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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

KOKUA COALITION, a Hawaii non-profit corporation, dba HAWAII VACATION RENTAL OWNERS ASSOCIATION, Plaintiff, vs. DEPARTMENT OF PLANNING AND PERMITTING OF THE CITY AND COUNTY OF HONOLULU; CITY AND COUNTY OF HONOLULU; KATHY SOKUGAWA IN HER OFFICIAL CAPACITY AS ACTING DIRECTOR OF THE DEPARTMENT OF PLANNING AND PERMITTING, Defendants.	CIVIL NO. _____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; EXHIBIT "A"; SUMMONS**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff KOKUA COALITION, a Hawaii nonprofit corporation doing business as HAWAII VACATION RENTAL OWNERS ASSOCIATION ("Plaintiff"), by and through its attorneys, Damon Key Leong Kupchak Hastert, and for causes of action against Defendant City and County of Honolulu, Defendant Department of Planning and Permitting, City and County of Honolulu, and Acting Director Kathy Sokugawa ("Defendants"), alleges and avers as follows:

INTRODUCTION

1. Ordinance 19-18 – relating to short-term rentals – will take effect on August 1, 2019, and its impact will be immediate and devastating on the owners and operators of legal rental properties on Oahu. Even before its effective date, the Department of Planning and Permitting ("DPP") has sent letters to 5,000 Oahu property owners, in the absence of any proof at all and apparently frequently in error, threatening fines of $10,000 per day. According to the Honolulu Advertiser, by July 27, 2019, the DPP had received over 390 complaints about erroneously targeted properties, to which the DPP responded "We apologize for any inconvenience this may have caused." Ordinance 19-18 is so flawed that the agency charged with enforcing has no idea how to do so. This heavy-handed and sloppy pre-enforcement raises significant and reasonable fears by those engaged in the legal rental use of property on Oahu concerning the imminent excessive enforcement of Ordinance 19-18.

2. Ordinance 19-18 is unconstitutional, violates both federal and state law, is inherently contradictory, and is too vague and ambiguous to be understood. Furthermore, the DPP has published "regulations" – which are being changed on a weekly basis – that bypassed the statutory rule-making requirements and that conflict with the ordinance itself and its legislative history. Plaintiff, on behalf of its members and others similarly situated, seeks declaratory and injunctive relief from this Court so that their lawful activities do not subject them to excessive fines imposed by an energetic but misguided DPP.

3. The right to own and rent property is a fundamental right under the United States and Hawaii Constitutions, and Plaintiff's members and others similarly situated have a property interest in the ownership and use of their properties, for purposes of due process.

NATURE OF ACTION AND JURISDICTION

4. Plaintiff is and was at all relevant times a Hawaii nonprofit corporation with its principal place of business in the City and County of Honolulu, State of Hawaii, whose purpose is to lobby and educate government officials, property owners, vendors and the general public about the vacation rental industry, and to advocate for its members and similarly situated property owners and property managers who do, or desire to, rent all or portions of their properties to guests for compensation in compliance with the law. Plaintiff's members, and many other Oahu property owners and managers, have been engaged in the lawful

rental and advertisement of their properties and their constitutional and statutory rights will be violated if Ordinance 19-18 is applied as the DPP has publicly stated it will be.

5. This is a civil action under 42 U.S.C § 1983 seeking declaratory judgment and injunctive relief against Defendants for committing acts, under color of law, with the intent and for the purpose of depriving Plaintiff, its members, and others similarly situated, of rights secured under the Constitution and laws of the United States.

6. This case arises under the United States Constitution and 42 U.S.C. §§ 1983 and 1988, as amended. This Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over the other claims pursuant to 28 U.S.C. § 1367. The declaratory and injunctive relief sought is authorized by 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983 and Rules 57 and 65 of the Federal Rules of Civil Procedure.

7. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2). Plaintiff, and the properties of its members are located in this judicial district; the actions complained of took place in this judicial district; documents and records relevant to the allegations are maintained in this judicial district; and the Defendants are present in and regularly conduct affairs in this judicial district.

PARTIES

8. Plaintiff incorporates by reference its allegation in Paragraph 1 above.

9. Defendant CITY AND COUNTY OF HONOLULU ("City") is a municipal corporation, and is legally responsible for the acts and omissions of its departments, officials and boards.

10. Defendant DEPARTMENT OF PLANNING AND PERMITTING OF THE CITY AND COUNTY OF HONOLULU ("DPP") is the agency charged with enforcing zoning regulations on Oahu, pursuant to the Land Use Ordinance ("LUO"), Chapter 21 of the Revised Ordinances of Honolulu.

11. Defendant KATHY SOKUGAWA ("Director") is, and at all relevant times was the Acting Director of the DPP of the City and County of Honolulu, and, in performing her duties is and was, at all relevant times, acting under color of law. The Director is being sued only in her official capacity.

12. Under Ordinance 19-18, the Director issues notices of violation to property owners, alleging that property is being used in violation of the LUO, including as an illegal Transient Vacation Unit ("TVU")[1] or Bed and Breakfast

[1] "'Transient vacation unit' means a dwelling unit or lodging unit that is advertised, solicited, offered, or provided, or a combination of any of the foregoing, for compensation to transient occupants for less than 30 days, other than a bed and breakfast home."

("B&B").[2] If the Director determines that any person is not complying with a notice of violation, the Director may have the person served with a notice of order requiring the party to correct the violation within a given period of time, pay a civil fine not to exceed $1,000 and $5,000 per day for each day the violation persists, and for a recurring violation, a civil fine of $10,000 and $10,000 per day for each day the violation persists. Ordinance 19-18 gives the Director no discretion to impose a lesser fine. An order issued by the Director may be appealed by a person aggrieved to the Zoning Board of Appeals for a contested case hearing pursuant to Haw. Rev. Stat. Ch. 91, which is the first opportunity for the aggrieved person to examine the DPP's evidence and witnesses, present evidence and argument, confront witnesses and contest the order. LUO § 21-2.150-2(c)(3).

13. Under Ordinance 19-18, the Director can also issue notices of violation for advertising an illegal TVU or B&B. If the advertisement is not removed within seven days after receipt of the notice of violation, the Director levies a fine of not less than $1,000 and not more than $10,000 per day against the owner for each day the advertisement is on display beyond the seventh day. Ordinance 19-18 allows the Director to impose fines via a notice of violation only, and without a notice of order, thereby depriving any aggrieved party with an

[2] "'Bed and breakfast home' means a use in which overnight accommodations are advertised, solicited, offered, or provided, or a combination of any of the foregoing, to guests for compensation, for periods of less than 30 days, in the same detached dwelling as that occupied by an owner, lessee, operator, or proprietor of the detached dwelling."

opportunity to obtain a contested case to challenge the alleged violation before the Zoning Board of Appeals.

14. The LUO also provides that violation of its provisions can be prosecuted as a crime. Ordinance 19-18 affords an owner no due process before a notice of violation or notice of order is issued, other than the nature of the violation, the section number of the provision or rule violated, and the time and location of the violation. Ordinance 19-18 does not require the DPP nor the Director to provide to the property owner the evidence or information upon which a notice of violation or notice of order is based. Under the existing legal framework, someone wrongly accused by the Director of having violated a provision of the LUO will not get any form of a hearing, an opportunity to cross-examine witnesses, and to prevent witnesses and exhibits, until months or years after the notice of violation and notice of order are issued and massive fines have amassed, and in the case of a notice of violation for advertising a TVU or B&B, there is no procedure at all for a hearing or appeal.

LEGAL RENTALS PRIOR TO ORDINANCE 19-18

15. The City first regulated "short-term" rentals in 1989 when it amended the LUO to prohibit TVUs and B&Bs outside of the resort district.

16. For the next 30 years, until the passage of Ordinance 19-18, the LUO and the City defined an illegal TVU as "a dwelling unit or lodging unit which is provided for compensation to transient occupants for less than 30 days, other

than a bed and breakfast home." LUO § 21-10.1.

17. Similarly, for the next 30 years, until the passage of Ordinance 19-18, the Land Use Ordinance and the City defined an illegal B&B as "a use in which overnight accommodations are provided to guests for compensation, for periods of less than 30 days, in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling." LUO § 21-10.1.

18. In recognition of Haw. Rev. Stat. 46-4, which prohibits a zoning law from eliminating a pre-existing lawful use except through discontinuance of the use, and the constitutional protections for property used as a non-conforming use and vested rights inherent in both the Hawaii and United States Constitutions, the City was required to and did allow those lawfully established, pre-existing TVUs and B&Bs to continue to operate subject to obtaining a non-conforming use certificate ("NUC"). TVUs and B&Bs that operate on Oahu pursuant to a NUC are not the subject of this litigation.

19. Over this 30 year period, until the passage of Ordinance 19-18, the City and the DPP have applied the law consistent with the express language of the LUO.

20. Thus, prior to the effective date of Ordinance 19-18, the LUO allowed a property owner to rent its property to transient guests in blocks of 30 days or more, up to twelve times per year.

21. Prior to the effective date of Ordinance 19-18, the LUO did not require that renters actually occupy all or a portion of a rented dwelling unit during the 30 day rental period. However, the LUO prohibited the owner, lessee, operator or proprietor from occupying themselves, or re-renting to others, any portion of the dwelling unit that was rented to the transient guest during the 30 day rental block.

22. In this way, the City and DPP were assured that a property that was provided to a guest for 30 days for consideration was available to the guest for 30 days, and further that there would not be multiple rentals within a 30 day rental period.

23. Thus, a rental that was conducted consistent with the foregoing was neither a TVU or B&B, nor illegal under the LUO, because it was a legal long term rental of at least 30 days.

24. For 30 years, prior to the effective date of Ordinance 19-18, the City and the DPP followed and applied the foregoing LUO provisions in the manner described, including in litigation before the Zoning Board of Appeal and in written opinions and/or declaratory rulings.

25. In prior litigation between Plaintiff and the City and DPP, *Kokua Coalition v. Department of Planning and Permitting*, Civil No. 1:16-cv-00387 DKW-RLP, the City and DPP agreed that the foregoing was the meaning of the LUO, prior to passage of Ordinance 19-18. A copy of that settlement agreement is attached as Exhibit "A."

26. TVUs and B&Bs that operated on Oahu in violation of the LUO, prior to the passage of Ordinance 19-18, are also not the subject of this litigation.

27. Rather, this lawsuit concerns Oahu properties for which the owners and managers legally rented residential properties for 30 consecutive days or more, but which under Ordinance 19-18 and the DPP's stated enforcement of it, may be subject to massive fines and potential criminal liability.

28. In reliance on the express language of the LUO and the pattern and practice of the City and DPP in enforcing the LUO, many Oahu property owners, lessees, operators, proprietors -- including Plaintiff's members and others similarly situated -- purchased properties, structured their lives around, and rented properties pursuant to the then-existing provisions of the LUO by legally renting all, or portions of, their properties for 30 days or more. The vast majority of these property owners, lessees, operators and proprietors, pay general excise tax, transient accommodation tax and income tax on their legal rental activity.[3]

29. By the City's estimate, as of 2019, there are an estimated 8,000 to 10,000 rental properties on Oahu being advertised to guests, a number that included both perfectly legal rentals as described above, as well as rentals that may have been operated in violation of the LUO. Upon information and belief, the City

[3] The DPP has no jurisdiction to collect taxes or enforce tax laws, those are the exclusive province of other governmental agencies.

has not published an estimate of how many of these advertised units are being rented legally under the LUO and how many are being rented illegally, and the City does not know.

30. In addition to property owners, lessees, operators, and proprietors directly engaging in such legal rentals, many other Oahu residents and businesses became wholly or partially economically dependent on these legal rentals, including house cleaners, landscapers, contractors, property managers, and booking agents. Many other businesses, such as retail merchants, restaurants and activity providers, are also economically supported, in whole or in part, by these legal rentals.

PASSAGE OF ORDINANCE 19-18

31. After hearings and public testimony before the City Council, the City Council passed Bill 89, CD 2 on June 17, 2019, and Mayor Kirk Caldwell signed Ordinance 19-18 on June 25, 2019. The effective date of Ordinance 19-18 is August 1, 2019, giving Oahu residents mere weeks to comply.

32. As more fully described below, Ordinance 19-18 and/or the intended application of it by the DPP and the Director, will have a direct and substantial impact on Plaintiff, its members and those similarly situated, who currently rent properties legally under the LUO and desire to continue to do so, and will put Plaintiff's members and those similarly situated, in immediate risk of excessive penalties, including fines and possible criminal prosecution.

DPP's Prohibition Of Legal 30 Day Rentals

33. As described above, for 30 years, until the passage of Ordinance 19-18, the LUO has not contained, and DPP has not enforced, any requirement that a guest who rents a property for 30 days or more, must actually be compelled to remain or stay within the property for 30 days.

34. Ordinance 19-18 contains a new definition of transient vacation unit (or TVU): "'Transient vacation unit' means a dwelling unit or lodging unit that is advertised, solicited, offered, or provided, or a combination of any of the foregoing, for compensation to transient occupants for less than 30 days, other than a bed and breakfast home."

35. Ordinance 19-18 also contains a definition of "unpermitted transient vacation unit" which means a TVU that is not located within certain zoning districts or operating with a valid NUC.

36. Similarly, Ordinance 19-18 contains a new definition of bed and breakfast home (or B&B): "'Bed and breakfast home means a use in which overnight accommodations are advertised, solicited, offered, or provided, or a combination of any of the foregoing, to guests for compensation, for periods of less than 30 days, in the same detached dwelling as that occupied by an owner, lessee, operator, or proprietor of the detached dwelling."

37. Ordinance 19-18 also contains a definition of "unpermitted bed and breakfast home" as one that is not located within certain zoning districts,

operating with a valid NUC, or newly registered under Ordinance 19-18.

38. Thus, with the exception of adding the terms "advertised, solicited or offered", Ordinance 19-18 describes an illegal TVU or B&B exactly as was defined under the LUO, i.e., one that is rented to a guest for less than 30 days.

39. Ordinance 19-18 further confirms that a rental for 30 days or more, such as those entered by Plaintiff's members and others similarly situated, are not unlawful under Ordinance 19-18. It provides that it is unlawful for an owner or operator of an unpermitted B&B or TVU, or their agent or representative to: (A) enter into a rental agreement for fewer than 30 consecutive days; (B) enter into a rental agreement that limits actual occupancy for less than the full rental period, or conditions occupancy for the full rental period for additional consideration; (C) set aside or exclusively reserve an unpermitted TVU or B&B for a period of 30 days or more, but limit actual occupancy for a period less than 30 days, or condition the right to occupancy for the full rental period on the payment of additional consideration; (D) advertise, solicit, offer or knowingly provide rental of an unpermitted TVU or B&B to transient occupants for less than 30 consecutive days. In other words, as long as the property rented is provided for 30 days, and access is not restricted or additional rent is not charged, the owner or operator, or their agent or representative, has not committed a proscribed unlawful act.

40. The new advertising restrictions of Ordinance 19-18, described more fully below, likewise confirm that Ordinance 19-18 does not proscribe the

type of legal 30 day rentals engaged in by Plaintiff's members and others similarly situated. It states "The following are exempt from the provisions of this subsection … Legally established dwelling units that are rented for periods of 30 consecutive days or more at any one time."

41. However, following the passage of Ordinance 19-18 on June 26, 2019, the DPP has published, and amended multiple times, a document entitled "New Regulations on Short-Term Rentals", most recently on July 24, 2019 (hereinafter "regulations"). These "regulations" were not published to the public in draft form, commented upon by interested persons, or adopted as required by Haw. Rev. Stat. Ch. 91.

42. In the "regulations", DPP states "actually staying in a home for less than 30 days is still a violation. DPP will still monitor for occupancy violations."

43. Not only is this provision of the "regulations" completely contrary to the express language of Ordinance 19-18, but it conflicts with the LUO which has been in effect for 30 years, it conflicts with DPP's past enforcement of the LUO, it conflicts with the legislative history during the debate on Ordinance 19-18, and it conflicts with the settlement agreement entered by the Defendants with Plaintiff. Moreover, it violates Haw. Rev. Stat. § 46-4, which prohibits the DPP from using an amendment of a zoning law to prohibit a lawful pre-existing use, and it violates the Hawaii and United States Constitutional protections for

non-conforming uses and vested rights.

44. Plaintiff's members and others similarly situated, have a reasonable fear that if this provision of the DPP's "regulations" is enforced against them and their previously legal rentals, they will be subjected to onerous fines of up to $10,000 per day, and possible criminal prosecution.

Advertising Restrictions

45. The LUO contained no specific provisions concerning the advertising content for rental property. Ordinance 19-18 contains new advertising restrictions on TVUs and B&Bs, which as noted above, are those properties that are rented for periods less than 30 days.

46. Ordinance 19-18 requires that advertisements for legal TVUs and B&Bs, as defined in the ordinance, must contain a registration number or NUC number for those uses that are permitted under the ordinance, and for advertisements for TVUs or B&Bs that are located in zoning districts where such uses are permissible with a registration or NUC, the street address and apartment number.

47. Ordinance 19-18 requires that within 7 days of receipt of a notice of violation for an illegal advertisement, the owner or operator of a B&B or TVU must remove the advertisement identified in the notice of violation, including any advertisement made through a hosting platform. If not timely removed, DPP levies a fine of between $1,000 and $10,000 a day for each day the advertisement

is on public display.

48. The above-mentioned advertising restriction does not require the issuance of a notice of order by the Director, which is the operative event by which an alleged violation can be appealed to the Zoning Board of Appeals. As worded, Ordinance 19-18 does not allow a person aggrieved by a notice of violation imposing fines for an advertising violation to obtain any agency or judicial review, thereby effectively silencing speech based on nothing more than the Director's unilateral determination that an advertisement violates the ordinance.

49. The July 2019 "warning letters" sent by DPP to 5,000 Oahu property owners was based on an internet search by DPP that resulted in "hits" linked to possible illegal vacation rentals. Although the "warning letters" required no response by the recipient, by its own admission, within a few days DPP received 390 complaints about erroneously issued warning letters, demonstrating the high likelihood that after August 1, 2019, the DPP will issue erroneous notices of violations and fines for allegedly illegal advertisements.

50. Further, Ordinance 19-18 states that the existence of an advertisement is prima facie evidence of the operation of an unlawful TVU or B&B, and places the burden of proof on the owner or operator to prove their use is legal, impermissibly shifting the burden of proof which was recently explained by the Intermediate Court of Appeals, that a notice of violation for illegal transient

vacation rental use issued by the Director must be supported by reliable, probative and substantial evidence that a violation occurred. In this fashion, the City, DPP and the Director have placed the burden on the property owner to prove that a violation did not occur, even though a violation can result in massive fines and criminal prosecution.

51. The new advertising restrictions of Ordinance 19-18 specifically exempt from their application "Legally established dwelling units that are rented for periods of 30 consecutive days or more at any one time." Thus, properties that are rented for 30 consecutive days are exempt from the advertising restrictions.

52. In contrast with the language of Ordinance 19-18, DPP's "regulations" explain that to distinguish a legal long-term rental advertisement, i.e., one for 30 consecutive days or more, from an illegal short-term rental, an owner must "[s]pecify in the ad that the rental period is a minimum of 30 days or more. Do not include any rental rates of less than a monthly basis."

53. DPP's regulations also acknowledge that many hosting platforms calculate and post a daily rate for a property, even when the minimum rental period is for 30 days or more, and that such information is often not posted by nor controlled by the host. Even though a daily rate is nothing but a metric that is provided by a hosting platform for consumer education and price comparison, and is a routinely used measure in all residential rentals under the landlord-tenant

code, DPP states that in such cases "You may be cited for illegally advertising." DPP's "regulations" state that a property owner legally advertising a property for rent for 30 days or more must make the Hobbesian choice of listing his property on a hosting platform and facing massive fines, or choosing not to advertise on such sites.

54. DPP's "regulations" are unsupported by the language of Ordinance 19-18, and with its threat to fine owners $10,000 per day, it severely chills free speech, and puts owners at risk of significant fines notwithstanding an advertisement is for a legal 30 day rental that is exempt from the advertising restrictions. Not only does Ordinance 19-18 not contain any pre-deprivation hearing before the imposition of fines, but because it does not contain a "notice of order" requirement, it also forecloses any prompt and independent post-deprivation review.

Compelled Disclosure Of Protected Information

55. Ordinance 19-18 requires a "hosting platform",[4] to report to the

[4] "'Hosting platform' means a person that collects or receives a fee from any person for booking services through which an owner, operator, or proprietor of a [B&B or [TVU] may offer the use of a [B&B or TVU]. Hosting platforms typically, but not necessarily, provide booking services through an online platform that allows the owner, operator, or proprietor to advertise the [B&B or TVU] through a website provided by the hosting platform, and the hosting platform conducts a transaction by which potential users arrange the use of and payment for the [B&B or TVU], whether the payment is made directly to the owner, operator, or proprietor, or to the hosting platform." Other jurisdictions have concluded that similar definitions apply to such hosting platforms as Airbnb, Homeaway and VRBO.

Director on a monthly basis the following massive amount of private, confidential and non-public information about hosts who list properties for rent on Oahu on such hosting platforms (including Plaintiff's members and others similarly situated), such as: (1) the names of the persons responsible for each listing; (2) the physical address of each listing; (3) the TAT identification number of the owner of the property; (4) the length of stay for each listing, and; (4) the price paid for each stay. Further, Ordinance 19-18 allows the Director to share this information with other state or city government officials for law enforcement purposes. Ordinance 19-18 also requires a hosting platform to compel its hosts to agree in writing to the disclosure of this non-public information.

56. Plaintiff's members and others similarly situtated, have significant privacy interests – statutory and constitutional – in and to this private, personal and highly confidential information and object to its compelled, mass disclosure to the City, the DPP and the Director on a monthly basis, and to the sharing of that information by the Director with other governmental officials for law enforcement purposes, or to the disclosure to the public pursuant to a Uniform Information Practices Act request made pursuant to Haw. Rev. Stat. Ch. 92.

57. Although required by Ordinance 19-18, the DPP has adopted no regulations, pursuant to Haw. Rev. Stat. Ch. 91, concerning the review, use or dissemination to others' of this highly personal and confidential information.

58. Reporting requirements substantially identical to those of Ordinance 19-18 have been found likely to violate the Fourth Amendment of the United States Constitution and the Stored Communications Act for purposes of preliminary injunctive relief.

Imposition Of Excessive Fines

59. The LUO, prior to the passage of Ordinance 19-18, gave the Director the discretion to impose civil fines for a violation, not to exceed $1,000, and $1,000 per day for each day that a violation persists.

60. The LUO also provides the Director with discretion to impose a lesser fine, and the DPP has enacted rules, pursuant to Haw. Rev. Stat. Ch. 91, providing for a schedule of fines and providing the criteria for the Director to consider when imposing a fine. The Intermediate Court of Appeals has held that the Director must explain her rationale when imposing a fine for transient vacation rental violations.

61. Ordinance 19-18 creates a special fine, applicable only to its requirements for TVUs or B&Bs. This includes a fine for an initial violation of $1,000, and $5,000 per day for each day that a violation persists. For a recurring violation, a fine of $10,000, and $10,000 per day for each day that a violation persists. Thus, a year-long violation could be fined between $1,800,000 and $3,600,000. In addition to the daily fines, the Director may impose an additional fine in the amount of the rent received from "impermissible rental activity" during

the period the daily fines were imposed.

62. Ordinance 19-18 does not explicitly provide any discretion to the Director with respect to the initial and recurring fine amounts.

Contradictory Provisions For Location of Permitted B&Bs

63. Ordinance 19-18 allows the permitting of new B&Bs, subject to restrictions and standards. Plaintiff's members, and others similarly situated, are considering seeking permits for B&Bs allowed under Ordinance 19-18. For purposes of this Lawsuit, Ordinance 19-18 contains an inherently contradictory, and therefore unlawfully vague and ambiguous, provision. In a multi-family dwelling (an apartment building or condominium), a total of 50% of the total dwelling units may be used as a B&B. However, Ordinance 19-18 also states that a B&B cannot be located within a 1,000-foot radius of another B&B. This latter provision prohibits what the former permits, the former provision permits what the latter prohibits.

COUNT I
(US CONSTITUTION VIOLATION: FOURTH AMENDMENT)

64. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

65. The Fourth Amendment to the United States Constitution provides "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no

Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

66. By virtue of its due process clause, the Fourth Amendment is binding on states and municipalities, including the City.

67. The reporting requirements of Ordinance 19-18 constitute a search and seizure within the meaning of the Fourth Amendment.

68. The information that Ordinance 19-18 seeks to compel the hosting platforms to produce is private, confidential, non-public information for which hosting platform users, including Plaintiff's members and others similarly situated, have a reasonable expectation of privacy against the compelled disclosure of that information to the City, DPP and the Director, and by extension to other law enforcement agencies and to the public.

69. Ordinance 19-18 contains no opportunity for pre-compliance review of the requested information by a neutral decision-maker.

70. Plaintiff, on behalf of itself, its members, and others similarly situated, is entitled to an injunction against the enforcement of the reporting requirements of Ordinance 19-18 and a declaration that the reporting requirements of Ordinance 19-18 are unconstitutional in violation of the Fourth Amendment.

COUNT II
(VIOLATION OF STORED COMMUNICATIONS ACT)

71. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

72. The Stored Communications Act, 18 U.S.C. § 2701 et. seq. "SCA"), governs the disclosure of user communications and records by covered service providers. Hosting platforms, as described by Ordinance 19-18, and as used by Plaintiff's members and others similarly situated, are covered service providers under the SCA.

73. The information that the City, through Ordinance 19-18, seeks to obtain from the hosting platforms concerning Plaintiff's members and others similarly situated, including the users' name, the address of each listing, the TAT tax identification number of the user, the length of stay at each listing and the price paid for each stay, is SCA-protected information.

74. Ordinance 19-18 does not require compliance by the City, DPP or Director, with any of the statutory procedures by which a government can obtain access to SCA-protected information.

75. 18 U.S.C. § 2707 provides a private right of action for declaratory and injunctive relief, damages, and attorneys' fees, against any person who knowingly or intentionally violates the SCA.

76. Plaintiff, on behalf of itself, its members, and others similarly situated, is entitled to an injunction against the enforcement of the reporting requirements of Ordinance 19-18 and a declaration that the reporting requirements of Ordinance 19-18 are in violation of the SCA.

COUNT III
(US CONSTITUTION VIOLATION: FREE SPEECH)

77. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

78. The First Amendment to the United States Constitution guarantees freedom of speech.

79. Ordinance 19-18 purports to penalize the speech of Plaintiff's members and others similarly situated, by imposing restrictions on the content of advertisements concerning the rental of real property on Oahu. Violations of the advertising restrictions in Ordinance 19-18 carry significant penalties, including fines of up to $10,000 for each day that an advertisement deemed illegal by the Director remains on public display. Violation of the LUO can also be prosecuted as a misdemeanor.

80. The advertising provisions of Ordinance 19-18 clearly apply to expressive speech and not conduct.

81. Although Ordinance 19-18 specifically exempts from its advertising restrictions any advertisements for "legally established dwelling units

that are rented for periods of 30 consecutive days or more at any one time," such as the rentals engaged in by Plaintiff's members and other similarly situated, the DPP "regulations" state that an advertisement that contains a "daily rate" or one that includes any rental rate of less than a monthly basis, would be found by the Director to be illegal.

82. Furthermore, although Ordinance 19-18 makes clear that a rental for a period of 30 consecutive days or more is a legal rental without regard to actual occupancy, upon information and belief the DPP and the Director will deem any advertisement containing a "minimum stay" of less than 30 consecutive days to be illegal, regardless of whether the advertisement explicitly states that all rentals will be for a minimum of 30 days and regardless of whether the rental actually arising from the advertisement will in fact be for 30 days.

83. The inconsistency between the express exemption in Ordinance 19-18 for advertising for legally established dwelling units that are rented for 30 days or more and the DPP's "regulations" that indicates a daily rental rate or other indicia of a less-than-30 day rental will constitute an illegal ad subjecting an owner to fines of $10,000 per day, create uncertainty and a chilling impact on the free speech of Plaintiff's members and others similarly situated, and the Court should issue declaratory and injunctive relief against its enforcement.

COUNT IV
(US CONSTITUTION VIOLATION: DUE PROCESS)

84. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

85. The Fifth Amendment to the United States Constitution provides: "nor shall [any person] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

86. The requirements of the Fifth Amendment are binding on municipalities, including the City.

87. Due process has two aspects, procedural and substantive.

88. Procedurally, the Fifth Amendment requires reasonable notice and an opportunity to be heard before a deprivation of property. Ordinance 19-18, with its onerous daily fines and the DPP's contradictory "regulations", does not contain sufficient due process protections for those accused by the Director of violating it. Furthermore, because an advertising violation does not result in an appealable notice of order, there is no procedural due process at all. Thus, Ordinance 19-18 as written, and as enforced by the DPP "regulations", violates the procedural due process requirements of the Fifth Amendment.

89. Substantively, an ordinance fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public

uncertain as to the conduct it prohibits. Laws must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that they may act accordingly. Ordinance 19-18 fails this test. For example, it exempts advertisements for properties that are rented for 30 days or more, but prohibits rentals that are advertised for less than thirty days, regardless of whether the actual rental is 30 days. Similarly, the DPP "regulations" both acknowledge the safe-harbor that a legal advertisement would state that "the rental period is a minimum of 30 days" but states that an advertisement containing rental rates of a less than monthly rate are prohibited. In addition, although Ordinance 19-18 is clear that a property that is actually rented for 30 days or more is permissible, the DPP "regulations" state that the ordinance prohibits "stays" of less than 30 days. And the new B&B permitting standards allow a multi-family dwelling to contain up to 50% permitted B&Bs, while it also prohibits a B&B from being located 1,000 feet from another B&B, which is impossible.

90. Ordinance 19-18 violates both the procedural and substantive requirements of the Due Process Clause, and Plaintiff, on behalf of itself, its members and those similarly situated, is entitled to declaratory and injunctive relief to that effect.

COUNT V
(US CONSTITUTION VIOLATION: EXCESSIVE FINES)

91. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

92. The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments be inflicted."

93. The protection against excessive fines guards against abuses of the government's punitive or criminal law enforcement authority, and the safeguard has been held to be fundamental to our scheme of ordered liberty with deep roots in history and tradition.

94. The provisions of Ordinance 19-18 which impose fines of $5,000 and $5,000 per day for a first violation, and $10,000 and $10,000 per day for a recurring violation, and which provide for no discretion, as well as a fine in the amount of rent received, violate the excessive fines provision of the United States Constitution.

95. The provisions of Ordinance 19-18 which imposes fines of between $1,000 and $10,000 per day for every day that an advertisement that is deemed to be illegal by the Director remains publicly available, violates the excessive fines provision of the United States Constitution. This constitutional violation is compounded by the absence of an appealable notice of order in

Ordinance 19-18 from which an appeal could be taken to review the Director's fine.

96. Under Ordinance 19-18, the imposition of fines occurs before any due process is afforded to the alleged violator, and could thus run into the hundreds of thousands or millions of dollars before any evidence is considered by a neutral decision-maker, any hearing occurs, and an opportunity provided for the DPP and the Director to prove that a violation occurred which warrants such a fine, assuming the DPP creates an appeal process.

97. Therefore, Plaintiff, its members and those similarly situated are entitled to declaratory and injunctive relief before fines can be imposed.

COUNT VI
(HAWAII CONSTITUTION VIOLATION: SEARCH & SEIZURE)

98. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

99. The Hawaii Constitution, Art. I, § 7, states "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated; and no warrants shall issue but upon probably cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted.

100. Hawaii's constitution is broader than the United States constitution, with respect to privacy and communications.

101. For the reasons states above in Count I and II, the reporting requirements of Ordinance 19-18 violate Hawaii's guarantees against unlawful searches and seizures of private, confidential, non-public and SCA protected information, entitling Plaintiff to the same relief.

COUNT VII
(HAWAII CONSTITUTION VIOLATION: FREE SPEECH)

102. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

103. The Hawaii Constitution, Art. I, § 4 guarantees freedom of speech.

104. For the reasons stated in Count III with respect to violation of the First Amendment of the United States Constitution, Defendants actions also violate the free speech clause of the Hawaii Constitution, entitling Plaintiff to the same relief.

COUNT VIII
(HAWAII CONSTITUTION VIOLATION: PRIVACY)

105. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

106. The Hawaii Constitution, Art. I, § 6 guarantees the right of the people to privacy which shall not be infringed without the showing of a compelling

state interest.

107. The reporting requirements of Ordinance 19-18 violate the Hawaii Constitution, Art. I, § 6 of Plaintiff's members and others similarly situated, by compelling the disclosure of their private information, and the City has made no showing of a compelling state interest in obtaining the information. Plaintiff is entitled to declaratory and injunctive relief.

COUNT IX
(HAWAII CONSTITUTION VIOLATION: DUE PROCESS)

108. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

109. The Hawaii Constitution, Art. I, § 5, states "[n]o person shall be deprived of live, liberty or property without due process of law".

110. Due process has two aspects, procedural and substantive.

111. Procedurally, the Due Process Clause requires reasonable notice and an opportunity to be heard before a deprivation of property. Ordinance 19-18, with its onerous daily fines and the DPP's contradictory "regulations", does not contain sufficient due process protections for those accused by the Director of violating it. Furthermore, because an advertising violation does not result in an appealable notice of order, there is no procedural due process at all. Thus, Ordinance 19-18 as written, and as enforced by the DPP "regulations", violates the procedural due process requirements of the Hawaii Constitution.

112. Substantively, an ordinance fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits. Laws must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that they may act accordingly. Ordinance 19-18 fails this test. For example, it exempts advertisements for properties that are rented for 30 days or more, but prohibits rentals that are advertised for less than thirty days, regardless of whether the actual rental is 30 days. Similarly, the DPP "regulations" both acknowledge the safe-harbor that a legal advertisement would state that "the rental period is a minimum of 30 days" but states that an advertisement containing rental rates of a less than monthly rate are prohibited. In addition, although Ordinance 19-18 is clear that a property that is actually rented for 30 days or more is permissible, the DPP "regulations" state that the ordinance prohibits "stays" of less than 30 days. And the new B&B permitting standards allow a mutli-family dwelling to contain up to 50% permitted B&Bs, while it also prohibits a B&B from being located 1,000 feet from another B&B, which is impossible.

113. Ordinance 19-18 violates both the procedural and substantive requirements of the Due Process Clause, and Plaintiff, on behalf of itself, its members and those similarly situated, is entitled to declaratory and injunctive relief to that effect.

COUNT X
(VIOLATION OF HRS 46-4)

114. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

115. The Hawaii Zoning Enabling Act, Haw. Rev. Stat. § 46-4 provides in pertinent part: "Neither this section nor any ordinance enacted pursuant to this section shall prohibit the lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued…"

116. Ordinance 19-18 contains no "grandfathering" provision that would preserve pre-existing lawful uses of property, such as those engaged in by Plaintiff's members and others similarly situated.

117. The new restrictions placed on existing lawful 30 day rentals, as contained in Ordinance 19-18, and/or as applied by the DPP through its "regulations," will result in the prohibition of the use of property where such use was previously lawfully established, in violation of Haw. Rev. Stat. § 46-4.

118. Moreover, to the extent that Haw. Rev. Stat. § 46-4 is simply a statutory codification of the requirement under the Federal and State constitutions that nonconforming uses of property are entitled to constitutional protection as

vested rights, if Ordinance 19-18 is implemented by the DPP in accordance with its "regulations," the City's actions will also violate both the United States and Hawaii constitutional protections against the interference with nonconforming, vested rights without due process, and the taking of property without compensation. In the alternative, to the extent Haw. Rev. Stat. § 46-4 is construed to be a statutory right independent of the property protections contained in the due process and property clauses of the Hawaii and United States Constitutions, then Count IX should be construed as also asserting those independent constitutional violations.

119. Because Ordinance 19-18 violates Haw. Rev. Stat. § 46-4 and the due process and property clauses of the United States and Hawaii Constitutions, Plaintiff is entitled to declaratory and injunctive relief.

COUNT XI
(VIOLATION OF HAWAII ADMINISTRATIVE PROCEDURES ACT)

120. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

121. The Hawaii Administrative Procedures Act, Haw. Rev. Stat. § 91-1, defines "rule" as each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy…"

122. The Hawaii Administrative Procedures Act sets forth the required procedures by which an agency, such as the DPP, can promulgate rules, which as a general matter include publication of draft rules, providing at least 30

days' notice of a public hearing, affording interested persons the opportunity to submit testimony, formal adoption by the agency, and approval by the mayor.

123. "No agency rule, order, or opinion shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been published or made available for public inspection as herein required, except where a person has actual knowledge thereof."

124. The DPP did not undertake rule-making as required by Haw. Rev. Stat. Ch. 91 prior to issuing its "regulations." The "regulations" therefore constitute illegal rule-making and are not valid or enforceable.

125. The DPP must be ordered to comply with the rule-making requirements of Haw. Rev. Stat. Ch. 91 before enforcing Ordinance 19-18.

COUNT XII
(HAWAII CONSTITUTION VIOLATION: EXCESSIVE FINES)

126. Plaintiff incorporates by this reference all of the foregoing allegations as if fully stated herein.

127. Article I, § 12 of the Hawaii Constitution provides "Excessive bail shall not be required, not excessive fines imposed, nor cruel or unusual punishment inflicted."

128. The provisions of Ordinance 19-18 which impose fines of $5,000 and $5,000 per day for a first violation, and $10,000 and $10,000 per day for a recurring violation, and which provide for no discretion, as well as a fine in

the amount of rent received, violate the excessive fines provision of the Hawaii Constitution.

129. The provisions of Ordinance 19-18 which imposes fines of between $1,000 and $10,000 per day for every day that an advertisement deemed to be illegal by the Director remain publicly available, violates the excessive fines provision of the Hawaii Constitution. This is constitutional violation is compounded by the absence of an appealable notice of order in Ordinance 19-18 from which an appeal could be taken to review the Director's fine.

130. Under Ordinance 19-18, the imposition of fines occurs before any due process is afforded to the alleged violator, and could thus run into the hundreds of thousands or millions of dollars before any evidence is considered by a neutral decision-maker, any hearing occurs, and an opportunity provided for the DPP and the Director to prove that a violation occurred which warrants such a fine.

131. Therefore, Plaintiff, its members and those similarly situated are entitled to declaratory and injunctive relief before fines can be imposed.

WHEREFORE, Plaintiff prays for judgment in its favor and against Defendants as follows:

A. That judgment be entered in favor of Plaintiff and against Defendants;

B. For appropriate declaratory relief regarding the unlawful and unconstitutional acts and practices of Defendants;

C. For an injunction against Defendants for the enforcement of Ordinance 19-18 against Plaintiff's members and all those similarly situated.

D. For an award of reasonable attorney's fees and their costs on their behalf expended as to such Defendants pursuant to the Civil Rights Act of 1871, 42 U.S.C. Section 1988; and

E. Costs;

F. For appropriate equitable relief against all Defendants as allowed by the Civil Rights Act of 1871, 42 U.S.C. Section 1983, including the enjoining and permanent restraining of these violations, and direction to Defendants to take such affirmative action as is necessary to ensure that the effects of the unconstitutional and unlawful patterns and practices are eliminated and do not continue to affect Plaintiff's members, or others' civil rights.

G. For such other and further relief as this court may deem appropriate, equitable, and just.

DATED: Honolulu, Hawaii, August 1, 2019.

DAMON KEY LEONG KUPCHAK HASTERT

/s/ Gregory W. Kugle
GREGORY W. KUGLE
MATTHEW T. EVANS
LOREN A. SEEHASE
VERONICA A. NORDYKE
Attorneys for Plaintiff

EXHIBIT "A"

Of Counsel:
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

KOKUA COALITION, a Hawaii non-profit corporation, dba HAWAII VACATION RENTAL OWNERS ASSOCIATION, Plaintiff, vs. DEPARTMENT OF PLANNING AND PERMITTING OF THE CITY AND COUNTY OF HONOLULU; CITY AND COUNTY OF HONOLULU; GEORGE ATTA; HONOLULU ZONING BOARD OF APPEAL, Defendants.	CIVIL NO. 1:16-cv-00387 DKW-RLP SETTLEMENT AGREEMENT AND RELEASE

386148

EXHIBIT "A"

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of May 23, 2018, by and between Plaintiff, KOKUA COALITION, a Hawaii non-profit corporation, d.b.a. HAWAII VACATION RENTAL OWNERS ASSOCIATION ("Plaintiff") and Defendants DEPARTMENT OF PLANNING AND PERMITTING OF THE CITY AND COUNTY OF HONOLULU ("DPP"); KATHY SOKUGAWA, in her official capacity as the Director of the DPP and the successor to GEORGE ATTA as the DPP Director; HONOLULU ZONING BOARD OF APPEAL, and the CITY AND COUNTY OF HONOLULU (collectively, "Defendants"). Plaintiff and Defendants are collectively referred to herein as the "Settling Parties" and do hereby promise and agree to resolve all of claims in the above-entitled action (hereinafter, "Litigation") as set fully set forth herein.

The Settling Parties are apprised of the facts and circumstances pertaining to the claims in Plaintiff's Complaint, filed in the Litigation on July 7, 2016 (i.e., Doc. No. 1). And, having considered these facts and circumstances together with the cost and uncertainty of further litigation, the Settling Parties desire to terminate, settle and compromise now all claims and controversies existing between them in this Litigation. Accordingly, this Agreement is made to resolve all

of the issues in the Litigation and preclude further dispute and controversy between the Settling Parties.

NOW, THEREFORE, for the foregoing reasons and in consideration of the mutual promises below, the Settling Parties hereby mutually agree as follows:

1. This document is a settlement agreement and release of all claims in the Litigation.

2. The Settling Parties are knowingly entering into this Agreement of their own free will, by and through their duly authorized, undersigned legal counsel.

3. Each party to this Agreement and the Litigation shall bear its own attorneys' fees and costs.

4. Section 21 of the Revised Ordinances of Honolulu 1990, also known as the Land Use Ordinance (hereinafter "LUO") prohibits transient vacation units and bed and breakfast homes in the residential zoning district unless the property owner has obtained nonconforming use certificate for such a use. The Department of Planning and Permitting ("Department") no longer issues new nonconforming use certificates for such uses.

5. "Transient vacation unit" means "a dwelling unit or lodging unit which is provided for compensation to a transient occupant for less than thirty (30) days, other than a bed and breakfast home."

6. For purposes of a "transient vacation unit," "compensation" includes, but is not limited to, "monetary payment, services or labor of employees."

7. "Bed and breakfast home" means "a use in which overnight accommodations are provided to guests for compensation, for periods of less than thirty (30) days, in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling."

8. As currently worded, the Land Use Ordinance prohibits providing all or a portion of a residential dwelling unit to a transient occupant for less than thirty (30) consecutive calendar days for compensation. Thus, the LUO allows a property owner to rent its property to transient guests in blocks of thirty (30) days or more, up to twelve times per year.

9. The LUO does not require that renters actually occupy all or a portion of a rented dwelling unit during the thirty (30) day rental period; however, a party that is not granted use of the dwelling unit by the thirty (30) day rental agreement may not occupy the rented portions of the dwelling unit during the same thirty (30) day rental block. The owner, lessee, operator or proprietor of a dwelling unit that is rented in a block of thirty (30) days or more has re-entry rights, as provided by law. In addition, the owner, lessee, operator or proprietor of the rented dwelling unit is allowed to occupy any portion of the dwelling unit that is expressly excluded from the rental agreement during the thirty (30) day rental block. However,

the owner, lessee, operator or proprietor may not occupy any portion of the dwelling unit that is rented to the transient guests during their thirty (30) day rental block.

10. Thus, an owner, lessee, operator, or proprietor shall be deemed to have established a meritorious defense to a notice of violation or notice of order for illegal transient vacation unit or bed and breakfast use by demonstrating, by contract or other evidence, that the rented portions of a dwelling unit were only used by one party within a thirty (30) day rental block. DPP can, however, negate this defense by demonstrating that two or more parties used the same dwelling unit within the same thirty (30) day rental block.

11. A notice of order for operating an illegal transient vacation unit or illegal bed and breakfast home may be appealed to the Honolulu Zoning Board of Appeals ("Board"), as provided in the LUO and Rules of Practice and Procedure of the Zoning Board of Appeals ("RPP").

12. With respect to the adjudication of an appeal of a notice of order for transient vacation unit or illegal bed and breakfast home use before the Board, the following procedures shall apply to Plaintiff's members who provide evidence of their membership in Plaintiff's organization, effective at least sixty (60) days prior to the date of issuance of the notice of order that is subject to the appeal.

a. Prior to the hearing, the submission of position statements, witness lists, exhibit lists and exhibits will be established

in a schedule set by the Board; however, the Department's submissions shall be filed first and shall be followed by the submissions of the party appealing the notice of order. Intervenors, if any, shall file in such order as the Board directs.

b. The hearing shall be conducted in conformity with the applicable provisions of §§ 91-9, 91-10, and 91-11, Hawaii Revised Statutes. At the hearing, Department's evidence shall be presented first, and shall be followed by the presentation of evidence by the party appealing the notice of order. Intervenors, if any, shall be heard in such order as the Board directs.

c. Except as provided herein, the Rules of the Zoning Board of Appeals shall apply.

13. Within fifteen (15) days of executing this Agreement, the parties shall execute and file a stipulation to dismiss the Complaint filed in the Litigation, with prejudice.

14. This Stipulation and Order shall not limit the authority of the City and County of Honolulu to enact, amend or repeal any ordinance.

DATED: Honolulu, Hawaii, May 23, 2018.

DAMON KEY LEONG KUPCHAK HASTERT

GREGORY W. KUGLE
LOREN A. SEEHASE
Attorneys for Plaintiffs

BRAD T. SAITO
Deputy Corporation Counsel
Attorney for Defendants
DEPARTMENT OF PLANNING AND PERMITTING OF THE CITY AND COUNTY OF HONOLULU; CITY AND COUNTY OF HONOLULU; and KATHY SOKUGAWA in her official capacity as Director of DPP and successor to GEORGE ATTA as DIRECTOR OF THE DEPARTMENT OF PLANNING AND PERMITTING OF THE CITY AND COUNTY OF HONOLULU

DAWN D. M. SPURLIN
Deputy Corporation Counsel
Attorney for Defendant
ZONING BOARD OF APPEALS

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

KOKUA COALITION, a Hawaii non-profit corporation, dba HAWAII VACATION RENTAL OWNERS ASSOCIATION, Plaintiff, vs. DEPARTMENT OF PLANNING AND PERMITTING OF THE CITY AND COUNTY OF HONOLULU; CITY AND COUNTY OF HONOLULU; KATHY SOKUGAWA; HONOLULU ZONING BOARD OF APPEAL, Defendants.	CIVIL NO. _____ **SUMMONS**

SUMMONS

TO: THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to file with the court and serve upon Gregory W. Kugle, Esq., Matthew T. Evans, Esq., Loren A. Seehase, Esq., and Veronica A. Nordyke, Esq. of the law firm Damon Key Leong Kupchak Hastert, Plaintiff's attorneys, whose address is 1003 Bishop Street, Suite 1600, Honolulu, Hawai`i, 96813, an answer to the Complaint which is herewith served upon you, within twenty-one (21) days after service of the summons upon you,

exclusive of the day of service. If you fail to do so, judgment by default will be entered against you for the relief demanded in the Complaint.

DATED: Honolulu, Hawai`i, _____.

_____
CLERK OF THE ABOVE-ENTITLED COURT