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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI‘I

BRIDGE AINA LE‘A, LLC,	)	Civil No. 11-00414 SOM KJM
	)	
Plaintiff,	)	STATE OF HAWAII’S
	)	MEMORANDUM RE AWARD OF
	)	NOMINAL DAMAGES
vs.	)	
	)	CERTIFICATE OF SERVICE
STATE OF HAWAII LAND USE	)	
COMMISSION, VLADIMIR P.	)	
DEVENS, in his individual and official	)	
capacity, KYLE CHOCK, in his	)	
individual and official capacity,	)	
THOMAS CONTRADES, in his	)	
individual and official capacity, LISA M.	)	
JUDGE, in her individual and official	)	
capacity, NORMAND R. LEZY, in his	)	
individual and official capacity,	)	
NICHOLAS W. TEVES, JR., in his	)	
individual and official capacity,	)	
RONALD I. HELLER, in his individual	)	

and official capacity, DUANE )  
KANUHA, in his official capacity, and )  
CHARLES JENCKS, in his official )  
capacity, JOHN DOES 1-10, JANE )  
DOES 1-10, DOE PARTNERSHIPS 1- )  
10, DOE CORPORATIONS 1-10, DOE )  
ENTITIES 2-10 and DOE )  
GOVERNMENTAL UNITS 1-10, )  
) )  
Defendants. )  
\_\_\_\_\_ )

STATE OF HAWAII’S MEMORANDUM RE AWARD  
OF NOMINAL DAMAGES

This Court correctly determined that even if there is a taking, plaintiff can be entitled at most to nominal damages of \$1.<sup>1</sup> This presents several alternatives:

- The Court can tell the jury that the Court will deal with just compensation.
- The Court can direct the jury to award just compensation of \$1 if the jury finds a taking.

The State prefers the first alternative. The jury’s knowledge or belief that the whole case is about \$1 will almost certainly affect its decision-making process. The

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<sup>1</sup> The State continues to support this decision. The ruling is correct and will be upheld on appeal if necessary. Respectfully, any other ruling would have been an abuse of discretion. In particular, case law clearly rejects the idea that actual damages (or just compensation) must be awarded if a constitutional right is implicated. *Carey v. Piphus*, 435 U.S. 247, 266 (1978) (“[T]he denial of procedural due process is actionable for nominal damages without proof of actual injury.”); *Farrar v. Hobby*, 506 U.S. 103, 112 (“[A] court [must] award nominal damages when a plaintiff establishes a violation of his right to procedural due process but cannot prove actual injury.”).

jury sat through two weeks of (let's face it) boring and confusing testimony. They will be disappointed and perhaps angry that two weeks of their valuable time is "wasted." They will not understand that their decision remains very important (and any attempt to explain why will be disputed and possibly prejudicial in itself).

Effect on decision-making is unpredictable. Maybe the jury will just shrug their shoulders and say – "Why bother for a dollar? Let's just find no taking and get done before lunch." Or maybe the jury will say or think: "Bridge is only getting a dollar so it won't hurt anyone for us to find a taking." Either way the \$1 introduces a wild card into the process and diminishes the chance of getting a true verdict.

In the limited time available, the State was not able to find a case directly addressing the apparently unusual situation where the issue of liability is open but – as a matter of law - plaintiff has not adduced evidence that can support actual damages. (And the State apologizes for not considering this issue earlier.) The State believes that the Court's analogy to special damages in a medical malpractice seems fruitful. If a plaintiff failed to put on evidence of future medical costs, then the issue would simply not be presented to the jury.

The State asks the Court to tell the jury can focus its attention on the important question of whether there was a taking. The Court will resolve just compensation based on the jury's action as to the taking.

DATED: Honolulu, Hawai'i, March 21, 2018.

/s/ William J. Wynhoff  
William J. Wynhoff  
David D. Day  
Amanda J. Weston  
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)  
Defendants. )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I hereby certify that on the date the foregoing document is filed it will be served on the following persons through the court ECF system:

Bruce D. Voss, Esq.  
Michael C. Carroll, Esq.  
Matthew C. Shannon, Esq.  
John Dickinson Ferry, III, Esq.

DATED: Honolulu, Hawai'i, March 21, 2018.

/s/ William J. Wynhoff  
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