

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

OFFICER CASSANDRA)	CIVIL NO. 13-00071 LEK-KSC
BENNETT-BAGORIO; SERGEANT)	
SHERMON DEAN DOWKIN; and)	
FORMER OFFICER FEDERICO)	
DELGADILLO MARTINEZ, JR.,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
THE CITY AND COUNTY OF)	
HONOLULU, on behalf of THE)	
HONOLULU POLICE DEPARTMENT)	
and THE CITY AND COUNTY OF)	
HONOLULU OFFICE OF)	
CORPORATION COUNSEL; D. SCOTT)	
DODD; CARRIE K.S. OKINAGA;)	
ROBERT C. GODBEY; CHIEF OF)	
POLICE LOUIS KEALOHA, FORMER)	
CHIEF BOISSE CORREA, DEPUTY)	
CHIEF DAVID KAJIHIRO, MAJOR)	
JOHN MCENTIRE; MAJOR KERRY)	
INOUYE; LIEUTENANT CAROLYN)	
ONAGA; LIEUTENANT YVONNE)	
BOLTON; RANDALL GRATZ; DENISE)	
TSUKAYAMA; and Does 1-100,)	
)	
Defendants.)	
_____)	

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR LEAVE TO FILE MOTION TO STRIKE AND/OR DISMISS FIRST AMENDED COMPLAINT FILED FEBRUARY 20, 2013 AND FOR SANCTIONS UNDER SEAL

Before the Court is Defendant City and County of Honolulu's ("the County") Motion for Leave to File Motion to Strike and/or Dismiss First Amended Complaint Filed February 20, 013 and for Sanctions Under Seal ("Motion to Seal"), filed May 9, 2013. [Dkt. no. 31.] The Court finds this matter suitable for

disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawai`i.

The County has lodged a copy of its Motion to Strike and/or Dismiss First Amended Complaint Filed February 20, 2013 and for Sanctions ("Motion to Dismiss"), along with a Separate and Concise Statement of Facts in support of the Motion to Dismiss ("Statement of Facts"). The County seeks leave to file each of these documents, in its entirety, under seal.

"Those who seek to maintain the secrecy of documents attached to dispositive motions must meet the high threshold of showing that 'compelling reasons' support secrecy." Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1180 (9th Cir. 2006) (citation omitted). The County argues that this Court should seal the Motion to Dismiss and the Statement of Facts because they discuss matters, and include exhibits, from the related proceeding of Dowkin, et al. v. Honolulu Police Department, et al., CV 10-00087 LEK-RLP. There is a stipulated protective order in place in Dowkin. [Motion to Seal, Decl. of Steven L. Goto ("Goto Decl."), Exh. A (Dowkin stipulated protective order).] The plaintiffs' counsel in Dowkin, who is also counsel for the plaintiffs in the instant case, was sanctioned for violating the stipulated protective order. [Goto Decl., Exh. B (Dowkin order filed 8/9/12 regarding violation of the stipulated protective

order).]

This Court notes that the standard for the issuance of a protective order under Fed. R. Civ. P. 26(c) is "good cause." The Ninth Circuit has stated that "[a] 'good cause' showing will not, without more, satisfy a 'compelling reasons' test." Kamakana, 447 F.3d at 1180 (citation omitted). Thus, the mere fact that there is a protective order in place in Dowkin does not, by itself, require this Court to seal the Motion to Dismiss and the Statement of Facts. Under the circumstances of the instant case, however, and after review of the County's proposed filings, this Court FINDS that there are compelling reasons to seal: 1) documents filed under seal in Dowkin; and 2) discovery subject to the Dowkin stipulated protective order. This Court therefore GRANTS the County's Motion to Seal as to these categories.

This Court DENIES the County's Motion to Seal insofar as it seeks leave to file the Motion to Dismiss and the Statement of Facts, in their entirety, under seal. Further, the Motion is DENIED insofar as the County seeks leave to file under seal: documents that are public record, including, but not limited to, documents filed in Dowkin which were not filed under seal; documents that are not subject to the Dowkin stipulated protective order; and portions of the Motion to Dismiss quoting from, or discussing confidential information contained in,

documents filed under seal in Dowkin or otherwise subject to the Dowkin stipulated protective order.

This Court ORDERS the County to re-file the Motion to Dismiss and the Statement of Facts, according to the terms of this order, by no later than **May 24, 2013**. The Court also DIRECTS the Clerk's Office to return the lodged copies of the Motion to Dismiss and the Statement of Facts to the County's counsel.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, May 15, 2013.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

OFFICER CASSANDRA BENNETT-BAGORIO, ET AL. V. THE CITY AND COUNTY OF HONOLULU, ET AL; CIVIL NO. 13-00071 LEK-KSC; ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR LEAVE TO FILE MOTION TO STRIKE AND/OR DISMISS FIRST AMENDED COMPLAINT FILED FEBRUARY 20, 2013 AND FOR SANCTIONS UNDER SEAL