

ERIC A. SEITZ  
ATTORNEY AT LAW  
A LAW CORPORATION

ERIC A. SEITZ 1412  
DELLA A. BELATTI 7945  
GINA SZETO-WONG 10515  
JONATHAN M.F. LOO 10874  
KEVIN A. YOLKEN 10987

820 Mililani Street, Suite 714  
Honolulu, Hawaii 96813  
Telephone: (808) 533-7434  
Facsimile: (808) 545-3608

Attorneys for Plaintiff  
WYATT J. K. KAM

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WYATT J. K. KAM,	)	CIVIL NO. 19-00052
	)	(Other Civil Rights)
Plaintiff,	)	
	)	COMPLAINT FOR DAMAGES
vs.	)	AND DECLARATORY RELIEF;
	)	DEMAND FOR JURY TRIAL
CARLTON HELM; ROBERT	)	
FARRELL; STATE OF HAWAII	)	
DEPARTMENT OF LAND AND	)	
NATURAL RESOURCES, DIV-	)	
ISION OF CONSERVATION AND	)	
RESOURCE ENFORCEMENT;	)	
and DOE DEFENDANTS 1-10,	)	
	)	
Defendants.	)	

**COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF**

Plaintiff WYATT J. K. KAM (hereinafter “Plaintiff”), by and through his undersigned attorneys, alleges as follows:

### **INTRODUCTION**

1. This is an action brought by Plaintiff Wyatt J. K. Kam to vindicate the outrageous assault and violation of his constitutionally protected rights by Officers of the Hawaii Division of Conservation and Resource Enforcement (hereinafter “DOCARE”) on July 4, 2017.

2. That afternoon Plaintiff was the captain aboard a vessel named “Wind Warrior” anchored on the water outside of Waikiki Beach when it was approached and boarded by DOCARE officers who verbally assailed Plaintiff with vulgar and threatening obscenities and forced him to lie face down on the deck of the boat.

3. One officer stood atop Plaintiff pressing his boot into the back of his head and repeatedly told him “I will kick you in the mouth” if you lift your head up.

4. Plaintiff was told he was under arrest, without explanation, and for forty-five minutes he remained face down as he was senselessly terrorized and humiliated, urinating on himself and sustaining burns and scrapes to his body.

5. The Enforcement Chief of DOCARE and other officers who were present participated in and/or passively stood by as the assault and egregious

violations of Plaintiff's constitutional rights carried on for nearly an hour without any probable, reasonable, or just cause.

### **JURISDICTION AND VENUE**

6. This action arises under the Constitution and laws of the United States and the State of Hawaii. This Court has original jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1331 and 1343, *inter alia*, and any state law claims contained herein form part of the same case or controversy giving rise to the constitutional claims and therefore fall within the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

7. Venue is appropriate in the United States District Court for the District of Hawaii pursuant to 28 U.S.C. § 1391 as all Defendants to the litigation reside in the state of Hawaii and all actions and/or omissions giving rise to the claim occurred in the state of Hawaii.

### **PARTIES**

8. Plaintiff WYATT J. K. KAM is and has been a resident of the County of Honolulu, State of Hawaii, at all times relevant hereto.

9. Defendant CARLTON HELM (hereinafter "Defendant Helm") is and has been a resident of the County of Honolulu, State of Hawaii, at all times relevant hereto, and was employed and on duty as a DOCARE officer on the date of the events alleged herein.

10. Defendant ROBERT FARRELL (hereinafter “Defendant Farrell”) is and has been a resident of the County of Honolulu, State of Hawaii, at all times relevant hereto, and was employed and on duty as the Enforcement Chief of DOCARE on the date of the events alleged herein.

11. Defendant STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES (“DLNR”), DIVISION OF CONSERVATION AND RESOURCE ENFORCEMENT (“DOCARE”) is the enforcement division within DLNR, which is a government agency responsible for the management, administration, and control of public lands and waters, including ocean waters.

12. DOE DEFENDANTS 1-10 (hereinafter “Doe Defendants”) are sued under fictitious names for the reason that their true names and capacities remain at present unknown to the Plaintiff except that they are connected in some manner with the named Defendants as agents, servants, employees, representatives, contractors, assignees, and licensees and/or in some manner presently unknown to the Plaintiff were engaged in the activities alleged herein and/or proximately caused the injuries or damages complained of by the Plaintiff. The identities of the Doe Defendants will be included in Plaintiff’s complaint at such times as their true names and capacities become known. The Doe Defendants are sued both in their individual and in their official capacities.

**FACTUAL ALLEGATIONS**

13. Plaintiff hereby restates all of the allegations set forth above and incorporates those allegations by reference herein.

14. On the date of the incident the Wind Warrior was anchored off Waikiki Beach along with dozens of other boats for the annual Fourth of July “flotilla” celebration.

15. Plaintiff was the responsible captain for the Wind Warrior and was following all applicable vessel operation and anchoring laws and regulations.

16. That afternoon a DOCARE vessel operated by Defendant Farrell maneuvered alongside the Wind Warrior.

17. Plaintiff is informed and believes, and thereupon alleges, that at the direction of Defendant Farrell, Defendant Helm jumped from the DOCARE vessel on to the Wind Warrior.

18. Defendant Helm boarded the Wind Warrior without any announcement of his authority to do so and without receiving any form of permission or invitation from Plaintiff or anyone else aboard the vessel.

19. Nevertheless, Plaintiff and others aboard the Wind Warrior made no objections and cooperated fully with the Defendants’ commands.

20. Upon boarding the Wind Warrior Defendant Helm immediately began berating passengers aboard the vessel and aggressively threatened Plaintiff, ordering him to lie face down on the boat.

21. Plaintiff was fully cooperative and did not exhibit any behavior that could objectively be construed as threatening or endangering Defendants.

22. Defendant Helm then asserted that everyone aboard the Wind Warrior was under arrest and the vessel would be impounded without informing Plaintiff or others of the grounds for his assertion.

23. When Defendant Helm demanded that the captain of the Wind Warrior identify himself Plaintiff immediately complied and identified himself as the captain.

24. Defendant Helm ignored Plaintiff and ordered that he remain face down on the deck of the boat.

25. Defendant Helm demanded again that the captain identify himself and asked for two individuals by name, neither of whom was present.

26. Plaintiff remained in the prone position and again identified himself as the captain, inquiring why he was under arrest and what justification there was to impound the vessel.

27. Defendant Helm became irate at Plaintiff's questioning of his authority, and without any justification or provocation he began physically assaulting Plaintiff, violently stepping on his back and neck with his boot and pressing him face down against the hot surface of the boat.

28. Plaintiff is informed and believes, and thereupon alleges, that Defendant Helm was not motivated by any proper purpose to use such excessive and unreasonable force against him.

29. Plaintiff did not commit any crime, posed no threat to the safety of Defendants Helm and Farrell or other armed enforcement officers present, and was not in any position to be a flight risk.

30. Plaintiff remained prone and did not resist, become defensive, or otherwise react to the unprovoked assault, yet Defendant Helm's violence continued to escalate.

31. Defendant Helm forcefully stepped on Plaintiff's head and repeatedly threatened him with violence, stating "I will kick you in the mouth" if you lift your head off the deck.

32. Defendant Helm's violence and intimidation were not even remotely justifiable under the circumstances.

33. Plaintiff suffered physical pain and was severely distressed by the above described actions of Defendant Helm.

34. Defendant Helm's abusive and unreasonable conduct continued unchecked by Defendant Farrell and other officers who were present and knew or should have known that they had an obligation and reasonable opportunity to intervene and restrain Defendant Helm.

35. Defendant Helm then directed and/or conducted a search of the Wind Warrior without permission or justification.

36. During the search Plaintiff was compelled to remain face down on the hot surface of the boat under threat of extreme physical violence.

37. When Plaintiff offered to help locate anything the officers may be searching for Defendant Helm again threatened him, violently stepped on his back and head, and told him to “shut up” and remain on the ground.

38. During their search of the Wind Warrior Defendant Helm and the other officers caused significant damage to various cabinets and covers on the vessel.

39. Although the officers found no evidence indicating that a crime had been committed, Defendant Helm still maintained that all parties on the Wind Warrior were under arrest.

40. Defendant Helm then ordered the other officers to cut the Wind Warrior’s anchor line so the vessel could be driven to the nearby Ala Wai Small Boat Harbor.

41. When Plaintiff objected to cutting the anchor line and offered to raise the anchor himself Defendant Helm told him to shut up and again threatened extreme physical violence.



42. Defendant Helm then declared the boat to be without a captain and personally took charge of the vessel after other officers manually raised the anchor.

43. Although Plaintiff continued to be compliant and presented no threat whatsoever, Defendant Helm compelled him to remain face down on the deck for the duration of the vessel's transit to the Ala Wai Harbor.

44. Plaintiff requested that he be allowed to use the bathroom, but Defendant Helm ignored Plaintiff's requests to do so, and Plaintiff eventually urinated on himself while fully clothed.

45. Terrified, humiliated, and still in pain, Plaintiff remained in the prone position for approximately forty-five minutes while Defendant Helm piloted the Wind Warrior into the Ala Wai Harbor and docked adjacent to the Hawaii Yacht Club.

46. Members of the Yacht Club and others in the boating community who recognized Plaintiff for his professional work in marine services witnessed the vessel dock with Plaintiff still under arrest and/or detained.

47. Plaintiff was compelled to remain face down as Defendant Helm disembarked from the Wind Warrior and left the scene with Defendant Farrell.

48. Plaintiff was then told that he was no longer under arrest and/or being detained and was allowed to sit up and eventually leave without any charges filed against him.

49. Plaintiff is informed and believes, and thereupon alleges, that his professional work with Hawaii Yacht Club and others in the boating community was negatively impacted as a result of his public arrest and/or detention.

### **COUNT I**

#### **Declaratory Relief Against Defendant State of Hawaii Department of Land and Natural Resources, Division of Conservation and Resource Enforcement**

50. Plaintiff hereby restates all of the allegations set forth above in paragraphs 1 through 49 and incorporates those allegations by reference herein.

51. At all times relevant hereto, Defendants Helm and Farrell were acting or purporting to act as enforcement officers for DOCARE.

52. Defendants' actions and/or omissions described herein violated Plaintiff's rights secured by the Fourth and Fourteenth Amendments of the Constitution of the United States and Article I, Sections 6 and 7 of the Constitution of the State of Hawaii, *inter alia*.

53. Defendant State of Hawaii Department of Land and Natural Resources, Division of Conservation and Resource Enforcement is liable for the actions and/or omissions of Defendants Helm and Farrell under the doctrine of respondeat superior, and thus liable for the violation of Plaintiff's constitutional rights.

54. As a direct and proximate result of Defendants' unlawful actions and/or omissions described herein, Plaintiff has suffered physical and emotional

injuries, including stress, anxiety, loss of enjoyment, humiliation, fear, pain, and other damages in amounts to be proven at trial.

**COUNT II**  
**(42 U.S.C. § 1983)**

**Excessive Force in Violation of the Fourth Amendment  
Against Defendant Helm and Defendant Farrell Individually**

55. Plaintiff hereby restates all of the allegations set forth above in paragraphs 1 through 49 and incorporates those allegations by reference herein.

56. 42 U.S.C. § 1983 provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress .

..

57. Plaintiff is a citizen of the United States, and Defendants Helm and Farrell are persons for the purposes of 42 U.S.C. § 1983.

58. At all times relevant hereto the individual Defendants purported to act under color of state law.

59. At the time of the events alleged herein, Plaintiff had a clearly established right under the Fourth Amendment of the Constitution of the United States and Article I, Section 7 of the Constitution of the State of Hawaii to be free from unreasonable seizure and the use of excessive force.

60. Plaintiff is informed and believes, and thereupon alleges, that any reasonable DOCARE officer knew or should have known of Plaintiff's constitutional rights which were clearly established at the time.

61. Plaintiff further alleges that Defendants Helm and Farrell knew or should have known of Plaintiff's constitutional rights.

62. Defendant Helm's violence spanning the course of forty-five minutes was objectively unreasonable given the facts and circumstances of the incident described herein and violated the clearly defined constitutional rights of Plaintiff who had committed no crime, posed no threat to the safety of Defendants, and fully complied with all of Defendants' commands.

63. Plaintiff is informed and believes, and thereupon alleges, that Defendant Helm's use of excessive force described herein was malicious and/or undertaken with deliberate indifference to Plaintiff's constitutionally protected rights.

64. By failing to intercede and/or prevent the unlawful use of force described herein, Defendant Farrell and other officers are liable for the violation of Plaintiff's rights protected by the Fourth Amendment of the Constitution of the United States and Article I, Section 7 of the Constitution of the State of Hawaii.

65. Because each of the Defendants' acts and/or omissions were moving forces behind Plaintiff's injuries all of the individual Defendants acted jointly in

violating Plaintiff's constitutional rights, and such actions and/or omissions were outside the scope of Defendants' employment as DOCARE officers.

66. Because Defendants' actions and/or omissions violated clearly established constitutional rights they are not entitled to qualified immunity.

67. As a direct and proximate result of Defendants' use of excessive force and other unlawful conduct described herein, Plaintiff has suffered physical and emotional injuries, including stress, anxiety, loss of enjoyment, humiliation, fear, pain, and other damages in amounts to be proven at trial.

**COUNT III**  
**42 U.S.C. § 1983**

**Unreasonable Search and seizure in Violation of the Fourth  
Amendment Against Defendant Helm and Defendant Farrell Individually**

68. Plaintiff hereby restates all of the allegations set forth above in paragraphs 1 through 49 and incorporates those allegations by reference herein.

69. Defendants Helm and Farrell violated Plaintiff's right under the Fourth Amendment of the Constitution of the United States and Article I, Section 7 of the Constitution of the State of Hawaii to be free from unreasonable searches and seizures by unlawfully detaining Plaintiff for over forty-five minutes and conducting a search of the Wind Warrior without Plaintiff's consent, without a warrant, and without reasonable suspicion or probable cause.

70. Defendants Helm and Farrell were never threatened or in any reasonable fear for their safety during the course of the unlawful search and

seizure, and the scope and duration far exceeded the authority of DOCARE officers to conduct safety inspections.

71. By conducting and/or failing to intercede and prevent the unlawful search and seizure, all of the individual Defendants jointly violated Plaintiff's constitutional right to be free from such unreasonable searches and seizures, and such actions and/or omissions were outside the scope of Defendants' employment as DOCARE officers.

72. Because Defendants' actions and/or omissions violated clearly established constitutional rights, they are not entitled to qualified immunity.

73. As a direct and proximate result of Defendants' unlawful actions and/or omissions described herein, Plaintiff has suffered physical and emotional injuries, including stress, anxiety, loss of enjoyment, humiliation, fear, pain, and other damages in amounts to be proven at trial.

**COUNT IV**  
**Assault**

74. Plaintiff hereby restates all of the allegations set forth above in paragraphs 1 through 49 and incorporates those allegations by reference herein.

75. Defendants Helm and Farrell, acting outside the scope of their employment as DOCARE officers, jointly participated, aided, set in motion, and/or failed to intercede and prevent the malicious physical assault of Plaintiff.

76. Plaintiff is informed and believes, and thereupon alleges, that by the actions and/or omissions described herein, Defendants Helm and Farrell intended to cause Plaintiff apprehension of an imminent harmful and offensive contact with his person.

77. As a result of Defendants' actions and/or omissions, Plaintiff did experience great apprehension of imminent harmful and offensive contact with his person to which he did not consent.

78. Defendants acted willfully, maliciously, and with conscious disregard for Plaintiff's rights, and knew or should have known their conduct was certain to cause injury, pain, fear, and humiliation to Plaintiff.

79. As a direct and proximate result of Defendants' unlawful actions and/or omissions described herein, Plaintiff has suffered physical and emotional injuries, including stress, anxiety, loss of enjoyment, humiliation, fear, pain, and other damages in amounts to be proven at trial.

**COUNT V**  
**Battery**

80. Plaintiff hereby restates all of the allegations set forth above in paragraphs 1 through 49 and incorporates those allegations by reference herein.

81. Defendants Helm and Farrell, acting outside the scope of their employment as DOCARE officers, jointly participated, aided, set in motion, and/or failed to intercede and prevent the malicious physical battery of Plaintiff.

82. In acting and/or failing to act in the manner described herein, Defendant Helm intended to make harmful and offensive contact with the Plaintiff.

83. Defendant Helm, acting in concert with Defendant Farrell, did in fact commit a harmful, offensive, and unwelcome contact with Plaintiff by the actions described herein, and at no point did Plaintiff consent to any of Defendants' actions.

84. Defendants' knew or should have known that such actions and/or omissions were certain to cause injury, pain, and humiliation to Plaintiff.

85. As a direct and proximate result of Defendants' unlawful actions and/or omissions described herein, Plaintiff has suffered physical and emotional injuries, including stress, anxiety, loss of enjoyment, humiliation, fear, pain, and other damages in amounts to be proven at trial.

**COUNT VI**  
**False Arrest/False Imprisonment**

86. Plaintiff hereby restates all of the allegations set forth above in paragraphs 1 through 49 and incorporates those allegations by reference herein.

87. By the acts and/or omissions alleged herein, Defendants falsely arrested and/or falsely imprisoned Plaintiff by detaining him against his will and without an arrest warrant, probable cause, or reasonable suspicion for over forty-five minutes.



88. Purporting to act under color of state law, Defendants unlawfully caused Plaintiff to be detained against his will, and did so knowingly, intentionally, and with malice.

89. Defendants' actions and/or omissions in falsely arresting and/or imprisoning Plaintiff were outside the scope of their employment as DOCARE officers.

90. As a direct and proximate result of Defendants' unlawful actions and/or omissions described herein, Plaintiff has suffered physical and emotional injuries, including stress, anxiety, loss of enjoyment, humiliation, fear, pain, and other damages in amounts to be proven at trial.

**COUNT VII**  
**Invasion of Privacy**

91. Plaintiff hereby restates all of the allegations set forth above in paragraphs 1 through 49 and incorporates those allegations by reference herein.

92. The acts and/or omissions of Defendants Helm and Farrell described herein were intended to and did cause an intrusion upon the privacy and seclusion of Plaintiff and were highly offensive to him and would be highly offensive to any reasonable person.

93. Defendants' actions thus constitute an invasion of privacy in violation of Article I, Sections 6 and 7 of the Constitution of the State of Hawaii.

94. Defendants actions and/or omissions in invading Plaintiff's privacy were outside the scope of their employment as DOCARE officers.

95. As a direct and proximate result of Defendants' unlawful actions and/or omissions described herein, Plaintiff has suffered physical and emotional injuries, including stress, anxiety, loss of enjoyment, humiliation, fear, pain, and other damages in amounts to be proven at trial.

**COUNT VIII**  
**Intentional Infliction of Emotional Distress**

96. Plaintiff hereby restates all of the allegations set forth above in paragraphs 1 through 49 and incorporates those allegations by reference herein.

97. Defendants Helm and Farrell knowingly, deliberately, and maliciously caused Plaintiff severe mental and emotional distress by subjecting him to senseless and prolonged violence without any reasonable justification.

98. Defendants' actions were extreme and outrageous under the circumstances described herein and extended beyond what is considered socially acceptable behavior.

99. Defendants' actions and/or omissions in intentionally inflicting emotional distress upon Plaintiff were outside the scope of their employment as DOCARE officers.

100. As a direct and proximate result of Defendants' unlawful actions and/or omissions described herein, Plaintiff has suffered physical and emotional

injuries, including stress, anxiety, loss of enjoyment, humiliation, fear, pain, and other damages in amounts to be proven at trial.

**COUNT IX**  
**Negligence**

101. Plaintiff hereby restates all of the allegations set forth above in paragraphs 1 through 49 and incorporates those allegations by reference herein.

102. At all times relevant hereto, Defendant State of Hawaii Department of Land and Natural Resources, Division of Conservation and Resource Enforcement and its agents had a duty to exercise reasonable care to avoid foreseeable harm in the performance of its functions as the agency responsible for the management, administration, and control of public lands and waters, including ocean waters, and the enforcement of laws relating thereto.

103. Defendants breached this duty by negligently causing and/or failing to prevent harm to Plaintiff in the performance of its responsibilities as law enforcement through the actions and/or omissions described herein.

104. Defendants knew or should have known that the actions and/or omissions described herein were reasonably likely to harm Plaintiff and violate his constitutional rights.

105. Defendants' negligent actions and/or omissions did violate Plaintiff's constitutional rights and result in harm to Plaintiff that would not have occurred but for Defendants' negligence.

106. As a direct and proximate result of Defendants' negligent actions and/or omissions described herein, Plaintiff has suffered physical and emotional injuries, including stress, anxiety, loss of enjoyment, humiliation, fear, pain, and other damages in amounts to be proven at trial.

WHEREFORE Plaintiff prays for relief as follows:

1. For declaratory judgment that the acts and/or omissions of Defendant State of Hawaii Department of Land and Natural Resources, Division of Conservation and Resource Enforcement and its agents, Defendants Helm and Farrell, violated Plaintiff's rights under the Fourth and Fourteenth Amendment of the Constitution of the United States and Article I, Sections 6 and 7 of the Constitution of the State of Hawaii;

2. For general, special, and punitive damages, including pain and suffering, mental anguish, loss of earnings, loss of future earnings, and other damages in amounts to be proven at trial;

3. For recovery of reasonable attorneys' fees and costs;

4. For any such further relief the Court deems just and proper.

DATED: Honolulu, Hawaii, January 28, 2019

/s/ Eric A. Seitz

ERIC A. SEITZ  
DELLA A. BELATTI  
GINA SZETO-WONG  
JONATHAN M.F. LOO  
KEVIN A. YOLKEN

Attorneys for Plaintiff  
WYATT J. K. KAM

CarrollCox.com