DATE: August 21, 2012

TO: James H. Q. Lee, Vice Chair of the University of Hawai'i Board of Regents, and M.R.C. Greenwood, President of the University of Hawai'i System

FROM: Dennis W. Chong Kee and Calvert G. Chipchase ("Factfinders")

RE: Report of Factfinders Regarding the Benefit Concert

Factfinders make the following report regarding the planned concert to benefit the University of Hawai'i ("UH" or "University") Athletics Department ("Athletics").[1]

I. APPOINTMENT OF FACTFINDERS

1. By letter dated July 13, 2012, Vice Chair Lee and President Greenwood appointed Factfinders to

> investigate the possible inappropriate management, planning, organization, and administration of the benefit concert scheduled for August 18, 2012 at the Stan Sheriff Center, and/or violations of [University] policies and procedures or other related violations which may involve James Donovan, III, Director of Athletics, Intercollegiate Athletics, University of Hawai'i at Mānoa, and Richard Sheriff, Manager, Stan Sheriff Center, University of Hawai'i at Mānoa, and/or other individuals.

Attachment 1 (7/13/12 letter). Factfinders understand that the scope of their investigation does not include the propriety of actions taken by individuals who are not employed by the University or the whereabouts of the payment that UH made in connection with the concert.

2. Factfinders were instructed to "meet and interview the relevant parties and appropriate witnesses" and to provide a report of their findings to Vice Chair Lee and President Greenwood. *Id.*

3. Factfinders were advised that upon completion of their investigation, the University "will determine whether or not the evidence does or does not support the allegations and what appropriate action, if any should be taken in

---

[1] The attachments to this report did not accompany the initial delivery of this report. The attachments will be submitted once they have been compiled and copied. Upon the delivery of the attachments, this report will be deemed the final report of Factfinders.

accordance with the provisions of any applicable collective bargaining agreements and/or University policies and/or procedures." *Id.*

II. EXECUTIVE SUMMARY OF FINDINGS

4. UH entered into an agreement with to put on a concert at the Stan Sheriff Center (the "Center").

5. The agreement was structured as a facilities use agreement pursuant to which rented the Center from UH. The agreement had several terms that are not found in typical facilities use agreements.

6. First, even though , a private for-profit corporation, was responsible for securing and putting on the concert, the concert was stated to be a "fund-raising benefit" for Athletics.

7. Second, consistent with the benefit concept, 's rental fee for the Center was set at 10% of gross revenue from ticket sales or 75% of the net revenue after expenses, whichever was greater.

8. Finally, UH agreed to "assist" 's promotion of the concert in the following ways:

a. Tickets for the concert would be "pre-sold" to . Revenue from the pre-sale of tickets "in the amount of $225,000" would be used by to secure before tickets went on sale to the general public. After the initial payment, could use revenue from all ticket sales to make additional payments to or for other expenses. In effect, UH agreed to allow to take an advance on the anticipated concert proceeds to pay for concert expenses before the show occurred.

b. UH committed to using its "best efforts to help promote the event[] and encourage ticket sales."

9. Finally, to protect UH from any claims "on account of the non-performance of . . . for whatever reason," was required to secure cancellation insurance and to name UH and additional insureds.

10. Factfinders have not identified any delegation of authority from the Mānoa Chancellor to the Director of Athletics to enter into a facilities use agreement with outside users. Such a delegation may exist, however.

11. Factfinders have not identified any UH policy that authorizes an outside user to pay a facilities fee after the event occurs. UH policy appears to require

the payment of facilities use fees before the event. But a contrary policy or practice may exist.

12. Factfinders have not identified any UH policy that authorizes or prohibits UH from advancing the funds generated from ticket sales to an outside user to pay for expenses.

13. Arena Manager of the Center Rich Sheriff was the point person for UH with respect to the planned concert. presented the concert idea to Sheriff. Sheriff secured approval of the idea from Director of Athletics James Donovan, III. Sheriff oversaw and managed the formation and execution of the agreement between UH and and the steps necessary to put on the concert. Based on the available records, there were more than 300 emails sent or received by Sheriff regarding the concert.

14. Donovan approved the concert, assisted in the development of some of the agreement terms and had an opportunity to review the agreement. Otherwise, Donovan had little involvement and provided little oversight. Donovan was not copied on the emails regarding the transfer of funds from UH's account and was out of the State when the transfer occurred.

15. Associate Athletic Director for Administrative Services Carl Clapp reviewed the agreement and signed the agreement for UH at Donovan's direction. Clapp was also involved with the payment of $200,000 in ticket proceeds via wire transfer to , which purportedly was the agent for

16. Assistant Athletic Director for Business Operations Tiffany Kuraoka was involved with the payment of $200,000 in ticket proceeds via wire transfer to . She signed an authorization form for the payment to pursuant to a request from Sheriff and Clapp, who is her supervisor.

17. Assistant Athletics Director for Facilities and Events Teri Chang is Sheriff's direct supervisor. Chang appears to have had little involvement in the concert and to have provided little oversight. Chang did not see or review the agreement. She was copied on correspondence related to the wire transfer.

18. Associate General Counsel Ryan Akamine drafted the agreement for UH. Akamine was not involved in the negotiation of the business terms of the agreement or in the management and oversight of the concert. Akamine did send one email, likely at the request of Clapp, attempting to alert the UH Disbursing and Payroll ("Disbursing") office of timing considerations related to the concert payment. It appears that by the time Akamine sent his email, Disbursing had implemented a procedure to process the $200,000 payment. It is Akamine's understanding, which appears to be consistent with his position description, that the duty of attorneys in the General Counsel's office is to prepare and review contracts

and agreements and not to implement, manage or administer contracts and agreements.

19. The involvement of other individuals is noted in the report.

20. Little appears to have been done to investigate and evaluate 's ability to secure or 's desirability as a contracting partner. Sheriff knew and made limited inquires about . Donovan trusted Sheriff's assessment.

21. Two terms of the agreement do not appear to have been followed. First, ticket pre-sales were not made solely to . Instead, ticket pre-sales were made to , , , and .

22. Second, no one at UH insisted that furnish the required cancellation insurance before pre-sales began. There was some effort to ensure that cancellation insurance was in place before UH made the wire transfer. But even there, the individuals who knew about the ticket sales or the request for wire transfer and knew about insurance requirement or had an opportunity to review the contract did not demand that provide proof of insurance. Ultimately, the insurance was not procured.

23. The agreement contemplated making the pre-sale ticket revenues available to to secure . provided an invoice to UH. Contrary to the invoice, later directed UH to wire the $200,000 deposit to .

24. To facilitate the wire transfer to , Athletics created a "dummy" or "pro forma" invoice purportedly from for $200,000. Factfinders have not identified any UH policy that authorizes or prohibits the use of pro forma invoices.

25. Prior to making the transfer to , it does not appear that an effort was made by anyone at UH to investigate or evaluate or to determine whether was the agent for .

26. The wiring instructions provided that the money was to be transferred to an "escrow account." No effort appears to have been made to verify that an escrow officer would manage the account or that there were appropriate escrow instructions in place.

27. In the days leading up to the wire transfer, and the other purported agent for , , pressured President and Director to make the payment or risk losing the concert. In turn, pressured Sheriff to make the payment. And in turn, Sheriff pushed Athletics and Disbursing employees to make the payment.

28. At the same time, Disbursing was in the process of transitioning to a new financial system. As a consequence, it appears that Disbursing employees were unable to focus on the request for transfer at the earliest opportunity. By the time Disbursing became significantly involved, little time was left to review the requested transfer.

29. In addition, Sheriff was the only person managing the planned concert. None of his supervisors provided significant oversight of Sheriff's efforts.

30. On July 9 and 10, 2012, UH was contacted by individuals from who identified themselves as 's exclusive agents. The representatives informed UH that and were not authorized agents, that the concert was not confirmed and that was not available for the concert.

31. In response to the notice from and faced with and 's inability to establish that they were authorized agents for , UH announced that was not available for the concert.

32. Factfinders have not found any evidence that , , , representative , or representative had a prior personal or business relationship with any of the UH employees.

33. Factfinders have not found any evidence that anyone at UH committed fraud.

34. It appears to Factfinders that all UH employees were motivated by a desire the help Athletics raise revenue.

III. INVESTIGATIVE PROCESS AND ATTACHMENTS TO THE REPORT

35. Factfinders reviewed the following UH policies and manuals:

a. The Board of Regents Policies.

b. The UH Systemwide Administrative Procedures Volume I – General.

c. The UH Systemwide Administrative Procedures Volume II – Business and Finance.

d. The UH Systemwide Administrative Procedures Volume IIB – Business and Finance.

e. The UH Executive Policies.

f. Executive Policies Memorandum EPM 12-11.

g. Hawai'i Administrative Rules, Title 20, University of Hawai'i, Chapter 13, Use of University-Owned Facilities.

36. Factfinders reviewed the following material documents:

a. The collection of documents and emails from that were provided to .

b. Emails and attachments from Sheriff's email account that were provided by UH.

c. Emails and attachments from Donovan's email account that were provided by UH.

d. Emails and attachments from Akamine's email account that were provided by UH.

e. Emails and attachments from President Greenwood's email account that were provided by UH.

f. Emails and attachments from 's email account that were provided by UH.

g. Documents provided to Factfinders by Cutshaw.

h. Documents provided to Factfinders by Todo.

i. Documents provided to Factfinders by Kuraoka.

j. Documents provided to Factfinders by .

k. Certain publicly available court records related to .

l. Relevant portions of the foregoing documents are appended to this report.

37. Factfinders interviewed the following witnesses:

a. Director of Athletics James Donovan, III. Copies of Donovan's signed written statements are appended together as Attachment 16. A copy of Donovan's job description is appended as Attachment 17.

b. Associate Athletic Director for Administrative Services Carl Clapp. A copy of Clapp's unsigned[2] written statement is appended as Attachment 18. A copy of Clapp's job description is appended as Attachment 19.

c. Associate Athletic Director for External Affairs John McNamara. A copy of McNamara's signed written statement is appended as Attachment 20. A copy of McNamara's job description is appended as Attachment 21.

d. Assistant Athletic Director for Facilities and Events Teri Chang. A copy of Chang's signed written statement is appended as Attachment 22. A copy of Chang's job description is appended as Attachment 23.

e. Assistant Athletic Director for Business Operations Tiffany Kuraoka. Copies of Kuraoka's signed written statements are appended together as Attachment 24. A copy of Kuraoka's job description is appended as Attachment 25.

f. Center Arena Manager Richard Sheriff. Copies of Sheriff's signed written statements are appended together as Attachment 26. A copy of Sheriff's job description is appended as Attachment 27.

g. Ticket Manager Walter Watanabe. A copy of Watanabe's signed written statement is appended as Attachment 28. A copy of Watanabe's job description is appended as Attachment 29.

h. Vice President for Budget and Finance/Chief Financial Officer Howard Todo. A copy of Todo's signed written statement is appended as Attachment 30. A copy of Todo's job description is appended as Attachment 31.

i. Director of Financial Management and Controller Paul Kobayashi. A copy of Kobayashi's signed written statement is appended as Attachment 32. A copy of Kobayashi's job description is appended as Attachment 33.

j. Accounts Payable Disbursing Supervisor Alan Kimura. A copy of Kimura's unsigned written statement is appended as Attachment 34. A copy of Kimura's job description is appended as Attachment 35.

k. Former Mānoa Chancellor . A copy of 's signed written statement is appended as Attachment 36 together with a copy of 's email approving the statement. A copy of 's job description is appended as Attachment 37.

---

[2]Some of the statements attached to this report are unsigned. It is the view of Factfinders that the unsigned statements accurately describe the information provided to Factfinders by the witnesses interviewed. If signed statements are provided to Factfinders after submission of the report, the statements will be delivered to the University.

l. Vice Chancellor for Administration Kathleen Cutshaw. A copy of Cutshaw's signed written statement is appended as Attachment 38. A copy of Cutshaw's job description is appended as Attachment 39.

m. Associate General Counsel Ryan Akamine. A copy of Akamine's signed written statement is appended as Attachment 40. A copy of Akamine's job description is appended as Attachment 41.

n. . A copy of 's unsigned written statement is appended as Attachment 42.

o. president and director . A copy of 's signed written statement is appended as Attachment 43.

p. . A copy of 's signed written statement is appended as Attachment 44. The signed statement does not include all matters covered during the interview, but the omissions are not material to the investigation.

IV. RELEVANT UH POLICIES

38. Factfinders found that several UH policies were potentially relevant to the review of the planned concert at the Center. These policies are summarized below.[3]

39. UH Board of Regents Policies ("Board Policies") Chapter 8, Business and Finance, grants the authority to sign and execute contracts as follows:

> Except as otherwise provided herein, the President is authorized to approve, sign and execute contracts . . . in accordance with law and Board policy. The President may delegate authority for the approval, acceptance, signing, and execution of contracts and settlements to other University officials."

Board Policies § 8-1.a, Contracts and Official Documents, Attachment 1.

40. Executive Policy E8.106 – Delegation, further delegates signing authority to the

[3]By listing and summarizing the following policies, Factfinders are not making the determination that any of the identified policies are directly applicable to the events being investigated or that any such policies have or have not been violated. Rather, Factfinders have listed certain policies to bring them to the attention of the relevant decision-makers in this matter.

> Director of Intercollegiate Athletics, University of Hawai'i at Mānoa, and his designees to execute contractual documents for procuring goods and services with moneys from the University of Hawai'i at Mānoa Intercollegiate Athletics Revolving Fund and for entering into cooperative agreements for the Office of Intercollegiate Athletics, University of Hawai'i at Mānoa.

Executive Policy E8.106, Attachment 1.

41. Executive Policy E8.106 became effective on November 1, 1997. President Greenwood suspended Executive Policy E8.106 on July 12, 2012. Attachment 2.

42. Board Policies Chapter 8, Business and Finance, addresses fundraising activities as follows:

> Fund raising campaigns conducted for the benefit of, and in the name of, the University, or any of its affiliate units, for whatever purpose, must be given prior approval in writing by the President.
>
> . . .
>
> The Board wishes to acknowledge the service of volunteer groups and nonprofit organizations and to encourage their support on behalf of the University . . . At the same time, as a public trust and the beneficiary of the funds raised, the University is obligated to require that the funds raised by such entities be adequately controlled and properly expended. The President shall promulgate such necessary policies and procedures that provide for the official recognition of groups and includes provisions that promote the fulfillment of the envisioned support of the University by the group and compliance with usual and common business and regulatory practices.

Board Policies §§ 8-9a, 8-9d, Fundraising, Attachment 1.

43. Executive Policy E8.209 – Fundraising, expresses UH's expectation that "affiliated volunteer groups or nonprofit organizations desiring to be associated with the University shall seek formal and continued recognition by the University." Executive Policy E8.209 § I, Attachment 4. To obtain official recognition, a volunteer group or nonprofit organization must "apply in writing to the respective campus Chancellor." *Id.* § IV.A.1. Pursuant to Executive Policy E8.209, "[a]ll fundraising campaigns done for the benefit of the campus unit or University shall be coordinated by the University of Hawai'i Foundation in accordance with the Foundation's policies and procedures. The Foundation shall also act as fiscal agent for funds raised and expended in this way." *Id.* § IV.C.

44. Executive Policy E8.209 further states that

> [w]ithout formal recognition, a volunteer group or nonprofit organization shall not (a) represent itself as raising funds or otherwise providing support on behalf of or for the benefit of the University or any unit thereof; (b) use the name of the University of Hawai'i or any of its campuses, facilities, or programs expressly or by implication; or (c) use University facilities, equipment, personnel, or other resources.

Id. § E.

45. With respect to the use of University facilities, the Hawai'i Administrative Rules provided that UH may "enter into rental agreements with organizations without university affiliation." HAR § 20-13-5(a). Attachment 5

46. Board Polices Chapter 10, Land and Physical Facilities, delegates to the President "the authority to promulgate practices and procedures governing the use of university-owned or operated facilities." Board Policies § 10-3, Use of University-Owned Facilities, Attachment 6. This delegation is reiterated in Executive Policy E10.301 – Policy to Govern the Use of University Owned or Operated Facilities. Attachment 6.

47. Executive Policy E10.101 – Delegation of Authority, further delegates to the Chancellors the authority to develop procedures for the use of facilities. Attachment 6. This delegation became effective on July 1, 1983.

48. Executive Policy E10.201 – Facilities Use, provides that "Chancellors are responsible for developing and implementing procedures governing the application and reservation for use of designated facilities under their respective jurisdictions . . . ." *Id.* § II.A. Implementation requires the development of a "rental agreement form, rental rates, and the procedures. Rental rates must cover the cost to operate and maintain the facilities during its use." *Id.* § II.D.

49. Organizations without University affiliation that have obtained approval to use UH facilities are required to, among other things, "[p]rovide evidence of appropriate and adequate insurance protection covering property damage, personal injury, or death arising out of the use of the University owned facilities." *Id.* § III.A. The indemnification and insurance requirements are restated in several places, including Administrative Procedures A8.400, Risk Management, Attachment 10, and HAR § 20-13-5(d).

50. Executive Policy E10.202 – UHM Special Events Center Use Policy, applies to the Center, which was formerly known as the Special Events Center. Attachment 11.

51. Pursuant to Executive Policy E10.202, "[o]rganizations without University affiliation may use the Center in accordance with the University's Policy on the Use of University-Owned Facilities as described in Attachment A." *Id.* § I. "Reservations shall be made upon application to the Center Manager." *Id.* § IV.A.

52. The priority of uses at the Center are ranked as follows:

1. UH ccommencement ceremonies;

2. UH at Mānoa men's and women's intercollegiate volleyball and basketball games, practices and related activities;

3. UH functions and activities approved by the President;

4. Functions and activities of the Board of Regents' Chartered Organizations;

5. Fundraising activities of University affiliated organizations which solely benefit the University, e.g., University of Hawai'i Foundation, University of Hawai'i Alumni Association, ; and

6. Functions and activities of University affiliated organizations which are appropriate for the Center.

Id. § II.

53. UH Systemwide Administrative Procedures ("Administrative Procedures") A1.200, University of Hawai'i – Mānoa Facilities Use Practices and Procedures, directs in relevant part as follows:

> Prior to the scheduled event, the organization shall be required to make a payment in full for the use and services. Checks are to be made payable to the 'University of Hawai'i at Mānoa.
>
> . . .
>
> Organizations without University affiliation shall be charged according to provisions in the contract or agreement covering their use of University facilities.

Administrative Procedures A1.200 §§ 9.g, 10.d, Attachment 12.

54. Attachment B-1 to Administrative Procedures A1.200 states, "Rental and deposit payments are due at the time of reservation." *Id.* B-1.

55. Administrative Procedures A8.025 – Fiscal Management, Organizational Responsibilities Within the Fiscal System, establishes the authority for financial management as follows:

> Primary authority for financial management has been delegated by the President to the Chancellors, who in turn can subdelegate authority to internal staff members and/or program heads. This latter subdelegation must be made in writing by the Chancellor so that persons who have the authority and responsibility for financial management are clearly identified.
>
> . . .
>
> Should delegation occur, program heads would be responsible for managing and controlling financial resources and other assets allocated to them to carry out their programs. Included in this is . . . the initiation and follow up on business affairs such as procurement, property management, contracts and grants administration, cash management, disbursements . . . and ensuring that fiscal control and reporting systems are properly prepared and maintained . . . It should be kept in mind that however many individuals are performing financial management functions under the supervision of the program head, it is the program head who is ultimately responsible for the proper financial management of the respective program.
>
> . . .
>
> Generally, the responsibilities delegated by the program head to the fiscal administrator are expressed in specific Delegation of Authority documents . . . The fiscal administrator is responsible solely to the program head . . . for ensuring compliance with applicable fiscal matters, and for ensuring that combined expenditures and encumbrances do not exceed funds available at any time.

Administrative Procedures A8.025 §§ 4, 4.a, 4.b.1, Attachment 13.

56. Administrative Procedures A8.839 – Disbursing/Accounts Payable and Payroll, Accounts Payable Processing, provides that Fiscal Officers are responsible for determining what constitutes a legitimate invoice or payment document and the accuracy and completeness of the document, for authorizing the document and for handling the process to assure payment. Administrative Procedures A8.839 §3.b.1, Attachment 14. Fiscal Officers and Program Managers (Approving Authority) who approve payments are responsible for compliance with all laws, rules, regulations, and University policies and procedures. *Id.* A8.839 § 3.d.

57. Administrative Procedures A8.861 – Disbursing/Accounts Payable and Payroll, Authorization for Payment Form, provides in relevant part as follows:

> Each campus/department office that processes payments on the Authorization for Payment (AFP) form must ensure that proper supporting documents are attached and that the transaction is in compliance with the procedures specified herein. The campus/department office must ensure propriety and legality of the payments.
>
> Fiscal Officers and Program Managers (Approving Authority) who approve AFPs are responsible for compliance with applicable Federal and State laws, rules, regulations and University policies and procedures.
>
> . . .
>
> The original AFP form is to be submitted to the Disbursing Office . . . The original (or certified as original) itemized invoices . . . and other supporting documents are to be attached to the original AFP.

Administrative Procedures A8.861 §§ 2.a, 2.b, 3.d, Attachment 15.

V. FINDINGS

58. The findings are organized as follows:

A. Structure of relevant organizational units of the University;

B. Chronology of events;

C. The extent of the investigation and evaluation of prior to contracting;

D. The extent of the investigation and evaluation of and prior to the wire transfer;

E. Authority to enter into the Agreement with to use the Center;

F. The collection of the user fee after the planned concert;

G. Sheriff's role in managing the planned concert;

H. The sale of tickets for the planned concert;

I. Authority to advance funds from ticket sales to pay for concert expenses;

J. Cancellation insurance;

K. The use of pro forma invoices; and

L. The transfer of funds to .

A. Structure of Relevant Organizational Units of the University.

59. The organizational structure for the Athletics Department is as follows:

a. Donovan is the head of the Athletics Department. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 10. He reports to the Mānoa Chancellor. Attachment 17 (Athletic Director Job Description) at 2.

b. Clapp is the Associate Athletics Director for Administrative Services. Attachment 18 (C. Clapp Statement) ¶ 9. He reports to Donovan. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 13; Attachment 18 (C. Clapp Statement) ¶ 11.

c. McNamara is the Associate Athletics Director for External Affairs. Attachment 20 (J. McNamara Statement) ¶ 8. He reports to Donovan. *Id.* ¶ 9.

d. Chang is the Assistant Athletics Director for Facilities/Events. Attachment 22 (T. Chang Statement) ¶ 10. She reports to Donovan or Clapp. *Id.* ¶ 11.

e. Kuraoka is the Assistant Athletics Director of Business Operations. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 16. She reports to Clapp. *Id.* ¶ 10.

f. Sheriff is the Arena Manager of the Center. Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 11. He reports to Chang. *Id.* ¶ 12. In regards to certain events, Sheriff approaches Donovan directly. *Id.* ¶ 12.

g. Watanabe is the Ticket Manager. Attachment 28 (W. Watanabe Statement) ¶ 9. He reports to Clapp. *Id.* ¶ 10.

h. Donovan states that he has an "open door policy" and allows anyone to discuss an issue with him. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 13.

60. The organizational structure for the University's Administrative Office for Budget and Finance is as follows:

a. Todo is the Vice President for Budget and Finance/Chief Financial Officer of the University. Attachment 30 (H. Todo Statement) ¶ 8. He reports to the President. *Id.* ¶ 8.

b. Kobayashi is the Director – Financial Management and Controller. Attachment 32 (P. Kobayashi Statement) ¶ 7. He reports to Todo. *Id.* ¶ 8.

c. James Kashiwamura is the Director of the Disbursing and Payroll Office. *Id.* ¶ 9. He reports directly to Kobayashi. *Id.* ¶ 9.

d. Kimura is the Accounts Payable Supervisor in Disbursing. Attachment 34 (A. Kimura Statement) ¶ 9. He reports to Kashiwamura. *Id.* ¶ 11.

e. Duff Zwald is the Director of the Office of Procurement and Real Property Management ("**Procurement**"). Attachment 32 (P. Kobayashi Statement) ¶ 9. He reports to Kobayashi. *Id.*

61. The organizational structure for the Office of the Chancellor for the University of Hawai'i Mānoa is as follows:

a. was the Chancellor for the Mānoa Campus of the University through June 2012. Attachment 36 (Statement) ¶ 7. Thomas Apple succeeded as the Chancellor. Attachment 38 (K. Cutshaw Statement) ¶ 9. The Chancellor reports to the President. 37 (Chancellor Job Description) at 1.

b. Cutshaw is the Vice-Chancellor for Administration, Finance and Operations for the Mānoa Campus of the University. *Id.* ¶ 8. She reports to the Mānoa Chancellor. *Id.* at 9.

B. Chronology of Events.

62. is an event and concert promoter and producer in Hawai'i. Attachment 43 (Statement) ¶ 6. is his production company. *Id.*

63. In the 1970s and 1980s, produced a concert and promoted a second concert in Hawai'i. *Id.* ¶ 10.

64. states that prior to 2012, he discussed with Sheriff the possibility of using the Center for one or more concerts. Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 17; Attachment 43 (Statement) ¶ 24. The concert(s) did not go forward. Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 17; Attachment 43 (Statement) ¶¶ 21, 25.

65. and Sheriff knew each other casually, but they did not have a prior personal or business relationship. *See* Attachment 43 (Statement) ¶¶ 24-26; Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 53.

66. did not have a prior personal or business relationship with any of the individuals involved in the planned concert at the Center. Attachment 43 (Statement) ¶¶ 24, 28. had not previously worked for or with UH. Attachment 43 (Statement) ¶¶ 20, 21, 25, 29, 30.

67. Prior to approaching UH regarding the concert, had been working with , whom identified as a promoter in England, on planning a Crater Festival at Diamond Head with as a possible act. introduced to , who held herself out as a principal with . *See* Attachment 43 (Statement) ¶¶ 14-17. had not previously heard of or . Attachment 43 (Statement) ¶ 22.

68. told that she represents as his international agent and claimed to be dealing with , whom knew to be an attorney for ; , whom knew to be a former president of ; and a third person whom was told was in direct contact with . Attachment 43 (Statement) ¶ 18.

69. In March 2012, approached Sheriff about the possibility of doing a concert at the Center. asked Sheriff to look into the availability of the Center on certain dates. *See, e.g.*, Attachment 45.

70. informed Sheriff that he wanted to put on the concert to "give back" to the University because is an alumnus. Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 18.

71. also expressed interest in being hired by the University to produce events at the Center. reiterated this interest over several communications with Sheriff. Attachment 43 (Statement) ¶ 30; Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 19. Sheriff did not promise a position with UH. Instead, understood that they would see how the first concert went and then revisit whether finding a position at the University made sense. Attachment 43 (Statement) ¶ 32.

72. also needed UH to be involved with the concert because believed that would charge a lower fee for a UH benefit concert and because could not afford to pay 's booking fee without access to the box office receipts prior to the concert. *Id.* ¶ 58. There is no record that disclosed these additional motivations to Sheriff or anyone else at UH.

73. According to , was willing to do the concert in Honolulu with a concert to follow at . Attachment 43 (Statement) ¶ 41.

74. Sheriff replied to 's inquiry with interest, but he advised that he would have to take the proposal to Donovan. Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 18.

75. On March 19, 2012, Sheriff informed Donovan that had contacted him about hosting a concert at the end of July or the beginning of August. Sheriff asked Donovan what he thought about the University hosting the event. 46. This was the first time that Sheriff had mentioned the concert to Donovan. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 21.

76. Factfinders questioned witnesses about the extent of any investigation into 's ability to deliver as promised. Donovan recalls Sheriff telling him that knows , that did a concert in Hawai'i 18 years ago and that was interested in doing a concert at the University. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 22. Sheriff thought that was "a good guy" based on his conversations with in Hawai'i. *Id.* ¶ 24. Factfinders' investigation has not disclosed that anyone at the University conducted any further review of , or the likelihood of securing . *Id.* ¶ 23; Attachment 28 (W. Watanabe Statement) ¶¶ 25-28; Attachment 40 (R. Akamine Statement) ¶¶ 28-31; Attachment 20 (J. McNamara Statement) ¶¶ 27-30; Attachment 18 (C. Clapp Statement) ¶ 23; Attachment 22 (T. Chang Statement) ¶ 26; Attachment 16 (J. Donovan 7/19/12 Statement) ¶¶ 22-23; Attachment 36 (Statement) ¶ 18; Attachment 38 (K. Cutshaw Statement) ¶ 23.

77. Factfinders reviewed publicly available court records related to . This review disclosed a judgment in favor of , and against " ." The judgment is for $24,196.80. Attachment 47 is a copy of a document filed on October 12, 2010, in the District Court of the First Circuit, Honolulu Division, State of Hawai'i, related to the judgment. The review by Factfinders also disclosed that initiated a foreclosure action against on November 21, 2011. Attachment 48 (Hoohiki printout).

78. Both Factfinders met and had the opportunity to observe on August 1, 2012.

Attachment 43 (7/10/12 email).

79. Donovan agreed with the concert idea and told Sheriff to "handle it." Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 24. Donovan believed that the event was within Sheriff's scope of responsibilities, as Sheriff had previously handled numerous events at the Center. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 24.

80. From this point forward, Sheriff was the primary person at UH involved in putting the Concert deal together and the primary UH liaison with . Attachment 22 (T. Chang Statement) ¶ 19; Attachment 20 (J. McNamara Statement) ¶ 33; Attachment 28 (W. Watanabe Statement) ¶ 68; Attachment 42 (Statement) ¶ 29; Attachment 43 (Statement) ¶ 45; Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 24, 28, 29, 33.

81. On March 27, 2012, Sheriff advised that he had talked with Donovan and that Donovan had approved the concert idea. 49 at 1-2.

82. Sheriff raised the possibility of Athletics being the promoter of the event and hiring to help promote it for the Department. *Id.* replied that such an arrangement would be acceptable to him. *Id.* at 1.

83. On April 3, 2012, sent proposed deal points for the concert. Attachment 50 at 1-2. The email attached a pro forma budget. *See id.* at 3. The planned date for the concert was August 11, 2012. *See id.* at 1. Sheriff forwarded the email along with the pro forma budget to Donovan on April 5, 2012. Attachment 51; Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 22; *see also* Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 26.

84. Using Sheriff as a "conduit," Donovan informed that the University could hold the concert if approved. *Compare* Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 38 *with* Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 20.

85. To book , substantial fees had to be paid before the concert. wanted UH to put up the money. Donovan rejected that idea. Attachment 16 (J. Donovan 8/1/12 Statement) ¶ 10-11. Sheriff suggested using tickets sales to generate the necessary funds. *Id.* ¶ 10. According to Donovan, he agreed with the idea on the condition that legal counsel approved. Donovan told Sheriff to run with it. Attachment 16 (J. Donovan 8/1/12 Statement) ¶ 10.

86. On April 16, 2012, sent a draft of an "Engagement Memorandum Agreement" ("Engagement Memorandum") to Sheriff via email. described the document as "a final draft of [the] booking contract." Attachment 52 at 1. The agreement was unsigned.

87. The Engagement Memorandum provided in material part as follows:

a. The parties to the agreement were "for Athletics" and and as the "Booking Agent."

b. engaged and to secure for an August 11, 2012 concert at the Center.

c. In order to secure , the Engagement Memorandum required the payment of a "binder" of $50,000 to be submitted to an escrow account via wire transfer. If accepted the offer, the $50,000 binder would be released to him or his management. Upon release of the binder, the management was to provide the rider (the technical and hospitality requirements) and promotional materials.

d. If agreed to the rider, the event could be announced. At that point, another $200,000 deposit would become due.

e. The performance binder would then be released to the agents to pay for booking fees and commissions. and were to receive $40,000 and was to receive $10,000.

f. A second $200,000 payment was due two weeks before the performance.

g. The binder and other payments were to be deposited into an escrow account created by in an accredited financial institution with the instructions as directed by all parties. Attachment 53 (Engagement Memorandum) ¶¶ 2, 3(a), (3b), 3(c), 3(e).

88. No one from UH was involved in drafting the Engagement Memorandum or negotiating its terms. UH did not sign the Engagement Memorandum. Attachment 40 (R. Akamine Statement) ¶ 83.

89. On April 17, 2012 at 9:14 a.m., Sheriff informed that procurement laws prohibited the University from promoting the concert. Attachment 54. This restriction left the University with the options of taking a percentage of the sales or taking a flat fee and having handle everything. Sheriff outlined the next steps. *Id.*

90. On April 17, 2012 at 7:42 p.m., Sheriff asked Donovan for permission to take the concert to to see whether would be interested in trying to host the concert as a fundraiser for Athletics. Attachment 55. It does not appear that this idea progressed much further, if at all.

91. Ultimately, Sheriff proposed a "hybrid" agreement pursuant to which would rent the Center from the University but instead of a flat fee, 's rental fee would be a percentage of revenue from the Concert. Attachment 43 (B.

Statement) ¶¶ 50-51. The concert would be put on as a "benefit" for Athletics. *Id.* ¶ 29.

92. On April 30, 2012, sent a revised draft of the Engagement Memorandum to Sheriff with the message: "Need to get this done . . . this week." Attachment 56.

93. To obtain approval of the concert, Sheriff consulted with , who is the Events and Services Manager for . On May 2, 2012, approved the concert. Attachment 32 at 1.

94. The same day, Sheriff proposed to Donovan that Sheriff work with Akamine to formulate an agreement with to host the concert. *Id.* at 1. Donovan replied, "I'm fine with you working with Ryan on a concert managed by to benefit UH athletics."[4] Attachment 58 at 1; *see also* Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 28; Attachment 16 (J. Donovan 8/1/12 Statement) ¶ 10. It does not appear that Akamine was involved with matters related to the concert prior to this time.

95. On May 4 and 5, 2012, Sheriff and exchanged comments on an "Event Management Agreement" that had prepared. Attachment 59. Sheriff forwarded the marked-up Event Management Agreement to Akamine on May 7, 2012 to assist him in preparing the first draft of the contract for the concert. Attachment 60; Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 28.

96. On May 9, 2012, sent an email to Sheriff stating, "Just got a call from Management/agent . . . we need to finalize this week or we will lose it." Attachment 61 at 1.

97. Donovan sent a letter to dated May 10, 2012 in which he confirmed that the University would make the Center available for the concert on August 9, 10 and 11, 2012. The last paragraph of the letter stated, "From this point forward please work with Ryan Akamine, UH Legal Counsel, and Richard Sheriff, Manager of the Center, to finalize the details of the rental and donation agreement." Attachment 62 at 2.

98. On May 15, 2012, and exchanged emails in which pressured to close the concert deal before May 18, 2012.

---

[4]On May 7, 2012, Athletics submitted a Legal Services Request ("LSR") to OGC for assistance "with the legalities of the Center PRU in regards to a benefit concert for the [Athletics] department." Attachment 63 at 3. Clapp told Sheriff that an LSR is required. Sheriff asked Clapp to prepare and submit the LSR. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 26.

claimed that she had another offer coming in for . *See* Attachment 64 at 1.

99. Sheriff organized a meeting of UH staff on May 18, 2012 to discuss the concert. The meeting was attended by Sheriff, , Chang, , Watanabe, McNamara and , whom put forward as in charge of promotion for events. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 32; Attachment 20 (J. McNamara Statement) ¶¶ 34, 49, 80; Attachment 28 (W. Watanabe Statement) ¶ 55. At the meeting, Sheriff formally announced that was going to do a concert at the Center. *See* Attachment 28 (W. Watanabe Statement) ¶ 55. Attendees were asked whether there was anything that would prevent the Concert from occurring. No one raised concerns. Pre-sale tickets were also discussed. Subsequently, Sheriff asked Watanabe to build an event in the system so that the ticket sales could start soon. Attachment 28 (W. Watanabe Statement) ¶ 55.

100. At this point, no contract between UH and was in place.

101. On May 18, 2012, and exchanged another series of emails in which they expressed their frustration that the concert deal was not yet finalized. *See* Attachment 65 at 1-2.

102. Sheriff sent the Engagement Memorandum to Akamine on May 20, 2012. Attachment 66 at 1; *see also* Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 28.

103. On May 23, 2012, Sheriff sent an email to in which he described the finalized ticket pricing levels. agreed with the proposed pricing. Attachment 67.

104. On May 24, 2012, Akamine sent a draft of the Facility Use Agreement with ("Agreement") to Donovan and Sheriff for review. Attachment 68 at 1. This was the first draft of UH's contract with . Attachment 40 (R. Akamine Statement) ¶ 73.

105. The first draft of the Agreement contained a provision that required to "assume all risks associated with booking, promoting and producing" the concert and to "indemnify, defend and hold harmless" the University from the non-performance of at the Concert. The latter provision further stated, " represents to UNIVERSITY that it can and will secure insurance to cover this possibility, and indemnify UNIVERSITY, the [University] and the [State] as additional insureds." Attachment 68 at 7.

106. According to Akamine, Sheriff added the provision concerning nonperformance insurance. Attachment 40 (R. Akamine Statement) ¶ 73; Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 34. had first suggested the insurance provi-

sion to Sheriff in April 2012. Statement ¶ 61; Statement ¶ 61; [UH001000725] at 2.

107. As noted above, the Engagement Memorandum required a $50,000 binder to be paid before the University started marketing tickets to boosters. Attachment 43 (Statement) ¶¶ 40, 53. Donovan did not want the University to put up the binder. *Id.* ¶ 54; Attachment 70. could not pay the binder himself. Attachment 43 (Statement) ¶ 56.

108. proposed to Sheriff that obtain the money from a third party with the understanding that the loan would come at a cost that would have to be paid from concert proceeds. Attachment 71; Attachment 43 (Statement) ¶ 56. Sheriff did not object. Eventually, reported to Sheriff that he had secured a $50,000 loan for a cost of $10,000. Attachment 43 (Statement) ¶¶ 56-57. Sheriff did not object.

109. There is no evidence that disclosed to Sheriff that the terms of the loan were actually for a $60,000 advance ($50,000 to be paid to and $10,000 to be paid to), a loan fee of $15,000, and concert tickets provided to the lender. Attachment 72 (Financing Agreement).

110. Pursuant to the loan agreement, the lender wired $50,000 to on May 29, 2012. Attachment 73 (wire).

111. On May 30, 2012, Sheriff advised Akamine that according to , the only item that the University would need to pay in advance was the artist deposit, which would be paid from the funds generated by the pre-sale of tickets. Sheriff stated that he was looking at starting ticket pre-sales around June 9 or 10, so he would like to get the contract finished and signed. Attachment 74

112. On May 31, 2012, Sheriff sent Clapp, , Watanabe, McNamara, Chang and an email asking about the possibility of moving the concert from August 11 to August 18. Attachment 75 at 1. The request to change dates was made because claimed that had taken too long to provide the binder and had accepted a separate engagement on August 11 but was available on August 18. Attachment 76.

113. On May 31, 2012, Sheriff obtained 's consent to the new date. Attachment 77 at 1.

114. Around this time, finalized a Memorandum of Understanding ("Memorandum of Understanding") with and . Attachment 78 at 2-11. The key terms of the Memorandum of Understanding were as follows:

a. and , as the "Company," engaged (with and as agents of), as the "Booking Agent," to secure the

appearance and/or performance of for concerts on August 17 and 18, 2012. *Id.* ¶¶ 1(1.1), 1.3, 1.4.

b. In return, the Memorandum of Understanding required a binder of $50,000, which the Memorandum of Understanding noted had been paid, a payment of $325,000 due on June 22, 2012, and a payment of $355,000 due on August 1, 2012. *Id.* ¶¶ 1.9.2, 1.9.3, 1.9.4. explained that the fees were based on concerts at the Center and . According to , the fees for the concert at the Center remained a total of $450,000. Attachment 43 (Statement) ¶ 41.

115. No one from UH was involved in negotiating or preparing the Memorandum of Understanding with and . Attachment 43 (Statement) ¶¶ 37-38; Attachment 26 (R. Sheriff 7/17/12 Statement) ¶¶ 27-28.

116. Donovan was out of town on vacation and business trips on June 4, from June 7 to June 20, and from June 23 to July 1. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 33.

117. On June 6, 2012 at 8:41 a.m., Sheriff asked Akamine when the Agreement would be ready. Attachment 79 Sheriff wanted to keep the deal moving so that could Donovan could sign the Agreement before leaving on vacation on June 7, 2012. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 34.

118. On June 6, 2012 at 4:26 p.m., Akamine sent version 5 of the Agreement to Donovan and Sheriff, with copies to UH Vice President for Legal Affairs and General Counsel Darolyn Lendio and to Clapp. Akamine noted that the most important change was to the fee structure. Attachment 80 Donovan had talked to Sheriff about changing the fee structure to 10% of gross revenue or 75% of net revenue after expenses, whichever was higher, and Sheriff told Akamine to incorporate that change. Attachment 16 (J. Donovan 8/1/12 Statement) ¶ 14; Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 35. The change to the fee structure was the only contract term that Donovan gave to Akamine. Akamine received all the other business terms from Sheriff. Attachment 40 (R. Akamine Statement) ¶¶ 77, 78; Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 43.

119. On June 9, 2012, sent Sheriff an email stating that he was fine with the revised fee structure. Attachment 81 at 1.

120. On June 12, 2012, Sheriff sent an email to in which he identified three groups that would be included in the presale: , members of the and . According to the email, the box office would start taking payment for ticket reservations on June 18. The public sale of the remaining tickets would commence on July 2. Attachment 82.

121. Including and in the pre-sale was inconsistent with the terms of the then-draft Agreement.

122. According to Sheriff, informed him that had received approval to obtain ticket reservations (i.e., pre-sales) from , and so that he could collect sufficient funds for the deposit. Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 42.

123. On June 14, 2012, at 12:15 p.m., at Sheriff's request, Akamine sent the final draft of the Agreement to , Donovan and Clapp for their execution. Attachment 83 at 1. This June 14, 2012 email is the only direct communication between and Akamine prior to the signing of the Agreement. Akamine later sent a copy to Sheriff, whom Akamine had inadvertently left off the distribution list. *Id.* at 1. stated he did not receive the June 14, 2012 email from Akamine. Accordingly, the final draft of the Agreement was resent to by Sheriff on June 14, 2012. Attachment 84.

124. The relevant terms of the Agreement were as follows:

a. The parties to the Agreements were the University and .

b. The University granted access to the Center on August 16, 17 and 18, 2012 for the concert.

c. The concert was to be a benefit for Athletics.

d. The rental fee was 10% of the gross revenue from ticket sales or 75% of the net revenue after expenses, whichever was greater.

e. "Pre-Sale Tickets" would be "made available for purchase by and through UNIVERSITY's , on or about June 18, 2012." Attachment 40 (R. Akamine Statement) ¶ 60.

f. Revenue from pre-sale tickets in the amount of $225,000 would be utilized by to reserve and secure the performer before tickets were sold to the general public.

g. Revenue from all ticket sales could be utilized by to make additional payments to entertainers and service providers necessary for producing a successful fundraising event.

h. agreed to indemnify the University and from, among other things, claims for property damage, personal injury or death and from the non-observance or non-performance of the terms, covenants and conditions of the Agreement or State, county or federal law.

i. agreed to maintain commercial general liability insurance with limits of no less than $2 million and to add the University and as additional insureds.

j. agreed to assume all risks associated with booking, promoting and producing the concert.

k. further agreed to indemnify the University and against claims based on the non-performance of at the concert. agreed to secure insurance to cover that possibility and to add the University as an additional insured. A copy of this policy had to be provided to the Athletics Director *before* the pre-sale of ticket commenced. Attachment 84 (Agreement) ¶¶ 1-10.B.

125. The same day, Clapp sent an email to Donovan asking him whether he wanted Clapp to sign the agreement for him. Attachment 85 at 1.

126. On June 14, 2012, Sheriff sent four emails to reminding him that the University needed the insurance in place before any money would be released. Attachment 86 at 1; Attachment 87 at 1; Attachment 88 at 1; Attachment 89 at 1; Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 40. The investigation by Factfinders has not disclosed any other written request sent by Sheriff or anyone else at UH regarding the insurance prior to the date that the pre-sales of tickets commenced. According to Sheriff, he tried to remind verbally every couple of days afterward to get the insurance. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 40.

127. It is not clear why Sheriff tied the insurance requirement to the release of funds instead of the pre-sale of tickets, as the Agreement required.

128. According to , he was using a broker at , to obtain the cancellation insurance. believed that the insurance would be obtained. Attachment 43 (Statement) ¶¶ 61, 63.

129. On June 15, 2012 at 7:17 a.m., Donovan sent an email to Clapp asking him to sign the Agreement on Donovan's behalf as long as OGC had approved the final draft. Attachment 85 at 1. Clapp signed the Agreement. Attachment 16 (J. Donovan 8/1/12 Statement) ¶ 15; Attachment 18 (C. Clapp Statement) ¶ 43.

130. signed the Agreement for . Attachment 43 (Statement) ¶ 60.

131. pushed Sheriff to release the $200,000 payment to . *See, e.g.*, Attachment 90. On June 15, 2012, Sheriff spoke to Clapp regarding the $200,000 payment. Clapp asked Kuraoka whether it was possible to pay the deposit. According to , the University needed to make the payment before the

tickets went on sale to the general public. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 42; Attachment 18 (C. Clapp Statement) ¶ 53.

132. The same day, at Sheriff's request, Kuraoka sent an email to Kashiwamura asking whether it was possible to process a request for a $200,000 check in connection with the concert. Kuraoka advised Kashiwamura that the funds for the check would "come from advance ticket sales which should begin shortly." Attachment 91 at 1; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 30. Kashiwamura did not respond to the email. According to Kobayashi, Kashiwamura was too busy, as it was near the end of the fiscal year, and the University's Administrative Office for Budget and Finance was in the middle of transitioning to the new financial system. Attachment 32 (P. Kobayashi Statement) ¶ 23.

133. announced the pre-sale of tickets for the concert to members on June 18, 2012. Attachment 92 At the same time, Brent Inouye, the Corporate Relations Manager for Athletics, announced the pre-sale to of the Athletic Department. Attachment 93

134. On June 18, 2012, sent an email to Sheriff stating that he "should have the insurance later that day." It is not clear whether was referring to the liability insurance or the cancellation insurance. In the same email, asked, "when can I expect the 200,000 . . . ." Attachment 94 at 1.

135. The same day, Clapp forwarded to Kobayashi the June 15, 2012 email that Kuraoka had sent to Kashiwamura. Clapp added to the email, "When you have [a] minute, Rich [Sheriff] and I would like to discuss the opportunity described below with you." Attachment 95. According to Kobayashi, he was extremely busy at the time and he did not respond to the request. Attachment 32 (P. Kobayashi Statement) ¶ 25-26.

136. On June 19, 2012, sent an email to Sheriff asking him to wire transfer the $200,000 deposit to the "agent's escrow" account as soon as possible. Attachment 96.

137. On June 19, 2012, President Greenwood sent a message inquiring about the concert. This appears to be the first time President Greenwood or knew about the concert.

138. After receiving the message, called Donovan for a briefing. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 35; Attachment 36 (Statement) ¶ 28. Donovan told her that Sheriff was connected with a person who had a contact with . Donovan further stated that had authorized the event and that Athletics was working with OGC. Attachment 36 (Statement) ¶ 28.

139. After receiving Donovan's report, sent the following email to President Greenwood:

> Jim [Donovan] has been working on this for a while – Ryan Akamine has been involved in every step. They have gotten appropriate permissions for the performance. Is there a specific question regarding the concert or tickets?"

Attachment 97. Akamine disagrees that he was "involved in every step." Attachment 40 (R. Akamine Statement) ¶ 81.

140. It does not appear that President Greenwood asked any further questions regarding the concert or the tickets sales. Attachment 36 (Statement) ¶ 32.

141. In a June 20, 2012 email to Sheriff, identified as the payee for the $200,000 deposit. Attachment 98.

142. The same day, Sheriff sent Kuraoka an email asking whether it was possible to transfer the deposit to via wire in order to expedite the payment. Attachment 99 at 1. Kuraoka responded by asking Sheriff whether there was a vendor code for . Attachment 100. The next day, Sheriff and Kuraoka continued discussing the transfer and the vendor code. Attachment 101. It does not appear that the change of payee raised any other concerns.

143. On June 21, 2012, sent the announcement for the concert to . Attachment 102.

144. On June 22, 2012, Sheriff sent an email to Clapp (with a copy to several other Athletics staff members) stating that $108,932 in ticket sales had been reserved as of that morning. Attachment 103.

145. On June 22, 2012, a pacmail (a marketing announcement) email blast was sent to . Attachment 104 at 1; Attachment 28 (W. Watanabe Statement) ¶ 59.

146. On June 22, 2012 at 11:57 a.m., Clapp sent Kobayashi an email asking how he and Kuraoka could "assist you so that we can have this wire transfer/check ready to go in a timely manner?" Attachment 105; Attachment 18 (C. Clapp Statement) ¶ 56. By the time Clapp sent this email, a week had gone by and Kashiwamura and Kobayashi had not responded to his previous emails. Clapp's email forwarded an email from Sheriff to Clapp and others earlier that day indicating that tickets were being sold for the event. Kobayashi asked Kashiwamura whether he knew anything about the concert. Kashiwamura replied that he was not aware of the event. Attachment 32 (P. Kobayashi Statement) ¶ 26.

147. In the afternoon of June 22, 2012, Kobayashi called Kuraoka to discuss the event. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 33. She explained the concert to Kobayashi. She said that Athletics was planning to deposit pre-sale ticket money from the concert that coming week. Kuraoka informed Kobayashi that a contract was in place and that OGC was involved. Kobayashi asked Kuraoka for a copy of the contract. Kuraoka sent the Agreement to Kobayashi that afternoon. Kobayashi verified that the Agreement was signed. Attachment 32 (P. Kobayashi Statement) ¶ 28; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 33. As for Kobayashi's question about the account, Kuraoka found out from the Ticket Office that Athletics was using an agency account nicknamed the "
" (although it is not used by). Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 33.

148. Tickets to the Concert went on sale to season ticket holders on June 23, 2012. Attachment 106.

149. On June 24, 2012 at 10:40 p.m., Watanabe sent an email to Donovan, Clapp, Sheriff and others notifying them that more than $200,000 in ticket sales had been processed. Attachment 107.

150. While the ticket sales went forward, kept pushing Sheriff to get the $200,000 deposit paid. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 47.

151. On June 25, 2012 at 7:19 a.m., Sheriff sent an email to Chang asking her to "help me push Carl [Clapp] to get the down payment wired out ASAP!
called this weekend and he is getting nervous that the agent might pull out." Attachment 108. Chang agreed to help. Attachment 109.

152. Up to this point, the non-performance insurance was not in place and no one involved with the ticket pre-sales raised a question of whether pre-sales could or should go forward without the cancellation insurance. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 47.

153. On June 25, 2012 at 8:54 a.m., Clapp sent an email to Kobayashi stating, in relevant part,

> We have reached the point where the transfer/check is needed today. Tiffany [Kuraoka] is working with our Ticket Office to identify the account that the money is deposited into. How can all of us work together to accomplish this? This is an extraordinary opportunity for the Athletics Department to make a significant amount of money. I anticipate, if this opportunity is successful, that the Athletics Department will maximize the use of Center by occasionally allowing outside groups to use the facilities when it "benefits" UHM.

Attachment 110 at 1. Clapp states that he reached out to Kobayashi because Sheriff was pushing him to get the payment to . Attachment 18 (C. Clapp Statement) ¶ 62(a).

154. Kobayashi noticed Clapp's June 25, 2012 email on his phone. The email prompted Kobayashi to call Kuraoka. Kuraoka told Kobayashi that Athletics had collected funds from ticket pre-sales and that a transfer of funds had to happen by Monday or Tuesday or else they would lose the performer for the concert. Kuraoka said that she had the payment information and was going to send it to Disbursing. Attachment 32 (P. Kobayashi Statement) ¶ 29.

155. Kobayashi and Kuraoka also discussed the need to create a new vendor code for . A unique vendor code must be set up in the University's financial system in order for a disbursement to be made to that vendor. However, because the Administrative Office for Budget and Finance Office was in the middle of transitioning to a new financial system, it had suspended the assignment of new vendor codes after June 15. New vendors would be created after that date only by exception. Kobayashi talked to Kashiwamura and authorized him to set up a new vendor code for . Kobayashi then advised Kuraoka to send the necessary documentation to Disbursing (i.e., a W-9 form). Attachment 32 (P. Kobayashi Statement) ¶ 30; Attachment 24 (T. Kuraoka 6/25/12 Statement) ¶ 33.

156. Kobayashi and Kuraoka also discussed the method of transfer. Disbursement cuts checks only on Monday and Wednesday. By the time of their conversation (mid-morning on Monday), the cutoff time for issuing a check on Monday had already passed. Therefore, the earliest Athletics could submit a check request was Wednesday, June 27, which meant that the check probably would not be issued in time. Because June 27 was after the deadline provided to Sheriff, Kobayashi and Kuraoka decided to use a wire transfer. Attachment 32 (P. Kobayashi Statement) ¶ 29.

157. On June 25, 2012 at 12:51 p.m., Kobayashi responded to Clapp's email. Kobayashi reported that he "[s]poke to Tiffany [Kuraoka] today and we think we have a plan of action to get this done and to expedite. We will keep you posted." Attachment 111 at 1; Attachment 32 (P. Kobayashi Statement) ¶ 31.

158. The following documents were prepared for the wire transfer:

a. Sheriff prepared a Requisition Form for $200,000 based on an invoice that he had received from . Attachment 112; Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 46. The form listed Sheriff as the "Requisitioner"—the person receiving the goods. Clapp was listed as the "Purchasing Officer"—the person authorizing the purchase and the "Approving Authority." The system automatically selected Clapp as the Purchasing Officer. Clapp usually signs as the Approving Authority. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶¶ 43-44.

b. The Wire Transfer Form was completed by Michele Inouchi, who is an administrative assistant in the Athletics business office, or by a student worker. Attachment 113; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 35.

c. The system generated an Authorization for Payment ("AFP"). The AFP authorized payment from Athletics to . Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶¶ 40-42. Kuraoka signed the form on June 25, 2012. *Id.* ¶ 51. Either Kuraoka or Clapp instructed Sheriff to prepare the AFP. Attachment 114; Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 45. Kuraoka reviewed the AFP before signing it and added the account code. She also verified that funds were available for the payment request and attached statements showing the availability of funds. *See* Attachment 115.

d. Sheriff sent Kuraoka an Escrow Trustee Information form on 's letterhead. Attachment 116.; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 39. Kuraoka added the vendor/payee information on the form. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 39.

e. Because had not furnished an invoice for $200,000 (the only invoice was from), a student worker in the Athletics business office prepared an invoice for . Attachment 117; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 80; Attachment 24 (T. Kuraoka 8/10/12 Statement) ¶¶ 5, 12. This kind of invoice is known as a "dummy" or "pro forma" invoice because the invoice is not from the payee. *See id.* ¶ 5. Without the pro forma invoice, the Disbursing Office would not have processed the payment. *See id.* ¶ 38.

159. Sheriff advised Kuraoka that the required payment was $200,000. The Agreement directed that $225,000 generated from pre-sales would be used to secure . *Id.* 35. The unsigned Engagement Memorandum stated the deposit for would be $200,000. Kuraoka noticed the differences between the amounts stated in the contracts and the payment amount, but she relied on the instruction from Sheriff to determine the amount of the payment. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 35.

160. Inouchi concluded that the invoice for $200,000 was supported by the Agreement. Attachment 24 (T. Kuraoka 8/10/12 Statement) ¶ 12.

161. All AFPs state that the Fiscal Officer "certif[ies] that sufficient funds are available in the accounts specified and that this payment is in accordance with applicable university policies and procedures." Kuraoka signed concert AFP with the understanding that she was making this certification. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 52.

162. Kuraoka believed that payment was in accordance with applicable University policies and procedures. Because Athletics was not actually making a purchase, Kuraoka understood that procurement policies did not apply. According

to Kuraoka, this was an outside user event, and there are no policies on outside user events. Kuraoka explained that the only thing she could do was verify that the funds were available. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 52.

163. With respect to the availability of funds in the specified account, Kuraoka verified that the funds were in the account. *Id.*

164. On June 25, 2012 at 1:47 p.m., Akamine sent an email to Todo and Kobayashi stating, in relevant part, "We are working through a number of issues with this benefit concert, but I just wanted to touch bases with you because my understanding is that we have a short deadline to make the initial payment to talent" and "some statutory disclosures need to be made to the Attorney General's Office, which could include financial disclosures." Attachment 118 at 1.

165. Akamine was told that there was a short window for making the payment in accordance with the Agreement. It appears that Akamine sent the June 25, 2012 email in response to a request from Clapp. Attachment 18 (Clapp Statement) ¶ 53; Attachment 40 (Akamine Statement) ¶ 50.

166. Kobayashi responded that he was working with Clapp and Kuraoka to make the initial deposit and payment. Attachment at 1.

167. Todo came in to the office on June 25, 2012 only to prepare for and make a presentation to the Board of Regents Audit Committee at 3:00 p.m. that afternoon. When Todo received the email from Akamine, he did not initially intend to respond until later. He expected that if information or approvals were required from him, he would address those needs at that time. However, when he was copied on the email from Kobayashi (saying that they were working with Clapp and Kuraoka on it) Todo asked Akamine for more information regarding the statutory disclosures referred to in Akamine's email. According to Todo, Akamine initially responded with a lengthy list that was not clear to Todo. Todo later spoke to Akamine to get clarification. According to Todo, Akamine informed Todo that no disclosures were required. Todo's discussion with Akamine occurred after the $200,000 transfer had been sent. Attachment 30 (H. Todo Statement) ¶ 14.

168. Kimura received the AFP and request for wire transfer. *See* Attachment 34 (A. Kimura Statement) ¶¶ 36, 44. The request caught his attention because it was for a "prepayment" of a large amount of money by wire transfer. Attachment 34 (A. Kimura Statement) ¶¶ 38-40. In his eight years with Disbursing, Kimura had not seen a University department make that large of a payment to secure a performer or use wire transfer to secure a performer. *Id.* ¶¶ 9, 43. In addition, there was a mismatch between the general ledger ("GL") account code and budget subcode on the AFP. Attachment 34 (A. Kimura Statement) ¶ 45.

169. On June 25, 2012, Kimura called Kuraoka to ask about the wire transfer. Kimura left a message for Kuraoka and followed with an email to her and Inouchi. Inouchi called Kimura at around 6:00 p.m. on June 25. With respect to the codes, Inouchi explained that they were using the GL account instead of the revolving account, as they normally do, because they had no time to transfer money from the GL account to the revolving account. *Id.* ¶ 45.

170. Kimura confirmed that there were sufficient funds in the GL account for the transfer. *Id.* ¶ 48.

171. Kimura also called Karlee Hisashima, who is the deputy director of Procurement, to inquire whether Procurement had any contract for the transaction. Hisashima replied that to her knowledge, there was to contract. *Id.* ¶ 50.

172. Kimura, with the help of Karyn Yoshioka in Disbursing, executed the $200,000 wire transfer on June 26, 2012. *See id.* ¶¶ 52, 55. The Wire Detail Report dated June 26, 2012 confirmed that the wire transfer was completed. *Id.* ¶ 53; Attachment 119.

173. On June 26, 2012, at 10:36 a.m., Kobayashi sent an email to Clapp and Kuraoka confirming that "[t]he wire for the deposit went out this morning and [was] confirmed by the bank." Attachment 120 at 1. Kobayashi also informed Todo that the wire transfer had been executed. Attachment 30 (H. Todo Statement) ¶ 15.

174. After the wire transfer had been completed, gave approval to release the funds. understood that 's people had received the funds. Specifically, thought the funds went to . Attachment 43 (Statement) ¶ 67.

175. Neither nor anyone at UH appears to have verified that the account was in fact an escrow account, provided or reviewed escrow instructions or received written confirmation of the transfer of the funds from the account to another account. Attachment 43 (Statement) ¶ 67; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶¶ 54-55, 57-59; Attachment 34 (A. Kimura Statement) ¶ 54; Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 54; Attachment 18 (C. Clapp Statement) ¶ 61; Attachment 32 (P. Kobayashi Statement) ¶ 49; Attachment 30 (H. Todo Statement) ¶¶34-39.

176. Sometime after the wire transfer was executed, Kimura wrote a "Memorandum for Record" concerning the transfer. Attachment 121. The memorandum is dated June 25, 2012, but it was written after that date. There is conflicting evidence as to when Kimura actually wrote the memorandum. Kimura stated that he wrote the memorandum on June 26, 2012. Attachment 34 (A. Kimura Statement) ¶ 32. Kobayashi recalled that Kimura wrote the memorandum a week later. Attachment 32 (P. Kobayashi Statement) ¶ 42. There is also conflict-

ing evidence as to who received a copy of the memorandum. Kimura stated that he gave a copy of the memorandum to Kashiwamura. Attachment 34 (A. Kimura Statement) ¶ 34. Kobayashi stated that Kimura handed a hard copy of the memorandum to him and Todo at a meeting and that Kimura also sent the memorandum via email to Kobayashi. Attachment 32 (P. Kobayashi Statement) ¶ 42.

177. On June 26, 2012, Todo asked Cutshaw whether she knew about the wire transfer. Cutshaw replied that she did not know about the transfer. Attachment 38 (K. Cutshaw Statement) ¶ 35.

178. Todo called Akamine regarding the wire transfer. According to Todo, Akamine explained that the wire transfer needed to go out or the concert would have been cancelled. Todo asked Akamine for the background and documents, and Akamine noted that the Agreement required insurance to protect the University for losses and that the University would get 10% of the gross or 75% of the net of ticket sales, whichever was greater. Todo expressed his concern about the University's protection. Akamine said that the insurance would protect the University. Attachment 30 (H. Todo Statement) ¶ 15.

179. On June 26, 2012, sent the announcement for the concert to . Attachment 122.

180. On June 26, 2012, Akamine sent an email to and Donovan attaching for their execution a "Consent Agreement Between University of Hawai'i and ." ("Consent Agreement"). Pursuant to the Consent agreement, the University would grant a license to use the names, logo and trademarks of the University and Athletics on marketing or press materials for the sole purpose of identifying the concert as a fundraising event for Athletics. Attachment 123. Donovan forwarded the email to Clapp on June 27, 2012 with instructions to review and sign the Consent Agreement on his behalf if he was fine with the language. Donovan noted his belief that OGC had approved the language. Attachment 124.

181. On June 27, 2012 at 4:34 p.m., Akamine sent unexecuted copies of the Agreement and Consent Agreement to Todo via email. *Id.* at 1; Attachment 30 (H. Todo Statement) ¶ 16.

182. On June 27, 2012 at 5:50 p.m., Sheriff sent an email to reminding him to sign the Consent Agreement as soon as possible and repeating his request "for copies of your insurance that is required in our executed contract. Please forward those documents ASAP." Attachment 125.

183. On June 28, 2012 at 4:32 p.m., Akamine sent an email to and Donovan notifying them that in lieu of the Consent Agreement, they could execute a simple form used by the Attorney General's office. *See* Attachment 126. Aka-

mine subsequently sent the form to and Donovan on June 29, 2012, along with a reminder to Sheriff to send him copies of the executed agreement and insurance information. Attachment 127.

184. On June 28, 2012 at 5:42 p.m., Cutshaw sent Clapp an email asking for details about the concert and inquiring whether the Chancellor had been briefed. Attachment 128.

185. On June 28, 2012 at 6:03 p.m., Todo forwarded to Cutshaw the documents that he had received from Akamine. Attachment 129 at 1. Cutshaw promptly responded, "I haven't verified that was informed and agreed to this. I have verified that you have been involved. If system has already moved forward, I am standing down." *Id.* at 1. Todo immediately replied that he was involved only because he found out about the wire transfer from OGC. He expressed his belief that it was "a Mānoa issue" and "the Chancellor's office's responsibility" because Athletics "initiated this and apparently has entered an agreement." Todo added that Cutshaw "should most definitely not stand down, but rather insure that it is okay and is being properly authorized and executed, because of the exposure and risk." *Id.* at 1.

186. On June 28, 2012 at 6:54 p.m., Cutshaw sent an email to Kuraoka asking for details about the Concert. Attachment 130. Cutshaw subsequently spoke with Kuraoka and asked her who had authorized the payment. Kuraoka replied that Athletics had collected money from pre-sales in an agency account and that she had issued the AFP because she was told to do so. Attachment 38 (K. Cutshaw Statement) ¶¶ 35, 45.

187. On June 28, 2012 at 7:04 p.m., Cutshaw sent an email to asking whether she knew about the concert. Attachment 131 at 1. At 9:58 p.m., replied that she had not known about the concert earlier, but she was now aware of it. added that Athletics had permission from the City to host the concert. *Id.* at 1.

188. On June 29, 2012 at 9:01 a.m., Kuraoka sent Cutshaw an unexecuted copy of the Engagement Memorandum. Attachment 132 At 9:05 a.m., Cutshaw forwarded Kuraoka's email and the attached Engagement Memorandum to Todo. *Id.*

189. After reading the Engagement Memorandum, Todo went to Akamine's office on June 29, 2012. Attachment 30 (H. Todo Statement) ¶ 20; Attachment 40 (R. Akamine Statement) ¶ 83. Todo expressed his concerns regarding the Engagement Memorandum. Akamine replied that he had already advised Athletics not to sign the Engagement Memorandum. Akamine added that insurance would protect the University, that he had requested the insurance policy and that he was told that "they are working on it." Todo responded that the answer was insuffi-

cient and the insurance policy needed to be in place before the pre-sale of tickets. Attachment 30 (H. Todo Statement) ¶ 20.

190. On June 29, 2012 at 10:38 a.m., Akamine sent an email to Donovan, Clapp and Sheriff stating, "I just want to make sure that no one has signed off on any "ENGAGEMENT MEMORANDUM" generated by or . Please reply ASAP." Attachment 136.; Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 41; Attachment 18 (C. Clapp Statement) ¶ 42. At 10:48 a.m., Sheriff replied that no one from the University had signed the Engagement Memorandum. *Id.* at 1. At 10:58 a.m., Clapp replied that he did not sign the document. Attachment 134 at 1. Donovan did not respond.

191. On June 29, 2012 at 10:54 a.m., Akamine sent an email to Sheriff asking whether he had the insurance policies and noting that UH was supposed to receive the policy before the pre-sale of tickets commenced. Attachment 135 at 1.

192. Sheriff promptly responded that was "trying to get the AG form back to us today. is working on the insurance. He said the insurance is in the process and we will get a copy as soon as he has it." *Id.* at 1.

193. Akamine replied, "The insurance is key. Please follow-up. Remember that needs 2 insurance policies per our agreement. The one that protects us against non-performance was supposed to be in place and a copy provided to Jim BEFORE pre-sale tickets were sold." Attachment 136.

194. On July 2, 2012, Akamine informed Donovan that had not turned in the proof of cancellation insurance and that the insurance was needed before the University could make another payment. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 46. According to Donovan, this was the first time he heard that payment for the concert had been made and that insurance was needed. *Id.* ¶ 21. Donovan had not read the provision in the Agreement regarding cancellation insurance. *Id.* ¶ 46.

195. Donovan spoke with Sheriff. Sheriff informed Donovan that would get the insurance to the University by July 5, 2012. Donovan advised Sheriff that the University would not send any more money until had obtained event cancellation insurance. *Id.* ¶ 21.

196. On June 29, 2012 at 11:27 a.m., Clapp replied to Cutshaw's earlier email. Clapp informed Cutshaw that had been briefed and that he would be happy to talk to her about the concert. Attachment 128. Cutshaw called Clapp. Attachment 18 (C. Clapp Statement) ¶ 48; Attachment 38 (K. Cutshaw Statement) ¶ 47. Clapp informed Cutshaw that he had signed the Agreement as directed by Donovan, that had approved the concert and that he did not know much about the concert until a week or two weeks before he had signed the Agreement. Attachment 38 (K. Cutshaw Statement) ¶¶ 37, 47.

197. On July 2, 2012, Sheriff informed that he had "been told buy [sic] the Dispersing Office that no more checks will be cut until they have confirmation of the Non-Performance Insurance." Attachment 137 at 1. replied with an email stating that he should have the insurance the next day. Attachment 138.

198. On July 5, 2012 at 10:39 a.m., sent an email to Sheriff informing him that he was "[t]old by [the] insurance company [that] I will have the cancellation insurance in hand tomorrow." Sheriff forwarded the email to Donovan with copies to Akamine and Clapp. Attachment 139. At 1:12 p.m., sent Sheriff another email stating that "[t]he cancellation insurance will be here tomorrow." also told Sheriff that the cancellation insurance would cost $16,000. wanted $16,000 from the University to pay for the insurance. *See* Attachment 140 at 1; Attachment 16 (J. Donovan 8/1/12 Statement) ¶ 21.

199. In the meantime, the ticket sales continued.

200. Tickets for the concert went on public sale on July 6, 2012.

201. On July 6, 2012 at 6:13 a.m., sent the certificate of liability insurance to Sheriff. Attachment 141.

202. On July 6, 2012, Cutshaw asked Akamine for an update. Attachment 40 (R. Akamine Statement) ¶ 84. At 3:03 p.m., Akamine forwarded to Cutshaw the email string between Sheriff and that Sheriff had sent to him on at 1:44 p.m. Attachment 142 At 3:06 p.m., Akamine sent an email to Sheriff asking him whether he had received a copy of the insurance policy. Attachment 143.

203. On July 6, 2012 at 3:15 p.m., Cutshaw sent an email to Kuraoka, with copies to Clapp, Akamine and Todo, stating, "It is my understanding that the insurance rider has not been executed yet. Until this insurance issue has been finalized, you are not authorized to make any further payments to the promoter." Attachment 144; Attachment 38 (K. Cutshaw Statement) ¶ 40.

204. According to Kuraoka, she was not previously aware of the need to obtain insurance, even though she had received the Agreement prior to processing the request for payment. According to Kuraoka, she does not inquire about insurance prior to making a payment. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶¶ 35, 68.

205. Kuraoka informed Cutshaw that she would "not process any further payments until the insurance rider has been executed." Attachment 145. Clapp sent a similar confirmation. Attachment 146.

206. On July 9, 2012 at 12:12 p.m., Sheriff forwarded the certificate of liability insurance that he had received from to Donovan, with copies to Clapp and Akamine. Attachment 141.

207. On July 9, 2012 at 12:42 p.m., Akamine informed Sheriff, Donovan, Clapp and Lendio that the liability insurance obtained by did not comply with the Agreement because it did not name and the University as additional insureds. [001000366]

208. In the same email, Akamine stated, "At this point, is in breach of our agreement if he hasn't obtained the insurance and provided it to you." Attachment 147 at 1-2. Akamine subsequently advised Cutshaw that the conditions of the Agreement were not being fulfilled. Attachment 40 (R. Akamine Statement) ¶ 85.

209. On July 9, 2012, McNamara received a call from . informed McNamara that he was an agent with , that represented , that has no knowledge of the concert, that the concert was unauthorized and that the concert would not go forward. *See* Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 53; Attachment 20 (J. McNamara Statement) ¶ 76. McNamara replied that should speak with and . Attachment 20 (J. McNamara Statement) ¶ 75. Sheriff received a similar call from . Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 62.

210. McNamara called Donovan about his conversation with . Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 53; Attachment 20 (J. McNamara Statement) ¶ 76. Donovan told Sheriff to talk to .

211. Sheriff informed Donovan that according to , is a competitor and is trying to get a cut of the deal. Donovan told Sheriff to tell to take care of the situation. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 53.

212. On July 9, 2012 at 3:56 p.m., sent an email to President Greenwood. represented himself as one of the managing partners at and the agent for for the past 18 years. He stated that no one knew about concert and that the concert was not a confirmed engagement. He further informed President Greenwood that had not been in communication with one of 's representatives. He asked President Greenwood to call him the next day. Attachment 148.

213. On July 9, 2012 at 4:06 p.m., sent an email to explaining that a contract with was in place for to perform on August 18, 2012 in Honolulu. added that a $250,000 deposit had been made. informed that , and had been involved. Attachment 149. Sheriff, who was copied on the email, forwarded the

email to Donovan. *Id.* sent a similar email to with copies to President Greenwood and Sheriff at 4:32 p.m. Attachment 150.

214. On July 9, 2012 at 4:44 p.m., responded that he had "no idea who is, or where they are based" and that he was "not sure why you would have sent anyone $250,000 without checking with an official representative of ." added that he had not been aware of the concert until the previous day. Attachment 151. sent a series of additional emails to that evening to explain the situation. *See, e.g.*, Attachment 152.

215. On July 9, 2012 at or around 6 p.m., President Greenwood called Donovan about 's email. President Greenwood told Donovan to wait until the next morning to see what happens. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 53.

216. On July 9, 2012 at 7:25 p.m., Sheriff sent an email to informing him of 's email and asking him to find out how quickly the University could have the $200,000 deposit refunded if he and could not work out an arrangement. Attachment 153. In the same email, Sheriff stated, "Needless to say[,] the President and the Chair of the Board of Regents are furious. It will be a miracle if Jim and I still have a job by Friday." *Id.*

217. wrote back at 7:28 p.m. saying that 's management and were going to have a meeting the next morning to straighten things out. *Id.* Sheriff forwarded the email string to Donovan. *Id.*

218. On July 9, 2012, at 9:57 p.m., sent an email to Sheriff and President Greenwood informing them that he had talked to four times that evening and that he and were going to have a conference call with 's management in the morning. Attachment 154.

219. According to , he was not surprised that had gotten involved. knew that represented , but he did not believe that 's representation was exclusive. stated that his "booking bible" listed as self-managed. Attachment 43 (Statement) ¶ 13; Attachment 155 (copy of booking bible pages). believed that was only looking for a cut. Attachment 43 (Statement) ¶ 74.

220. In the morning of July 10, 2012, a meeting at UH was held to discuss the recent developments relating to the concert. Those in attendance included President Greenwood, Chancellor Tom Apple, Vice President for Student Affairs and University/Community Relations Rockne Freitas, Donovan, Todo and Sheriff. *See* Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 54; Attachment 30 (H. Todo Statement) ¶ 42.

221. On July 10, 2012, a conference call was held in which Donovan, and others participated. During the call, mentioned the name of . At some point during the conference call, joined the call on another line. told that had spoken with , who appeared to be part of 's management, and that did not know anything about the concert. *See* Attachment 16 (J. Donovan 7/19/12 Statement) ¶¶ 56, 58; Attachment 43 (Statement) ¶¶ 18.

222. On July 10, 2012 at 7:46 a.m., Donovan received a call from . identified himself as the president of . He said that he was working with and that they did have a contract with someone in 's management. He said that was a direct competitor and that they were trying to stop the deal or get a cut of it. He told Donovan to be patient. He said that he would get Donovan the contract by the end of the day. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 57.

223. On July 10, 2012 at 9:39 a.m., Donovan received a call from a person who identified himself as and the president of . This was the first time that Donovan had heard of . told Donovan that he needed to be patient. said that they had an agreement with someone in 's management and that definitely knew about the concert and approved it. Donovan asked to see the contract between and . said that he was trying to get the contract and would have it by the end of the day. Donovan told him that having the contract in hand would help to settle things down. asked Donovan to wait 24-48 hours before calling off the concert. Donovan replied that he would pass on what said but that the University collectively would be making a decision consistent with its best interests. This was the only time that Donovan spoke to . Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 59.

224. On July 10, 2012, Donovan saw the Engagement Memorandum for the first time. He did not know who had drafted the document. The copy of the document that Donovan saw on July 10 was not signed, and he never saw a signed copy. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 41.

225. On July 10, 2012, Donovan was told by that the $200,000 deposit was sent to . Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 49.

226. On July 10, 2012 at 4:00 p.m., the University held a press conference about the Concert. At the press conference, UH announced that was not available for an August 18, 2012 concert and that refunds would be given. *See* [UH001000384].

227. On July 10, 2012 at 4:23 p.m., sent an email to President Greenwood, Donovan and stating that and the University had not

been dealing with 's official representatives. represented himself as 's agent and in that capacity, denied knowledge of any offer or confirmed engagement for a concert at the Center. further claimed that and his representatives had not authorized UH to sell tickets for the concert. insisted that all advertising and ticket sales for the concert be stopped and that all ticket holders be allowed to return their tickets for a full refund. disclaimed any liability on the part of and his representatives. Finally, wanted to discuss the announcements that the University would make and the process for refunding ticket payment. Attachment 157. It is not clear whether anyone from UH had further discussions with .

228. On July 10, 2012 at 5:06 p.m., sent Sheriff, Donovan and President Greenwood the quote that he had obtained for the cancellation insurance. Attachment 158 The policy was never put into place. Attachment 43 (Statement) ¶ 70.

229. On or around July 12, 2012, Todo prepared a summary of the events relating to the Concert entitled "Concert Events Description." Attachment 159; Attachment 30 (H. Todo Statement) ¶ 12.

230. Between July 13 and 18, 2012, exchanged emails with in which he asked where the $200,000 deposit went, whether the concert could still go forward and whether he could get a copy of the contract with . informed that had sent the deposit to to give to 's people and that a management representative of currently had the money. asked for a copy of the contract stating that was authorized to represent UH in the matter. maintained that the concert deal with was still effective and that UH had canceled the show. also maintained that and/or UH had breached the Memorandum of Understanding by selling tickets before 's management had signed and completed the deal. Attachment 160 (email string).

C. The Extent of the Investigation and Evaluation of Prior to Contracting.

231. The investigation by Factfinders disclosed the following regarding the extent of UH's investigation and evaluation of prior to contracting:

a. Donovan had heard of and was generally aware that he is a promoter of events in Hawai'i. However, Donovan did not know . Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 21;

b. had never worked with Donovan and did not have a personal relationship with him. Attachment 43 (Statement) ¶ 27.

c. Donovan did not do anything to investigate or . He did not task anyone with investigating . Donovan does not know whether anyone other than Sheriff investigated . *See* Attachment 16 (J. Donovan 7/19/12 Statement) ¶¶ 22-23.

d. Through Sheriff, Donovan was aware that had put on a concert 18 years ago. Sheriff also told Donovan that is "a good guy," which Sheriff based on his conversations with in Hawai'i. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 24.

e. Sheriff believed that was knowledgeable about 's representation and management because had previously been involved in a show. Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 30.

f. In addition, Sheriff had seen and identified in connection with other events in Hawai'i. Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 29;

g. Finally, Sheriff spoke with people who worked for , a local audio company, and , a lighting company that had recently done work for a show at the Center. Based on this information, reportedly had a good reputation. *Id.*; Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 22.

h. did not have a personal relationship with Sheriff and had never worked with him. Attachment 43 (Statement) ¶ 24; *see also* Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 53.

i. Except for what is summarized above in this section V.C, it does not appear that Sheriff did anything else to investigate or evaluate and .

j. Clapp did not do anything to investigate or evaluate and . He does not know whether anyone at the University investigated or evaluated and . Clapp did not task anyone with investigating or evaluating and . Attachment 18 (C. Clapp Statement) ¶ 23.

k. There is no evidence that Factfinders are aware of that anyone else at UH did anything to investigate or evaluate and .

232. It does not appear that prior to executing the Agreement, anyone at UH was aware of (i) the judgment in favor of i, and against " " for $24,196.80 or (ii) the foreclosure action initiated by against on November 21, 2011.

D. The Extent of the Investigation and Evaluation of and Prior to the Wire Transfer.

233. Prior to the concert, had never worked with or heard of or . *See* Attachment 43 (Statement) ¶¶ 14-17. had never met . *Id.* ¶ 22.

234. To investigate claims and determine that was a legitimate agency, checked out and online and in the social media. *Id.* ¶ 22.

235. Prior to the planned concert, had never worked with or heard of or . had never met . Attachment 43 (Statement) ¶ 36.

236. looked at 's website, but he did not do anything to determine whether and were legitimate agents. *Id.* ¶ 19.

237. told Sheriff that was the booking agent. Sheriff did not know anything about . Based on paperwork that produced, Sheriff incorrectly believed that was based in Miami, Florida. Sheriff did not know whether there was a relationship between and or whether the two companies had previously done business together. Sheriff does not believe that the University had previously used the services of . Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 32.

238. mentioned to Sheriff in connection with , but did not tell Sheriff anything specific about her. Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 33.

239. Sheriff did not do anything to investigate or evaluate . Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 34.

240. Clapp looked into and found out that it had not been in business very long—perhaps, 14-18 months. Clapp raised the issue with Sheriff. Sheriff replied that he did not know anything about it. Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 34.

241. It does not appear that Clapp expressed his concern to anyone else or that anything was done in response to Clapp's concern about the length of time during which had been in business.

242. There is no evidence that Factfinders are aware of that anyone from UH did anything else to investigate or evaluate before the wire transfer.

243. Sheriff recalled the name , but he did not remember from where or whom. Sheriff had received the escrow account information for . But Sheriff did not know who owns , where it is based, how many employees it has or what services it provides. Sheriff did not know whether there is any relationship between and ; or whether they had done business together. Sheriff believed that the University has not previously used the services of . Attachment 26 (R. Sheriff 7/17/12 Statement) ¶ 35.

244. Sheriff did not do anything to investigate and evaluate . Sheriff did not know whether anyone else at the University investigated or evaluated . *Id.*

245. Sheriff incorrectly believed that was the manager of and . Sheriff did not know whether and had a relationship. Sheriff has never spoken to . *Id.* ¶ 36.

246. There is no evidence that Factfinders are aware of that anyone at UH investigated or evaluated before the wire transfer.

E. Authority to Enter into the Agreement with to Use the Center.

247. The Board has delegated to the President the authority to enter into contracts to rent UH facilities to outside groups. Attachment 6 (BOR Policies § 10-3).

248. The President has delegated to the Mānoa Chancellor the authority to enter into contracts to rent UH facilities to outside groups. Attachment 8 (Executive Policy E10.101).

249. Factfinders have been unable to determine whether the Mānoa Chancellor formally delegated to the Director of Athletics the authority to enter into contracts to rent the Center to outside groups.

250. Cutshaw could not find any delegation of the authority to approve facilities use contracts from the Chancellor's office to department heads. However, Cutshaw stated that the delegation of authority could have occurred when the President was still the Chancellor of the Mānoa campus. Cutshaw does not have access to records pre-dating the creation of the Chancellor's office. *See* Attachment 38 (K. Cutshaw Statement) at 12.

251. Todo could not find a document delegating the Chancellor's authority to approve facilities use contracts. Todo could not find a policy relating to the method of delegation of authority from the Chancellor to the department heads. Attachment 30 (H. Todo Statement) ¶ 23.

252. Akamine believes that there is a delegation of authority to sign facilities contracts from the Chancellor to the department heads. Attachment 40 (R. Akamine Statement) ¶ 20. However, Akamine did not identify a specific delegation.

253. In practice, Clapp and Chang have final approval regarding facilities rental. Donovan does not get involved. Donovan does not see anything, including contracts or billings. Donovan does have approval authority over Clapp and Chang, and he has the ability to veto any approval given by them. Attachment 16 (J. Donovan 8/1/12 Statement) ¶ 26; Attachment 36 (Statement) ¶ 35; Attachment 40 (R. Akamine Statement) ¶ 52.

254. All agreements are to be signed by Donovan. Attachment 18 (C. Clapp Statement) ¶ 20; Attachment 20 (J. McNamara Statement) ¶ 17.

255. Clapp does not sign contracts unless Donovan is out of town and has given him authority to sign. Attachment 18 (C. Clapp Statement) ¶ 20.

256. The Mānoa Chancellor has the authority to stop a use at the Center. The Vice Chancellor has the authority to review a use at the Center to determine whether the use is proper. If a use were improper, the Vice Chancellor would report it to the Chancellor. During her tenure as Vice Chancellor, Cutshaw has never vetoed a decision regarding the use of Center. Attachment 38 (K. Cutshaw Statement) ¶ 16.

257. OGC does not play any role in decisions regarding the use of Center. Attachment 38 (K. Cutshaw Statement) ¶ 17.

258. The OGC will draft the facilities rental agreements to use the Center, unless the agreement is prepared on a standard form. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 17.

259. OGC does not negotiate contracts. OGC provides UH options and input on the appropriateness of business terms. *See* Attachment 40 (R. Akamine Statement) ¶¶ 10, 12; Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 18. OGC documents the terms negotiated by UH. Attachment 40 (R. Akamine Statement) ¶¶ 10, 12.

260. OGC has instructed Athletics that no one can sign any contract unless OGC first approves. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 17.

261. When negotiating a contract, Clapp goes to Donovan for direction as to the terms and relies on Akamine for legal drafting and review. Attachment 18 (C. Clapp Statement) ¶ 47. Akamine would provide the legal terms and might comment on business terms to the extent necessary to confirm that the terms can be performed and carried out. Attachment 40 (R. Akamine Statement) ¶ 13.

262. Donovan would not act on a contract unless Akamine approved it. Attachment 18 (C. Clapp Statement) ¶ 47.

263. For the planned concert, the Agreement was based on a use agreement form that Akamine had drafted for another event at the Center. *See* Attachment 40 (R. Akamine Statement) ¶¶ 16-17. New terms were created to address the unique nature of the concert and the rental.

264. Donovan authorized Clapp to sign the Agreement, if OGC approved. Attachment 16 (J. Donovan 8/1/12 Statement) ¶15; [UH00100200].

F. The Collection of the User Fee After the Planned Concert.

265. Attachment B-1 to Administrative Procedures A1.200 directs that "[r]ental and deposit payments are due at the time of reservation." *Id.* B-1.

266. The Agreement provided for payment of the facilities rental fee after the concert in the form of a percentage of the gross or net proceeds.

267. Factfinders have not identified any policy that authorizes the payment of a rental fee after the event or that authorizes a rental fee in the form of a percentage of revenue from the event.

268. There appear to be instances in the past where UH has been paid an event fee for use of the Center based on a percentage of the gross ticket sales and, seemingly, such a fee is unlikely to be determined until after the event has occurred. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 7.

G. Sheriff's Role in Managing the Planned Concert.

269. Donovan told Sheriff to handle the concert. *See* Attachment 16 (J. Donovan 7/19/12 Statement) ¶¶ 10, 24. Donovan approved of Sheriff working with Akamine and on the Concert. Attachment 58 at 1; *see also* Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 28; Attachment 16 (J. Donovan 8/1/12 Statement) ¶ 10.

270. On May 10, 2012, Donovan instructed to "work with Ryan Akamine, UH Legal Counsel, and Richard Sheriff, Manager of the Center, to finalize the details of the rental and donation agreement." Attachment 62 at 2. Sheriff prepared the letter for Donovan. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 29.

271. Sheriff was the point person at UH for putting the concert together and the primary UH liaison with . *See* Attachment 22 (T. Chang Statement) ¶ 19; Attachment 20 (J. McNamara Statement) ¶ 33; Attachment 28 (W.

Watanabe Statement) ¶ 68; Attachment 42 (Statement) ¶ 29; Attachment 43 (Statement) ¶ 45.

272. With few exceptions, Sheriff was the only person at the University who had direct contact with and . Attachment 62 at 2. Attachment 40 (R. Akamine Statement) ¶ 26. Sheriff was the "conduit" through which information between UH and passed. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 21; Attachment 26 (R. Sheriff 8/2/12 Statement) ¶¶ 24, 33; Attachment 43 (Statement) ¶ 45.

273. Based on the available records, there were more than 300 emails sent or received by Sheriff regarding the concert.

274. It is unclear whether Sheriff typically plays such a significant role in outside events. According to Chang, who is Sheriff's direct supervisor, it is not typical for Sheriff to play such a major role in putting outside events together. In the past, Sheriff was part of a team, but he did not act as the sole coordinator of all the moving parts. Attachment 22 (T. Chang Statement) ¶ 20.

275. On the other hand, Watanabe did not think Sheriff's role was anything out of the ordinary. Attachment 28 (W. Watanabe Statement) ¶ 68.

276. Similarly, Donovan stated his view that the concert was within Sheriff's scope of responsibilities because Sheriff had previously handled numerous events at the Center. *See* Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 24.

277. The duties and responsibilities described in the Position Description applicable to Sheriff's position include, among other matters, the duties and responsibilities to (i) "[s]erve as the UH Manoa Athletic department representative to all patrons and tenants at the Center"; (ii) "[o]versee event management and facilities operation of the Center"; and (iii) [o]versee and administer written contracts".

278. Donovan did not review drafts of the Agreement. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 29. Sheriff worked directly with Akamine. If Sheriff had questions, he would talk to Donovan and give Donovan's comments to Akamine. Attachment 16 (J. Donovan 8/1/12 Statement) ¶ 11. The only term of the Agreement that Donovan gave to Akamine was the term regarding the fee structure of the rental. Attachment 16 (J. Donovan 8/1/12 Statement ¶14). Akamine received all the other business terms from Sheriff. Attachment 40 (R. Akamine Statement) ¶¶ 77, 78; Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 43.

279. Clapp reviewed the final draft of the Agreement. Attachment 18 (C. Clapp Statement) ¶ 34.

280. Chang did not review the Agreement. Attachment 22 (T. Chang Statement) ¶ 45.

281. As discussed in greater detail below, no one ensured that all terms of the Agreement were followed.

H. The Sale of Tickets for the Planned Concert.

282. Sheriff called a May 18, 2012 meeting to discuss, among other things, ticket pre-sales. The meeting was attended by Sheriff, , Chang, , Watanabe, McNamara and . Attachment 20 (J. McNamara Statement) ¶¶ 34, 49; Attachment 28 (W. Watanabe Statement) ¶ 55.

283. Ticket pre-sales were planned for , members of and . Attachment 82.

284. suggested to Sheriff the start date for ticket sales. told Sheriff that the University needed to make the $200,000 payment before beginning the public sale. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 42; Attachment 18 (C. Clapp Statement) ¶ 53.

285. Paragraph 5A of the Agreement provided that "Pre-Sale Tickets shall be made available for purchase by and through UNIVERSITY's , on or about June 18, 2012." Attachment 83 at 6. Based on this language, Akamine understood tickets to the concert would be pre-sold to . *See* Attachment 40 (R. Akamine Statement) ¶ 60.

286. Instead, tickets were sold to , , , the and . *See* [UH001000641]; [UH001001026]. The announcement of ticket pre-sales went out to and on June 18, 2012, Attachment 92; Attachment 93; to on June 21, 2012, Attachment 102; to on June 22, 2012, Attachment 104 at 1; Attachment 28 (W. Watanabe Statement) ¶ 59; and to on June 26, 2012, Attachment 122.

287. No one accepts responsibility for authorizing the ticket sales. It appears that Sheriff, working with , informed those involved with ticket sales of the date by which the $200,000 payment was needed. The payment date drove the timing of the announcement of ticket pre-sales and the deadline for payments for pre-sale tickets.

288. No one has explained why the terms of the Agreement were not followed.

289. The investigation has not disclosed any information confirming or suggesting that (i) members of the University's Administrative Office for Budget and Finance were involved in the ticket pre-sale process or that (ii) members of the OGC were involved in the ticket pre-sale process.

I. Authority to Advance Funds from Ticket Sales to Pay for Concert Expenses.

290. On June 24, 2012 at 10:40 p.m., Watanabe sent an email to Donovan, Clapp, Sheriff and others notifying them that more than $200,000 in ticket sales had been processed. Attachment 107.

291. The Agreement provided that revenues from the pre-sale of tickets in the amount of $225,000 would be used by to reserve and secure before tickets were sold to the general public. Attachment 83 at 6 (¶ 4).

292. The fees charged by were concert expenses to be paid by .

293. But under the provisions of the Agreement, UH was allowing to use box office receipts before the concert.

294. As the party selling the tickets, UH was responsible for providing refunds to ticketholders if the concert did not go forward.

295. Factfinders have not identified any policy or procedure authorizing or prohibiting UH from allowing an outside user to pay for event expenses with revenue generated from ticket sales before the event occurs.

J. Cancellation Insurance.

296. In April 2012, informed Sheriff that he would obtain cancellation insurance for the concert. Statement ¶ 61; [UH001000725] at 2. According to , the cancellation insurance would protect UH against the non-performance of due to acts of God, travel, health and other perils. [UH001000725] at 2.

297. Sheriff asked Akamine to include the cancellation insurance provision in the Agreement. Attachment 40 (R. Akamine Statement) ¶ 73; Attachment 79.

298. Consistent with Sheriff's request, the Agreement directed to secure insurance to cover the risk that failed to perform. A copy of this policy had to be provided to the Athletics Director *before* pre-sale ticket sales commenced. Attachment 84 (Agreement) ¶ 10.B.

299. On June 14, 2012, before ticket sales commenced, Sheriff reminded of the insurance requirement. Attachment 86 at 1; Attachment 87 at 1; Attachment 88 at 1; Attachment 89 at 1; Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 40.

300. replied, "Non performance insurance is specially [sic] insurance . . . I have applied for it . . . this afternoon. It should be in place tomorrow, in the mean time [sic] please get the check in the 'pipeline.'" Attachment 90.

301. On June 18, 2012, sent an email to Sheriff stating that he "should have the insurance later that day." [UH0010000168] at 9-10 (¶ 10.B.). It is unclear whether meant the liability insurance or the cancellation insurance.

302. No one at UH confirmed that the insurance was in place before presales began.

303. No one at UH confirmed that the insurance was in place before UH made the $200,000 wire transfer to .

304. At the time Sheriff solicited the assistance of Chang to get the $200,000 wire transfer out, Sheriff did not tell Chang or anyone else that the nonperformance insurance was not in place. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 47.

305. Clapp, Sheriff and Akamine were aware of the insurance requirement.

306. Donovan had an opportunity to review the Agreement. According to Donovan, however, he only became aware that the Agreement required to obtain cancellation insurance after the $200,000 wire transfer had been completed. *See* Attachment 16 (J. Donovan 8/1/12 Statement) ¶ 21. Donovan was not copied on the correspondence pushing for the transfer of funds.

307. Kuraoka saw the Agreement prior to preparing the AFP form. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 35.

308. Kobayashi saw the Agreement prior to creating a vendor code, but he did not review any terms of the Agreement. Kobayashi verified that the Agreement was signed. Attachment 32 (P. Kobayashi Statement) ¶ 26.

309. It does not appear that anyone else at UH had been given a copy of the Agreement before the wire transfer was made.

310. Watanabe, Kimura, McNamara, Chang and did not see or review the Agreement. Attachment 28 (W. Watanabe Statement) ¶ 46; Attachment 34 (A. Kimura Statement) ¶ 22; Attachment 20 (J. McNamara Statement) ¶ 70;

Attachment 22 (T. Chang Statement) ¶ 45; Attachment 36 (State-ment) ¶ 43.

311. Todo did not see or review the Agreement prior to the wire transfer. Attachment 30 (H. Todo Statement) ¶ 16.

312. No one has accepted responsibility for failing to ensure that the insurance was in place before tickets were sold and money was transferred.

313. According to Donovan, in general, Clapp and Kuraoka are responsible for monitoring to see that payments due under a contract are made as scheduled. In regards to the insurance requirement in the Agreement, Donovan stated that Sheriff and Akamine were responsible for making sure the insurance was procured before tickets were pre-sold. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 47.

314. Clapp remembers seeing the provision in the Agreement providing that will indemnify the University against claims brought because of the non-performance of and will secure insurance to cover that possibility. Attachment 18 (C. Clapp Statement) ¶ 49.

315. According to Kuraoka, she was not aware of the need to obtain cancellation insurance. Kuraoka stated that insurance is not something she looks for prior to making payment. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 68.

316. Akamine prepared the Agreement and added the insurance provision pursuant to Sheriff's request. Attachment 40 (R. Akamine Statement) ¶ 62. Akamine was not involved in the ticket pre-sale process and does not implement, manage or administer contracts. The OGC's duty, as Akamine understands it, is to prepare and review contracts. Id. ¶ 87.

317. Sheriff stated, "I wish I had told Carl [Clapp] to hold the payment until we get the insurance. This is not my responsibility to make sure the insurance is in place. I was never directed by my superiors to get it." Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 41. Sheriff believed that Clapp would have held up the transfer if things were not in place. According to Sheriff, Clapp told him that he had read the Agreement. Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 46.

318. Chang stated that the Athletics Director would be responsible for making sure there is compliance with the terms of an agreement to which Athletics is a party because the agreement would be signed by the Athletics Director. But others could be responsible as well or could be designated for responsibility. For example, the point person for a project typically would be the one monitoring compliance with the terms of the agreement for the project. *See* Attachment 22 (T. Chang Statement) ¶ 47.

319. After the wire transfer had been made, Akamine and others followed up with Sheriff regarding the insurance. *See, e.g.*, [UH001000321] Sheriff followed up with . Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 40.

320. Donovan is responsible for, among other matters, overseeing fiscal records and purchasing; for negotiating and administering contracts "in the best interests of the University"; and for supervising and directing staff to "ensure that the program goals and strategic missions are achieved." Attachment 17 (Athletics Director job description).

321. Clapp is responsible for, among other matters, assuming the duties of the Director of Athletics for the operations and administration of Athletics when the Director is absent; for reviewing all contracts; and for monitoring the administration of Athletics' personnel and fiscal operations to ensure "conformity to State, University and Departmental policies, procedures and practices in consonance with departmental goals and objectives." Attachment 19 (Associate Athletic Director job description).

322. Sheriff's duties and responsibilities include, among other matters, negotiating and writing "contractual agreements for outside user organizations"; "[o]versee[ing] and administer[ing] written contracts"; negotiating "settlement after fulfillment of contract with promoter or tenant"; creating "billing documentation"; "bill[ing] outside users"; and "log[ing] and monitor[ing] accounts receivables." Attachment 27 (Arena Manager job description). Sheriff is also tasked with immediately advising the Director if there is "reasonable cause to believe violations, whether by employees, students, or others, have occurred or will occur."

323. Chang, among other duties and responsibilities, "[p]rovides leadership and direction for the . . . Stan Sheriff Center Management." Attachment 23 (Assistant Athletics Director for Facilities and Events job description).

324. As Associate General Counsel, Akamine is "responsible for the provision of all legal advice and services to University executives and operating units." Specifically, he provides legal services to the "Board of Regents, administrators, and the staff of the University"; reviews and approves "as to legality and form contractual documents relating to acquisition or transfer of interests in land"; "[p]erforms legal research"; and "[p]repares and review legal documents." Akamine is also expected to represent UH in court and other proceedings and to keep up to date on laws and regulations affecting the University. Attachment 41 (Associate General Counsel job description).

K. The Use of Pro Forma Invoices.

325. Funds may be transferred pursuant to contract, purchase order or AFP. A contract spells out the terms of payment. A purchase order is essentially a

"short form" contract. An AFP can be used for reimbursements or for payment after goods or services have already been obtained. Attachment 32 (P. Kobayashi Statement) ¶ 14.

326. Extensive approvals and checks are performed for procurement expenditures. Attachment 10 (Administrative Procedure A8.400); Attachment 161 (Administrative Procedure A8.836); Attachment 14 (Administrative Procedure A8.839); Attachment 15 (Administrative Procedure A8.861).

327. If the transaction does not go to Procurement for review, Disbursing requires a Requisition Form. The Requisition Form requires the signatures of the Approving Authority and the Fiscal Officer. By signing the AFP, the Fiscal Officer certifies that (1) there are enough funds for the payment and that (2) the payment request is supported by the required documentation in view of the contract or purchase order. Attachment 34 (A. Kimura Statement) ¶ 27. By signing the AFP, the Fiscal Officer is certifying that the requested payment is legal, proper and authorized. The certification also confirms that contract conditions, including conditions relating to payment, have been satisfied. *Id.* ¶ 47.

328. For a "prepayment transaction," which is a payment before the goods or services have been provided, the supporting documentation also includes an invoice, documents supporting the invoice and in lieu of a contract or purchase order, an AFP. Attachment 34 (A. Kimura Statement) ¶ 27.

329. The Fiscal Officer determines the account from which payment to the vendor will be made. Attachment 32 (P. Kobayashi Statement) ¶ 17.

330. Disbursing remits the funds to the vendor. Attachment 32 (P. Kobayashi Statement) ¶ 16.

331. AFPs may be manually generated or system generated. Administrative Policy A8.861 applies to both forms of AFP.

332. Policy A8.861 applies to the $200,000 payment to because the payment was made pursuant to an AFP that was system generated. Attachment 24 (T. Kuraoka 8/10/12 Statement) ¶¶ 16-17.

333. Paragraph 3.d. of Policy A8.861 lists certain Disbursing office document requirements. These document requirements include the original AFP and the original (or certified as original) itemized invoices/receipts or other supporting documents. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 79; Attachment 24 (T. Kuraoka 8/10/12 Statement) ¶ 18.

334. To satisfy the latter requirement, University departments sometimes create "dummy" or "pro forma" invoices. Kimura believes that the practice occurs infrequently. Attachment 34 (A. Kimura Statement) ¶ 19.

335. According to Kuraoka, her office will create a pro forma invoice if there is not one from the payee so that the Disbursing Office will process the payment. *See* Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 38.

336. Kuraoka believes that a pro forma invoice satisfies the invoice requirement described in paragraph 3.d. of Policy A8.861. Attachment 24 (T. Kuraoka 8/10/12 Statement) ¶¶ 18-19.

337. Factfinders have not identified any policy that authorizes or prohibits the use of pro forma invoices.

338. Kuraoka is not aware of any policy or procedure that authorizes or prohibits the use pro forma invoices to satisfy the invoice requirement in Policy A8.861. Attachment 24 (T. Kuraoka 8/10/12 Statement) ¶¶ 18-19.

339. Kuraoka generally recalls a situation, approximately five years ago, where the Athletics business office sent an AFP to Disbursing for payment and the AFP was not accompanied by an invoice. The request for payment was denied and Kuraoka was instructed by Disbursing to create a "dummy" invoice and resubmit the AFP for approval. The person who instructed Kuraoka was likely the former head of Disbursing, . After this instance, the Athletics business office has from time to time submitted AFPs that have been accompanied by pro forma invoices. Attachment 24 (T. Kuraoka 8/10/12 Statement) ¶ 20.

340. For example, Athletics is required to make payments to officials and referees for numerous Western Athletic Conference sporting events. Each official or referee is paid by check before the event. The University does not receive invoices from the officials for their payments. Therefore, pro forma invoices are prepared as part of the information submitted to Disbursing when the request for payments for the officials is made. A vendor code is created for each official and referee who receives a payment from the University. According to Kuraoka, Hundreds of such payments are made each year. Attachment 24 (T. Kuraoka 8/10/12 Statement) ¶ 7.

341. Kimura does not recall seeing a written policy or procedure that authorizes or prohibits the use of pro forma invoices. No one has ever told him that the practice is acceptable. However, Kimura understands that the practice is acceptable. Attachment 34 (A. Kimura Statement) ¶ 19,

342. When a pro forma invoice is submitted to Disbursing, the Approving Authority usually includes a memorandum clarifying that the activity related to the payment request is legitimate. *See* Attachment 34 (A. Kimura Statement) ¶ 20. No such memorandum accompanied the pro forma invoice for .

343. Kimura did not realize that the invoice was a pro forma invoice. Attachment 34 (A. Kimura Statement) ¶ 22.

L. Transfer of Funds to .

344. At the time the $200,000 payment was made, Kuraoka was the only Fiscal Officer in the Athletic Department. For reasons unrelated to this investigation, her position title (along with the title of other University fiscal officers) was changed to "Fiscal Administrator" and she is currently the only fiscal administrator in the Athletic Department. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 15. Kuraoka has signing authority up to $25,000 for purchase order items. *Id.* ¶ 16.

345. Athletics has an exemption that provides it with unlimited purchasing authority. This purchasing authority is given to the Athletics Director. , the previous Athletics Director, delegated this purchasing authority to Kuraoka. *Id.* ¶ 16.

346. Executive Policy E8.106 gives Athletics the ability to negotiate dollar amounts exceeding $25,000 and exempts expenditures from Athletics' revolving fund account from review by Procurement. *See* Attachment 32 (P. Kobayashi Statement) ¶ 20; Attachment 34 (A. Kimura Statement) ¶ 30. President Greenwood suspended Executive Policy E8.106 in July 2012.

347. In the typical purchase order procedure, Kuraoka approves a purchase order and sends it to the Disbursing Office for payment. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 18. For purchase orders exceeding $25,000, Kuraoka consults the procurement policy to ensure that proper procurement procedures are followed. *Id.* ¶ 19.

348. The $200,000 wire transfer for the benefit concert was an "expenditure" and "disbursement" within the definitions of those terms in Administrative Policy A8.801(3). Attachment 32 (P. Kobayashi Statement) ¶ 20.

349. According to , 's contract with and required that money had to be in place as of a certain date. The Agreement made proceeds from ticket pre-sales available to pay the deposits. pushed the University to get the money to so that the deal would not fall apart. Attachment 43 (Statement) ¶ 66; Attachment 94 at 1; Attachment 96.

350. In turn, Sheriff pushed Clapp and Kuraoka to make the payment. Attachment 108; Attachment 18 (C. Clapp Statement) ¶ 58.

351. Clapp and Kuraoka contacted Disbursing for assistance in paying the $200,000 deposit in a timely manner. Attachment 91 at 1; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 30; Attachment 105; Attachment 18 (C. Clapp Statement) ¶ 56.

352. Clapp asked Akamine to help obtain timely payment form Disbursing. Attachment 18 (C. Clapp Statement) ¶ 53. Likely in response to Clapp's request, Akamine emailed Todo and Kobayashi on June 25, 2012. [UH001000244] at 1.

353. According to Kuraoka, the $200,000 payment was unusual because funds are normally transferred after the event. *See* Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 53.

354. The pro forma invoice may have been unusual. Kimura, who has worked in Disbursing for nearly eight years, does not recall an instance when Athletics previously engaged in the practice of submitting a pro forma invoice. However, he has seen other University departments engage in the practice, albeit infrequently. Attachment 34 (A. Kimura Statement) ¶¶ 9, 22.

355. The use of a wire transfer might have been unusual. In the more than four years that Donovan has been the Athletics Director, he does not remember ever making a wire transfer. Attachment 16 (J. Donovan 7/19/12 Statement) ¶ 51.

356. The amount of the payment and the payee were also unusual in that the Agreement directed $225,000 generated from pre-sale would be used by to secure . But, the transfer amount was $200,000 and the payee was .

357. Despite these irregularities, it appears that everyone involved with the transfer generally relied on Sheriff to determine the timing of payment, the correct payee and the correct payment amount.

358. The following documents were prepared for the wire transfer:

a. A Requisition Form for $200,000 that Sheriff prepared based on an invoice he received from . Attachment 112; Attachment 26 (R. Sheriff 8/2/12 Statement) ¶ 46. The Requisition Form listed Sheriff as the Requisitioner and Clapp as Purchasing Officer.

b. A Wire Transfer Form that was completed by Inouchi or a student worker. Attachment 113; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 35. Administrative Policy A.808 applies to wire transfers. Kobayashi is not aware of special criteria that must be satisfied in order to make a wire transfer. According to Kobayashi and Kimura, it is not uncommon at the University to transfer funds via wire. Attachment 32 (P. Kobayashi Statement) ¶ 30; Attachment 34 (A. Kimura Statement) ¶ 42.

c. An AFP was generated by the system. Attachment 114. Kuraoka reviewed the AFP before signing it and added the account code. She verified that funds were available for the payment request and attached statements showing the

availability of funds. *See* Attachment 115. Kuraoka signed the form on June 25, 2012. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 51.

d. Kuraoka received from Sheriff an Escrow Trustee Information form on 's letterhead. Attachment 116; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 39. Kuraoka added the vendor/payee information on the form. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 39.

e. A pro forma invoice for $200,000 in 's name was prepared by a student worker in the Athletics business office. Attachment 117; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 80; Attachment 24 (T. Kuraoka 8/10/12 Statement) ¶¶ 5, 12.

359. The transfer was to be funded by the Athletics revolving fund and thus, pursuant to Executive Policy E8.106, the expenditure was exempt from review by Procurement. *See* Attachment 32 (P. Kobayashi Statement) ¶ 21.

360. Paragraph 4.a. of Administrative Policy A8.808 states that the "Department should coordinate with the Disbursing 2 days prior to the desired date of the wire transfer to ensure that the transfer can be processed without delay." Kimura received the paperwork for the request on June 25 in the late afternoon, and Athletics needed the wire transfer done the next morning. Attachment 34 (A. Kimura Statement) ¶ 42.

361. Kimura, with the help of Karyn Yoshioka in Disbursing, executed the $200,000 wire transfer on June 26, 2012. *See* Attachment 34 (A. Kimura Statement) ¶¶ 52, 55. The Wire Detail Report dated June 26, 2012 confirmed that the wire transfer was completed. Attachment 34 (A. Kimura Statement) ¶ 53; Attachment 119.

362. According to Kobayashi, the amount transferred – $200,000 – was not an unusually large amount to transfer via wire. Kobayashi believes that Administrative Policy A8.808 was followed with respect to the transfer. Kobayashi did not identify any particular "red flags" about the wire transfer. OGC was involved in the transaction, a contract was in place, funds were available for the transfer and the payment request went through Disbursing's pre-audit process. Attachment 32 (P. Kobayashi Statement) ¶ 30.

363. The Escrow Trustee Information form that Sheriff gave to Kuraoka on June 25, 2012 listed what appeared to be an escrow account belonging to . [UH001002809].

364. No one verified that the money was transferred to an escrow account, that there was an escrow officer or that there were escrow instructions. Attachment 43 (Statement) ¶ 67; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶¶ 54-55, 57-59; Attachment 34 (A. Kimura Statement) ¶ 54; Attach-

ment 26 (R. Sheriff 7/17/12 Statement) ¶ 54; Attachment 18 (C. Clapp Statement) ¶ 61; Attachment 32 (P. Kobayashi Statement) ¶ 49; Attachment 30 (H. Todo Statement) ¶¶ 34-39.

365. Clapp and Kuraoka do not know whether the $200,000 transfer went into an escrow account. Attachment 18 (C. Clapp Statement) ¶ 61; Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 54.

366. Kuraoka is not aware of any policies regarding the transfer of money to an escrow account. Attachment 24 (T. Kuraoka 7/25/12 Statement) ¶ 56.

367. gave approval to release the wired funds. He was told that 's people received the funds. He thought the funds went to . *See* Attachment 43 (Statement) ¶ 67.

368. It does not appear that anyone from UH was involved in authorizing the transfer of funds from to another account or in transferring those funds.

VI. CONCLUSION

369. Factfinders respectfully submit the foregoing findings for your consideration.

DENNIS W. CHONG KEE

CALVERT G. CHIPCHASE

Attachments 1 – 161