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Council Services Division
4396 Rice Street, Suite 206
Lihue, Kauai, Hawaii 96766

13 APR -9 P2:28

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

NOTICE OF CLAIM AGAINST THE COUNTY OF KAUAI
and Declaration in Support of Claim

Upon completion of this form, please mail or deliver to:

County Clerk, County of Kauai
4396 Rice Street, Suite 206
Lihue, Hawaii 96766

Please note that this form must be notarized.

The undersigned hereby submits a claim against the County of Kauai. The pertinent information is as follows:

Claimant information:

Name Ron Rawls

Address c/o Hempey & Meyers LLP, 3175 Elua Street,
Suite C, Lihue, HI 96766

Home phone _____

Business phone (808) 632-2444

Information regarding incident: *Please see attached Declaration in Support of Claim.*

1) Date of incident _____

2) Time of incident _____

3) Place of incident _____

4) Please describe fully how the incident or accident occurred.

Please see attached Declaration in Support of Claim

5) **Extent of damages or loss:** Please describe the nature and extent of damages, loss or injury.

Please see attached Declaration in Support of Claim.

6) **Amount of claim:** *Please see attached Declaration in Support of Claim.*

Please list any documents which verify the amount of damages (for example, receipts, estimates, invoices, medical bills). Please **attach** these documents to this form.

- a) _____
- b) _____
- c) _____
- d) _____
- e) _____

7) **Photographs:** If you have photographs showing the damages, loss, or injury, please attach those photographs.

8) **Witnesses:** If there were any witnesses or any other person who has personal knowledge of the incident, please identify them. Please provide their names, addresses, and phone numbers. *Please see attached Declaration in Support of Claim*

- a) _____
- b) _____
- c) _____
- d) _____

9) **Police report:** *N/A*

- a) Did you file a police report? _____
- b) When did you file it? (date and time) _____

10) **Report to other county official:** *Please see attached Declaration in Support of claim*

a) Did you report this incident to any other County official or employee? _____

b) If so, to whom did you report it and when? _____

11) **Damages to automobile:** *N/A* If you are claiming for damages to an automobile, please answer the following:

a) Vehicle information: _____

Make, model, and year: _____

License plate number: _____

b) Who is the registered owner of the vehicle?

Please **attach** a copy of your latest automobile registration.

c) Who is the legal owner of the vehicle? _____

d) Name of driver: _____

e) Names of passengers: _____

f) Name of automobile insurance carrier:

Have you filed a claim with your insurance carrier? _____

Did you receive compensation from your insurance carrier? _____

If so, what amount did you receive? _____

g) **Estimates:** Please attach two estimates for repair of the damages to your vehicle.

12) **Certification:** I hereby state that all of the above information and related attachments are true and correct.

DATED: Lihue HI, April 9, 2013

D. Hempey
Claimant's Attorney

STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

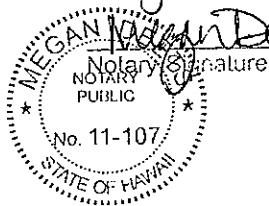
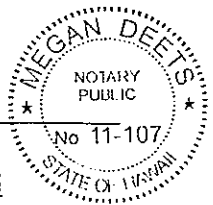
On this 9th day of April, 2013, before me personally appeared Daniel Hempey, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.

Doc Date: 4/9/2013 # Pages ^{two} 12

Notary Name: Megan Deets Fifth Judicial Circuit

Doc. Description Notice of Claim Against the County of Kauai and Declaration in Support of Claim

Megan Deets
Megan Deets
Notary Public, State of Hawai'i



Megan Deets 4/9/2013
Notary Signature Date

My commission expires: 4/10/2015

Ron Rawls – Declaration in Support of Claim

I was employed as a staff internal auditor in the Office of the County Auditor, County of Kauai.

On June 25, 2012, I filed a complaint alleging a hostile workplace and violations of State and County law involving corruption within the Office of the County Auditor. Since that time, I suffered illegal retaliation based on what and who I reported. I was forced to resign my employment, due to the actions taken against me, and the severe and pervasive hostile work environment that followed because I spoke out about illegal activity as well as ethics violations and misconduct in the Office.

I also spoke up about corruption and misconduct by County Auditor Ernie Pasion in relation to an audit of county fuel costs, and I also suffered retaliation because of this. More specifically, in August 2010, I was assigned to conduct an audit of county fuel costs, including controls designed to ensure that fuel usage is authorized and limited to valid county business purposes. During this audit, I discovered that the county's Mayor, Bernard Carvalho, may have inappropriately used county fuel in his private car for personal use purposes and I immediately reported this to Auditor Pasion. Auditor Pasion then contracted with the law firm of McCorrison Miller Mukai and MacKinnon LLP (hereinafter "McCorrison") who performed extended audit procedures in the form of investigations into the mayor's use of county fuel for personal use purposes and other suspected instances of fuel misuse by county employees.

Generally speaking, the purpose of the investigations was supposed to be an independent assessment of the various facts and circumstances surrounding the appearance of fuel use/misuse, with the goal of determining whether illegal acts or fraud had likely occurred.

The results of the McCorrison-led investigations were memorialized in two reports; one regarding the mayor's use of fuel and the other regarding a parks employee's alleged misappropriation of fuel. At the outset, I note that McCorrison's May 1, 2012 report regarding the mayor's use of fuel concludes that the mayor may or may not have possessed the *mens rea* required to support a criminal case against him. The McCorrison report also recommended referral to law enforcement (in this case, the state's Attorney General) if the County Council decided to seek further investigation into the lack of *mens rea* problem.

Auditor Pasion submitted a summary report to the County Council based on McCorrison's May 1, 2012 report. Prior to providing McCorrison report to the Council, however, Auditor Pasion and I met with the (then) Prosecuting Attorney, Shaylene Iseri-Carvalho. At the meeting, Auditor Pasion and Prosecuting Attorney Iseri-Carvalho decided to withhold from the County Council the portion of the investigators' report which indicated that the mayor may have lacked *mens rea* as to a potential criminal offense. Thus the report that was provided to the Council had important evidence of innocence removed, before the Council was briefed. I voiced my opposition to this decision to both Auditor Pasion and (then) Prosecuting Attorney, Iseri-Carvalho.

Because I disagreed with the decision to withhold this information from the report I formally communicated my concerns to Auditor Pasion in an email message (which I sent to Auditor Pasion at 1:24 p.m. on June 5, 2012). In particular, I communicated to Auditor Pasion that I felt that the councilmembers should be provided with *all* significant information pertaining to the investigation, including the investigators' findings regarding the mayor's possible (lawful) rationale for using county fuel in his private vehicle and the difficulty with lack of evidence regarding criminal intent. Nonetheless, Auditor Pasion removed references to the potential lack of criminal intent from the summary report that he submitted to the County Council. I also note that Auditor Pasion also declined to provide the councilmembers with full version copies of the McCorriston report, which delineates the lack of *mens rea* problem.

I believe the intentional omission of potentially significant information from Auditor Pasion's report was an effort to manipulate the Council's decision regarding whether to refer this matter to law enforcement. I further believe that this was only one of a number of instances in which Auditor Pasion, along with Audit Manager Lani Nakazawa, violated government auditing standards (and hence violated legal requirements set forth in the county charter) relating to auditor independence, objectivity, impartiality, integrity and professional behavior in connection with the fuel costs audit investigations.

During the course of the fuel costs audit investigations, I often spoke out about these types of instances. For example, when Ms. Nakazawa provided me with her proposed draft of a memorandum addressed to Council Chair Jay Furfaro, dated December 15, 2010, claiming that "fraud had likely occurred," I spoke out against the use of word "likely" because I felt that we did not have enough evidence to support that contention. Rather, I recommended softening the wording to "fraud *may* have occurred." However, Auditor Pasion and Ms. Nakazawa declined to change the wording (i.e., from "likely" to "may"). It is important to note that the wording "fraud has likely occurred" was intentionally used by Auditor Pasion in the December 15, 2010 memorandum in order to provide him with an avenue to directly report the mayor's possible misappropriation of county fuel to the Office of the Prosecuting Attorney.

From the early stages of the audit and investigations, it was clear to me that Auditor Pasion, Audit Manager Lani Nakazawa and Prosecuting Attorney Iseri-Carvalho wanted the mayor's fuel use matter referred for criminal prosecution. By contrast, I simply tried to ensure conformity with county charter-required government auditing standards and to be a "voice of reason" and impartiality throughout the fuel audit and investigation process. This often put me at odds with Auditor Pasion.

In November 2010, during the course of the same fuel costs audit, information came to my attention that a number of county employees were using county-owned vehicles on a take home basis. Since county-purchased fuel was likely used by these employees for commuting and other personal use purposes, investigating this possible misuse of fuel clearly fell within the scope of my fuel costs audit. State law required that I look into all

people who may have been misappropriating fuel, as a part of such a fuel-use audit – not just they Mayor.

HRS, Division 1, Title 9, Chapter 105, Sections 105-1 through 105-5, provides that it is unlawful for any county employee to use a county-owned vehicle for personal use, including commuting. Penalties for violating section 105-1 include a fine (up to \$50) and/or imprisonment (up to 10 days). In addition to the statutory restrictions, I found that the county has a policy prohibiting unauthorized use of county-owned vehicles dating back to November 2002. The policy was prepared in order to ensure compliance with the aforementioned state law.

On August 4, 2011, before the McCorriston-led investigations commenced, the Office of the County Auditor received a written allegation from an anonymous person asserting that the (then) elected Prosecuting Attorney and her First Deputy Prosecuting Attorney were routinely using county-owned vehicles for personal use purposes, including commuting, daily errands and the like. The use of county-owned vehicles and fuel by the prosecuting attorney and her first deputy was substantiated and was quite analogous to the situation involving the mayor's alleged unauthorized use of county fuel.

I reported my findings and the possibility that the Prosecuting Attorney had engaged in illegal fuel use to Auditor Pasion. I strongly advocated that the information that we had already gathered regarding the possible unauthorized use of county-owned vehicles and fuel by county employees (including the prosecuting attorney and her first deputy) should be provided to the McCorriston investigators for their review and consideration. Auditor Pasion objected.

However, shortly before entering a meeting with the investigators at the McCorriston offices in Honolulu in mid-August 2011, I was able to persuade Auditor Pasion to allow me to provide the anonymous allegation letter and other information regarding "take home vehicle" use to the investigators. At the meeting, the investigators immediately recognized that the possible unauthorized use of county vehicles and fuel by the Prosecuting Attorney, her first deputy, and multiple other county employees needed to be fully investigated in conjunction with the investigation of possible unauthorized use of fuel by the mayor. The investigators were unequivocal in their position and cited the likelihood of serious prosecutorial problems arising from the appearance of "selective prosecution" if different audit/investigation standards were applied to different individuals.

Nonetheless, in early-September 2011, Auditor Pasion contacted the McCorriston investigators and directed them to focus their efforts first on investigating the possible misuse of fuel by the mayor and, secondly, on a parks department employee who appeared to have misappropriated gasoline by way of county 5-gallon gas cans. The same month, Auditor Pasion specifically directed the investigators to not investigate the use of fuel by any other employees, including the prosecuting attorney and her first deputy.

It was clear to me that Auditor Pasion was trying to quash or postpone indefinitely any investigation into possible unauthorized use of county-purchased fuel (and a county-owned vehicle) by the Prosecuting Attorney – in violation of the scope of the audit and in violation of State and County law.

I have also come to learn that Mr. Pasion is a close political ally of the former Prosecuting Attorney. On the contrary, I have observed that Auditor Pasion openly disdains and disparages Mayor Carvalho.

In late-April 2012, after receiving documents from the McCorriston investigations into the mayor's unauthorized use of fuel and the parks employee's possible misappropriation of fuel, I discussed the take home vehicles and fuel use/misuse matter with Auditor Pasion.

I believed that Auditor Pasion was knowingly failing to perform his duties, which are inherent in the nature of the Office of the Auditor, as defined in the county charter. In April 2012, I spoke up about this misconduct and I openly recommended that Auditor Pasion recuse himself from further involvement in the take home vehicles investigation. I also confronted him at that time with a report that he had engaged in illegal quid pro quo dealings with the Prosecuting Attorney.

On May 10, 2012, I formally recommended that Auditor Pasion "self-assess" his ability to maintain auditor independence with respect to the take home vehicles audit/investigation matter and that he consider recusing himself from further involvement. In response, Auditor Pasion lashed out at me.

Auditor Pasion then retaliated against me by excluding me from any further involvement in the take home vehicles matter. In particular, he re-assigned the take home vehicles audit/investigation to Ms. Iwasaki and he ordered me to turn over all of my papers relating to the take home vehicles matter to Ms. Iwasaki.

Auditor Pasion further subjected me to various forms of unlawful retaliation for my role in uncovering/revealing possible illegal activity by the prosecuting attorney and her first deputy, even though investigating and discovering this information was part of my job responsibilities.

Among other things, Auditor Pasion encouraged the auditing staff to stop speaking to me about anything but the most-essential work matters. He and/or the auditing staff began having daily, multiple and secretive closed door meetings at work, and all of these meetings specifically excluded me. He also hid my other fuel costs audit workpaper files in a locked file cabinet drawer (without telling me) and he directed Ms. Iwasaki to take control of the file cabinet key – so that I could not access the key or the contents of the office file cabinet.

On June 5, 2012, Auditor Pasion called for an impromptu staff meeting in which Auditor Pasion and Ms. Nakazawa ridiculed me with false accusations about the quality and

timeliness of my work. This was done in the presence of my co-worker, Ms. Iwasaki. At least three times during the meeting I told Auditor Pasion that I felt that his and Ms. Nakazawa's comments and attacking tone, as well as the subject matter (i.e., my work performance) were inappropriate for an open staff meeting and I asked him to stop it. He declined each of my requests to stop the verbal attacks.

The June 5, 2012 impromptu staff meeting was held at approximately 2:30 p.m., which was approximately one hour after I submitted the aforementioned email to Auditor Pasion citing my disagreement with his decision to omit significant information from the proposed audit report to the council regarding the investigation into the mayor's use of fuel.

It should also be noted that, in the moments immediately prior to the June 5th staff meeting, Auditor Pasion held a closed door meeting with Ms. Nakazawa and Ms. Iwasaki.

Between June 5th and June 25th, Auditor Pasion subjected my cash management audit different standards than were applied to audits conducted by my coworkers.

On June 25, 2012, I filed a complaint alleging a hostile workplace and corruption within the Office of the County Auditor. Shortly thereafter, I was offered a workspace in a separate building.

Even though I was physically located in a separate workspace, I was ready, willing and able to conduct audits as required by my job description. In July 2012, Auditor Pasion assigned me to work on an audit of parks maintenance and improvement activities, for which I promptly began performing background research (a normal audit planning phase activity).

However, beginning in early-August 2012, Ms. Pasion began taking my assignments away from me without any explanation or logical reason. More specifically:

- On August 8, Auditor Pasion re-assigned the remaining portion of my responsibility for the fuel costs audit to Ms. Iwasaki. Auditor Pasion offered no explanation for this change.
- On August 10, 2012, I submitted a detailed, seven page audit "scoping statement" to Auditor Pasion, which provided an overall framework for a proposed audit of the county parks department maintenance and improvement activities. However, instead of reviewing and approving the scoping statement as he normally does, Auditor Pasion inexplicably declined to allow me to proceed with any meaningful work on this audit. By late-September 2012, this audit completely "stalled out" when Auditor Pasion discontinued all contact with me regarding this assignment.

As a result of these actions, I was no longer allowed to work on meaningful audit assignments. In short, I was denied virtually all opportunity to do my job.

Also in August 2012, Auditor Pasion sent Ms. Nakazawa and Ms. Iwasaki to a three day national governmental accounting and auditing training conference in San Diego, California. I was not told about this conference nor was I allowed to attend an alternative training conference, as normally would have been the case. I was denied this in retaliation for my insisting that the Council be provided with evidence of the Mayor's potential innocence as well as guilt, and for my suggestion that the audit also cover allegedly similar fuel misuse by the Prosecuting Attorney, the auditor's political ally.

On August 30, 2012, I formally reported the ongoing retaliation by my supervisor against me to the County Council, as well as the county's Human Resources department and the Office of the County Attorney. I reported that the retaliation was having an adverse impact on my ability to do my job and I requested that immediate action be taken to stop the retaliation. (Note: The council hired an investigator in September 2012, but this action did not stop the retaliation.)

Between September 2012 and November 2012, the retaliation continued and I reported it to the council's investigator. For example, I reported that my responsibility as the Office's liaison with the external CPA firm that performed the annual financial statement audit of the county's comprehensive annual financial report (CAFR) was taken away from me without any notice. A representative from the audit engagement partner for the CPA firm told me that Auditor Pasion had informed the firm something to the effect that "Ron Rawls no longer works for the Office of the Auditor" and that all communications between the CPA firm and the Office of the Auditor should be directed to Auditor Pasion.

To my knowledge, the council's investigator provided substantial documentation regarding the retaliation to the County Council in mid-November 2012. Again, however, no discernible action was taken to stop the retaliation.

Consequently, I was left sitting in a small windowless office with no audit work assignments from mid-August 2012 through my last day of work, on January 7, 2013. These working conditions and the continuing retaliation and hostile work environment became so intolerable that I felt I had been constructively discharged from my employment.

Thus, I have lost, at a minimum, the following money and income due directly to Mr. Pasion's unlawful retaliation:

Increase in monthly expenses:

Expense Category	Kaua'i	Oahu	Net Increase in Monthly Expenses
Rent	\$ 850	\$ 1,850	\$ 1,000
Utilities: Electricity and Cable TV	0	150	150
Parking at state parking garage	0	50	50
Groceries, household items	160	260	100

Meals out	200	280	80
Inter-island flights	0	220	220
Cab fares to/from HNL or parking at HNL	0	80	80
Golf	60	180	120
Total			\$ 1,800

On average, my general living costs in Honolulu are approximately \$1,800 per month more than my cost of living on Kauai. This equates to \$21,600 per year. I have nine working years remaining before my planned retirement age of 65, and therefore the projected additional cost for me to live and work in Honolulu until I reach retirement age is \$194,400.

In addition, I believe my future earnings potential has been significantly damaged. As an auditor for the Office of the Auditor on Kaua'i, I was the likely candidate to advance into the audit manager position after Lani Nakazawa retired. And I was a likely candidate to be selected for the county auditor position upon Mr. Pasion's retirement. The annual salary for the county's audit manager position is currently \$103,000 per year and the annual salary for the county auditor position is nearly \$115,000 per year, whereas my current annual salary as an audit manager for the Office of the State Auditor in Honolulu is \$91,000. Therefore, I have lost additional future earnings potential in the amount of \$12,000 to \$24,000 per year. Using \$18,000 per year as an average, this equates to an additional \$162,000.

Together, my lost earnings potential and the additional cost of living and working in Honolulu until retirement age can be reasonably projected to be \$356,400.

I am hereby making a claim against the County in this amount (\$356,400). As I incur attorney's fees to protect my right to work in a place that is free from illegal activity and retaliation for reporting the same, my demand my substantially increase. I am requesting that the County engage in dialogue with my attorney, Daniel Hempey, within 30 days of receiving this claim.

April 8, 2013



 Ron Rawls