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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. : CIVIL NO.
 :
 CITY AND COUNTY OF HONOLULU, :
 P M AUTOWORKS, INC., d/b/a :
 ALL ISLAND AUTOMOTIVE TOWING, : **COMPLAINT**
 : **JURY TRIAL DEMANDED**
 Defendants. :

Plaintiff, the United States of America, alleges:

NATURE OF THE ACTION

1. This action is brought by the United States to enforce the provisions of the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, against the City and County of Honolulu, Hawaii (hereinafter “Honolulu”) and P M Autoworks, Inc. d/b/a All Island Automotive Towing (hereinafter “All Island Towing”) (collectively “the Defendants”) for illegally auctioning, selling, or otherwise disposing of the motor vehicles and personal effects of active-duty servicemembers.

2. The purpose of the SCRA is to provide servicemembers with protections against certain civil proceedings that could adversely affect their legal rights while they are in military service. One of those protections is the requirement that a person holding a lien on the property or effects of an active-duty servicemember obtain a court order prior to enforcing the lien. The court may stay the proceedings for a period of time or adjust the obligations to preserve the interests of all parties.

3. Neither Honolulu nor its contracted towing company, All Island Towing, determines whether the motor vehicles they auction, sell, or otherwise dispose of are owned by active-duty servicemembers.

4. By failing to obtain court orders before auctioning, selling, or otherwise disposing of the motor vehicles and personal effects of protected servicemembers, the Defendants prevented servicemembers from obtaining a court’s review of whether the lien sales should be delayed or adjusted to account for their military service.

5. Since January 1, 2011, the Defendants have auctioned, sold, or otherwise disposed of the motor vehicles of 1,440 individuals who had identified themselves as active-duty servicemembers during the motor vehicle registration process. The Defendants auctioned, sold, or otherwise disposed of these vehicles to satisfy liens without obtaining court orders.

6. Prior to January 1, 2011, Honolulu and/or its contracted and subcontracted towing companies auctioned, sold, or otherwise disposed of the motor vehicles of other active-duty servicemembers to satisfy liens without obtaining court orders.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 50 U.S.C. § 4041.

8. Venue is proper under 28 U.S.C. § 1391(b) because the actions or omissions giving rise to the United States' allegations occurred in the District of Hawaii and the Defendants do business in this judicial district.

DEFENDANTS

9. Defendant Honolulu is a municipal corporation and consolidated city-county organized and existing under the laws of the State of Hawaii, and its agencies and departments are governed by the provisions of the Revised Charter of the City and County of Honolulu 1973 (2017 ed.). Honolulu is authorized by law to control and maintain all agencies and departments of the city-county. State and county statutes authorize Honolulu to publicly auction, sell, or otherwise dispose of abandoned or unclaimed motor vehicles.

10. Defendant All Island Towing is a Hawaii corporation that, at all times relevant to this action, owned and/or operated a motor vehicle towing and storage business at 91-222 Olai

Street, Kapolei, Hawaii. Since January 1, 2014, All Island Towing has served as the sole general contractor providing law enforcement towing services for Honolulu. Pursuant to its contract with Honolulu, All Island Towing oversees several subcontractor towing companies that have exclusive towing rights in designated zones. Prior to 2014, All Island Towing served as a subcontractor to Honolulu and conducted law enforcement tows in a designated zone. All Island Towing is authorized by its contract with Honolulu to dispose of certain abandoned or unclaimed motor vehicles that do not sell at public auction.

SERVICEMEMBERS

11. Timothy Hartzog is a Chief Petty Officer (“CPO”) in the United States Navy. At all times relevant to this action, CPO Hartzog was an active-duty servicemember.
12. Orrin Sanford is a Staff Sergeant (“SSgt.”) in the United States Marine Corps. At all times relevant to this action, SSgt. Sanford was an active-duty servicemember.
13. Cheri Tarbet was a Petty Officer Second Class (“PO2”) in the United States Navy. At all times relevant to this action, PO2 Tarbet was an active-duty servicemember.

FACTUAL ALLEGATIONS

Honolulu’s Practice of Towing and Auctioning Motor Vehicles

14. Honolulu contracts and subcontracts with local towing companies to perform its law enforcement tows of motor vehicles.
15. Law enforcement tows of motor vehicles in Honolulu are initiated by the Honolulu Police Department (“HPD”).

16. Under the current system, a HPD dispatcher calls All Island Towing and identifies the motor vehicle that needs to be towed, the applicable violation that warrants the tow, and the location and predetermined zone where the motor vehicle is located.

17. Based on the location of the tow, All Island Towing contacts one of its subcontractor towing companies to retrieve the motor vehicle as requested by the HPD.

18. In Honolulu, motor vehicles are generally towed because they have been involved in traffic stops or accidents or been deemed abandoned by the HPD. Motor vehicles are deemed abandoned and are subject to towing, storage, and disposal at the order of the county when the motor vehicle is unlawfully parked and left unattended for a period of twenty-four or more hours.

19. After an abandoned motor vehicle is taken into custody by Honolulu, a written notice of abandoned vehicle is sent by registered or certified mail from Honolulu's Division of Motor Vehicles to the legal and registered owners of the motor vehicle. Receipt of written notice is assumed five days from the mailing date unless there is evidence to the contrary.

20. If the motor vehicle is not reclaimed by the owner within ten days of the date that the notice was mailed, the vehicle can be disposed of by public auction after a public advertisement in the local paper. If no bid is received, the motor vehicle can be sold through negotiation, disposed of or sold as junk, or donated to a governmental agency.

Payment of Towing, Storage, and Administrative Fees

21. Under Honolulu's contract with its tow truck operators, if an abandoned motor vehicle is reclaimed by the owner, he or she is required to pay all towing and storage fees to the towing company.

22. If an abandoned motor vehicle is not reclaimed by the owner, Honolulu attempts to auction the motor vehicle through its Vender Self Service (VSS) electronic bidding system.

23. If the motor vehicle is sold through the VSS auction, the buyer pays the cost of the motor vehicle and the towing company's towing and storage fees. In this case, the towing company receives no additional payment from Honolulu.

24. Honolulu subtracts its administrative costs incurred in preparing for the auction from the proceeds of the auction.

25. If an abandoned motor vehicle is not sold at auction, Honolulu pays the towing fees levied by the towing company. No storage fees are paid. The towing company retains the unsold motor vehicle and may dispose of it and retain the proceeds.

26. The motor vehicle's owner can request the proceeds of the auction from Honolulu, less administrative fees, within one year of the sale.

27. After one year, the remaining proceeds are released to Honolulu's general fund. If a motor vehicle's sale does not cover the fees incurred, Honolulu can file a deficiency claim against the owner of the motor vehicle for the difference between the sale proceeds and the unpaid towing, storage, and administrative fees.

Honolulu's Auction of Servicemembers' Motor Vehicles

28. Neither Honolulu nor its current contracted towing company, All Island Towing, determines whether the motor vehicles they auction, sell, or otherwise dispose of are owned by active-duty servicemembers.

Honolulu's Lien Sale of CPO Hartzog's 1997 Chevrolet S-10

29. At all times relevant to this complaint, CPO Hartzog's motor vehicle was registered in Hawaii. During the motor vehicle registration process, CPO Hartzog completed a non-resident driver form which identified him as a servicemember and exempted him from paying certain state and county motor vehicle weight taxes on that basis.

30. In October 2014, CPO Hartzog was aboard a U.S. Navy ship being transported to his temporary duty station in East Asia. Without his permission, his roommate drove his 1997 Chevrolet S-10 and was subsequently arrested. The motor vehicle was towed by Pinky Tows, a subcontractor of All Island Towing.

31. In early November 2014, CPO Hartzog learned via Facebook that his truck had been towed. On November 5, 2014, he executed a power of attorney onboard the naval ship, designating a fellow chief petty officer as his agent. On the same date, he scanned and emailed the executed power of attorney to his agent in Honolulu.

32. On or about November 11, 2014, the agent took the document to Pinky Tows in an attempt to retrieve CPO Hartzog's motor vehicle and his personal effects. Pinky Tows refused to accept the power of attorney or release the motor vehicle. Pinky Tows refused to allow the agent to remove valuable tools and personal items from the trunk of the motor vehicle because the agent was not the motor vehicle's legal owner.

33. On December 3, 2014, Honolulu attempted to auction the motor vehicle and its contents, but they did not sell. Honolulu released the motor vehicle to All Island Towing, and All Island Towing subsequently disposed of the motor vehicle and its contents. Neither Honolulu nor All Island Towing obtained a court order prior to putting CPO Hartzog's motor vehicle up for auction or before disposing of the motor vehicle.

34. On February 5, 2015, CPO Hartzog returned from deployment.

35. On June 22, 2015, CPO Hartzog's military legal assistance attorney sent a letter to Pinky Tows that outlined the facts and applicable SCRA provisions and sought restitution of \$22,889.95 for the value of the 1997 Chevrolet S-10 and for the tools and personal items that were stored in the motor vehicle.

36. Pinky Tows responded by letter on July 16, 2015, stating that it had only towed and stored CPO Hartzog's truck, and that the truck was put up for auction by Honolulu and was scrapped by All Island Towing.

37. On August 12, 2015, the military legal assistance attorney sent a similar demand letter to Honolulu. Honolulu did not respond.

38. The Department of Defense's Defense Manpower Data Center ("DMDC") website shows that CPO Hartzog was an active-duty servicemember when his motor vehicle was towed, put up for auction, and subsequently scrapped. The DMDC is the central source for identifying, authenticating, and providing information on Department of Defense personnel, including verifying servicemembers' active duty status.

Honolulu's Lien Sale of SSgt. Sanford's 2004 Dodge Ram 2500

39. At all times relevant to this complaint, SSgt. Sanford's motor vehicle was registered in Hawaii. During the motor vehicle registration process, SSgt. Sanford completed a non-resident driver form which identified him as a servicemember and exempted him from paying certain state and county motor vehicle weight taxes on that basis.

40. On May 13, 2015, SSgt. Sanford was aboard a U.S. Navy ship, the USS Greenbay, being transported to his temporary duty station at Camp Foster in Okinawa, Japan.

When he deployed, he left his white 2004 Dodge Ram 2500 parked on the street in front of his residence. The motor vehicle's front windshield had base decals that are distributed only to Department of Defense employees for base access.

41. On May 21, 2015, SSgt. Sanford's motor vehicle was deemed abandoned by Honolulu and was towed by and stored at the facilities of All Island Towing.

42. On May 22, 2015, Honolulu sent a "Notification of Abandoned Motor Vehicle in Custody" notice to the Base address at which SSgt. Sanford had registered his motor vehicle. Honolulu sent another certified letter to Navy Federal Credit Union, the lien holder and legal owner of the motor vehicle.

43. SSgt. Sanford did not receive Honolulu's notice aboard the USS Greenbay until July 24, 2015.

44. On July 8, 2015, Honolulu auctioned SSgt. Sanford's motor vehicle without obtaining a court order.

45. When SSgt. Sanford arrived at Camp Foster in Okinawa, Japan in early August 2015, the first time he was able to leave the USS Greenbay, he contacted Honolulu and was informed that his motor vehicle had been auctioned.

46. SSgt. Sanford visited Navy Federal Credit Union, the lien holder on the 2004 Dodge, and was told that he remained responsible for the remaining loan payments on the motor vehicle.

47. In September 2015, SSgt. Sanford consulted the Legal Services Support Section at Camp Foster, and a legal assistance attorney emailed a letter to Honolulu indicating that SSgt.

Sanford was an active-duty servicemember, citing the applicable SCRA provisions, and seeking restitution. Honolulu did not respond.

48. On November 14, 2015, SSgt. Sanford returned to Honolulu and soon thereafter received a permanent change of station to Camp Pendleton Marine Base in California.

49. In January 2016, after receiving no response from Honolulu regarding restitution for his auctioned motor vehicle, SSgt. Sanford again sought legal assistance. On February 16, 2016, an attorney with the Legal Assistance Office at Camp Pendleton sent another letter to Honolulu outlining the facts, citing the applicable SCRA provisions, and seeking restitution of \$12,253, which was the average market value of the 2004 Dodge Ram 2500.

50. On April 13, 2016, Honolulu offered SSgt. Sanford \$1,971, which was the excess sale amount for his motor vehicle less fees.

51. The DMDC website shows that SSgt. Sanford was an active-duty servicemember when his vehicle was towed and auctioned.

Honolulu's Lien Sale of PO2 Tarbet's 2003 Volkswagen Jetta GL

52. At all times relevant to this complaint, PO2 Tarbet's motor vehicle was registered in Hawaii. During the motor vehicle registration process, PO2 Tarbet completed a non-resident driver form which identified her as a servicemember and exempted her from paying certain state and county motor vehicle weight taxes on that basis.

53. On May 17, 2010, PO2 Tarbet deployed with the U.S. Navy to Japan and Guam. When she deployed, she left her silver 2003 Volkswagen Jetta GL parked on the street in front of her residence.

54. On July 23, 2010, PO2 Tarbet's motor vehicle was deemed abandoned by Honolulu and was towed by and stored at the facilities of Leeward Auto Wreckers.

55. On July 28, 2010, Honolulu sent a "Notification of Abandoned Motor Vehicle in Custody" notice to the Base address at which PO2 Tarbet had registered her motor vehicle. Honolulu sent another certified letter to Navy Federal Credit Union, the lien holder and legal owner of the motor vehicle.

56. PO2 Tarbet did not receive the notice from Honolulu, but instead was notified by her roommate that her motor vehicle was no longer parked in front of their home. PO2 Tarbet contacted the HPD to inquire about her motor vehicle. She was informed that there was no record of the motor vehicle being towed by Honolulu.

57. On September 10, 2010, Honolulu auctioned PO2 Tarbet's motor vehicle without obtaining a court order.

58. In November 2010, when PO2 Tarbet returned from her deployment, she again contacted HPD and was told that her motor vehicle had been auctioned by Honolulu and that she was no longer the registered owner.

59. On April 20, 2011, a military legal assistance officer sent a letter to Honolulu indicating that PO2 Tarbet was an active-duty servicemember, citing the applicable SCRA provisions, and seeking restitution of \$5,715, which was the average market value of the 2003 Volkswagen Jetta GL. On July 5, 2011, Honolulu sent a letter denying PO2 Tarbet's request for restitution.

60. On April 22, 2011, PO2 Tarbet received a permanent change of station to Sigonella, Italy. The DMDC website shows that PO2 Tarbet was an active-duty servicemember when her vehicle was towed and auctioned.

Honolulu's Lien Sales of Other Servicemembers' Motor Vehicles

61. On May 16, 2016, the United States requested that Honolulu provide "an electronically searchable list of all lien sales conducted by [Honolulu] without obtaining a court order at any time since January 1, 2011." Honolulu provided a list of more than 17,000 motor vehicles it auctioned during this time period. Of those 17,000 motor vehicles, 1,440 were owned by individuals who had identified themselves as active-duty servicemembers during the motor vehicle registration process.

SERVICEMEMBERS CIVIL RELIEF ACT VIOLATIONS

62. By the conduct described in the foregoing paragraphs, the Defendants have enforced liens on the property or effects of active-duty servicemembers without authorizing court orders, in violation of 50 U.S.C. § 3958.

63. The Defendants have engaged in a pattern or practice of violating Section 3958(a)(1) of the SCRA, 50 U.S.C. § 3958(a)(1), by auctioning the motor vehicles and personal effects of numerous active-duty servicemembers without court orders. These violations raise an issue of significant public importance.

64. The servicemembers whose motor vehicles were auctioned, sold, or otherwise disposed of without authorizing court orders in violation of the SCRA are aggrieved persons and have suffered damages as a result of the Defendants' conduct.

65. The Defendants' conduct was intentional, willful, and taken in disregard for the rights of servicemembers.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an ORDER that:

1. Declares that the Defendants' actions, policies, and practices, as alleged herein, violate the SCRA;
2. Declares that the Defendants have engaged in a pattern or practice of violating the SCRA that raises an issue of significant public importance;
3. Enjoins the Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:
 - a. enforcing liens on the motor vehicles of SCRA-protected servicemembers without court orders, in violation of Section 3958 of the SCRA, 50 U.S.C. § 3958;
 - b. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, each identifiable victim of the Defendants' illegal conduct to the position he or she would have been in but for that illegal conduct; and
 - c. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any illegal conduct in the future and to eliminate, to the extent practicable, the effects of the Defendants' illegal conduct;
4. Awards appropriate monetary damages to each identifiable victim of the Defendants' violations of the SCRA; and
5. Assesses civil penalties against the Defendants in order to vindicate the public interest, pursuant to 50 U.S.C. § 4041(b)(3).

6. Awards such additional relief as the interests of justice may require.

JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: February 15, 2018

Respectfully submitted,

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