

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

|                              |   |                           |
|------------------------------|---|---------------------------|
| ALEXIS-KELVIN: FOWLERS,      | ) | Civ. No. 11-00178 ACK-RLP |
|                              | ) |                           |
| Plaintiff,                   | ) |                           |
|                              | ) |                           |
| vs.                          | ) |                           |
|                              | ) |                           |
| UNITED STATES DEPARTMENT OF  | ) |                           |
| JUSTICE, INTERNAL REVENUE    | ) |                           |
| SERVICE, FLORENCE T.         | ) |                           |
| NAKAKUNI, LESLIE E. OSBORNE, | ) |                           |
| RYLON OSHIRO,                | ) |                           |
|                              | ) |                           |
| Defendants.                  | ) |                           |
| _____                        | ) |                           |

ORDER ADOPTING AS MODIFIED MAGISTRATE JUDGE'S  
FINDINGS AND RECOMMENDATION

On May 9, 2011, a document styled "Findings and Recommendation to (1) Grant Plaintiff's Application to Proceed Without Prepayment of Fees and (2) Dismiss Plaintiff's Complaint Without Prejudice and With Leave to Amend" ("F&R") was filed and served on all parties. Doc. No. 10. No objections have been filed by any party. The F&R is adopted as the opinion and order of this Court, with one modification. See 28 U.S.C. § 636(b)(1)(C); LR74.2.

Rather than dismissing the complaint without prejudice at this time, the Court grants Plaintiff leave to file an amended complaint correcting the deficiencies in his current complaint, as detailed in the F&R. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) ("Unless it is absolutely clear that no

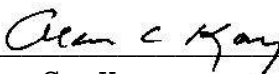
amendment can cure the defect, . . . a pro se litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action.") (emphasis added); see also Lopez v. Smith, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc).

Failure to file an amended complaint as instructed by **Friday, July 1, 2011**, shall result in AUTOMATIC DISMISSAL of this action for failure to state a claim.

IT IS SO ORDERED.

Dated: Honolulu, Hawai'i, May 31, 2011.



  
\_\_\_\_\_  
Alan C. Kay  
Sr. United States District Judge

Fowlers v. City of Hilo, Civ No. 11-00223 ACK-RLP: Order Adopting as Modified Magistrate Judge's Findings and Recommendation.