful policy and practice of arresting drivers in the City and County of Honolulu for DUI without probable cause and/or due process, HPD has stood by its practices.

207. To prompt changes to HPD's unlawful policy and practice of making false arrests for DUI, Named Plaintiffs Mr. Fepuleai and Mr. Pangan have filed complaints with the HPD Professional Standards Office ("PSO") against the officers involved in their false arrests.

208. On or around November 15, 2023, Mr. Fepuleai submitted a Written Complaint to HPD's PSO about Defendants Pauu, Ferreira, and Newcom's misconduct on November 7, 2023.

209. Mr. Fepuleai's PSO complaint stated that "[e]ven though I do not drink or do drugs, I was arrested . . . for operating a vehicle under the influence of an intoxicant."

210. Mr. Fepuleai's complaint also stated that the "officer(s) lied and arrested me on false pretense," including by "tricking me in denying all tests at the station." Mr. Fepuleai stated that Defendant Newcom "told me the fastest way to get out of jail is to refuse everything when I get into the station" and that "if I chose to take the test at the station, I would have to wait 3 or more hours in jail for the results."

211. On April 4, 2024, HPD's PSO responded to Mr. Fepuleai's complaint and stated: "Upon a review of the facts available by the officers' immediate command, they were not able to find sufficient evidence to sustain your complaint."

212. On or around June 18, 2024, Mr. Pangan submitted a Written Complaint to HPD's PSO about Defendant Messmer's misconduct on January 24, 2024.

213. Mr. Pangan's complaint stated the facts and circumstances behind Defendant Messmer's arrest and alleged that "Officer [Messmer] arrested me without probable cause."

214. On August 9, 2024, HPD's PSO responded to Mr. Pangan's complaint and stated:

“Upon the completion of the investigation, they were not able to find sufficient evidence to sustain your complaint.”

215. On November 4, 2024, Named Plaintiffs’ counsel sent HPD’s Chief Logan a letter about “HPD’s Pattern and Practice of False Arrest at Sobriety Checkpoints, Including That of Ammon Fepuleai.”

216. The November 4, 2024 letter stated that “Mr. Fepuleai’s arrest does not stand in isolation; . . . in the past couple of years, at least 69 other individuals who blew 0.000 were also arrested for OVUII by HPD officers.”

217. The November 4, 2024 letter demanded that HPD “investigate the misconduct of Officers Ferreira, Newcom, and Pauu, and Sergeant Cachola”; “end its policy and practice of falsely arresting drivers at sobriety checkpoints”; and “implement policies, practices, procedures, trainings, and other measures to ensure that HPD officers” were acting lawfully.

218. In a letter dated November 25, 2024, Defendant Chief Logan responded that HPD was conducting a review of Mr. Fepuleai’s arrest.

219. The November 25, 2024 letter also stated: “the HPD believes its departmental polic[i]es are valid and that the officers involved complied with these polic[i]es.” But the letter also stated “HPD continues to be open to reviewing and improving its polic[i]es, including implementation of its polic[i]es, and will do so here.”

220. Finally, the letter stated that “an administrative investigation has been opened.”

221. On March 20, 2025, Plaintiffs’ counsel inquired with HPD about the status of HPD’s review of Mr. Fepuleai’s arrest, the open administrative investigation, and “what policies or practices, if any, has HPD revised or changed in light of [the] November 4, 2024 letter.”

222. On April 23, 2025, Defendant Logan responded. The response letter stood by

HPD's earlier position that its officers had not engaged in misconduct: "it was concluded [by District 3 command] that the officer at the scene had reasonable suspicion to conduct a Standardized Field Sobriety Testing (SFST)" and that "[i]t appears that there was probable cause to effect an arrest."

223. The April 23, 2025 letter stated that it had started an OVUII audit but that such audit "is currently ongoing."

224. The April 23, 2025 letter stated that HPD's Traffic Division had conducted several trainings since November 7, 2023.

225. In the April 23, 2025 letter, Defendant Logan did not commit to changing any HPD policies or practices relating to OVUII arrests.

226. On May 20, 2025, Plaintiffs' counsel sent a follow-up letter about "HPD's Pattern and Practice of DUI False Arrests, Including That of Sarah Poppinga, Tanner Pangan, and Ammon Fepuleai."

227. The May 20, 2025 letter shared new observations, including that "HPD's pattern and practice of falsely arresting Oahu residents for DUI extends beyond sobriety checkpoints to traffic stops island-wide."

228. The May 20, 2025 letter shared new HPD data showing that "in 2024 alone, HPD arrested 58 drivers who blew 0.000."

229. The May 20, 2025 letter described other patterns in the arrest data, and described various concerns that "HPD officers are also violating due process rights when investigating DUI and after effectuating arrests."

230. The May 20, 2025 letter described the facts and circumstances of Ms. Poppinga's and Mr. Pangan's arrests.

231. The May 20, 2025 letter asked HPD to respond by May 27, 2025 and “outline any commitments that HPD will be making to address” the concerns raised in the letter.

232. As of this filing, HPD has not substantively responded to the May 20, 2025 letter.

233. Based on HPD and Chief Logan’s responses to Plaintiffs’ and Plaintiffs’ counsel’s efforts to address HPD’s pattern and practice of problematic DUI arrests, Defendants very likely will continue to rely on HPD’s unconstitutional policy and practice of arresting drivers on O‘ahu for DUI without probable cause and/or due process.

V. CLASS ACTION ALLEGATIONS

234. Plaintiffs bring this action individually and on behalf of a putative class consisting of: All persons who, on or after January 1, 2022, have been or will be subject to an arrest by HPD for OVUII under its policies and practices incentivizing and encouraging arrest without probable cause and/or without due process (the “Class”). Plaintiffs seek only injunctive and declaratory relief on behalf of themselves and the Class.

235. The Class meets all requirements for certification under Rule 23(b)(2) of the Hawai‘i Rules of Civil Procedure.

236. **Numerosity.** The Class contains at least 69 individuals from January 1, 2022 to December 31, 2023 and 58 individuals from 2024, or a total of 127 individuals who have recently been subjected to HPD’s arrest for DUI despite test results of 0.000. Further, given the increasing pattern of persons being falsely arrested by HPD in recent years (from 28 in 2022, to 41 in 2023, to 58 in 2024)—as well as HPD’s standing by its existing policies and practices (*see supra* § IV.E)—hundreds, if not thousands, of other individuals will be affected. Additionally, HPD data reveals many hundreds of refusals (to test) that led to rescindment or reversal after

review by the ADLRO. Thus, the Class contains many hundreds (and possibly thousands) of Class Members, which is so numerous that joinder of all members is impracticable.²³

237. **Commonality.** There are ample questions of law and fact common to the Class, including:

- a. Whether HPD has a policy, pattern, or practice of making DUI arrests without probable cause in violation of Article I, section 7 of the Hawai‘i Constitution.
- b. Whether HPD has a policy, pattern, or practice of making DUI arrests without due process in violation of Article I, section 5 of the Hawai‘i Constitution.
- c. Whether HPD has a policy, pattern, or practice of misleading or misadvising drivers about implied consent to chemical testing in violation of Article I, section 5 of the Hawai‘i Constitution and HRS § 291E-15.
- d. Whether Class Members’ rights violations were caused by particular policies, practices, and customs of HPD and/or its officers.
- e. Whether HPD and/or its officers, including Officer Defendants, were negligent in allowing a policy, pattern, or practice of arrests without probable cause and/or due process.
- f. Whether HPD was negligent in training, supervising, and/or disciplining its officers regarding its policies, practices, and customs regarding DUI arrests.

238. **Typicality.** The claims of Named Plaintiffs are typical of those of the Class in that they arise from the same course of conduct and pattern and practice engaged in by the City and its officers. Named Plaintiffs’ and Class Members’ claims alike are based on the City’s policies,

²³ Haw. R. Civ. P. 23(a)(1); *see also* *Life of the Land v. Land Use Comm’n of State of Hawaii*, 63 Haw. 166, 182, 623 P.2d 431, 444 (1981) (numerosity met where there were over 150 members).

practices, and customs in enforcing the DUI laws. Further, the relief sought herein will benefit all Class Members in similar ways in that it will free them from the City's unconstitutional and unlawful DUI enforcement actions.²⁴

239. **Adequacy.** Named Plaintiffs will fairly and adequately represent the interests of the Class. They have no interests adverse to the interests of other members of the Class and have retained counsel who are competent and experienced in litigating complex class actions, including large-scale constitutional rights cases.²⁵

240. **Rule 23(b)(2).** The City has acted and refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.²⁶ HPD has been responsible for and continues to be responsible for policies, practices, and customs that subject Class Members to arrests without probable cause and/or due process throughout the City and County of Honolulu. The City has refused to discontinue its unlawful policies and practices even after multiple attempts by Plaintiffs and their counsel.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

False Arrest and/or Unreasonable Seizure Hawai'i Constitution Article I, Section 7

241. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

²⁴ Haw. R. Civ. P. 23(a)(3); *Nakamura v. Countrywide Home Loans, Inc.*, 122 Hawai'i 238, 245, 225 P.3d 680, 687 (Ct. App. 2010) ("Although there are incidental factual differences between Nakamura and the Class members, the nature of Nakamura's individual claim and the Class members' claims are essentially similar and there is no conflict of interest . . . [so] Nakamura's claim was typical of the Class members under Rule 23(a)(3)").

²⁵ Haw. R. Civ. P. 23(a)(4); *Nakamura*, 122 Hawai'i at 245–47, 225 P.3d at 687–89 (adequacy requirement met where there was no showing of a conflict of interest between class representatives or their counsel and unnamed class members).

²⁶ Haw. R. Civ. P. 23(b)(2); *Akau v. Olohana Corp.*, 65 Haw. 383, 392 (1982).

242. Article I, section 7 of the Hawai‘i Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated.”

243. Officer Defendants, acting under color of state law, arrested and/or seized Named Plaintiffs for OVUII.

244. These arrests and/or seizures were made without probable cause.

245. Officer Defendants acted intentionally, maliciously, or with reckless disregard for Plaintiffs’ rights under Article I, Section 7 of the Hawai‘i Constitution.

246. As a direct and proximate result, the Named Plaintiffs have suffered violations of their constitutional rights; harm to reputation and standing in the community; emotional distress, humiliation, and embarrassment; and ongoing fear, distrust, and anxiety about future encounters with HPD.

247. Officer Defendants were at all relevant times acting within the scope of their employment with the City.

248. These unlawful arrests and/or seizures were made pursuant to and are the direct, foreseeable, and natural result of the City’s and Chief Logan’s continuing policy, practice, and custom of authorizing HPD officers to arrest drivers for OVUII without probable cause.

249. Other HPD officers have, under the same ongoing policy and practice, already arrested and/or seized unnamed Class Members without lawful justification and will continue to do so unless enjoined.

250. Both the Named Plaintiffs and the Class remain at imminent risk of re-arrest under these unconstitutional practices.

251. Plaintiffs and the Class are therefore entitled to declaratory relief, injunctive relief, and reasonable attorneys' fees and costs for these violations.

SECOND CLAIM FOR RELIEF
Violation of Due Process
Hawai'i Constitution Article I, Section 5

252. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

253. Article I, section 5 of the Hawai'i Constitution provides that "no person shall be deprived of life, liberty or property without due process of law"

254. By arresting and/or seizing Named Plaintiffs for OVUII, Defendants deprived them of their liberty.

255. Those actions also deprived Plaintiffs of a property interest in their driver's licenses.

256. These liberty and property deprivations were without due process of law, pursuant to the City's and Chief Logan's policies, practices, and customs of:

- a. Misleading, deceiving, or pressuring individuals into refusing to take tests—including preliminary alcohol screenings, and breath, blood, and urine tests under the implied consent law (HRS §291E-11)—that could provide exculpatory evidence;
- b. Misrepresenting the legal consequences of agreeing to or refusing SFSTs and/or preliminary alcohol screenings, or breath, blood, or urine tests under the implied consent law;
- c. Arresting individuals for failing to agree to SFSTs;
- d. Improperly administering the SFSTs to generate incriminating evidence;

- e. Deliberately fabricating evidence and observations in police reports to justify arrest;
- f. Failing to adequately inform individuals of their rights and choices under the implied consent statutes (HRS §§ 291E-11, 15).

257. Officer Defendants acted intentionally, maliciously, or with reckless disregard for Plaintiffs' rights under Article I, Section 5 of the Hawai'i Constitution.

258. As a direct and proximate result, the Named Plaintiffs have suffered violations of their constitutional rights; harm to reputation and standing in the community; emotional distress, humiliation, and embarrassment; and ongoing fear, distrust, and anxiety about future encounters with HPD.

259. Officer Defendants were at all relevant times acting within the scope of their employment with the City.

260. These unlawful arrests and/or seizures were made pursuant to and are the direct, foreseeable, and natural result of the City's and Chief Logan's continuing policy, practice, and custom of authorizing HPD officers to arrest drivers for OVUII without due process.

261. Other HPD officers have, under the same ongoing policy and practice, already deprived unnamed Class Members of liberty and property without due process, and will continue to do so unless enjoined.

262. Both the Named Plaintiffs and the Class remain at imminent risk of further due process deprivations.

263. Plaintiffs and the Class are therefore entitled to declaratory relief, injunctive relief, and reasonable attorneys' fees and costs for these violations.

THIRD CLAIM FOR RELIEF
Violation of HRS §§ 291E-11 and 15

264. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

265. Pursuant to HRS § 291E-11, all persons arrested for OVUII have a right to a chemical test to ascertain their sobriety.

266. Pursuant to HRS § 291E-15, if a law enforcement officer determines that a person arrested for OVUII is refusing to submit to a chemical test, the officer must (1) inform the person of the sanctions under HRS § 291E-41 or 291E-65 (driver's license suspension) and (2) give the person another opportunity to decide to take a chemical test.

267. As the Hawai'i Supreme Court observed, "law enforcement must follow a two-step procedure: first, an OVUII arrestee must be given an opportunity to refuse to submit to testing; second, if the arrestee refuses, the arrestee must then be informed of the specific sanctions that could result and asked whether they still refuse testing."²⁷

268. However, Officer Defendants have not been appropriately advising people arrested for OVUII of the serious consequences that could result from a refusal. Instead, officers are telling arrestees that it will be "faster" for them to refuse, or that not refusing will require the person to spend additional time in custody.

269. This misleading advice, coupled with the lack of advice about the consequences of a refusal, violates the requirement in HRS § 291E-14 that law enforcement officers explain the consequences of a refusal.

270. Officer Defendants acted intentionally, maliciously, or with reckless disregard for Plaintiffs' right to be accurately advised of the consequences of refusing a chemical test.

²⁷ *State v. Hosaka*, 148 Hawai'i 252, 260, 472 P.3d 19, 27 (2020).

271. As a direct and proximate result, the Named Plaintiffs have suffered violations of their statutory rights; harm to reputation and standing in the community; emotional distress, humiliation, and embarrassment; and ongoing fear, distrust, and anxiety about future encounters with HPD.

272. Officer Defendants were at all relevant times acting within the scope of their employment with the City.

273. These inadequate implied consent advisements were made pursuant to and are the direct, foreseeable, and natural result of the City's and Chief Logan's continuing policy, practice, and custom of authorizing HPD officers to arrest drivers for OVUII without lawful justification.

274. Other HPD officers have, under the same ongoing policy and practice, already detained and/or restrained unnamed Class Members without lawful justification and will continue to do so unless enjoined.

275. Both the Named Plaintiffs and the Class remain at imminent risk of re-arrest under these unlawful practices.

276. Plaintiffs and the Class are therefore entitled to declaratory relief, injunctive relief, and reasonable attorneys' fees and costs for these violations.

FOURTH CLAIM FOR RELIEF
Common Law False Arrest and False Imprisonment

277. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

278. Under Hawai'i law, false arrest and false imprisonment each require "(1) the detention or restraint of one against his [or her] will, and (2) the unlawfulness of such detention

or restraint.”²⁸

279. Officer Defendants handcuffed and arrested Named Plaintiffs, thereby detaining and restraining them against their will.

280. Those detentions and restraints were unlawful because they were effected without probable cause.

281. Officer Defendants acted intentionally, maliciously, or with reckless disregard for Plaintiffs’ right to be free from false arrest and imprisonment.

282. As a direct and proximate result, the Named Plaintiffs have suffered violations of their constitutional rights; harm to reputation and standing in the community; emotional distress, humiliation, and embarrassment; and ongoing fear, distrust, and anxiety about future encounters with HPD.

283. Officer Defendants were at all relevant times acting within the scope of their employment with the City.

284. These unlawful detentions and restraints were made pursuant to and are the direct, foreseeable, and natural result of the City’s and Chief Logan’s continuing policy, practice, and custom of authorizing HPD officers to arrest drivers for OVUII without lawful justification.

285. Other HPD officers have, under the same ongoing policy and practice, already detained and/or restrained unnamed Class Members without lawful justification, and will continue to do so unless enjoined.

286. Both the Named Plaintiffs and the Class remain at imminent risk of re-arrest under these unlawful practices.

²⁸ *Reed v. City & Cnty. of Honolulu*, 76 Haw. 219, 230, 873 P.2d 98, 109 (1994) (citation omitted).

287. Plaintiffs and the Class are therefore entitled to declaratory relief, injunctive relief, and reasonable attorneys' fees and costs for these violations.

FIFTH CLAIM FOR RELIEF
Negligence

288. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth.

289. Officer Defendants owed a duty to Named Plaintiffs and the Class to exercise reasonable care in investigating and enforcing the OVUII laws, including to ensure arrests are based on probable cause and accompanied by due process.

290. They breached that duty by arresting Named Plaintiffs for OVUII in violation of their constitutional rights, and by adopting and maintaining the unlawful arrest practices described above.

291. Officer Defendants acted negligently, intentionally, maliciously, or with reckless disregard for Plaintiffs' rights.

292. As a direct and proximate result, the Named Plaintiffs have suffered violations of their constitutional and other rights; harm to reputation and standing in the community; emotional distress, humiliation, and embarrassment; and ongoing fear, distrust, and anxiety about future encounters with HPD.

293. Officer Defendants were at all relevant times acting within the scope of their employment with the City.

294. These unlawful arrests and/or seizures were made pursuant to and are the direct, foreseeable, and natural result of the City's and Chief Logan's continuing policy, practice, and custom of authorizing HPD officers to arrest drivers for OVUII in violation of constitutional and other rights.

295. Other HPD officers have, under the same ongoing policy and practice, violated constitutional and other rights, and will continue to do so unless enjoined.

296. Both the Named Plaintiffs and the Class remain at imminent risk of further rights violations.

297. Plaintiffs and the Class are therefore entitled to declaratory relief, injunctive relief, and reasonable attorneys' fees and costs for these violations.

SIXTH CLAIM FOR RELIEF
Negligent Training, Supervision, and Disciplining
(Against City and Logan)

298. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth.

299. The City and Chief Logan owed a duty to Plaintiffs and the Class to adequately train, supervise, and discipline HPD officers in constitutional and statutory requirements for OVUII investigations and arrests, including how to lawfully determine probable cause.

300. They breached that duty by failing to adequately train, supervise, discipline, and otherwise oversee their officers, including Officer Defendants, to prevent unconstitutional and unlawful arrests and seizures.

301. As a direct and proximate result of these training/supervision/disciplining failures, HPD officers—inadequately trained, supervised, and disciplined—continued to effectuate OVUII arrests without probable cause or due process, causing the harms alleged above.

302. The Class remains at imminent risk of similar injury.

303. Plaintiffs and the Class are entitled to declaratory relief, injunctive relief, and reasonable attorneys' fees and costs for these violations.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

304. Enter a judgment in Plaintiffs' favor on each count of the Complaint;

305. Issue a declaratory judgment under HRS § 632-1 that the City/HPD, HPD Chief Logan, and Officer Defendants:

- a. Violated the rights of Plaintiffs and Class Members under Article I, Sections 5 and 7 of the Hawai'i Constitution;
- b. Violated Plaintiffs' and Class Members' rights under Hawai'i common law, including false arrest, false imprisonment, negligence, and negligent training and supervision; and
- c. Violated HRS § 291E-11 and 15 (implied consent).

306. Enter a permanent injunction against the City (and its divisions, officers, employees, agents successors, and all persons acting in concert) that:

- a. Prohibits OVUII arrests without probable cause and due process.
- b. Requires creation, implementation, and enforcement of policies, practices, procedures, trainings, and supervision to ensure future compliance with Article I, Sections 5 and 7 of the Hawai'i Constitution.
- c. Directs the City to expunge any and all criminal and/or arrest records of Named Plaintiffs and Class Members that resulted from or will result from Defendants' unconstitutional and illegal OVUII arrests.

307. Retain jurisdiction to ensure full implementation of relief until the Court is satisfied that the City's unlawful policies, practices, and customs have been eliminated and will not recur.

308. Award reasonable attorneys' fees, costs, and other expenditures incurred as a result of bringing this action, under applicable law.

309. Grant further relief as the Court may deem just and proper.

DATED: May 29, 2025

Respectfully submitted,

/s/ Jongwook "Wookie" Kim
JONGWOOK "WOOKIE" KIM
EMILY HILLS
ACLU OF HAWAI'I FOUNDATION

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AMMON FEPULEAI, SARAH POPPINGA, and
TANNER PANGAN

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

AMMON FEPULEAI, SARAH POPPINGA, and
TANNER PANGAN, on behalf of themselves and
others similarly situated,

Plaintiffs,

vs.

CITY AND COUNTY OF HONOLULU,
ARTHUR J. LOGAN, DARREN CACHOLA,
DALLAS PAUU, DAVID FERREIRA, RIDGE
NEWCOM, JACOB BRINDLEY, DRAE MOON,
KELSEY MESSMER, AND DOE
DEFENDANTS 1-10,

Defendants.

Case No.
(Declaratory Judgment)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiffs AMMON FEPULEAI, SARAH POPPINGA, and TANNER PANGAN, by and
through their undersigned counsel, hereby demands a jury trial as to all issues so triable.

DATED: Honolulu, Hawai‘i, May 29, 2025

Respectfully submitted,

/s/ Jongwook “Wookie” Kim
JONGWOOK “WOOKIE” KIM
EMILY HILLS
ACLU OF HAWAI‘I FOUNDATION

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AMMON FEPULEAI, SARAH POPPINGA, and
TANNER PANGAN