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IN THE CIRUCIT COURT OF THE FIFTH CIRCUIT

COUNTY OF KAUA‘I, STATE OF HAWAI‘I

FOR OUR RIGHTS, a Hawai‘i corporation,
Diana Lomma, David R. Hamman, Randi
Hamman, Janet Eisenbach, Levana Lomma
Keikaika, Lawrence K. Paille, Geralyn
Schulkind, Leonard Schulkind, Daniel
Hashimoto, Christina Cole, Francesca
Woolger, Na‘ea Lindsey, Michael Mazzone,
Lanette J. Harley, and Loraine L. Patch.

Plaintiffs,

vs.

DAVID IGE, in his official capacity as
Governor of the State of Hawai‘i, CLARE E.
CONNORS, in her official capacity as
Attorney General for the State of Hawai‘i, and
STATE OF HAWAI‘I,

Defendants.

Civil No.

(Other Civil Action)

**FIRST AMENDED COMPLAINT;
JURY TRIAL DEMAND;
And SUMMONS**

Plaintiffs, by and through their attorneys, allege the facts and causes of action
against Defendants as set forth in this Complaint. Plaintiffs request injunctive and

declaratory relief. Plaintiffs assert their right to a jury trial on all issues raised in the Complaint.

NATURE OF THE CASE

1. Defendant Governor Ige issued a Proclamation on March 4, 2020, declaring a state of emergency based upon concerns about the spread of Covid-19 virus into Hawai‘i, suspending some state laws, and imposing other restrictions and directives. *See* Exh. 1. The March 4 Proclamation expressly was set to expire on April 29, 2020, or earlier. The Proclamation was issued upon authority delegated by the legislature via Hawai‘i Revised Statutes (“H.R.S.”) §§ 127A-2,-11,-12, and -14. Under H.R.S. § 127A-14(d): “A state of emergency and a local state of emergency shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency or local state of emergency, respectively, or by a separate proclamation of the governor or mayor, whichever occurs first.” Defendant Governor circumvented the limitation upon his delegated authority, however, by issuing a series of “Supplementary Proclamations” purporting to incorporate the initial Proclamation and extend the period of the state of emergency far beyond the statutory 60-day limit. Under the Ninth Supplementary Proclamation, issued June 10, 2020, the declared emergency was extended to July 31, 2020 – 149 days after the initial Proclamation. *See* Exh. 2. The Governor exceeded his delegated authority, thus the Proclamation and all of the Supplementary Proclamations and associated Executive Orders should be declared null and void.

2. On July 17, 2020, Defendant Governor issued a document entitled “Tenth Proclamation Related to the Covid-19 Emergency.” *See* Exh. 3. Although entitled a

“Proclamation” instead of a “Supplementary Proclamation,” the Tenth Proclamation expressly extended all of the provisions of the initial Proclamation and all Supplementary Proclamations, while adding additional “Health Screening” and related “Self-Quarantine for Travelers to the State.” The Tenth Proclamation did not repeal any prior proclamation documents, and therefore the Tenth Proclamation was in law the equivalent of any of the preceding supplementary proclamations. Under the Tenth Proclamation, the declared emergency extended to August 31, 2020 – 180 days after the initial Proclamation. The Governor exceeded his delegated authority, thus the Proclamation and all of the Supplementary Proclamations and associated Executive Orders, and including the Tenth Proclamation should be declared null and void.

3. On August 6, 2020, Defendant Governor issued a document entitled “Eleventh Proclamation Related to the Covid-19 Emergency.” *See* Exh. 4. Although entitled a “Proclamation” instead of a “Supplementary Proclamation,” the Eleventh Proclamation expressly extended all of the provisions of the initial Proclamation and all Supplementary Proclamations including the Tenth Proclamation. The Eleventh Proclamation affected the collection of orders, recommendations, prohibitions of the prior proclamation documents, by *inter alia* reinstating an inter-island quarantine. The Eleventh Proclamation did not repeal any prior proclamation documents, and therefore the Eleventh Proclamation was in law the equivalent of any of the preceding supplementary proclamations. The Eleventh Proclamation expressly states it is continuing the provisions and emergency period through the date set forth in the Tenth Proclamation. The declared emergency thus extends to August 31, 2020 – 180 days after the initial

Proclamation. The Governor exceeded his delegated authority, thus the Proclamation and all of the Supplementary Proclamations and associated Executive Orders, and including the Eleventh Proclamation should be declared null and void.

4. Each successive Supplementary Proclamation (to include the nominally titled Tenth and Eleventh Proclamations, hereinafter all referenced as “Supplementaries”) incorporated the initial Proclamation, and most Supplementaries added additional prohibitions and restrictions upon the people living in, working in, or even visiting in any of the Hawaiian Islands. The Proclamation and the Supplementaries invoke the delegated power of H.R.S. § 127A-25 to declare their provisions to have the force and effect of law. They also invoke the delegated power of H.R.S. § 127A-29 to arrest, prosecute, convict, and punish violations of their provisions as misdemeanors. After the initial Proclamation’s maximum 60-day period had expired on May 3, 2020, however the Governor and any member, agent or employee of the State government no longer held power to arrest, charge, or convict any person of a violation of the Proclamation or any purported Supplement or related Executive Order. This Court should declare these legal facts to the people of Hawai‘i and relieve any person of potential criminal liability in accord with such declaration.

5. Plaintiffs are citizens and residents in the State of Hawai‘i who are subject to the Governor’s proclamations and executive orders, and have standing to request this judicial intervention to restrain the Governor and the State from continuing to impose all of the elements relating to the proclamations and executive orders, including, but not limited to, the shutdown, in-home detention, self-quarantine, closure of private

enterprises, closure of public facilities and publicly-accessible property, and prohibitions and/or restrictions on travel within any of the islands and territory comprising the State of Hawai‘i.

6. The Governor’s Proclamation, the succeeding Supplementaries and the associated Executive Orders, all purport to have the force and effect of law, carrying criminal misdemeanor penalties for violations, when none of these official documents has lawful authority anymore after May 3, 2020.

7. Plaintiffs, like all persons in Hawai‘i, are currently suffering the effects of the Governor’s Proclamation, Supplementaries, and associated Executive Orders, and unless relief is granted will continue to so suffer in the near future, perhaps indefinitely. Accordingly, Plaintiffs seek permanent injunctive and declaratory relief against the Governor’s Proclamation, Supplementaries and Executive Orders.

JURISDICTION AND VENUE

8. This action is brought for injunctive and declaratory relief damages arising from the deprivation of rights to liberty and property under State and Federal law, by virtue of the violation of Hawai‘i state law by the Defendant Governor. This Court has jurisdiction over this action pursuant to H.R.S. §§ 603-21.5, 661-1, 632-1, 662-3, Rules 57 and 65 of the Hawai‘i Rules of Civil Procedure, and this Complaint is founded and arises under, inter alia, Article I, Sections 2, 5 and 8, and Article V, Section 5 of the Constitution of the State of Hawai‘i. Defendant Governor’s temporary powers under H.R.S. § 127 are expressly limited per H.R.S. § 127A-1(c), which contemplates a

Hawai'i court's judicial power to invalidate an exercise of power that exceeds Hawai'i State or federal constitutional law.

9. Venue lies in this Court as the Defendants may be sued in any state court of competent jurisdiction, and Circuit Courts have general jurisdiction. *See* H.R.S. § 603-21.5.

THE PARTIES

10. Plaintiffs are all residents on the island and in the County of Kaua'i in the State of Hawai'i, except where indicated parenthetically:

- (a) For Our Rights, a Hawai'i corporation;
- (b) Diana Lomma (resident of Hawai'i County);
- (c) David R. Hamman & Randi Hamman;
- (d) Janet Eisenbach;
- (e) Levana Lomma Keikaika;
- (f) Lawrence K. Paille;
- (g) Geralyn Schulkind & Leonard Schulkind;
- (h) Daniel Hashimoto;
- (i) Christina Cole;
- (j) Francesca Woolger;
- (k) Na'ea Lindsey;
- (l) Michael Mazzone (resident of Honolulu County);
- (m) Lanette J. Harley (resident of Hawai'i County); and
- (n) Loraine L. Patch.

11. Defendant David Ige is the Governor of the State of Hawai‘i, and is sued in his official capacity. He is the chief executive of the State of Hawai‘i and in that capacity issued the proclamations and supplements and executive orders. Defendant Governor is responsible for executing and administering laws, customs, practices, and policies of the State of Hawai‘i, and is currently enforcing the laws, customs, practices and policies complained of in this action.

12. Defendant State of Hawai‘i is the governmental entity under whose auspices the other Defendants exercise authority and in whose interest Defendants are expected to act.

13. Defendant Clare E. Connors is the Attorney General for the State of Hawai‘i and is sued in her official capacity. She formally approved the proclamations and supplements, and is responsible under the law for enforcing its provisions against entities in violation thereof, including against the Plaintiffs. Defendant Attorney General is responsible for executing and administering laws, customs, practices, and policies of the State of Hawai‘i, and is currently enforcing the laws, customs, practices and policies complained of in this action.

STATEMENT OF FACTS

14. On March 4, 2020, Defendant Governor issued a Proclamation (“March 4 Proclamation”), formally approved by Defendant Attorney General, a copy of which is attached here as Exhibit 1. The March 4 Proclamation declares the findings, determinations, and orders of Defendant Governor. The March 4 Proclamation reports the identification of the coronavirus Covid-19 by world and national public health entities

and political authorities as “a public health emergency of international concern,” as a disease that “is highly contagious” and spreading to many nations. The March 4 Proclamation finds the danger posed by Covid-19 to be “significant so as to warrant preemptive and protective actions in order to provide for the health, safety, and welfare of the people of the State.” The March 4 Proclamation determines, based upon the asserted facts in that document, that conditions in Hawai‘i were “of such character and magnitude to constitute an emergency or disaster as contemplated by sections 127A-2 and 127A-14, Hawai‘i Revised Statutes, that threaten[ed] the State of Hawai‘i.” The March 4 Proclamation declares “an Emergency Period for the purpose of authorizing the expenditure of State monies as appropriated for the speedy and efficient protection and relief of the damages, losses, and suffering resulting from the emergency. The March 4 Proclamation further activated “the Major Disaster Fund” and suspended several provisions of the Hawai‘i Revised Statutes, while also activating statutory limits upon price increases of certain goods and commodities of goods needed by the public “to prepare for, respond to, or use because of the circumstances giving rise to the emergency” that was being proclaimed. Via the March 4 Proclamation Defendant Governor thus declared “the disaster emergency relief period shall commence immediately and continue through April 29, 2020, or by a separate proclamation, whichever occurs first.”

15. The March 4 Proclamation provided no data indicating the numbers of citizens of Hawai‘i who had tested positive for exposure to Covid-19, or who had shown symptoms of Covid-19 infection, or who had been hospitalized for or died as a result of Covid-19 infection. The March 4 Proclamation asserted there were “at least 108

confirmed and presumptive positive cases of COVID-19” in the entire United States, but pointed to not one death due to that cause.

16. Subsequently, starting on March 16, 2020, Defendant Governor issued “supplementary proclamations” and orders on March 16 (Supplementary), March 21 (Second Supplementary) to include “Rules Relating to Covid-19,” March 21, 2020 (Executive Order No. 502), March 23 (Third Supplementary), March 31 (Fourth Supplementary), April 16 (Fifth Supplementary), April 16 (Executive Order No. 20-05), April 25 (Sixth Supplementary), May 5 (Seventh Supplementary), and May 18 (Eighth Supplementary). Each of the Supplementary proclamations incorporated the previous initial proclamation and all supplementary proclamations by reference, and each extended the date of expiration. All of these supplementary proclamations and orders are available on the Defendant Governor’s website: <https://governor.hawaii.gov/emergency-proclamations/> and <https://governor.hawaii.gov/executive-orders/page/2/>, or <https://dod.hawaii.gov/hiema/>.

17. On June 10, 2020, Defendant Governor issued his Ninth Supplementary Proclamation (“June 10 Supplement”), approved by Defendant Attorney General. A copy of this Supplement is attached as Exhibit 2. The June 10 Supplement indicates a count of “685 documented cases of Covid-19 cases in the State” and “17 deaths attributed to this disease.” The June 10 Supplement purports to amend and restate “all prior proclamations.” The June 10 Supplement purports to extend the “disaster emergency relief period ... through July 31, 2020,” unless otherwise modified.

18. The June 10 Supplement, Section IV(F), maintains the same “Travel Quarantine Rules” by incorporating “Exhibit D,” as did several prior supplementary proclamations.

19. The June 10 Supplement, Section IV(E), imposes a legal duty upon any “car sharing service” provider to verify that any user of such a vehicle is not subject to the mandatory self-quarantine measures of the Supplement. Any person who “intentionally, knowingly, or recklessly” violates this duty is subject to criminal prosecution and penalties. Actual ignorance of the vehicle user’s mandatory quarantine status is no defense.

20. The June 10 Supplement, Section IV(C), imposes new “host responsibility” duties:

All hosts of any guest or guests within the State of Hawai‘i shall be responsible for ensuring their guest or guests abide by the mandatory self quarantine ... Any host violates this section if the host intentionally, knowingly, or recklessly fails to notify law enforcement immediately when a guest ... subject to the self-quarantine fails to enter or remain within the confines of their designated quarantine location. It shall be the duty of all hosts to ascertain the period of self-quarantine for their guest or guests and to determine whether or not their ... guests remain confined to their designated quarantine location throughout the period of self-quarantine. It shall not be a defense to a violation of this section that the host did not know the period of self-quarantine for their ... guests, that they did not know that their ... guests were subject to the mandatory self quarantine, or that they did not know that their ... guests had failed to enter or remain within the confines of the designated quarantine location.

21. The June 10 Supplement, Section IV(B), declares the expiration of inter-island travel mandatory self-quarantine provisions. The June 10 Supplement does not

declare the expiration or repeal of any other existing or prior provision of the Proclamation or supplements, however.

22. The June 10 Supplement, Section IV(F) declares:

all provisions set forth in Section IV of this Proclamation and the Rules Relating to COVID-19 Travel Quarantine, Exhibit D attached hereto, are hereby adopted as rules and shall have the force and effect of law. (These rules are hereinafter referred to as the “Travel Quarantine Rules”). Pursuant to section 127A-29, HRS, any person who intentionally, knowingly, or recklessly violates the Travel Quarantine Rules shall be guilty of a misdemeanor, and upon conviction, the person shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

23. Like the above-referenced prior Supplementaries and orders, the June 10 Supplement declares itself having the force and effect of law, and declares violations of its provisions punishable by criminal misdemeanor penalties.

24. Although Defendant Governor issued prior Executive Orders related to and in conjunction with the prior proclamations, the June 10 Supplement expressly restates Executive Order No. 20-05 as the Order currently in effect. This Order is supplied as “Exhibit A” to the June 10 Ninth Supplementary Proclamation (*see* Exhibit 2).

25. On July 17, 2020, Defendant Governor issued a document entitled “Tenth Proclamation Related to the Covid-19 Emergency.” A copy of the Tenth Proclamation is attached hereto as Exhibit 3. Although entitled a “Proclamation” instead of a “Supplementary Proclamation,” the Tenth Proclamation expressly extended all of the provisions of the initial Proclamation and all Supplementary Proclamations, while adding additional “Health Screening” and related “Self-Quarantine for Travelers to the State.” The Tenth Proclamation did not repeal any prior proclamation documents, and therefore

the Tenth Proclamation was in law the equivalent of any of the preceding supplementary proclamations. Under the Tenth Proclamation, the declared emergency extended to August 31, 2020 – 190 days after the initial Proclamation.

26. On August 6, 2020, Defendant Governor issued a document entitled “Eleventh Proclamation Related to the Covid-19 Emergency.” A copy of the Eleventh Proclamation is attached hereto as Exhibit 4. Although entitled a “Proclamation” instead of a “Supplementary Proclamation,” the Eleventh Proclamation expressly extended all of the provisions of the initial Proclamation and all Supplementary Proclamations including the Tenth Proclamation. The Eleventh Proclamation essentially continued all of the collection of orders, recommendations, prohibitions of the prior proclamation documents, but reinstated an inter-island quarantine: “all persons traveling to the Islands of Kaua‘i, Hawai‘i, and the Islands comprising the Counties of Maui and Kalawao, in the State of Hawai‘i shall be subject to mandatory self-quarantine. The period of self-quarantine shall begin from the date of entry onto the Island and shall last 14 days or the duration of the person’s presence on the Island, whichever is shorter. All travelers must comply with all applicable State and county rules, directives, and orders related to travelers, including those mandating the verification of data upon arrival at the airport and the completion of any and all documents. This self-quarantine mandate shall take effect on August 11, 2020 at 12:01 am.”

27. The Eleventh Proclamation did not repeal any prior proclamation documents, and therefore the Eleventh Proclamation was in law the equivalent of any of the preceding Supplementaries. The Eleventh Proclamation expressly states it is

continuing the provisions and emergency period through the date set forth in the Tenth Proclamation: “The provisions set forth in this Proclamation are in addition to and not in derogation of any of the provisions set forth in the Tenth Proclamation, and will run concurrently with the provisions set forth in the Tenth Proclamation.” The declared emergency thus extends to August 31, 2020 – 190 days after the initial Proclamation.

28. The Governor exceeded his delegated authority, thus the Proclamation and all of the Supplementary Proclamations and associated Executive Orders, and up to and including the Eleventh Proclamation should be declared null and void.

29. The people of the State of Hawai‘i have suffered massive unemployment, loss of business, loss of income, home foreclosures, lease delinquencies, and loss of economic and financial opportunities, in amounts to be drawn from publicly available data when it is made public, or from other sources such as pretrial discovery.

30. The people of the State of Hawai‘i have suffered increased suicides and suicidal ideation, anxiety, depression, social isolation, domestic strife, domestic abuse, child abuse, and other phenomena of emotional and psychological impacts of Defendant Governor’s above-alleged directives and threatened criminal penalties, in amounts and to the degree as may be drawn from publicly available data when it is made public, or from other sources such as pretrial discovery.

31. Defendant Governor’s Proclamation and Supplementaries, including their travel restrictions and quarantine provisions, have directly and indirectly harmed Plaintiffs, as briefly summarized here:

(A) Christina Cole: anxiety, prevention of travel to see family, lost employment, lost income, lost mental health care, serious emotional distress, depression, isolation from friends, and social exclusion.

(B) Diana Lomma: Physical pain, choking and vomiting caused when EMT forcefully pushed mask onto face, ridicule for not wanting to wear mask, deprivation of outside physical therapy necessary for health conditions, anxiety, stress, deprivation of any visits from daughter while in the hospital for surgery, deprivation of emotional and family support, fear of public humiliation and harassment, denial of freedom to travel to the other islands or on the mainland and move about due to fear of adverse consequences, depression and strong feelings of hopelessness.

(C) David R. Hamman, Randi Hamman: Heavy financial losses, unemployment of hired family members, likely alienation from family that moves away, serious emotional harm to selves and family.

(D) Janet Eisenbach: Directly due to inbound travel restrictions and quarantine requirements visitors have stopped coming and thus have destroyed the vacation rental business that provided crucial income, the anxiety and depression resulting from the culture of suspicion and fear, social exclusion, deprivation of the right to use public facilities, even to deprivation of taking grandchildren to an outdoor park, anxiety about losing condominium valued at \$400,000, and deprivation of visits from many family members previously planned.

(E) Levana Lomma Keikaika: Loss of employment, loss of income, depletion of savings just to survive, injury to physical and mental health, depression,

social isolation, fear of public harassment, panic attacks, deprivation of visits with family outside of the island, deprivation of AA meeting attendance, the effects of other people's fear, worry, anxiety and depression impacting one's own, fear of losing home and car, and severe anxiety, depression, hopelessness, and suicidal thoughts. Plaintiff Keikaika wrote to Governor Ige on June 4, 2020, presenting her intent to travel and not abide by the self-quarantine; the Office of the Governor responded within a day via an email emphasizing that criminal penalties would be applied to her if she violated the emergency orders.

(F) Lawrence K. Paille: Destruction of business that provided outdoor experiences for tourists, injury to health by deprivation of right to venture outdoors, a permanent state of stress, depression, and occasional thoughts of suicide.

(G) Geralyn and Leonard Schulkind: Destruction of key source of family income due to curfew, lockdown, and 14-day quarantine, zero income to the couple, facing potential or likely loss of properties to distress sale or foreclosure, substantial emotional distress as senior citizens living in fear of the future.

(H) Danny Hashimoto: Deprivation of right of intrastate travel, freedom of movement, and engaging in social contacts and events.

(I) Francesca Woolger: Her entire income depends on tourism and was completely cut off due to the Proclamation and Supplementaries; a new venture, the Kauai Advisor Kauai Guide was expected to generate an income of up to \$5000 a month within the first 6 months, but the venture could not succeed under the lockdown and tourist-hostile directives; ongoing losses of \$3000 - \$4000 income per month; suffering

serious stress, anxiety, and emotional trauma due to financial collapse and social isolation.

(J) Na‘ea Lindsey: lost job and income, approximately \$60,000 per year; experiencing serious social isolation and loss of physical activity and exercise; receiving taunts and threats concerning wearing masks despite health-based exemption; suffering stress, anxiety, depression, and PTSD episodes.

(K) Michael Mazzone: losses of income and business opportunities that jeopardize financial future; denied opportunities to see daughters who live out of state; ongoing worry, anxiety, arguments at home, and a heavy sense of hopelessness as all of daily life including financial and familial matters are totally disrupted.

(L) Lanette J. Harley: Financial devastation due to loss of income and ineptitude of state unemployment system – left entirely without a home (now staying with friends in their home) – loss of life savings to become destitute; tremendous psychological hardships owing to stresses of losing job, income, home, and savings – and – the trauma of *witnessing son being arrested for sitting on a beach*; receiving harassment from people on social media and elsewhere, including death threats, because of lawful protest against lockdowns and mask wearing; loss of other opportunities to earn \$50,000 because of inter-island quarantine; being destitute and homeless and harassed, with constant fear of being arrested, has resulted in immense stress and hopelessness.

(M) Loraine L. Patch: Lost all income, approximately \$5,200 per month, due to lockdown that destroyed vacation rental industry, with depression in that industry expected to last about six years; difficulties locating essential living items due to store

shortages; claustrophobia due to mandatory mask wearing; high anxiety about how to survive in the future; draining of life savings just to pay mortgage; financial and emotional hopelessness due to lockdown, quarantine, and destruction of business and income opportunities.

32. Plaintiffs legitimately fear actual criminal law consequences if they violate, intentionally or otherwise, any provision declared in the June 10 Supplement, the Tenth Proclamation or the Eleventh Proclamation, or the previous Proclamation and Supplementaries that are incorporated by reference. Defendants and their agents and employees intend to enforce the above-alleged travel restrictions and quarantine mandates, for example, and have in fact enforced them via the police and criminal prosecutions. If Plaintiffs take any action even colorably a “violation” of any of the June 10 Supplement or other Supplementaries’ orders, restrictions and mandates, Plaintiffs reasonably fear and expect criminal arrest and prosecution; their fears are therefore real, imminent, and based upon a strong likelihood. In this regard,

(A) Honolulu Police Chief Susan Ballard said a “COVID enforcement team” of 160 officers will be charged every day with ensuring the emergency orders are being followed, and she urged residents to take the rules seriously. ... “With all this enforcement going on ... at this point, we’re probably going to do very few warnings,” she said. “It’s probably going to be citations or arrests.” A hotline was set up for citizens to inform on fellow citizens who are suspected of violating one of the Supplementaries (<https://www.msn.com/en-us/news/us/police-chief-says-her-officers-will-cite-arrest-those-who-ignore-emergency-orders/>)

ar-BB17F2NR, Aug. 7, 2020).

B. “Honolulu police officers issued some 1,350 citations over the weekend to those allegedly violating COVID-19 emergency orders.” (<https://www.hawaiinewsnow.com/2020/08/10/over-weekend-police-issued-citations-those-violating-covid-orders/>).

33. Plaintiff Keikaika wrote to Governor Ige on June 4, 2020, presenting her intent to travel and not abide by the self-quarantine provisions of the May 18 Supplementary; the Office of the Governor responded within a day via an email emphasizing that criminal penalties would be applied to her if she violated the emergency orders.

34. Neither the initial Proclamation nor any of the Supplementaries cites to scientifically validated and reliable sources, or provides any scientifically validated and reliable data, that would establish the efficacy of state-wide lockdowns, business closures, self-quarantines of well people, mandatory wearing of masks in outdoor and open-air places, or prohibitions of well people being in outdoor locations solo or in groups. Neither the initial Proclamation nor any of the Supplementaries cites to scientifically validated and reliable sources, or provides any scientifically validated and reliable data, that would: (a) establish to a reasonable degree of scientific probability how many Covid-19 infections and Covid-19-caused deaths have been prevented by the directives and prohibitions announced by the Proclamation and Supplementaries; or (b) project to a reasonable degree of scientific probability how many Covid-19 infections and

Covid-19-caused deaths would be prevented by the directives and prohibitions announced by the Proclamation and Supplementaries.

FIRST CAUSE OF ACTION

GOVERNOR'S NINTH SUPPLEMENTARY PROCLAMATION, TENTH PROCLAMATION AND ELEVENTH EXCEED THE LEGISLATURE'S DELEGATED AUTHORITY AND ARE UNCONSTITUTIONAL.

35. Plaintiffs incorporate all previous paragraphs this Complaint as if fully stated herein.

36. The legislature of the State of Hawai'i holds the power to enact laws affecting all the people in Hawai'i. Haw. Const. art. III § 1.

37. The Governor of the State of Hawai'i holds the power to execute the laws of the State of Hawai'i, but does not hold legislative power. *See* Haw. Const. art. V.

38. The Governor of the State of Hawai'i does not hold an enumerated power in the Constitution of the State of Hawai'i to declare states of emergency, or to abridge the fundamental rights to liberty and property of persons present in Hawai'i, without the express authority of the legislature. *See* Haw. Const. art. V.

39. The legislature of the State of Hawai'i expressly conferred upon the Governor the limited power to declare an emergency and promulgate rules and regulations to facilitate the government response to such declared emergency. *See* H.R.S. §§ 127A-2 and 127A-14. Included in that delegated authority is the provision permitting the State to arrest, prosecute and punish "violators" of emergency rules and regulations by misdemeanor penalties. *See* H.R.S. § 127A-29.

40. The express delegation of emergency authority limits the Governor's power to a period not to exceed 60 days. H.R.S. § 127A-14(d).

41. Defendant Governor's temporary powers under H.R.S. § 127 are expressly limited per H.R.S. § 127A-1(c), which contemplates a Hawai'i court's judicial power to invalidate an exercise of power that exceeds Hawai'i State or federal constitutional law.

42. Defendant Governor's initial Proclamation was issued on March 4, 2020. Sixty days past March 4, is May 3, 2020. Using the stratagem of issuing "supplemental" proclamations successively incorporating one another, the Ninth (June 10) Supplement extended the coverage of the initial and supplemental proclamations to July 31, 2020, which was 159 days past March 4.

43. Defendant Governor issued the "Tenth Proclamation" on July 17, 2020, which incorporated all prior Supplementaries and extended the coverage of them all to August 31, 2020.

44. Defendant Governor issued the "Eleventh Proclamation" on August 6, 2020, which incorporated all prior Supplementaries and restated the coverage of them all to August 31, 2020.

45. None of the Supplementaries cite any authority, nor has any been found, to authorize apparently limitless numbers of "supplemental" proclamations or end-to-end contiguous proclamations and thereby circumvent the legislature's express 60-day limitation.

46. Defendant Governor’s Eleventh Proclamation, Tenth Proclamation, June 10 Supplement, and any and all Supplementaries, which purport to extend its effect past May 3, 2020, are unconstitutional.

47. As alleged above, Plaintiffs are suffering harms directly related to the continued application and enforcement of the Eleventh Proclamation, Tenth Proclamation, June 10 Supplement, and all preceding Supplementaries.

48. As alleged above, Plaintiffs legitimately fear actual criminal law consequences if they violate, intentionally or otherwise, any provision declared in the Eleventh Proclamation, Tenth Proclamation, June 10 Supplement, and any preceding Supplementaries.

SECOND CAUSE OF ACTION

GOVERNOR’S NINTH SUPPLEMENTARY PROCLAMATION, TENTH PROCLAMATION, AND ELEVENTH PROCLAMATION ARE ALL UNCONSTITUTIONALLY VAGUE AND DEPRIVE PLAINTIFFS OF DUE PROCESS OF LAW

49. Plaintiffs incorporate all previous paragraphs this Complaint as if fully stated herein.

50. As set forth and alleged above in this Complaint, the June 10 Supplement in three places declares the criminal penalties to be imposed for violations of the Supplement’s orders: Section III(E), Section IV(F), and “Exhibit D” (Travel Quarantine Rules). These three provisions purporting to impose criminal penalties are vague and/or internally contradictory.

51. As set forth and alleged above in this Complaint, Plaintiffs each have suffered and continue to suffer substantial harms due to the restrictions and prohibitions imposed by the June 10 Supplement (and its predecessors).

52. As set forth and alleged above in this Complaint, Plaintiffs have a real fear and expectation of criminal prosecution if they violate any provision of the June 10 Supplement. Plaintiffs' fears and expectations are exacerbated by the impossibility of knowing how the criminal penalty provisions will be construed, interpreted and applied to them in any given case.

53. The above-cited and other provisions in the June 10 Supplement / Rules for Travel Quarantine are so vague that persons of common intelligence must necessarily guess at the meaning and may differ as to the application of each of the various provisions contained in those documents.

54. The history and sequence of Defendant Governor's proclamation documents presents an aggregation of overlapping, inconsistent and contradictory provisions. Each of the above-cited supplemental proclamations restates, amends but also reaffirms the prior proclamation document, resulting in a growing body of separate documents that requires a lawyer to assess what is or is not prohibited, restricted, permitted, permitted with restrictions, or punishable by criminal prosecution. With scant exception, none of the proclamation documents informs the reader, a lay person, which prior orders have been nullified, modified, or expanded, or how the new orders are supposed to be interpreted *vis a vis* prior expressions on the same subject matter. Subsequent supplementary proclamations do not effect any repeals by implication. A

person of everyday intelligence cannot decipher what the state of the Governor’s declared “law” is at any given time.

55. As an example of the vagueness and ambiguity: Earlier supplementary proclamations imposed a stay-at-home order, but the June 10 Supplement does not contain that language. The June 10 Supplement purports to restate and restate the prior supplementary proclamations, but then gives vague, inconsistent, and ultimately unintelligible orders concerning what travel is permitted – omitting any guidance about the assumed background status of the “law.” A person of ordinary intelligence – even a lawyer – is hard pressed to know what the rules are and how they would be applied in any but the most obvious cases.

56. As another specific example: The June 10 Supplement, Section III(E), purports to make it a misdemeanor crime to “intentionally or knowingly” violate any restriction or prohibition of activities outside a person’s residence as described in Section III. Section IV(F) purports to make it a misdemeanor crime to “intentionally, knowingly or recklessly” violate Travel Quarantine Rules. Yet the “Rules Relating to Covid-19 Travel Quarantine” (“Exhibit D”), incorporated in Section IV(F), purports to make it a misdemeanor crime to violate said “Rules,” without any proof of knowledge, intent or recklessness. The prohibitions, restriction, and rules defined in the totality of Section III and Section IV overlap and produce conflicts in meaning, understanding, interpretation, and worst of all, in the potential criminal liability and penalties for violations. As a result, the provisions in Section III and Section IV of the June 10 Supplement are so vague that persons of common intelligence must necessarily guess at the meaning and

may differ as to their understanding of the applications of the provisions individually or taken as a whole.

57. Other provisions in the June 10 Supplement / Rules for Travel Quarantine are so vague that persons of common intelligence must necessarily guess at the meaning and may differ as to the application of each of the following provisions, among others, contained in those documents:

(a) The May 18 Supplementary, Section III: included the order to stay at home or place of residence, including hotel rooms or condominium units – the June 10 Supplement does not mention the stay at home order, but authorizes specific kinds of travel, making the extent of the restrictions vague and confusing;

(b) Section III (B): reference to “travel for health and safety” is patently vague, ambiguous, and subject to private interpretations that vary depending upon perspective;

(c) Section III (B): references to permission for persons to “travel to engage in minimum basic operations,” which despite some vague broad examples, is a provision so vague and ambiguous that it leaves ordinary people wondering – yet in fear of criminal prosecution for violations if they guess incorrectly;

(d) Section III (A): declares which business may operate by reference to “Exhibit G,” which is a colorful graphic that provides little to no guidance to a person of common intelligence to know what qualifies so as to avoid a misdemeanor prosecution;

(e) Section III(A), (B) & (C): imposes requirements about engaging in “safe practices” and the like “to the fullest extent possible” – which is not a

reasonableness standard, nor a published standard, but a vague, ambiguous, unknown, and therefore a both subjective and arbitrary standard, such that a person of common intelligence could never be expected to know the standard in advance or in any given application, yet would face criminal prosecution for an alleged violation based upon an outside person's *post hoc* evaluation; and

(f) "Exhibit D," Travel Quarantine Rules, sections 2 & 4: impose the "period of self-quarantine" for anyone entering the State of Hawai'i, and imposes misdemeanor criminal penalties upon a self-quarantined person who "fails to remain within the confines of the quarantine location designated by the person" for the quarantine period, without providing any guidance about what constitutes "the confines" and without providing any rule of reason for a person to employ in order to comply with the quarantine but still carry out important life activities within a reasonable distance from or in a reasonable proximity to the "designated quarantine location."

(g) Section IV(B): defines "designated quarantine location" as the "individual room or unit" in some kinds of lodging, without providing any rule of reason for a person to employ in order to comply with the quarantine but still carry out important life activities within a reasonable distance from or in a reasonable proximity to the "designated quarantine location." The same paragraph entirely fails to define the term with respect to lodging such as single-family dwellings, duplexes, or mobile homes.

58. The above quoted vague and/or otherwise unlawful or unconstitutional provisions are set forth to provide examples. Plaintiffs allege there are other vague, unlawful and/or otherwise unconstitutional provisions contained in the June 10

Supplement and its predecessor proclamations and exhibits, and Plaintiff reserves without limitation the right to elaborate upon them depending upon the facts developed in litigation, discovery, motions, and hearings.

59. The June 10 Supplement and its predecessor proclamations, along with the prior and existing Executive Order(s), and Defendants' enforcement of each and all of these, unlawfully and unconstitutionally infringe on Plaintiffs' rights to liberty and property without due process of law, thereby entitling Plaintiffs to the relief requested below. Haw. Const. art. I §§ 2,5.

60. The Tenth Proclamation suffers the same defects as alleged above for the June 10 Supplement because the Tenth Proclamation expressly incorporates and restates the Ninth Supplement.

61. The Tenth Proclamation injects overlapping, confusing, vague, and ambiguous language into the corpus of directives. The Tenth Proclamation does not expressly repeal any prior Supplementary's language. There is no applicable repeal by implication.

62. Because the corpus of directives has grown by addition only, the body of "law" includes every directive starting with the initial Proclamation, despite the changes in language, section numbering, and potential context. A lay person cannot determine what is prohibited, what is mandatory, and what is punishable, by simply referring to a single document. Instead, every person must attempt the legal analysis of a series of documents, on pain of accusations of "knowingly" or "recklessly" violating some

provision appearing in one proclamation document that does not appear in the same way or at all in another.

63. A person of everyday intelligence cannot decipher what the state of the Governor's declared "law" is at any given time, or how it will be interpreted and applied. In consequence, the directives within the June 10 Supplement imposing the "host responsibility" to call law enforcement because of suspected violations are very likely to result in criminal arrests and accusations leveled based upon "laws" that have no commonly understood meaning. For example, the June 10 Supplement in Section III(C) issues directives about "safe practices." The Tenth Proclamation, however, in Section III(B) issues different directives about "safe practices." A call to police to inform upon a neighbor who is violating "safe practices" cannot be fairly adjudicated because there is no single definition – but the accused becomes enmeshed into the systems of police, prosecutors, and criminal law courts.

64. The Eleventh Proclamation suffers all of the same infirmities and defects as the other Supplementaries, as alleged above, and is unconstitutional for the same reasons.

65. There are many other instances of vagueness, ambiguity, internal contradiction, and invitations for abuse arising from the fact that the Supplementaries accrue by addition only, as alleged and described above. Plaintiffs reserve the right to present any number of the additional examples as litigation proceeds in this matter.

66. As alleged above, the corpus of directives, individually, en masse, and in concert, are unconstitutionally vague under the constitutions of the State of Hawai'i and of the United States.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

1. A declaratory judgment stating that the Eleventh Proclamation, the Tenth Proclamation, and the June 10 Supplement inclusive of all exhibits and any existing or predecessor documents they include by reference, are unconstitutional, invalid, null, and void;

2. An injunction prohibiting Defendant Governor, Defendant Attorney General, and Defendant State of Hawai'i including all of its political entities, agents, and employees, from enforcing any provision of the Eleventh Proclamation, the Tenth Proclamation, the June 10 Supplement, the initial Proclamation, or any of the Supplementaries in any way, whether by criminal, civil, or administrative procedures;

3. A declaratory judgment stating that the Eleventh Proclamation, the Tenth Proclamation, and the June 10 Supplement inclusive of all exhibits and any existing or predecessor documents they include by reference, may not be cited or otherwise employed as a source of law or evidence in any civil, administrative, or other legal or quasi-legal proceeding, except only as a defense to allegations of fault, misconduct, liability, or damages, and for no other purposes;

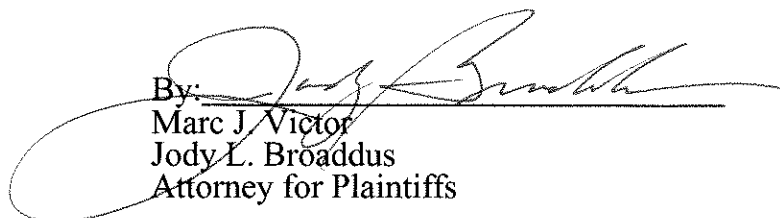
4. That this Court award Plaintiffs their attorneys' fees under any applicable provision of law;

5. That this Court award Plaintiffs' their costs in this action; and

6. That this Court award any other relief it deems just and proper.

RESPECTFULLY SUBMITTED this 24th day of September, 2020.

ATTORNEYS FOR FREEDOM LAW FIRM

By: 
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Attorney for Plaintiffs