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Attorneys for Defendants SUSAN BALLARD ,
in her official capacity as Police Chief of the
City & County of Honolulu, and
CITY AND COUNTY OF HONOLULU

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

RONALD G. LIVINGSTON;
MICHAEL J. BOTELLO; KITIYA M.
SHIROMA; JACOB STEWART; and
HAWAII RIFLE ASSOCIATION,

Plaintiff,

vs.

SUSAN BALLARD, in her official
capacity as Police Chief of the City &
County of Honolulu; CITY &
COUNTY OF HONOLULU; and
CLARE E. CONNORS, in her official
capacity as Attorney General of Hawaii,

Defendants.

CIVIL NO. CV19-00157 JMS/RT

DEFENDANTS SUSAN BALLARD
AND CITY AND COUNTY OF
HONOLULU'S **CONDITIONAL
JOINDER** TO DEFENDANT CLARE
E. CONNORS'S MOTION TO STAY
PROCEEDINGS [ECF # 27];
CERTIFICATE OF SERVICE

Trial Date: None.

**DEFENDANTS SUSAN BALLARD AND CITY AND COUNTY OF
HONOLULU’S CONDITIONAL JOINDER TO DEFENDANT CLARE E.
CONNORS’S MOTION TO STAY PROCEEDINGS [ECF # 27]**

Pursuant to Local Rule 7.9, Defendants SUSAN BALLARD, in her official capacity as Police Chief of the City & County of Honolulu, and City and County of Honolulu (“City Defendants”), file this conditional joinder to Clare E. Connors’s Motion to Stay Proceedings [ECF # 27] and the relief sought therein.

This joinder is conditional because the City Defendants will be filing a motion to dismiss the complaint against them next week pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a municipal liability claim against them. Count One—the only cause of action in Plaintiffs’ Complaint—is based on 42 U.S.C. § 1983. ECF No. 1 at 18. However, the Complaint only alleges that the City Defendants enforce an unconstitutional state law, but does not allege, as required for *Monell* liability, that any City policy or custom is the moving force behind the alleged constitutional violation. The City Defendants are therefore improper parties, and the Complaint should be dismissed as against them.

The City Defendants’ motion to dismiss should be heard before the pending motions for preliminary injunction and stay of proceedings (ECF Nos. 19, 26) because if the City Defendants are improper parties, those two motions will become moot as to them, and there is no reason to subject the City Defendants to the burden of continued litigation. *See, e.g., Saunders v. Trump*, No. 17-cv-5400

(WMW/LIB), 2018 U.S. Dist. LEXIS 157479, at *41–42 (D. Minn. Aug. 1, 2018) (citing cases); *Heineke v. Santa Clara Univ.*, No. 17-CV-05285-LHK, 2018 U.S. Dist. LEXIS 114737, at *55, 2018 WL 3368455 (N.D. Cal. July 10, 2018); *Teixeira v. Cty. of Alameda*, No. C 12-03288 SI, 2013 U.S. Dist. LEXIS 36792, at *19–20 (N.D. Cal. Feb. 26, 2013); *Hanover Ins. Grp. v. Singles Roofing Co.*, No. 10 C 611, 2012 U.S. Dist. LEXIS 85813, at *6, 2012 WL 2368328 (N.D. Ill. June 21, 2012).

DATED: Honolulu, Hawai‘i, April 18, 2018.

PAUL S. AOKI
Acting Corporation Counsel

By: /s/ Robert M. Kohn
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NICOLETTE WINTER
Deputies Corporation Counsel

Attorneys for Defendants
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COUNTY OF HONOLULU; and
CLARE E. CONNORS, in her official
capacity as Attorney General of Hawaii,

Defendants.

CIVIL NO. CV19-00157 JMS/RT

CERTIFICATE OF SERVICE

Trial Date: None.

CERTIFICATE OF SERVICE

I hereby certify that, on April 18, 2019 and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses as shown below.

Served Electronically through CM/ECF:

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DATED: Honolulu, Hawai'i, April 18, 2019.

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