IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

DEB RITCHIE, Plaintiff, vs. NATIONAL FOOTBALL LEAGUE, STATE OF HAWAII, DOE ENTITIES 1-10, DOE INDIVIDUALS 1-10, Defendants	CIVIL NO. 13-00525 JMS BMK MEMORANDUM IN SUPPORT OF MOTION

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TABLE OF CONTENTS

SECTION PAGE(S)

Table of Authorities ii

1. Introduction 1

2. Standard for Summary Judgment 1

3. The Underlying Facts Support the State's Motion 3

4. A Proper Section 504 Defendant Must Receive Federal Funds 7

5. Aloha Stadium Does Not Receive Federal Funds 13

   A. By Statute Aloha Stadium's Operating Budget Comes From Rents and Fees 13

   B. Plaintiff's Proposed Exhibits Do Not Show Aloha Stadium Received Federal Funds in Fiscal Year 2013 14

6. The Hawaii Tourism Authority is not a Proper Defendant Pursuant to Hawaii Law 19

7. Conclusion 21

TABLE OF AUTHORITIES

CASES PAGE(S)

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986) 2

Armstrong v. Davis,
275 F.3d 849 (9th Cir.2001) 7

Celotex Corp. v. Catrett,
477 U.S. 317 (1986) 2

Gilstrap v. United Air Lines, Inc.,
709 F.3d 995 (9th Cir.2013) 7

Greater L.A. Council on Deafness, Inc., v. Zolin,
812 F.2d 1103 (9th Cir.1987) 8

Haybarger v. Lawrence County Adult Prob. & Parole,
551 F.3d 193 (3d Cir.2008) 8, 9

Johnson v. California,
543 U.S. 499 (2005) 7

Lujan v. Nat'l Wildlife Federation,
497 U.S. 871 (1990) 3

Regents of Univ. of Cal. v. Doe,
519 U.S. 425, 117 S.Ct. 900 (1997) 9

Sharer v. Oregon,
513 F.3d 1176 (9th Cir. 2009) 10, 11

Starr v. State of Hawaii, Department of Accounting and General Services,
2007 WL 3254831 (D. Haw. 2007) 10

United States Department of Transportation v. Paralyzed Veterans of America,
477 U.S. 597 (1986) 7, 8

STATUTES PAGE(S)

HRS § 26-35(a) 12

HRS § 109-1 ..... 9, 12, 13

HRS § 109-2 ..... 9, 12, 13

HRS § 109-3 ..... 3, 14,

HRS § 109-6 14

HRS § 201 ..... 16, 17, 19

OTHER AUTHORITY PAGE(S)

Air Carrier Access Act of 1986, Pub.L. No. 99–435 (1986) 8

Civil Rights Restoration Act of 1987, Pub.L. No. 100–259, §§ 2, 4, 102 Stat. 28 (1988) 9

FRCivP, Rule 56(c) 1, 2

National Endowment of the Arts (NEA) 18

Section 504 of the Rehabilitation Act (29 U.S.C. § 701) 1, 8, 10, 18

MEMORANDUM IN SUPPORT OF MOTION

1. Introduction

Plaintiff Deb Ritchie purchased 10 tickets to the 2013 Pro Bowl in the first and second rows.[1] Ms. Ritchie intended to sit in the front row at the 2013 Pro Bowl.[2] At the time of the 2013 Pro Bowl Ms. Ritchie was unable to walk any significant distance and used a wheelchair to move from place to place.[3] Ms. Ritchie attempted to access her front row seat by going down the stairs using crutches and wearing shoes with wheels on them.[4] Eventually a decision was made that Ms. Ritchie had to sit in the wheelchair accessible section rather than her front row seat.[5] Ms. Ritchie has brought a claim against the State of Hawaii, *inter alia*, for violation of section 504 of the Rehabilitation Act.[6]

2. Standard for Summary Judgment

A party against whom a claim is asserted may move with supporting declarations and documents for a summary judgment in the party's favor. FRCivP, Rule 56(c). The court shall grant summary judgment if the movant shows there is

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[1] Deposition of Plaintiff Deb Ritchie (Exhibit A); Page 158, line 20 – page 159, line 7.
[2] Exhibit A, page 164, lines 12 – 25.
[3] Exhibit A, page 37, lines 8 – 20.
[4] Exhibit A, page 264, line 7 – page 269, line 4.
[5] Exhibit A, page 284, line 4 – page 285, line 2.
[6] First Amended Complaint ¶¶ 176 – 188.

no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. FRCivP, Rule 56(a).

A movant must make a prima facie showing the motion satisfies the standard for obtaining summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986). The Supreme Court has explained what is required for a defendant to make a prima facie showing:

> If the burden of persuasion at trial would be on the *non-moving* party, the party moving for summary judgment may satisfy Rule 56's burden of production in either of two ways. First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the Court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.

Celotex, 477 U.S. at 331.

Once the moving party has met its initial burden, the burden of producing substantial evidence to demonstrate the existence of a genuine dispute as to a material fact shifts to the opposing party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The opposing party's evidence must be sufficiently substantial to support a jury verdict in the nonmovant's favor. Evidence that is merely colorable, or is not significantly probative, is not enough. *Anderson*, 477 U.S. at 249-252. Nor can a nonmovant defeat a motion for summary judgment based on mere assertions and allegations:

> The object of this provision [Rule 56(e)] is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit...Rather, the purpose of Rule 56 is to enable a party who believes there is no genuine dispute as to a specific fact essential to the other side's case to demand at least one sworn averment of that fact before the lengthy process of litigation continues.

Lujan v. Nat'l Wildlife Federation, 497 U.S. 871, 888-89 (1990).

3. The Underlying Facts Support the State's Motion

Russell Uchida is currently the Administrative Services Officer for Aloha Stadium, and had the same position in 2013. (Fact 1). Monies for capital improvement projects (CIPs) are appropriated by the Hawaii State Legislature and administered through the Department of Public Works which is part of the Department of Accounting and General Services (DAGS). (Fact 2). State appropriations are the sole source of capital improvement fundings in recent years, (Fact 3). Aloha Stadium did not fund any CIPs from revenues it generated through operations. (Fact 4). CIPs are funded by general obligation bonds issued by the State of Hawaii. (Fact 5). Mr. Uchida is aware that the Department of Health receives federal funds. (Fact 6).

Pursuant to HRS § 109-3 the state legislature authorized the establishment of a Stadium special fund into which revenues generated by the Aloha Stadium are deposited and from which the operational expenses of Aloha Stadium are paid. (Fact 7). In fiscal year 2013, the following sources of funds were collected by Aloha Stadium: Rental of the facility for the Swap Meet; rental of various areas of

the stadium proper; the stadium's share of food and beverage sales receipts; parking revenue; advertising revenue; interest; and miscellaneous. (Fact 8). The Miscellaneous item consists primarily of rent revenue and expenditure reimbursements from the prior year that are collected after the prior fiscal year end. This item does not include any federal funds. (Fact 9). The Aloha Stadium Special Fund also includes a transfer from the Department of Accounting and General Services, Division of Public Works of unused cash from Capital Improvement Projects (CIP). Monies for Capital Improvement Projects are appropriated to Aloha Stadium and are administered by the Department of Accounting and General Services, Division of Public Works. (Fact 10).

As shown on page 2 of Exhibit B, the operating expenses of Aloha Stadium are paid from the Special Fund. The Ending fund balance of June 30, 2013 is the Beginning fund balance of July 1, 2013, to be used for fiscal year 2014. (Fact 11). No State general funds are appropriated to Aloha Stadium by the Hawaii State Legislature. (Fact 12). No federal funds are appropriated, received, or disbursed by Aloha Stadium. (Fact 13).

In 2013 Kerry Yoneshige was the Business Management Officer at DAGS. At the time of his deposition he was Interim Comptroller.[7] He has been employed

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[7] The remainder of the facts that follow were derived from depositions taken by Mr. Phillips after this Court denied the State's earlier Motion for Partial Summary Judgment on the same subject. The facts gleaned from these depositions, when

at DAGS since 2003. (Fact 14). His duties are budgeting, the fiscal operations, and any special projects that the State Comptroller may have. (Fact 15). The types of administrative actions that DAGS performs for agencies attached to DAGS for administrative purposes are: DAGS serves as a conduit for any budget requests going to the legislature; DAGS serves as a conduit for any communications between the attached agency and the governor and legislature; and DAGS oversees the agencies' operations to ensure compliance with statutes, rules, and administrative policies. (Fact 16). The budgets for the attached agencies are included in DAGS consolidated budget. (Fact 17). DAGS does not represent the agencies in budget matters before the legislature. DAGS facilitates the transference of information between the respective bodies. (Fact 18). DAGS does receive federal funds that are designated for agencies that are attached to DAGS for administrative purposes. (Fact 19).

The State Foundation on Culture and Arts receives federal funds indirectly. The National Endowment of Arts receives federal funds then passes that through to the State Foundation on Culture and Arts. (Fact 20).

Mr. Yoneshige did not believe the Office of Elections received federal funds in fiscal year 2013. (Fact 21).

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added to Plaintiff's witness list and proposed exhibits, represent the sum total of evidence Plaintiff intends to offer at trial to attempt to prove that Aloha Stadium receives federal funds.

The State Procurement Office, an agency attached to DAGS for administrative purposes, receives surplus federal property, which they sell to other state agencies or nonprofit agencies. (Fact 22). The National Endowment of the Arts does not send funds to DAGS, but it goes directly to the State Foundation for Culture and Arts. (Fact 23). DAGS does not disburse or authorize the disbursement of any federal funds to any element of State government. (Fact 24).

Aloha Stadium Authority is not a part of DAGS operations. It is an attached agency. By statute DAGS cannot control or supervise an attached agency. DAGS administers the administrative functions. By statute DAGS cannot control or supervise the Stadium Authority. (Fact 25).

Jonathan Johnson is the Executive Director of the State Foundation on Culture and the Arts. (Fact 26). 27. Although Mr. Johnson was aware the State Foundation on Culture and the Arts received a grant in 2013 from the National Endowment of the Arts, he was not aware of how the process works. (Fact 27). The State Foundation on Culture and the Arts has received federal funds in the past. (Fact 28).

Rhowell Ruiz is the Elections Support Services section head for the Office of Elections. (Fact 29). He is familiar with the source of funding for the Office of Elections. (Fact 30). The Office of Elections does not receive federal funds annually. (Fact 31). The office of elections did not receive federal funds in fiscal

year 2013, although there have been a number of federal grants between 2004 and 2014. (Fact 32). The budget of the Office of Elections is submitted to the legislature as part of the DAGS consolidated budget. (Fact 33).

Paula Youngling is employed at the State Procurement Office. (Fact 34). The State Procurement Office (SPO) participates in the federal service surplus property program. (Fact 35). In general, the SPO receives donations of federal property from federal agencies and then the property is provided to various state agencies at the cost of a handling fee. (Fact 36). The SPO is not a department of DAGS, it is an associate agency. (Fact 37).

4. A Proper Section 504 Defendant Must Receive Federal Funds

"The Rehabilitation Act is materially identical to and the model for the ADA, except that it is limited to programs that receive federal financial assistance...." *Armstrong v. Davis,* 275 F.3d 849, 862 n. 17 (9th Cir.2001) (internal quotations omitted), *abrogated on other grounds by Johnson v. California,* 543 U.S. 499, 504–05 (2005); *see also Gilstrap v. United Air Lines, Inc.,* 709 F.3d 995, 999 (9th Cir.2013).

In *United States Department of Transportation v. Paralyzed Veterans of America,* the Supreme Court held that Congress intended to strictly limit the scope of the Rehabilitation Act solely "to those who actually 'receive' federal financial assistance." 477 U.S. 597, 605 (1986), *superseded by statute on other grounds,* Air

Carrier Access Act of 1986, Pub.L. No. 99–435 (1986). The Court explained that "[b]y limiting coverage to *recipients,* Congress imposes the obligations of § 504 upon those who *are in a position to accept or reject those obligations* as a part of the decision whether or not to 'receive' federal funds." *Id.* at 606, 106 S.Ct. 2705 (emphases added); *see also Greater L.A. Council on Deafness, Inc., v. Zolin,* 812 F.2d 1103, 1111 (9th Cir.1987) (recognizing that the Rehabilitation Act "does not prohibit discrimination against the handicapped as such; it simply bars the use of federal funds to support programs or activities that so discriminate").

Consequently, while those who affirmatively choose to receive federal aid may be held liable under the Rehabilitation Act, liability will "not extend as far as those who benefit from it," because application of § 504 to all who benefit economically from federal assistance would yield almost "limitless coverage." *Paralyzed Veterans,* 477 U.S. at 607–08.

Section 504 defines "program or activity" to include "all the operations of ... a department, agency, special purpose district, or other instrumentality of a State or of a local government." 29 U.S.C. § 794(b)(1)(A). Congress adopted this broad definition in response to *Consolidated Rail Corp. v. Darrone,* 465 U.S. 624, 635–36 (1984), where the Court narrowly construed "program or activity" to reach "only the specific parts of a recipient's operation which directly benefited from federal assistance." *Haybarger v. Lawrence County Adult Prob. & Parole,* 551

F.3d 193, 199 (3d Cir.2008); *see also* Civil Rights Restoration Act of 1987, Pub.L. No. 100–259, §§ 2, 4, 102 Stat. 28 (1988).

Whether a particular state entity is a program or activity receiving federal financial assistance within the meaning of section 504, though itself "a question of federal law[,] ... can be answered only after considering the provisions of state law that define the agency's character." *Regents of Univ. of Cal. v. Doe,* 519 U.S. 425, 429 n. 5, 117 S.Ct. 900, 137 L.Ed.2d 55 (1997) (discussing whether an agency is "an arm of the State" for Eleventh Amendment sovereign immunity purposes); *Haybarger,* 551 F.3d at 201 ("[t]hough not dispositive, a State's characterization of an entity under state law is significant" in determining whether that entity is a "program or activity" under section 504). Therefore, this Court should look to the State's statutory scheme governing Aloha Stadium to determine whether it is, for section 504 purposes, a "program or activity receiving Federal financial assistance."

Pursuant to HRS § 109-1, the Stadium Authority is established within the department of accounting and general services for administrative purposes only. The Stadium Authority's responsibility is to maintain, operate, and manage the stadium and facilities attached thereto. HRS § 109-2 sets forth that the stadium authority includes the power to prescribe and collect rents, fees and charges for the

use or enjoyment of the stadium and to make and execute contracts necessary to exercise its powers.

This Court has previously referred counsel to *Starr v. State of Hawaii, Department of Accounting and General Services*, 2007 WL 3254831 (D. Haw. 2007) for guidance regarding the status of an attached agency with respect to a claim under the Rehabilitation Act. Notably, Mr. Phillips was the attorney representing Ms. Starr in that earlier action. There, the Defendant was DAGS, which, although it did not receive federal funding itself, disbursed federal funds to the Office of Elections and the State Foundation on the Culture and the Arts. *Starr* at *4 "DAGS essentially acts as the 'paying agent' by writing the check to distribute the federal funds" on behalf of the Office of Elections and the State Foundation on the Culture and the Arts. Based on that analysis, Judge Ezra found that DAGS was a proper § 504 defendant. That is clearly distinguishable from the present situation: Aloha Stadium does not receive federal funds and DAGS is not the Defendant.

The present case is similar to a case giving rise to a later published Ninth Circuit opinion, *Sharer v. Oregon*, 513 F.3d 1176 (9th Cir. 2009). There, Ms. Sharer, a former legal assistant in Oregon's Office of Public Defense Services (OPDS), sued her employer claiming, *inter alia*, a violation of the Rehabilitation Act.

The *Sharer* Court examined the structure of OPDS to determine whether they were a program or activity receiving federal financial assistance. During the relevant time period, OPDS was "located within the judicial branch of Oregon's government." *Sharer*, 513 F.3d at 1179. The *Sharer* Court further found that OPDS was established within Oregon's "judicial department"—that is, the judicial branch of Oregon's government—as the administrative arm of the Commission," which was established "to carry out the administrative policies and procedures for the public defense system." *Id.* It was undisputed that Oregon's judicial branch received federal funds.

After considering the Judicial Department and Commission's distinct funding sources and administration, the *Sharer* Court held that:

> It does not follow, however, that Oregon's judicial "department" of government comprises a unitary "department" or "agency" within the meaning of section 504. Oregon's statutes draw a distinction between the State's "judicial department" (lower case), which refers to the judicial branch of government in its entirety, and the "Judicial Department" (upper case), which refers to the predominant administrative agency within the judicial branch.

Sharer, 513 F.3d at 1180.

Based on this analysis the Ninth Circuit found that OPDS "is not a "program or activity receiving Federal financial assistance" within the meaning of section 504 simply by virtue of the Judicial Department's receipt of federal funds." *Sharer*, 513 F.3d at 1180.

The same situation exists here. The Aloha Stadium Authority is administratively attached to DAGS. DAGS receives and disburses federal funds. Aloha Stadium does not.

Pursuant to HRS § 109-1, the Aloha Stadium Authority is placed in DAGS "for administrative purposes only." The Stadium Authority's responsibility is the management and operation of Aloha Stadium. *Id.*; HRS § 109-2.

HRS 26-35(a) defines the relationship between a Department and an agency which is placed into that Department for administrative purposes:

> Whenever any board or commission is established or placed within or transferred to a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department, the following provisions shall apply except as otherwise specifically provided by this chapter: (1) The head of the department shall represent the board or commission in communications with the governor and with the legislature; unless the legislature or a legislative committee requests to communicate directly with the board or commission; (2) The financial requirements from state funds of the board or commission shall be submitted through the head of the department and included in the budget for the department; (3) All rules adopted by the board or commission shall be subject to the approval of the governor; (4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the board or commission shall be determined by the board or commission subject to the approval of the head of the department and to applicable personnel laws; (5) All purchases of supplies, equipment, or furniture by the board or commission shall be subject to the approval of the head of the department; (6) The head of the department shall have the power to allocate the space or spaces available to the department and which are to be occupied by the board or commission; (7) Any quasi-

> judicial functions of the board or commission shall not be subject to the approval, review, or control of the head of the department; and (8) Except as set forth hereinabove, the head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties, and powers.

This statute distinguishes between administrative duties that are carried out by the department in which an agency is placed for administrative purposes and the substantive functions of the agency. Based on the nature of the relationship between an agency which is only placed within a department for administrative purposes, which are narrowly defined, the State believes Plaintiff is required to prove, by a preponderance of the evidence, that the Aloha Stadium Authority received federal funds during fiscal year 2013. For the reasons that follow, the State does not believe Plaintiff will be able to do this.

5. Aloha Stadium Does Not Receive Federal Funds

A. By Statute Aloha Stadium's Operating Budget Comes From Rents and Fees

Pursuant to HRS § 109-1, the Stadium Authority is established within the department of accounting and general services for administrative purposes only. The Stadium Authority's responsibility is to maintain, operate, and manage the stadium and facilities attached thereto. HRS § 109-2 sets forth that the stadium authority includes the power to prescribe and collect rents, fees and charges for the use or enjoyment of the stadium and to make and execute contracts necessary to exercise its powers.

The ability to collect and disburse funds for the operation of Aloha Stadium is provided for in HRS §§ 109-3 and 109-6, which creates a special fund into which all funds, including monies from the sale of tickets and rent of the stadium, collected by the authority are deposited. This special fund shall be used for the payment of the expenses of the operation, maintenance, promotion and management of Aloha Stadium. HRS § 109-3(1).

It is obvious that the purpose of these statutes is to allow Aloha Stadium to be operated as a business, without the need for a legislative appropriation to support its operation. Not only is Aloha Stadium operated without any appropriation from the state legislature, it does not receive any federal funds. Notably, the budget for Aloha Stadium for fiscal year 2013 (Ex. B) irrefutably demonstrates that Aloha Stadium does not receive federal funds.

Based on the structure of the Aloha Stadium Authority, as set by Hawaii law, the budget for fiscal year 2013 (during which the 2013 Pro Bowl was played) and the facts set forth in the Declaration of Russell T. Uchida, Aloha Stadium does not qualify as a program or activity that receives federal financial assistance.

B. Plaintiff's Proposed Exhibits Do Not Show Aloha Stadium Received Federal Funds in Fiscal Year 2013

Mr. Phillips has provided copies of documents he wishes to use as exhibits at this trial. The proposed exhibits are attached as Exhibit C:

Plaintiff's Number	Description	Bates Nos.
23	State of Hawaii Executive Budget, Fiscal Budget 2011 – 2013 for DAGS.	C 1 – C 70
24	State of Hawaii Executive Budget, Fiscal Budget 2011 – 2013 for DBEDT.	C 71 – C 120
25	State of Hawaii, Department of Business, Economic Development and Tourism, 2013 Annual Report	C 71 – C 144
26	Aloha Stadium Comprehensive Site Survey	C 145 – C 219
27	Hawaii State Foundation on Culture and the Arts, Annual Report Fiscal Year 2012 – 2013.	C 220 – C 251
28	National Endowment for the Arts, 2013 Annual Report	C 252 – C 267
29	Congressional bill for appropriation to the Department of Interior, environment, and related agencies for the fiscal year ending September 30, 2013.	C 268 – C 273

Unfortunately, Mr. Phillips has not disclosed which portion or portions of these voluminous proposed exhibits are actually pertinent or he actually intends to publish to the jury, forcing counsel for the State to review hundreds of pages of irrelevant documents.[8]

To begin, at page 20 of Exhibit C (Plaintiff's proposed Exhibit 23), the budget for the Aloha Stadium Authority is set forth. **It shows that the Aloha Stadium Authority did not receive federal funds for fiscal year 2013**. This Exhibit appears to show that the State Foundation on Culture and the Arts (another attached agency) received federal funds during that time. (Exhibit C at 16). It also shows that DAGS received some sort of federal funding, although its purpose is

[8] At a meet-and-confer on March 2, 2015, I specifically asked which portions he considered to be relevant. Mr. Phillips refused to answer.

unknown. (Exhibit C at 3). Other than trying to blur the distinction between different agencies, there doesn't appear to be any purpose to offering this Exhibit. It certainly does not prove that the Aloha Stadium Authority was the recipient of federal funding.

Turning to Plaintiff's proposed Exhibit 24, the budget of the Department of Business, Economic Development and Tourism (DBEDT), this proposed Exhibit is based on Plaintiff's lack of understanding of DBEDT's structure.[9] On page C 76, there is a chart which shows that the Hawaii Tourism Authority (HTA) is an attached agency for administrative purposes. (*See also* C 125 and C 134). On page C 78, the document shows that one of DBEDT's major programs is Tourism, designated as BED 113. Page C 91 is the budget allocated for this program of DBEDT. Page C 92 states that "[t]he objective of the Tourism program is to achieve a strong sustainable tourism industry..."

Plaintiff is confusing the Tourism program (a part of DBEDT) with the HTA (an agency attached for administrative purposes). These agencies are authorized by two different chapters of the Hawaii Revised Statutes. The Tourism Office is organized pursuant to HRS Chapter 201. *See* HRS § 201-92: "There is established an office of tourism within the department of business, economic

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[9] Plaintiff has recently expanded his claim to include a discrimination claim against the Hawaii Tourism Authority (HTA). HTA is not a proper defendant for the reasons that follow.

development, and tourism." The Hawaii Tourism Authority is organized pursuant to HRS Chapter 201B. *See* HRS § 201B(a) (in pertinent part): "There is established the Hawaii tourism authority...the authority shall be placed within the department of business, economic development, and tourism for administrative purposes only."

Plaintiff's proposed Exhibit 24 does not contain the budget for the HTA, but does have the budget for the Tourism Office at C 91. This Exhibit doesn't prove that HTA receives federal funding, much less that the Aloha Stadium Authority does.

None of the remainder of the proposed Exhibits demonstrate that either Aloha Stadium or the HTA receive federal funds. Exhibit 25 is an annual report which describes in general terms the functions of DBEDT and its accomplishments during the preceding year. It provides no information as to the source of funds for either Aloha Stadium or the HTA.

Exhibit 26 is a Comprehensive Site Summary prepared for DAGS for the purpose of possible redevelopment of the site. This document is completely irrelevant to the present lawsuit, and prior to it being offered into evidence, the State would request an offer of proof.

Exhibit 27 is a copy of a glossy magazine prepared by the Hawaii State Foundation on Culture and the Arts explaining what that agency does. It does not

provide any information as to the funding of Aloha Stadium or the HTA. Page C 236 states that part of this agency's revenues for the fiscal year ending June 30, 2013 was a National Endowment for the Arts Partnership. The fact that another agency attached to DAGS received funding from some federal source is irrelevant with respect to this issue in this case.

Exhibit 28 is the 2103 Annual Report for the National Endowment of the Arts (NEA). This document explains that the NEA is an agency created by Congress and that 40% of the NEA's funds are awarded to organizations such as state arts agencies (C 256). Neither Aloha Stadium or the HTA is a state art agency.

Exhibit 29 is a portion of an appropriations bill indicating that Congress voted to provide funds to the NEA.

None of the documents which Plaintiff intends to offer at trial prove that either the HTA or Aloha Stadium Authority receive federal funds, a necessary element to proceed against either of them pursuant to § 504 of the Rehabilitation Act.

Finally, none of the witnesses Plaintiff intends to call for trial can testify that either Aloha Stadium or the HTA receives federal funds. (*See* Facts section, above.)

6. The Hawaii Tourism Authority is not a Proper Defendant Pursuant to Hawaii Law

As to the Licensing Agreement (Exhibit D), the main reason for offering this Exhibit is to allow Plaintiff to argue that the Hawaii Tourism Authority (HTA) is a proper Defendant because it was a signatory to the License Agreement. Plaintiff is attempting to persuade this Court that because HTA signed a licensing agreement with the NFL, it is a proper defendant, where employees of the Aloha Stadium Authority are alleged to have discriminated against her.[10]

The extent of HTA's authority is fixed by HRS Chapter 201B. HRS § 201B-3(a)(13) allows the HTA to "contract for or to accept revenues, compensation, proceeds, and gifts or grants in any form from any public agency or any other source…" HRS § 201B-3(a)(14) allows the HTA to "[d]evelop, coordinate, and implement state policies and directions for tourism and related activities taking into account the economic, social, and physical impacts of tourism on the State…" **Importantly, HRS § 201B-19 allows the HTA to "[m]arket and promote sports-related activities and events."**

None of these provisions allow the HTA to operate or manage Aloha Stadium. It is the management and operation of Aloha Stadium that is the basis for this lawsuit, not the promotion of the Pro Bowl by HTA. As noted above, the

[10] Presumably, this effort is also related to Plaintiff's failed attempt to show that the HTA receives federal funding and is therefore a proper section 504 Defendant.

Stadium Authority's responsibility is to maintain, operate, and manage the stadium and facilities attached thereto.

Turning to the Licensing Agreement, page 1 contains three provisions which provide the reasons that the Licensing Agreement was executed by both the HTA and Aloha Stadium Authority:

> WHEREAS, the Stadium Authority has the statutory duty and responsibility to authorize the use of the Aloha Stadium, a multi-purpose stadium consisting of approximately 50,000 seats, parking stalls, and related improvements, located in the City and County of Honolulu, island of Oahu, State of Hawaii (hereinafter referred to as the "Aloha Stadium").
>
> WHEREAS, the HTA has the statutory duty and responsibility to promote tourism for the State of Hawaii.
>
> ***
>
> WHEREAS, the Stadium Authority and the HTA desires to fulfill their respective duty and responsibility by allowing the Pro Bowl Game to be played in Hawaii…

Despite Plaintiff's belief to the contrary, the HTA did not license Aloha Stadium to be used by the NFL to play the Pro Bowl, the Aloha Stadium Authority did. Nor did the Hawaii Tourism Authority operate Aloha Stadium on game day. The HTA's role was to promote tourism, not manage and operate Aloha Stadium. The HTA is not a proper Defendant in this action.

7. Conclusion

Because Defendant has shown that Aloha Stadium Authority is an agency attached to DAGS for administrative purposes only, the fact that DAGS receives and disburses federal funds does not make the Aloha Stadium Authority a proper section 504 Defendant. It is undisputed that Aloha Stadium does not receive federal funds.

Additionally, the HTA is not a proper section 504 Defendant either: It does not operate or manage Aloha Stadium. Further, none of Plaintiff's proposed exhibits demonstrate that the HTA receives federal funds.

Defendant State of Hawaii has met both prongs of the tests for summary judgment: It has negated an element of Plaintiff's cause of action (Aloha Stadium is not a program that receives federal funds) and it has shown that Plaintiff cannot prove this element at trial.

Based on the above, the State requests this Court grant its partial summary judgment with respect to the section 504 claim.

DATED: Honolulu, Hawaii, March 4, 2015.

/s/ John F. Molay
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