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FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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F. OTAKE
CLERK

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ROSEN BIEN GALVAN & GRUNFELD,
LLP,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC SAFETY,
STATE OF HAWAII,

Defendant.

CIVIL NO. 13-1-1078-04 E C N
(Other Civil Case: Uniform Information
Practices Act)
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND TO
COMPEL DISCLOSURE OF
GOVERNMENT RECORDS;
SUMMONS

COMPLAINT

Plaintiff ROSEN BIEN GALVAN & GRUNFELD, LLLP (hereinafter "Plaintiff" or "RBGG"), by and through its undersigned counsel, hereby files this complaint for declaratory, injunctive, and other relief against Defendant DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAII (hereinafter "Defendant" or "PSD") for violations of the Uniform Information Practices Act ("UIPA"), Hawai'i Revised Statutes ("HRS") chapter 92F, and its accompanying administrative rules, Hawai'i Administrative Rules ("HAR") chapter 2-71. Plaintiff alleges as follows:

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.


Clerk Circuit Court, First Circuit

INTRODUCTION

1. Plaintiff submitted a Request to Access Government Records pursuant to the UIPA nearly seven months ago. Approximately three months ago, Defendant requested – and Plaintiff paid – \$5,327.50 towards production of the requested government records. Nevertheless, Defendant has refused to produce a single document. Instead, Defendant has responded with empty promises to produce some government records at some undetermined point in the future, along with vague, unsubstantiated objections to producing broad categories of government records. Defendant has no basis under the UIPA to withhold the records requested by Plaintiff, and has violated both the UIPA and the Hawai‘i Administrative Rules in failing to provide access to these records, failing to identify what government records are being withheld, and failing to justify the denial of access to those records. As such, Plaintiff has no choice but to file this action for declaratory and injunctive relief and to compel production of these records via this action.

PARTIES

2. Plaintiff ROSEN BIEN GALVAN & GRUNFELD LLLP is a limited liability limited partnership, registered in California. As a legal entity, Plaintiff is a “person” within the meaning of HRS § 92F-3.

3. Defendant DEPARTMENT OF PUBLIC SAFETY is the state administrative agency that manages Hawaii’s prison system. Defendant is an “agency” within the meaning of HRS § 92F-3.

JURISDICTION AND VENUE

4. This action is brought pursuant to HRS §§ 92F-15(a) and (b).
5. This Court has jurisdiction over this action pursuant to HRS §§ 92F-15(e) and 603-21.5(a)(3).
6. Venue is proper in this Court pursuant to HRS §§ 92F-15(e) and HRS § 603-36, because the acts and omissions complained of occurred in this Circuit.

FACTS

7. On September 21, 2012, Leslie Mehta (an attorney employed by, and thus an agent of, Plaintiff) mailed a Request to Access Government Records (hereinafter, "Initial Request") to Ted Sakai, (then-Interim) Director of PSD, pursuant to the UIPA. The Initial Request sought thirty-one categories of government records.
8. Plaintiff – RBGG – was the legal entity that requested the government records.
9. In a letter dated September 27, 2012 (but not received in Ms. Mehta's office until October 9, 2012), Shelley Nobriga, Litigation Coordination Officer for PSD, responded to the Initial Request and asked that Plaintiff narrow the Initial Request.
10. On October 10, 2012, Ms. Mehta contacted Ms. Nobriga to discuss potential revisions to the Initial Request. Ms. Mehta informed Ms. Nobriga that she (Ms. Mehta) was willing to narrow the Initial Request to receive the government records as quickly, and with as few complications, as possible. Ms. Nobriga stated that she wished to speak with her colleagues about the matter and would call Ms. Mehta back.
11. Later on October 10, Ms. Nobriga telephoned Ms. Mehta and listed item-by-item PSD's requested revisions to the Initial Request. Based on these requested revisions, Ms. Mehta mailed and e-mailed a revised UIPA request (hereinafter, "Revised Request") on October 12,

2012, copying Director Sakai. The Revised Request sought twenty-eight categories of government records.

12. The records requested by Plaintiff in its Initial Request and its Revised Request are “government records” within the meaning of HRS § 92F-3.

13. Plaintiff requested access to these government records pursuant to HRS chapter 92F, via a “formal request” within the meaning of HAR § 2-71-2.

14. From October 2012 until January 2013, in numerous emails and telephone conversations, Ms. Nobriga repeatedly informed Ms. Mehta that Plaintiff could expect to receive government records. No records were – or have been – produced.

15. On December 21, 2012, Ms. Mehta again e-mailed Ms. Nobriga to follow up on Plaintiff’s multiple requests for production of documents; attached to this letter was a lengthy list of communications between Ms. Mehta and Ms. Nobriga concerning the Initial Request and the Revised Request. The December 21, 2012 letter requested a response by January 4, 2013.

16. On December 21, 2012, Ms. Nobriga replied to Ms. Mehta’s e-mail. Ms. Nobriga stated that she had forwarded Ms. Mehta’s letter and attachments to the Department of the Attorney General. Ms. Mehta responded to this e-mail, stating that she hoped to receive a substantive response shortly.

17. On January 7, 2013, Ms. Nobriga sent Ms. Mehta an e-mail in which she (Ms. Nobriga) stated that she had initiated a follow up with the Department of the Attorney General.

18. Ms. Mehta did not receive any further communications from Ms. Nobriga for over a week. Consequently, on January 15, 2013, Ms. Mehta e-mailed Attorney General David Louie, requesting a substantive response to Plaintiff’s Amended Request by January 18, 2013.

19. On January 16, 2013, Diane Taira, Deputy Attorney General, e-mailed Ms. Mehta. Ms. Taira apologized for the delayed response and requested yet another extension for production of documents to January 22, 2013, to which Ms. Mehta agreed.

20. On January 22, Ms. Taira requested that Plaintiff make a pre-payment in the amount of \$5,327.50 for production of documents. In this letter, Ms. Taira also indicated that Defendant would only agree to produce six categories of documents (out of twenty-eight categories sought). Out of the remaining twenty-two categories of documents, Ms. Taira stated that PSD was not in possession of four categories of records, and that seventeen categories of government records would not be produced pursuant to various provisions of HRS chapter 92F; Ms. Taira did not address one of the categories of records, such that it is unclear whether PSD intends to produce records as to that category.

21. As for the seventeen categories of government records to be withheld, Defendant has never provided any information regarding “[t]he specific record or parts of the record that will not be disclosed,” as required by HAR § 2-71-14(b)(1). Instead, the only information Ms. Taira (or anyone else) ever provided with respect to the records being withheld is as follows, from Ms. Taira’s January 22, 2013 e-mail:

Objections based on confidentiality limitations set forth in §92-13 [sic], Hawaii Revised Statutes, are asserted with regard to paragraphs 3-5, 7-8, 11, and 13-23 of your request as follows: Items 3, 5, 7, 8, 20 and 21 declined based on §92F-13 (2), (3) and (4), HRS. Item 4, declined based on §92F-13(1), (3) and (4), HRS. Item 11, declined based on §92F-13(1) and (3), HRS. Items 13 through 19, 22 and 23 declined based on §92F-13(1), (2), (3) and (4), HRS.

22. On January 25, 2013, Ms. Mehta mailed a check for \$5,327.50, and a letter, to Ms. Taira. The letter explained that Defendant’s vague, blanket refusal to produce documents violated HAR § 2-71-14(b)(1) and HRS § 92-15(c). Nevertheless, Defendant has never provided

any additional information regarding “[t]he specific record or parts of the record that will not be disclosed,” as required by HAR § 2-71-14(b)(1).

23. Because Plaintiff has no information regarding the types of records within Defendant’s possession (for which Defendant claims there exist statutory bases for withholding the records), Plaintiff has no way to determine whether Defendant does, in fact, have a valid justification for refusing to produce those records.

24. On February 1, 2013, Ms. Mehta e-mailed Ms. Nobriga and Ms. Taira, requesting confirmation of receipt of the letter and check and for the documents to be produced by February 8, 2013. Ms. Nobriga responded by e-mail the same day and stated that she was awaiting a response from Ms. Taira.

25. On February 8, 2013, by email, Ms. Taira confirmed receipt of the January 25 letter and check, but failed to provide an estimated deadline by which Plaintiff could expect to receive documents. Ms. Mehta thereafter made numerous unsuccessful attempts to reach Ms. Taira by telephone.

26. On or about February 15, Ms. Mehta spoke with Ms. Taira. Ms. Taira agreed to produce documents responsive to the Revised Request, on a rolling basis, beginning March 1, 2013. No government records were produced by that date (nor have any government records been produced to date).

27. On March 8, 2013 – a week after the date by which Defendant was supposed to have produced records, and without having heard from Ms. Taira or Ms. Nobriga, Ms. Mehta again e-mailed Ms. Nobriga and Ms. Taira. Ms. Mehta again asked when Plaintiff could expect the documents.

28. On March 12, Ms. Taira responded by email and stated that she was requesting the status of the production from PSD.

29. Over a week went by, and neither Ms. Taira nor Ms. Nobriga contacted Ms. Mehta.

30. On March 20, Ms. Mehta emailed Ms. Nobriga and Ms. Taira, again requesting a status update concerning the production of government records. On March 20, Ms. Nobriga emailed and informed Ms. Mehta that she should speak with Ms. Taira. Ms. Mehta tried, repeatedly and unsuccessfully, to reach Ms. Taira via telephone.

31. On March 29, Ms. Mehta e-mailed Ms. Taira and Ms. Nobriga, again requesting production of government records by April 5. On April 1, Ms. Nobriga responded by e-mail and stated that she would defer to Ms. Taira regarding a substantive response to the March 29 letter. Ms. Taira, however, did not respond to Ms. Mehta's e-mail.

32. On April 3, Ms. Mehta again e-mailed Ms. Taira, and again requested a response. Ms. Taira did not respond.

33. On April 5, Ms. Mehta again called Ms. Taira, and finally was able to reach her by telephone.

34. For the first time, in this April 5 telephone conversation, Ms. Taira informed Ms. Mehta that she (Ms. Taira) and/or Ms. Nobriga had been communicating with mainland attorneys Rachel Love and/or Daniel Struck, and that those mainland attorneys had been advising PSD *against* producing government records as required by the UIPA. (Plaintiff RBGG, along with the Human Rights Defense Center and the American Civil Liberties Union of Hawaii, represents the plaintiffs in two lawsuits in federal district court in which the Corrections Corporation of America ("CCA") and the State of Hawaii (among others) are defendants.

CCA's mainland attorneys, Rachel Love and Daniel Struck, represent all defendants -- including the State of Hawai'i -- in those cases. They are admitted *pro hac vice* in those two cases, and have previously been admitted *pro hac vice* in several other cases in federal district court in Hawai'i. Ms. Love has also been admitted *pro hac vice* in Hawai'i state court.)

35. During this April 5 telephone call, Ms. Taira informed Ms. Mehta that CCA's mainland attorneys, Rachel Love and Daniel Struck, had instructed PSD not to produce any government records to Plaintiff.

36. To be clear, according to Ms. Taira, the mainland attorneys admitted to practice *pro hac vice* in litigation in federal district court (representing both CCA and the State of Hawaii) have been advising and instructing PSD to violate a state statute and state administrative rules, thus interfering with Plaintiff's right to obtain government records.

37. In a second conversation on April 5, Ms. Taira told Ms. Mehta that PSD would produce the government records over CCA counsel's objections. In that conversation, Ms. Taira did not provide a date by which PSD would produce these government records, but asked that Ms. Mehta call her back on April 8.

38. On April 8, Ms. Taira stated that the *tentative* date to *start* production of government records was April 30. Ms. Taira did not provide Ms. Mehta with an expected completion date.

39. In the early morning hours of April 10, 2013, another letter was sent by e-mail on behalf of Ms. Mehta to Ms. Taira, requesting production of government records earlier than April 30. Ms. Mehta requested a response by the afternoon of April 10. Ms. Taira did not respond.

DECLARATORY AND INJUNCTIVE RELIEF

40. An actual and immediate controversy has arisen and now exists between Plaintiff and Defendants, which parties have genuine and opposing interests and which interests are direct and substantial. Defendants have failed and continue to fail to comply with provisions of HRS chapter 92F and HAR chapter 2-71 for at least the reasons set forth herein. Plaintiff is, thus, entitled to a declaratory judgment as well as such other and further relief as may follow from the entry of such a declaratory judgment.

41. Plaintiff has no adequate remedy at law. Unless enjoined by the Court, Defendant will continue to deny Plaintiff access to government records. Plaintiff is entitled to access these government records pursuant to HRS chapter 92F. This threat of injury to Plaintiff from continuing violations requires temporary, preliminary and permanent injunctive relief.

FIRST CLAIM FOR RELIEF

Violation of HRS § 92F-11

(Failure to disclose government records, actionable pursuant to HRS § 92F-15(a))

42. Plaintiff realleges and incorporates by reference as though fully contained herein, the allegations set forth in the preceding paragraphs.

43. HRS § 92F-11(a) provides that “[a]ll government records are open to public inspection unless access is restricted or closed by law.”

44. HRS § 92F-11(b) provides that “each agency upon request by any person shall make government records available for inspection and copying during regular business hours[.]”

45. HRS § 92F-15(a) provides that “[a] person aggrieved by a denial of access to a government record may bring an action against the agency at any time within two years after the agency denial to compel disclosure.”

46. Defendant has unlawfully denied Plaintiff access to government records, which records are required to be open to public inspection and are not protected from disclosure by law.

SECOND CLAIM FOR RELIEF

**Violation of HRS § 92F-11 and HAR §§ 2-71-13 and 2-71-15
(Failure to disclose government records within established time limits,
actionable pursuant to HRS § 92F-15(a))**

47. Plaintiff realleges and incorporates by reference as though fully contained herein, the allegations set forth in the preceding paragraphs.

48. Defendant has not produced any government records, incrementally or otherwise, in violation of HAR § 2-71-13.

49. Defendant has not given Plaintiff notice of “extenuating circumstances” pursuant to HAR § 2-71-15(a) justifying a delay beyond the ordinary requirement that government records be produced within the ten to twenty business days required by HAR § 2-71-14; however, even if such extenuating circumstances exist, Defendant has failed to produce at least *some* records within twenty business days as required by HAR § 2-71-15(b)(2).

50. Defendant has failed to prove that a statutory exception, in HRS chapter 92 or elsewhere, exists to allow Defendant to withhold or delay production of records.

51. HRS § 92F-15(a) provides that “[a] person aggrieved by a denial of access to a government record may bring an action against the agency at any time within two years after the agency denial to compel disclosure.”

52. Defendant has unlawfully denied Plaintiff access to government records, which records are required to be open to public inspection and are not protected from disclosure by law.

53. In failing to produce the government records within the time deadlines specified by law, Defendant's actions constitute a "denial of access" within the meaning of HRS § 92F-15(a).

THIRD CLAIM FOR RELIEF
Violation of HRS § 92F-15(c) and HAR § 2-71-14(b)
(Failure to identify specific records being withheld,
actionable pursuant to HRS § 92F-15(a))

54. Plaintiff realleges and incorporates by reference as though fully contained herein, the allegations set forth in the preceding paragraphs.

55. HRS § 92F-15(c) provides that "[t]he agency has the burden of proof to establish justification for nondisclosure."

56. HAR § 2-71-14(b) requires that, "[w]hen the agency intends to deny access to all or part of the information in the requested record, the agency's notice to the requester shall state:
(1) The specific record or parts of the record that will not be disclosed[.]"

57. Defendant has failed to provide Plaintiff with any identifying information regarding government records that have been withheld, in violation of HAR § 2-71-14(b).

FOURTH CLAIM FOR RELIEF
Violation of HRS §§ 92F-13 and 92F-15(c) and HAR §§ 2-71-14(b) and (c)
(Failure to justify non-disclosure of government records,
actionable pursuant to HRS § 92F-15(a))

58. Plaintiff realleges and incorporates by reference as though fully contained herein, the allegations set forth in the preceding paragraphs.

59. HRS § 92F-13 authorizes agencies to withhold government records that fall within well-defined statutory exceptions.

60. HRS § 92F-15(c) provides that "[t]he agency has the burden of proof to establish justification for nondisclosure."

61. HAR § 2-71-14(b) requires that, “[w]hen the agency intends to deny access to all or part of the information in the requested record, the agency’s notice to the requester shall state: . . . (2) The specific legal authorities under which the request for access is denied under section 92F-13, HRS, or other laws.”

62. Similarly, HAR § 2-71-14(c) provides that an agency must provide reasons why an agency is unable to disclose the requested records.

63. Defendant has failed to provide Plaintiff with the legal authority or authorities pursuant to which records are being withheld, in violation of HRS §§ 92F-13, 92F-15(c), and HAR § 2-71-14.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- A. Assume jurisdiction over this action;
- B. Issue a declaratory judgment stating that Defendant has violated HRS chapter 92 and HAR chapter 2-71 for at least the reasons set forth herein, by:
 - i. Failing to produce government records;
 - ii. Failing to produce government records in a timely manner;
 - iii. Failing to identify the specific record or parts of the record that will not be disclosed; and
 - iv. Failing to specify the legal authority or authorities for denying access to the government records;
- C. Issue a preliminary and permanent injunction ordering Defendant to grant Plaintiff access to all requested government records;

- D. Award attorneys' fees, costs, and all other expenses to Plaintiff pursuant to HRS § 92F-15(d) and/or the Private Attorney General doctrine, including but not limited to all expenses incurred by Plaintiff in attempting to obtain the government records prior to filing the instant Complaint;
- E. Retain jurisdiction over Defendant until such time as the Court is satisfied that Defendant's unlawful customs, policies, practices, rules, regulations, acts and omissions complained of herein no longer exist and will not recur; and
- F. Order such other relief as this Court deems just and proper.

Dated: Honolulu, Hawaii, April 11, 2013.

Respectfully submitted,



DANIEL M. GLUCK

LOIS K. PERRIN
DANIEL M. GLUCK

ACLU OF HAWAII FOUNDATION

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

ROSEN BIEN GALVAN & GRUNFELD,
LLP,

Plaintiff,

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Defendant.

CIVIL NO. _____

(Other Civil Case: Uniform Information
Practices Act)

SUMMONS

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STATE OF HAWAI'I

TO: DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAI'I

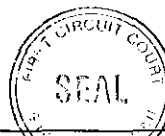
You are hereby summoned and required to file with the court and serve upon DANIEL M. GLUCK, Attorney at Law, Plaintiff's attorney, whose address is P.O. Box 3410, Honolulu, Hawaii 96801, an answer to the Complaint which is herewith served upon you, within twenty (20) day after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

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.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawai'i, APR 11 2013.

F. OTAKE



CLERK OF THE ABOVE-ENTITLED COURT