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ERNESTO G. PASION

1ST CIRCUIT COURT
STATE OF HAWAII
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5TH CIRCUIT COURT
STATE OF HAWAII
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IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII

ERNESTO G. PASION,

Plaintiff,

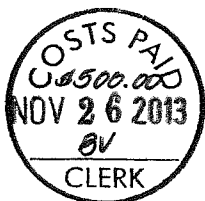
vs.

COUNTY OF KAUAI; JAY FURFARO;
JOHN DOES 1-10, JANE DOES 1-10,
DOE CORPORATIONS 1-10, and/or
OTHER DOE ENTITIES 1-10,

Defendants.

CIVIL NO. **13-1-0340**
(Other Civil Action)

**COMPLAINT; DEMAND FOR JURY
TRIAL; SUMMONS**



COMPLAINT

Plaintiff ERNESTO G. Pasion brings this Complaint against Defendants the COUNTY OF KAUAI; JAY FURFARO; and JOHN DOES 1-10; JANE DOES 1-10, DOE CORPORATIONS 1-10, AND DOE ENTITIES 1-10 and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff ERNESTO G. Pasion ("**Pasion**") is a citizen and resident of the County of Kauai, State of Hawaii.

2. Defendant COUNTY OF KAUAI (the "**County**") is a County and municipality of the State of Hawaii organized and empowered under the constitution and laws of the State of Hawaii, and the Kauai County Charter.

3. On information and belief, Defendant JAY FURFARO ("**Furfaro**") is a citizen and resident of the County of Kauai, State of Hawaii. Furfaro is the Chair of the County Council, and is sued in both his individual and official capacities. The County and Furfaro are, collectively, "**Defendants**".

4. All actions taken by Furfaro as alleged herein were done in the course and scope of his employment with the County, and as an agent for the County.

5. Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and/or OTHER DOE ENTITIES 1-10, are persons or entities whose identity is currently unknown to Pasion, but who may have acted in concert with or on behalf of the Defendants.

6. This Circuit Court has jurisdiction over this matter pursuant to Haw. Rev. Stat. §§ 378-63 & 603-21.5(a)(3).

7. The damages Pasion seeks in this case exceed the minimum jurisdictional requirements for claims brought in the Circuit Courts of the State of Hawaii, but the Circuit Court would have jurisdiction irrespective of the amount of damages.

8. Venue is proper in the Fifth Circuit pursuant to Haw. Rev. Stat. § 603-36 because the claims for relief arose in the Fifth Circuit of the State of Hawaii, that is, the County of Kauai, Island of Kauai, where Pasion lives and works as the Auditor of the County of Kauai, as alleged in detail below, and venue is also proper in the Fifth Circuit pursuant to Haw. Rev. Stat. § 378-63.

FACTUAL ALLEGATIONS

A. MR. PASION'S APPOINTMENT TO A SIX-YEAR TERM AS THE FIRST KAUAI COUNTY AUDITOR

9. In November 2008, the voters in the County of Kauai General Election overwhelmingly approved an amendment to the County of Kauai Charter ("**Charter**") to establish the Office of the County Auditor.

10. Following voter approval, the Charter was subsequently amended to establish the Office of the County Auditor.

11. Section 32.01 of the Charter, titled "Office Established; County Auditor" now provides:

A. There is established within the legislative branch an office of the county auditor, to be headed by a county auditor who shall be appointed by the county council and shall serve for a period of six years, and thereafter, until a successor is appointed. The salary commission shall fix the salary of the county auditor. The county council, by two-thirds vote of its membership, may remove the county auditor from office at any time for cause.

B. The county auditor shall possess adequate professional proficiency for the office, demonstrated by relevant certification, such as a certification as a certified internal auditor or a certified public accountant or have an advanced degree in a relevant field with at least five years experience in the field of government auditing, evaluation, or analysis. A certified internal auditor or certified public accountant shall be preferred. The county auditor shall have a bachelor's degree in accounting, business

administration, or public administration or related field. If financial statement audits are conducted, the county auditor shall be a certified public accountant.

12. Through a merit-based application process, the County Council deemed Pasion the most qualified applicant as the County Auditor to head the newly established Office of the County Auditor.

13. On or about September 16, 2009, the County Council unanimously appointed Pasion as the Kauai County Auditor.

14. Pursuant to Section 32.01(A) of the Charter, Mr. Pasion was appointed to serve a six-year term, and then thereafter until a successor is appointed.

15. Pasion began his tenure as County Auditor by selecting staff for the Office of the County Auditor after objectively considering the education, skills, and professional experiences of each applicant.

16. Pasion ultimately hired an Audit Manager, a Staff Auditor, an Audit Analyst, and a Program Support Technician.

17. Since his appointment, Pasion has dutifully served the Office, the County, and the people of Kauai as the County Auditor.

18. In fact, earlier this year, the Independent Association of Local Government Auditors conducted a peer review of the Auditor's Office, finding not only that the County Auditor conducted work in full compliance with Government Auditing Standards for the period of January 1, 2011 through December 31, 2012, but noting this accomplishment given the Auditor's Office is in its infancy.

19. In his reviews, when the Council conducted them, Pasion received excellent marks.

20. Pasion leads the Auditor's Office in the conducting of performance audits of county funds, programs, and operations.

21. The Auditor's Office is administratively organized under the legislative branch of the County of Kauai.

22. Pasion's "employer" is the County, which acts through the Kauai County Council ("**Council**") (as the Council has the power of appointment and removal, with cause, and with a 2/3 vote).

23. Although the Auditor's Office is part of the legislative branch, the Charter reflects the importance of an independent and politically neutral auditor's office, and provides that the Auditor shall conduct or cause to be conducted "Performance and financial audits of the funds, programs, and operations of any agency or operation of the county, as

determined by the county auditor to be warranted." Charter, § 32.02(A)(3).

24. In connection therewith, the audit plan is "transmitted to the county council for review and comment, but not approval." Id.

B. PASION'S STATUTORILY PROTECTED REPORTING ACTIVITIES

25. In the audit plan for FY2010, the Auditor's Office included a certain performance audit, in which the Auditor's Office would analyze County fuel costs, consumption, and management to identify issues, and give recommendations regarding things such as increased efficiency ("**Fuel Audit**").

26. In August 2010, as part of the Fuel Audit, the Staff Auditor reviewed the Transportation Agency's procedures for verifying fuel purchase charges and invoices received from the Kauai Automated Fuel Network.

27. The Staff Auditor's review revealed, among other things, that a certain high elected Official ("**Official A**") used a County gas card assigned to a seldom-used Transportation Agency vehicle to purchase gas for Official A's private vehicle. This meant that Official A was using County resources and taxpayers' monies for what appeared to be a personal purpose.

28. Pasion was very concerned that Official A's conduct could be and was a violation of law.

29. Accordingly, in response to the Fuel Audit preliminary review findings generally, and this suspected violation of law specifically, the Auditor's Office prepared a 2010 Memorandum to the Kauai County Council ("**2010 Memo**").

30. In that 2010 Memo, Pasion reported to the Council suspected violations of law pursuant to the County Auditor's procedures, including as to Official A, and for the Council to conduct a further investigation, or to otherwise act in accordance with the law.

31. In or around January 2011, Council Chair and Defendant Furfaro purported to agree that the fuel irregularities uncovered during the preliminary Fuel Audit review warranted further investigation, and that the Auditor's Office should conduct that investigation.

32. After this authorization, Pasion engaged external consultants for that purpose ("**Investigators**").

33. The Investigators conducted an investigation into County fuel use irregularities as first uncovered in the beginning stages of the Fuel Audit.

34. That investigation included, among other things, interviewing County employees, including Official A.

35. Official A, who was represented by the County Attorney Alfred B. Castillo, Jr. ("**County Attorney**") during that interview, invoked his rights under the Fifth Amendment of the

United States Constitution and refused to answer any questions from the Investigators, purportedly because truthful answers would have tended to or actually incriminate him. Another County employee, also represented by the County Attorney, also refused to answer certain questions, invoking that employee's rights under the Fifth Amendment of the United States Constitution.

36. Because Official A invoked Official A's Fifth Amendment rights, Official A offered neither justification nor excuse for Official A's use of the gas card for Official A's personal vehicle, nor did Official A claim the use of the gas card was lawful or for a County purpose.

37. In or around May 2012, the Investigators concluded their investigation, and transmitted their report and recommendations to the Auditor's Office, including underlying source documents from their investigation, such as the identities and transcripts of interviews the Investigators conducted of certain County employees.

38. Working with the Investigators, on or about June 12, 2012, Pasion, as the County Auditor, sent a Fuel Audit memorandum to the Council ("**2012 Memo**").

39. The Investigators confirmed that Pasion was correct in suspecting that Official A's conduct could constitute a violation of law such that it should be reported to law enforcement - such that the matter should go to law enforcement for a determination of whether the conduct violated the criminal laws of the State of Hawaii, and if so, whether Official A should be prosecuted.

40. Thus, in the 2012 Memo, Pasion discussed certain of the facts that were uncovered during the Fuel Audit, and based on the facts uncovered, Mr. Pasion reported to the Council suspected violations of law, writing (highlighted by an underline):

Before any criminal liability can be concluded with certainty, further investigation is needed. Law enforcement authorities are equipped with the necessary investigative and subpoena power to accomplish this task. Accordingly, the external [I]nvestigators recommend that this matter be referred to law enforcement authorities for further investigation and determination of any criminal liability.

41. Pasion concluded the 2012 Memo with the following "Recommendation":

Given the external [I]nvestigators' recommendation, this matter should be referred to law enforcement for further investigation without delay. Accordingly, we recommend that the County Council refer this matter to law enforcement *within two weeks of the date of this memorandum...*

42. On or about June 28, 2012, Pasion and David Minkin, Esq. briefed the Council in an executive session regarding the Fuel Audit.

43. During that session, the Council voted to request that the Hawaii State Attorney General take jurisdiction over the matter.

44. Pasion also reported the suspected violations of law by Official A to law enforcement - specifically, the Attorney General for the State of Hawaii.

45. The Kauai Police Department ("**KPD**") later also opened its own investigation.

46. In or about October 2012, in connection with its investigation, KPD subpoenaed the Auditor's Office for all documents related to the Fuel Audit.

47. Pasion directed his office to comply with the subpoena, and turned those documents over to KPD.

48. On information and belief, Furfaro and Official A are political allies.

49. On information and belief, Furfaro retaliated against Pasion as alleged herein because of Pasion's statutorily protected reporting activities, including due to the political alliance between Furfaro and Official A, and possible other relationships between the two.

**C. THE COUNTY AND FURFARO'S RETALIATION AGAINST PASION BECAUSE
OF PASION'S STATUTORILY-PROTECTED REPORTING OF OFFICIAL A'S
SUSPECTED VIOLATIONS OF LAW**

50. After Pasion reported the suspected violations of law by Official A to Pasion's employer and to law enforcement, and because of those statutorily-protected reporting activities, the County and Furfaro began a pattern of adverse employment actions against Pasion, including but not limited to: harassment; refusing to afford Pasion special counsel with respect to the Staff Auditor (as alleged below); intentionally impeding Pasion from being able to do his job as the County Auditor; seizing, removing, and copying all computers in the Auditor's Office; making numerous arbitrary demands that cost Pasion a significant amount of time and money to respond to; outright threats by Furfaro that he would "discipline" Pasion, including by "terminating" him; actual "discipline" by the Council - including suspension and placement on "probation"; and continual and continuing threats by Furfaro and the County to terminate Pasion.

**i. The Staff Auditor's Termination And The County
And Furfaro's Subsequent Use Of The Staff Auditor
For Pretextual Retaliation Against Pasion**

51. In 2012, the Staff Auditor's conduct towards Mr. Pasion and towards his fellow employees had deteriorated.

52. Overall, the Staff Auditor had become antagonistic and difficult to work with.

53. In or around April and May 2012, both the Audit Manager and the Audit Analyst filed complaints against the Staff Auditor for his discriminatory conduct against them, which included threatening to slap the Audit Analyst.

54. In early June 2012, Pasion determined that the Staff Auditor's conduct warranted his dismissal.

55. Pasion informed Furfaro of the pending termination, including by providing Furfaro with a copy of the termination letter to the Staff Auditor.

56. Just before Pasion could terminate the Staff Auditor, however, the Staff Auditor apparently filed a complaint against the Auditor's Office with the County Council, Personnel Services Department and the Office of the County Attorney ("**Complaint**").

57. Accordingly, on or about June 29, 2012, Pasion requested special counsel from the County Attorney to represent the Auditor's Office with respect to the Staff Auditor's Complaint.

58. The County Attorney did not and to date has never provided the County Auditor's Office with any special counsel.

59. On information and belief, the County took no action with respect to investigating the complaints filed by the Audit Analyst or the Audit Manager against the Staff Auditor.

60. However, the County did hire an external law firm to conduct an "investigation" of the Staff Auditor's Complaint ("**Firm**").

61. Throughout the process, the County denied Pasion (as the County Auditor)/the Auditor's Office any special counsel to provide advice and counsel with respect to the Firm's investigation.

62. The Firm's investigation resulted in a November 9, 2012 "Report" that addressed two limited questions regarding the Staff Auditor's Complaint: (i) whether the Staff Auditor had discussed certain concerns regarding the Auditor's Office; and (ii) whether he had been retaliated against as a result.

63. On or about January 7, 2013, the Staff Auditor resigned.

64. Despite the Staff Auditor's resignation, the County and Furfaro used the Report as pretext to harass Pasion and attempt to terminate him.

65. On or about May 3, 2013, the County's external attorney sent Pasion a letter ("**May 2013 Letter**").

66. In the May 2013 Letter, that external attorney made a series of proposed "findings," and stated that based on those findings, that external attorney would recommend to the Council that it should or could terminate Pasion, purportedly based on the Report. Pasion was invited to respond, and told

that such a response would or could be his only opportunity to do so.

67. Those proposed "findings", however, did not even address the subject of the Report - let alone somehow relate to the Report.

68. Instead, the May 2013 Letter was clearly pretext to unlawfully terminate Pasion (and at the least to unlawfully require Pasion to expend time and money to respond to pretextual "proposed findings") because Pasion reported suspected violations of law by Official A uncovered during the Fuel Audit to the Council and to law enforcement.

69. For example, in the May 2013 Letter, the external attorney would recommend the Council fire Pasion based on an unsupported "proposed finding" that Pasion "does not possess 'adequate professional proficiency for the office' of County Auditor."

70. Contrary to this "proposed finding," Pasion has the requisite bachelor's degree in a field related to accounting and business administration, an advanced degree in a relevant field (a Master in Business Administration, General Management), well over the minimum five years of experience in the field of government evaluation and analysis in his prior role as Deputy County Clerk, Pasion was unanimously appointed by the Council as Auditor after a rigorous merit-based selection process over four

years ago, and the Council's own reviews of Pasion's work as Auditor reinforce the sufficiency of Pasion's professional qualifications, as the Council, when it performed them, consistently gave Pasion positive annual reviews.

71. That the Council would threaten to fire Pasion based on this "finding" that directly contradicts the Council's own unanimous selection of Pasion as the most qualified applicant to serve as Auditor, that directly contradicts the Council's subsequent repeated determinations that Pasion has performed his job as County Auditor during the course of the past three years, clearly shows the County and Furfaro prepared the May 2013 Letter as pretext to illegally terminate Pasion.

72. In fact, as part of those "findings," the external attorney (on behalf of Defendants) discussed Pasion's reporting to the Council and to law enforcement that Pasion suspected Official A had violated the law by "engag[ing] in acts that are likely fraud, illegal or abuse." The external attorney (on behalf of Defendants) explicitly wrote to Pasion that for doing so, Pasion engaged in "misconduct" that "justifies his termination for cause."

73. Despite the pretextual purpose of the May 2013 Letter and numerous factual inaccuracies, Pasion expended significant time and money to provide a response, because of his fear that his failure to do so could result in Defendants having

the excuse they needed to terminate him. In his response, Pasion repeatedly pointed out that the ongoing retaliation against him was illegal, including in violation of Part V of Chapter 378 of the Hawaii Revised Statutes, the "Whistleblowers' Protection Act."

74. Notwithstanding the response, the illegal retaliation against Pasion did not stop.

ii. The County's Sudden Seizure And Copying Of The Auditor's Office Computers

75. Only days after sending Pasion the threatening and pretextual May 2013 Letter, the County - without notice or explanation to Pasion - seized and "cloned" all computers in the County Auditor's Office.

76. This seizure disrupted Pasion's ability to perform his job as County Auditor, and on information and belief, was done by the Defendants to obtain confidential information related to the Fuel Audit and the suspected violations of law by Official A uncovered during that audit. The seizure, like other actions of the Defendants, was illegal retaliation against Pasion by Defendants, because Pasion reported to the County, his employer, and reported to public bodies—including law enforcement—violations and suspected violations of law, including the laws of the State of Hawaii.

iii. Furfaro's Repeated Threats Against Pasion

77. Meanwhile, throughout 2013, Furfaro repeatedly demanded that Pasion turn over to Furfaro all underlying source documents related to the Fuel Audit, which included the identity and transcripts of witnesses (County employees) who were interviewed by the Investigators regarding Official A's irregular fuel use conduct, and "instructed" Pasion that he would be "disciplined" including "terminated" if he did not comply.

78. However, as alleged above, KPD had opened an investigation of Official A, subpoenaing all related documents, and issuing an instruction that the Auditor's Office keep them confidential.

79. Based on that instruction, as well as a fear of additional retaliation by Furfaro and by the County against employees who were interviewed by the Investigators regarding Official A's suspected violations of law, Pasion sought advice from the Hawaii State Office of Information ("**OIP**") regarding whether he should turn all source documents regarding the Fuel Audit over to Furfaro as he was demanding.

80. OIP confirmed that Pasion had the discretion to turn over such documents, but was not required to do so.

81. Furfaro continued to demand those documents and threatened to fire Pasion if he did not comply.

82. Again informing Furfaro of his concerns regarding potential retaliation against the testifying witnesses, Pasion provided those documents (under protest) to Furfaro. Pasion again wrote that these actions and demands against him were illegal, including in violation of the Whistleblowers' Protection Act.

iv. The Unconstitutional Executive Session To Fire Pasion

83. The adverse employment actions by Defendants against Pasion culminated in an unconstitutional Executive Session run by Furfaro to determine whether to terminate Pasion - without ever giving Pasion notice of any specific charges against him, let alone any evidence (if any) supporting those unknown charges, or the constitutionally necessary opportunity to respond after appropriate notice.

84. In fact, in response to Pasion's repeated requests for notice of the charges against him, and the evidence (if any) supporting those charges, in July 2013, the Council's external attorney transmitted a "document dump" of over 6,000 pages of documents, with no explanation as to their relevancy, and again no statement as to any purported charge or charges against Pasion upon which the Council was considering removing him.

85. In August 2013, the Council's external attorney also sent Pasion over fifty (50) questions to respond to prior to the Executive Session ("**August 2013 Questions**").

86. Notably, the Council did not acknowledge the lengthy response Pasion had provided to the Council's pretextual questions in the May 2013 Letter.

87. The August 2013 Questions, just like the May 2013 Letter, were clearly pretextual and intended to harass Pasion and require him to expend significant time and money to provide a response, which Pasion did. These actions, like the previous actions, constitute illegal retaliation against Pasion by Defendants because Pasion reported to the County, his employer, and reported to public bodies – including law enforcement – violations and suspected violations of law, including the laws of the State of Hawaii.

88. Again, like the May 2013 Letter, the August 2013 Questions were either factually incorrect, completely baseless or irrelevant, or concerned Pasion's statutorily-protected reporting activities – Pasion's reporting to the Council and to law enforcement that he was concerned that Official A had violated the law with respect to certain fuel use.

89. The Executive Session took place on September 16, 2013 ("**September Session**").

90. For almost two months after that September Session, Pasion did not receive any notice regarding whether the Council had even held the supposed vote to decide whether there is cause to terminate him.

91. In fact, the Council held multiple subsequent closed Executive Sessions regarding Pasion since that September Session.

92. During that time, Furfaro and the Council held the threat of termination over Pasion's head, disrupting Pasion's ability to fully perform his job as Auditor, and causing Pasion ongoing and severe emotional stress.

93. Then, on November 18, 2013, Pasion received a letter from the Council ("**November Letter**").

94. The November Letter notified Pasion that the Council was taking several adverse employment actions against Pasion, purportedly as "discipline."

95. The Charter does not give the Council the power to "discipline" Pasion.

96. Despite this lack of authority under the Charter, the Council took adverse employment actions against Pasion, which included: adding a reprimand and unidentified supporting documents to his personnel file; suspending Pasion from acting as the County Auditor for a period of one week; placing Pasion on "probation" for one hundred twenty (120) days; requiring an

evaluation at the end of Pasion's "probation period"; and requiring Pasion to report to a new "Audit Review Committee" on a quarterly basis.

97. These adverse employment actions and the November Letter are part of Defendants' ongoing retaliation against Pasion for his having reported suspected violations of law to the Council and to law enforcement with respect to certain findings uncovered during the Fuel Audit.

98. Consistent with Defendants' pattern of conduct, the November Letter contains purported findings of fact that are false, otherwise plainly pretextual, or explicitly based on Pasion's statutorily protected reporting activities.

99. Further, on information and belief, because Pasion reported Official A's suspected violations of law to law enforcement and to the Council uncovered during the Fuel Audit, the Auditor's Office budget has been slashed, and "Official A", supported by the County Council, eliminated the position of Staff Auditor, and the County Council further slashed the Auditor's Office outside forensic audit budget with a cumulative effect of over 32 percent. These actions, like the previous actions, constitute or may have constituted illegal retaliation against Pasion by Defendants because Pasion reported to the County, his employer, and reported to public bodies – including

law enforcement – violations and suspected violations of law, including the laws of the State of Hawaii.

100. Since Pasion reported his concerns that Official A may have violated the law to the Council and to law enforcement, Defendants' repeated and ongoing retaliation, harassment, and continued threats to fire Pasion have caused Pasion severe physical and emotional distress and injury, and have caused him to have to expend significant sums of money on an attorney to defend himself against the illegal retaliation and ongoing illegal threats of termination.

101. All of the illegal actions set forth above constitute illegal retaliation against Pasion by Defendants because Pasion reported to the County, his employer, and reported to public bodies – including law enforcement – violations and suspected violations of law, including the laws of the State of Hawaii.

CLAIMS FOR RELIEF

COUNT I

Hawaii Whistleblowers' Protection Act (Haw. Rev. Stat. Ch. 378)

102. Pasion re-alleges and incorporates by reference each of the foregoing paragraphs as though fully stated herein.

103. Pasion is an employee of the County and who administratively reports to Furfaro, as County Council Chair.

104. As alleged in detail above, Pasion reported suspected violations of law by Official A to his employer and to law enforcement within the meaning of Haw. Rev. Stat. §§ 378-62 and 378-70.

105. Because of Pasion's statutorily protected reporting conduct as alleged herein, the County and Furfaro took several adverse employment actions against Pasion, including but not limited to those alleged above.

106. Pasion's reporting of suspected violations of law to law enforcement and to his employer was a substantial and motivating factor in each of the adverse actions taken by Furfaro and the County against Pasion as alleged above. These actions included but were not limited to: threats to Pasion to terminate and discharge him, threats and discrimination regarding Pasion's terms, conditions, and privileges of employment, suspending Pasion from his employment as County Auditor, placing Pasion on a "probation period," and including a formal reprimand based on unknown supporting documents and unspecified charges in Pasion's personnel file.

107. As a direct result of those illegal and adverse actions and employment actions the County and Furfaro took against Pasion, Pasion suffered injury and damages in an amount to be proven at trial, and suffered and continues to face, irreparable harm.

108. Defendants acted with malice, oppression, recklessly and/or with conscious indifference to the consequences that could arise.

COUNT II

Illegal Retaliation in Violation of the Common Law

109. Pasion re-alleges and incorporates by reference each of the foregoing paragraphs as though fully stated herein.

110. As set forth in Haw. Rev. Stat. § 378-69, of the Whistleblowers' Protection Act, "The rights created herein shall not be construed to limit the development of the common law nor to preempt the common law rights and remedies on the subject matter of discharges which are contrary to public policy. In the event of a conflict between the terms and provisions of this part and any other law on the subject the more beneficial provisions favoring the employee shall prevail."

111. Defendants owed Pasion a duty not to act in the manner set forth above.

112. All of the illegal acts set forth above by Defendants also violated the common law of Hawaii, giving rise to common law claims by Pasion against Defendants.

113. As a result, Pasion suffered all of the damages described above, and is threatened with continued harm, including irreparable harm.

114. Defendants acted with malice, oppression, recklessly and/or with conscious indifference to the consequences that could arise.

COUNT III
Negligence

115. Pasion re-alleges and incorporates by reference each of the foregoing paragraphs as though fully stated herein.

116. Defendants owed Pasion a duty of care, including but not limited to the duty to protect against unreasonable risk of harm, including an independent tort law duty not to illegally retaliate against Pasion.

117. Defendants breached those duties owed to Pasion by acting in the manner set forth above.

118. Defendants' breaches of duties owed to Pasion actually and proximately caused Pasion to suffer injury and damages in an amount to be proven at trial.

119. In addition, in breaching those duties owed to Pasion, Defendants acted with malice, oppression, recklessly and/or with conscious indifference to the consequences that could arise.

COUNT IV
Violation of The Kauai County Charter

120. Pasion re-alleges and incorporates by reference each of the foregoing paragraphs as though fully stated herein.

121. Section 32.01(D) of the Kauai County Charter provides:

There is established within the legislative branch an office of the county auditor, to be headed by a county auditor who shall be appointed by the county council and shall serve for a period of six years, and thereafter, until a successor is appointed. The salary commission shall fix the salary of the county auditor. The county council, by two-thirds vote of its membership, may remove the county auditor from office at any time for cause.

122. As alleged above, Pasion was appointed to serve a six (6) year term.

123. Defendants violated Section 32.01(D) of the Charter by their actions alleged above, specifically including by exceeding their authority and powers under the Charter by, among other things, "disciplining" Pasion where the Charter only gives the Council the limited authority to remove the county auditor and only for cause and only by two-thirds vote of its membership.

124. As a result of Defendants' breach of the Charter, Pasion has suffered injury and damages in an amount to be proven at trial.

125. Defendants acted with malice, oppression, recklessly and/or with conscious indifference to the consequences that could arise.

COUNT V
Declaratory Relief

126. Pasion re-alleges and incorporates by reference each of the foregoing paragraphs as though fully stated herein.

127. An actual controversy exists between Pasion and Defendants regarding rights and obligations under the Charter.

128. Based on the allegations contained herein, Defendants violated the Charter by exceeding the power and authority given to the Council with respect to Pasion, as the County Auditor.

129. Accordingly, Pasion is entitled to a declaration that:

a. The Charter contains a limited grant of authority and power with respect to the Council or any Councilmember's ability to affect the employment status of Pasion, as the appointed County Auditor;

b. That the limited grant of authority and power extends only to the Council and only includes the power to remove the County Auditor for cause, and by two-third's vote of the Councilmembers; and

c. Defendants violated the Charter by their actions alleged herein which exceeded this limited grant of authority and power with respect to the employment status of Pasion.

PRAYER FOR RELIEF

WHEREFORE, Pasion respectfully asks the Court to enter and issue a judgment in Pasion's favor against Defendants as follows:

(1) For damages, including punitive damages, in an appropriate amount to be proven at trial, including pursuant to Haw. Rev. Stat. § 378-63;

(2) For an injunction prohibiting Defendants from taking adverse employment actions against Pasion because of Pasion's statutorily protected reporting activities, including but not limited to those listed in the November Letter;

(3) For an injunction prohibiting Defendants from further retaliating against Pasion because of Pasion's statutorily protected reporting activities by taking any adverse employment action or any other action against Pasion;

(4) For costs, attorney's fees, and prejudgment interest to the extent permitted by law;

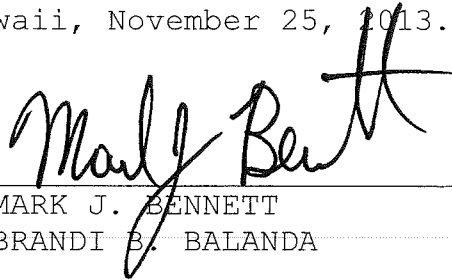
(5) For any and all other remedies the Court considers appropriate pursuant to Haw. Rev. Stat. §§ 378-63(a) and (c), and § 378-64, and the common law;

(6) For an order requiring Defendants to pay the appropriate civil fine pursuant to Haw. Rev. Stat. § 378-65;

(7) For declaratory relief pursuant to Haw. Rev. Stat. § 632-1 and the Court's equitable powers as appropriate;

(8) For such other and further relief, which the Court may deem appropriate in the circumstances.

DATED: Honolulu, Hawaii, November 25, 2013.

A handwritten signature in black ink, appearing to read "Mark J. Bennett", is written over a horizontal line.

MARK J. BENNETT
BRANDI B. BALANDA

Attorneys for Plaintiff
ERNESTO G. PASION

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII

ERNESTO G. PASION,
Plaintiff,

vs.

COUNTY OF KAUAI; JAY FURFARO;
JOHN DOES 1-10, JANE DOES 1-10,
DOE CORPORATIONS 1-10, and/or
OTHER DOE ENTITIES 1-10,
Defendants.

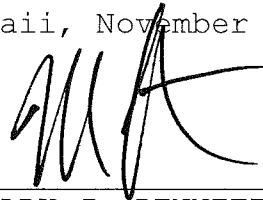
CIVIL NO. _____
(Other Civil Action)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL


Plaintiff ERNESTO G. PASION, by and through his
undersigned attorneys, hereby demands trial by jury on all
triable issues herein.

DATED: Honolulu, Hawaii, November 25, 2013.



MARK J. BENNETT
BRANDI B. BALANDA

Attorneys for Plaintiff
ERNESTO G. PASION

STATE OF HAWAII CIRCUIT COURT OF THE FIRST FIFTH CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
PLAINTIFF, ERNESTO G. PASION,	VS.	DEFENDANT. COUNTY OF KAUAI; JAY FURFARO; JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and/or OTHER DOE ENTITIES 1-10,
PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.) MARK J. BENNETT # 2672-0 BRANDI B. BALANDA # 9271-0 Starn O'Toole Marcus & Fisher 733 Bishop Street, Suite 1900 Honolulu, HI 96813 Telephone No.: (808)537-6100		
<p>TO THE ABOVE-NAMED DEFENDANT(S)</p> <p>You are hereby summoned and required to file with the court and serve upon <u>Mark J. Bennett, Esq. and Brandi B. Balanda, Esq., 733 Bishop Street, Suite 1900, Honolulu, HI</u> , plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</p> <p>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>		
DATE ISSUED NOV 25 2013	CLERK EX OFFICIO 	
I do hereby certify that this is full, true, and correct copy of the original on file in this office	Circuit Court Clerk	



In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at PHONE NO. 539-4333, FAX 539-4322, or TTY 539-4853, at least ten (10) working days prior to your hearing or appointment date.