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SMITH & WESSON BRANDS INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SMITH & WESSON BRANDS INC.,

Plaintiff,

v.

HAWAII STATE DEPARTMENT OF THE ATTORNEY GENERAL; JOHN DOES 1-10; JANE DOES 1-10; DOE ENTITIES 1-10,

Defendants

Civil No. 1CCV-22-0000353
(Other Civil Action)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF' SMITH & WESSON BRANDS INC.'S MOTION FOR SUMMARY JUDGMENT

Motion Hearing
Date: February 9, 2023
Time: 9:00 a.m.
Judge: Honorable Kevin T. Morikone

Trial: Off calendar

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF' SMITH & WESSON BRANDS INC.'S MOTION FOR SUMMARY JUDGMENT

On February 9, 2023, Plaintiff Smith & Wesson Brands Inc. ("Plaintiff")'s Motion for Summary Judgment (the "Motion") came on for hearing before the Court. Plaintiff was represented by John P. Duchemin and Jeffrey S. Portnoy. Defendant State of Hawaii Department of Attorney General ("Defendant") was represented by David N. Matsumiya.

At the Court's request and based on the Court having heard the arguments of all parties and having reviewed and considered all the underlying pleadings filed herein, the Court hereby makes the following Findings of Fact, Conclusions of Law, and Order with respect to the Motion.

FINDINGS OF FACT

1. The Court finds the following facts to be undisputed. To the extent any of these findings of fact are deemed conclusions of law or conclusions of law are deemed findings of fact, they shall be so construed.

2. Plaintiff is a publicly traded American firearms and munitions manufacturing company based in Springfield, Massachusetts. See https://www.smith-wesson.com/brands/sw (last visited on March 3, 2023). As part of its business, Plaintiff interacts with government entities and from time-to-time requests public records.

3. Starting on or about November 9, 2020, Plaintiff, through third-party contractor Cogency Global ("Cogency"),[1] submitted a series of written requests to Defendant (collectively, the "Requests") pursuant to the Uniform Information Practices Act (Modified) ("UIPA"), HRS Ch. 92F, seeking Defendant's records related to several topics. See Ex. 1.[2]

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[1] Cogency Global is a third-party entity that Plaintiff employs for purposes of making public records informational requests from governments across the country. See Declaration of Joanna McCall ("McCall Decl.") at ¶¶ 2, 4 (Mot.).

[2] Plaintiff's exhibits submitted with the Motion are cited herein as "Ex. #." Defendant's exhibits submitted with Defendant's Opposition to the Motion, if and when they are referenced, are cited herein as "Opp. Ex. #." If any declaration submitted with either the Motion or the Opposition is cited, it is cited herein as "[Declaration abbreviation from Motion/Opp} at [pincite] [(Mot.) or (Opp.)]."

4. Plaintiff's initial Requests (the "First Request Set") consisted of three separate UIPA requests to Defendant for three separate categories of public records. Exh. 1 through 3. All of the requests in the First Request Set were time-limited to the period between January 1, 2017, and the date of the requests (November 9, 2020). See Ex. 1 at SW-2; Ex. 2 at SW-7; Ex. 3 at SW-4.

5. The three separate requests in the First Request Set asked, respectively, for:

> (a) **Communications (the "First Communications Request"):** Communications (1) with certain organizations, and (2) with the Firearms Accountability Task Force. See Ex. 1 at SW-2.
>
> (b) **Requests for Proposal, or RFPs (the "First RFP Request"):** Documents and communications related to any RFPs created or issued by Defendant regarding seven specific firearms-related issues. See Ex. 2 at SW-7.
>
> (c) **Logs (the "Log Request"):** A log of all public records requests received by Defendant. (The Log Request is not the subject of this litigation.) See Ex. 3.

6. On January 5, 2021, Defendant separately provided written responses (each titled "Notice to Requestor") to the First Communications Request and the First RFP Request. See Exh. 10, 11. DAG's responses, which were on the standard form Hawaii government entities use to respond to UIPA requests, were substantially identical.

7. Specifically, Defendant stated that it would disclose responsive records that were not (a) "work product or protected by a privilege" or (b) "need to remain confidential to avoid the frustration of a legitimate governmental function." Defendant did not raise any other objections. Ex. 10 at SW-233; Ex. 11 at SW-239.

8. Defendant further stated that records would be produced only after "prepayment of 50% of fees and 100% of costs, as estimated below." Ex. 10 at SW-234; Ex. 11 at SW-240.

9. Defendant set forth its "estimated fees," based on "estimated" hours spent to (a) search for the requested documents and (b) review and segregate documents to be disclosed from those to be withheld. Ex. 10 at SW-235; Ex. 11 at SW-241.

10. For the First RFP Request, Defendant claimed its employees would need 108 hours to search for the requested communications. Ex. 10 at SW-235. Because the relevant section of the Hawaii Administrative Rules (HAR) allows the government to charge $2.50 for each 15-minute period (i.e. $10/hour) (HAR § 2-71-31(a)(1)), Defendant estimated that the search cost would be $1,080. Ex. 10 at SW-235.

11. Defendant also asserted that once that search was completed, it would need at least 510.6 more hours to review and segregate privileged and confidential material. Id.

12. At the HAR-mandated $5 per 15-minute period (i.e. $20/hour) for such review (HAR § 2-71-31(a)(2), Defendant estimated that its review/segregation fees would be $10,212.00. Ex. 10 at SW-235. The estimated total for the First RFP Request therefore was $11,262.00, consisting of $1,080 in search costs plus $10,212.00 in review/segregation costs, minus a standard $30 fee waiver. Ex. 10 at SW-235.

13. As for the First Communications Request, Defendant estimated that its total fees would be $11,862.00, which was $600 more than for the First RFP Request. Ex. 11 at SW-241. The only difference was that Defendant estimated that searching for responsive records would take 168 hours (rather than 108); at $10 per hour, the additional 60 hours would cost Plaintiff $600 more.) Id.

14. Therefore, for the entire First Request Set, Defendant sought a combined $23,124 in fees from Plaintiff, based on Plaintiff's estimate that it would take a total of 1,297.2 hours to search its database for responsive records, retrieve them, and review and segregate privileged or other records that were subject to Defendant's stated objections. Defendant requested payment of 50 percent of these estimated fees, or $11,562, up-front before it would produce any of the requested records to Plaintiff. Ex. 10 at SW-235; Ex. 11 at SW-241.

15. Plaintiff presented evidence, based on Defendant's sworn interrogatory responses, that the estimated fees were significantly higher than the fees typically estimated, sought, or collected by Defendant in response to UIPA requests from members of the public. Specifically, between January 1, 2017 and September 2, 2022, Defendant responded to 248 UIPA requests. Defendant estimated fees exceed $500 for only five of those requests (aside from Plaintiff's Requests); the average amount of fees collected from members of the public was $76.45; and the total amount actually collected for the entire period was less than $1,200. Ex. 12 (Defendant's verified interrogatory responses) at responses 4, 7, 9, 10.

16. Plaintiffs also presented evidence that Plaintiff (via Cogency) has routinely obtained governmental records from other jurisdictions for a fraction of Defendant's purported estimate: Cogency's standard public records request form, used for all Requests here, includes language that the requestor will "authorize charges for 1,000 pages of copies and/or $1,000 of other fees." See, e.g., Ex 1 at SW-2.

17. Plaintiff repeatedly asked Defendant for assistance in understanding and reducing the fees. On February 21, 2021, Plaintiff asked Defendant to "provide more detail on the estimates, particularly for the search costs." Ex. 13.

18. On May 18, 2021—nearly three months later— Defendant responded with a single sentence: "The estimate was based upon a representative sample of search/review/segregation time, which served as the baseline multiplier to determine the total number of hours necessary to respond to your request." Ex. 14.

19. On June 4, 2021, Plaintiff asked Defendant to "tell us which part of the request is going to take the longest for search and for review and segregation" and sought "guidance on how we could narrow the requests." Ex. 15.

20. On June 7, 2021, Defendant responded with another single sentence: "The Department is unable to provide the assistance that you are requesting." Ex. 16.

21. On June 11, 2021, Plaintiff responded with an e-mail asking: "Is it possible to provide a breakdown of costs based on each of the items we originally requested?" Ex. 17.

22. On June 18, 2021, Defendant responded with another single sentence: "Unfortunately, we are unable to accommodate your request." Ex. 18.

23. Aside from the fee estimates in the Notices to Requestor, those are the only communications Defendant provided to Plaintiff, before this litigation, regarding the nature of the fee calculations.

24. In fact, Defendant had prepared a written analysis (the "First Fee Analysis") setting forth its calculations of the fee estimates for responding to the First RFP Request and the First Communications Request, along with the purported basis for those calculations. Ex. 19. The First Fee Analysis was finalized on January 5, 2021,[3] the date of Defendant's written responses to the First Request Set.

25. Plaintiff asserts in its Motion that the methodology Defendant used in the First Fee Analysis was fundamentally flawed, resulting in redundancies and massive, unnecessary duplication of work. See Motion at 8-11. Defendant in its Opposition disputes that its methodology was flawed. The Court finds the contents and accuracy of the fee analysis to be disputed and does not here make any findings on the reasonableness, accuracy, or credibility of the calculations contained in the First Fee Analysis. However, it is undisputed that Defendant did

[3] The First Fee Analysis was undated. However, Defendant's counsel confirmed in writing that the First Fee Analysis was finalized on January 5, 2021. See Ex. 22 (e-mail from Defendant's counsel to Plaintiff's counsel). This date therefore is undisputed based on the admissions of Defendant through counsel. Defendant also did not dispute the dates that it finalized the Second Fee Analysis and the Third Fee Analysis discussed infra.

not tell Plaintiff about the First Fee Analysis, did not share the First Fee Analysis with Plaintiff, and also did not share any of the calculations or analysis contained therein.

26. On July 8, 2021, Plaintiff submitted a revised set of requests (the "Second Request Set") to Defendant. The Second Request Set revised the First Request Set in an attempt to avoid objections and unreasonable fees and costs. See Exh.. 4-8. The principal revision is that Plaintiff broke the First Communication Requests and the First RFP Requests into four separate written requests. See Exh.. 4 through 8. Plaintiff hoped that submitting four separate requests (rather than two) would result in four separate fee estimates, possibly providing Plaintiff with additional information on the fee estimates that might allow Plaintiff to narrow its requests and avoid fees. See Ex. 25.

27. On July 13, 2021, Defendant provided Plaintiff with responses to the Second Request Set. See Exh..23, 24. Instead of providing separate written fee estimates for each separate written Request, however, Defendant provided two fee estimates—one for the communication-related requests, and the other for the RFP-related requests. See Ex. 23 at SW-220; Ex. 24 at SW-211. This is how Defendant handled the First Fee Requests. See Ex 10 at SW-235; Ex. 11 at SW-241.) When Plaintiff on July 14, 2021, stated that Plaintiff was seeking "separate [fee] estimates" for each separate request (Ex. 25) and asked why Defendant had provided only two fee estimates responses rather four, Defendant replied that "[r]elated requests are considered as a single request to avoid confusion and duplication." Ex. 26.

28. Defendant's two fee estimates in response to the Second Request Set were substantially similar to its fee estimates in response to the First Request Set, except the total combined fees had increased to more than $27,000. See Ex. 23 at SW-220; Ex. 24 at SW-211. Defendant did not explain why its fees had increased. See id.

29. As with the First Request Set, Defendant had prepared a memorandum setting (the "Second Fee Analysis" setting forth its fee calculations for the Second Request Set. Ex. 20. The Second Fee Analysis was based on the same methodology as the First Fee Analysis. See id. at ATG-30-32. As with the First Request Set, Defendant never told Plaintiff about the Second Fee Analysis, and never shared that analysis or its contents with Plaintiff.

30. On July 23, 2021, facing higher fees and having learned no new details about the fee estimates underlying those fees, Plaintiff informed Defendant that Plaintiff was withdrawing the Second Request Set. See Ex. 27.

31. On July 27, 2021, Plaintiff submitted another revised set of records requests to Defendant (the "Third Request Set") See Ex. 9. The Third Request Set was significantly smaller than the original First Request Set (or the similar Second Request Set). See id. at SW-78-79; McCall Dec. at ¶ 17.

32. On August 5, 2021, DAG served its Notice to Requestor responding to the Third Request Set. See Ex. 28. The Third Request Set asked for a narrowed subset of the previously requested documents, again in an effort to reduce fees. See id. at SW-78-79.

33. As with the First and Second Request Sets, Defendant stated that it would engage in a partial production (subject to the specifically enumerated privilege/work product and "frustration of purpose" exemptions). Id. at SW-21. However, Defendant continued to estimate $13,266.00 in fees arising out of 108 hours of search and retrieval, and 610.5 hours of review and segregation. See id. at SW-23.

34. To reach this fee estimate, DAG again created a written fee estimate (the "Third Fee Analysis"), completed on the day of service of its response to the Third Request Set. See Ex. 21. The Third Fee Analysis was based on the same methodology as the First and Second Fee Analyses.

See id. at ATG-43-45. As with the First and Second Request Sets, Defendant never disclosed or shared the Second Fee Analysis or its contents with Plaintiff.

35. As a final attempt to obtain information to allow it to reduce fees, Plaintiff on August 31, 2021, submitted a fourth and last UIPA request (the "Fee Calculation Request"). See McCall Dec. at ¶ 30; Ex. 30. The Fee Calculation Request sought documents relating to Defendant's calculation of the fee estimates provided in response to each of Plaintiff's substantive requests. Id.

36. On September 8, 2021, Defendant issued a Notice to Requester stating it was "unable to disclose the requested records" because it "does not maintain 'spreadsheets and worksheets' relating to your record's request," and furthermore asserting that the Fee Calculation Request sought "work product" that would "allow members of the public to circumvent the payment of search, review and segregation fees." Ex. 31. Thus, even though the three Fee Analyses would have been responsive to the Fee Calculation Requests, as would the calculations contained therein, Defendant continued to not disclose those Fee Analyses and calculations to Plaintiff.

37. Defendant brought the Complaint in this action on March 28, 2022. The Complaint seeks relief under UIPA, and alleges one count (Count I) of denial of access to government records. See Ex. 29.

38. The Parties have exchanged documents and information in connection with the lawsuit. Among other things, Defendant voluntarily disclosed the three Fee Analyses to Plaintiff as part of Defendant's initial disclosures on May 20, 2022. See Ex. 19. In so doing, Defendant waived any work-product or confidentiality objections that may otherwise have applied to the First, Second, or Third Fee Analyses.

39. On January 10, 2023, Plaintiff filed the Motion. The Motion seeks an order (1) granting summary judgment as to Count I of Plaintiff's Complaint; (2) requiring Defendant to immediately

commence the process of locating and producing records responsive to the Requests, subject only to the objections raised in its prior responses; (3) requiring Defendant to bear all fees and costs associated with the search, review, and segregation of responsive records, as a sanction for failure to provide good faith UIPA fee estimates and as a deterrent for future misconduct; and finally, (4) awarding Plaintiff all of its attorney's fees and costs incurred in this litigation, pursuant to UIPA and this Court's equitable powers.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the evidence shows "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Jou v. Dai-Tokyo Royal State Ins. Co., 116 Hawai'i 159, 164, 172 P.3d 471, 476 (2007) (quotation marks omitted). Once the moving party has satisfied its initial burden of showing the absence of any genuine issue of material fact, the opposing party **must** come forward with specific admissible facts showing a genuine issue of material fact. Chuck Jones & Maclaren v. Williams, 101 Hawai'i 486, 497, 71 P.3d 437, 448 (2003). If the opposing party fails to do so, the moving party is entitled to summary judgment as a matter of law. Id.

2. When, however, the fact-finder in a forthcoming bench trial is the same judge deciding a summary judgment motion, nothing precludes that judge from making factual findings at the dispositive-motion stage based on a sufficiently developed factual record. See Ludlow v. Lowe's Companies, Inc., No. 12-00476, 2014 WL 12580233 at *14 n.16 (D. Haw. Jan. 17, 2014) ("In any event, this case will involve a bench trial, so the Court, as the ultimate fact finder, may draw necessary inferences. . . . the court may conclude on the basis of the affidavits, depositions, and stipulations before it, that there are no genuine issues of material fact, even though [the] decision may depend on inferences to be drawn from what has been incontrovertibly proved. . . .

[Therefore,] if trial will not enhance a court's ability to draw inferences and conclusions, and evidentiary facts are not disputed, a court may grant summary judgment in a non-jury case.").

3. Plaintiff submitted its Requests pursuant to the Uniform Information Practices Act ("UIPA"), HRS Chapter 92F, which requires the government to make "[a]ll government records open to public inspection unless access is restricted or closed by law." HRS § 92F-11(a). UIPA vests state governmental bodies with "[a] affirmative agency disclosure responsibilities," id. (section title), and states that unless a specifically enumerated exception applies, "each agency upon request shall make government records available to inspection." HRS § 92F-11(b).

4. UIPA also created the Office of Information Practices (OIP), an administrative agency tasked with review and enforcement powers related to disputes over government records. HRS § 92F-41. The legislature also tasked OIP, *inter alia*, with creating rules implementing UIPA, including the Hawaii Administrative Rules sections cited in this memorandum. HRS § 92F-42.

5. OIP also is vested with ***non-exclusive*** jurisdiction to hear appeals by members of the public upon denial of access. HRS § 92F-27.5. Formal OIP opinions in response to such appeals are binding legal precedent, including in Circuit Court cases (unless found to be palpably erroneous).

6. Nonetheless, OIP's jurisdiction is not exclusive, and any member of the public has the statutory right to sue in state Circuit Court to compel disclosure. HRS § 92F-15. (There is no requirement to exhaust the OIP process before suing.) Any such lawsuit shall take precedence all other cases (with few exceptions). Id. at (f). The agency has the burden of proof to justify non-disclosure of records. If the requester prevails in such a lawsuit, they are entitled to their reasonable attorney's fees and costs. Id. at (d).

7. An agency's written response to a record request is required to include a "**good faith** estimate of all fees that will be charged to the requester under section 2-71-19, [HAR,] which

authorizes fees for an agency's search, review, and segregation of records. HAR § 2-71-14(a)(2)(A) (emphasis added). UIPA's legislative history reflects lawmakers' intent "that such charges for search, compilation, and segregation **shall not be a vehicle to prohibit access to public records.**" H. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 969, 972 (1988). Furthermore, the legislature intended that OIP "move aggressively against any agency that uses such charges to chill the exercise of first amendment rights." Id. The same legislative intent would apply to the Circuit Court if a member of the public opted to file suit (rather than proceed through the OIP process) pursuant to HRS § 92F-15.

8. The OIP relied on the good-faith requirement, and also the state Legislature's directive to "move aggressively" against agencies using excessive fee charges to chill the exercise of First Amendment rights, in a formal opinion released on June 30, 2022, that is now the OIP's seminal opinion on the subject. See OIP Op. Ltr. No. F22-03 (June 30, 2022), In re Employee Retirement System; Records Relating to Employee Departure, available online at https://oip.hawaii.gov/wp-content/uploads/2022/07/OIP-Op.-Ltr.-No.-F22-03-Knauth-re-ERS.pdf (last visited March 2, 2023).

9. According to the OIP in ERS:

> The clear purpose of the "good faith" estimate is to provide a requester with **sound information** about the anticipated agency time required and fees to be paid to process the request as submitted, so the requester can make an **informed choice** whether to pursue, modify, or even abandon it. The fee estimate is specifically not intended to be a "vehicle to permit access to public records," and the Legislature instructed OIP to "move aggressively" against such use of the UIPA's fees.

Id. at 19 (emphasis added).

10. Although the OIP acknowledged that "[i]t can be difficult to provide an exact fee for a record request before the work of searching for, reviewing, and segregating records is performed . . . that estimate must still be made in good faith." Id. at 20. OIP further warned against agencies

providing estimates "of thousands of dollars of fees for hundreds of hours of time"—and also for providing such expensive estimates "with no explanation of how the estimate was reached and for which the agency did not pull any potentially relevant responsive records to assess what might be in them, how long review might take, what might need segregation, and how long it might take for a full search." Id.

11. The ERS opinion, in addition to reaffirming the requirement of a good faith estimate, lays out an example of what is not good faith conduct on the government's part. The facts OIP considered, and OIP's specific findings, are highly instructive here.

12. In ERS, a member of the public filed a UIPA request seeking records relating to the termination of an ERS' officer. In response, ERS provided a Notice to Requester stating the request would be granted in part and denied in part and listing a series of objections. ERS also

> [e]stimated fees and costs for the request at $5,140, including 323 hours of search, review and segregation time and copy fees for an estimated 1,800 pages.

Id. at 6. Critically, in ERS, as here, ERS **provided no explanation to the requester** (or to OIP when it asked for that information as part of its review process) for the estimated fees. Although ERS ultimately did engage in an intensive search process resulting in fewer than two dozen e-mails being disclosed, that disclosure only happened after several years had passed. ERS also concluded that the intensive search process was only necessary because so much time had passed after the requester's UIPA request—at which point the e-mails had been archived, were no longer on the ERS e-mail system and thus not easily searchable for words or custodians.

13. The OIP opinion resulted from the requester's appeal to OIP of ERS' partial denial of his request. Among other things, OIP analyzed whether ERS' fee estimate was made in good faith.

14. OIP concluded that it was not a good-faith estimate. According to OIP:

> it appears that ERS' estimate was instead intended as "a vehicle to prohibit access to public records," contrary to the UIPA's clear legislative intent. It [the

> fee estimate] in fact had that effect, preventing Requester as a practical matter from pursuing access to those records ERS was prepared to disclose while he waited for OIP's decision on his appeal of ERS' partial denial.

Id. at 20.

15. OIP therefore held that ERS had violated UIPA by failing to provide a good-faith fee estimate to the requester. Furthermore, "given this conclusion and the legislative instruction to 'move aggressively' against bad faith use of the fees allowed under the UIPA," OIP held that ERS "**may not now charge Requester the fees otherwise authorized**, assuming he chooses to pursue his request." Id. (emphasis added).

16. The binding precedent of OIP's ERS decision applies directly to this case. The undisputed facts show that Defendant, like ERS:

- provided UIPA fee estimates for "thousands of dollars of fees for hundreds of hours of time." ERS at 20, Defendant's fee and hour estimates in fact exceeded ERS's estimates by several times over. ERS at 6; Exh.. 10, 11, 23, 24, 28.
- failed to provide Plaintiff with any explanation of the fee estimate. Moreover, Defendant refused to provide any details when Plaintiff asked--several times--for additional information. And when Plaintiff formally requested the fee calculations through a separate UIPA request, Defendant refused to provide them--instead asserting confidentiality objections that contradicted Defendant's willing disclosure of the Fee Analyses in this litigation.
- effectively delayed the disclosure of any documents for more than two years, with Defendant continuing through this lawsuit to make no efforts to actually search for the documents and repeating its demand for up-front payment of 50 percent of the estimated fees as an affirmative defense in this ongoing lawsuit. See Ex. 32 (Defendant's Answer)

at 6 (Eleventh Defense).

17. Defendant's knowing refusal and failure to provide Plaintiff those details deprived Plaintiff of the sound information it needed to make an informed choice as to whether it should pursue, revise, or abandon its fee requests.

18. Pursuant to ERS, it does not matter whether Defendant intentionally delayed the disclosure of documents by deliberately withholding the contents of the Fee Analyses from Plaintiff, because there is "not [a] need to actually find a deliberate intent . . . to conclude that the estimate was not made in good faith." ERS at 20.

19. In ERS, OIP concluded that "notwithstanding ERS' actual time spent on search, review, and segregation, because its estimate of fees was not in 'good faith' as required . . . ERS may not now charge Requester the fees otherwise authorized, assuming he chooses to pursue his request." That remedy is appropriate here. Furthermore, Defendant in its Opposition conceded that if the Court rules that Defendant did not provide a good faith fee calculation, Plaintiff is entitled to a waiver of fees incurred in producing records responsive to its requests.

20. Pursuant to UIPA's fee-shifting statute, HRS 92F-15(d), if Plaintiff prevails in a UIPA enforcement action, it is entitled to its reasonable attorney's fees and costs. Defendant in its Opposition also conceded that Defendant must pay Plaintiff's reasonable attorney's fees and costs incurred in connection with this action.

21. The Court therefore concludes based on the undisputed facts that Plaintiff is entitled to an order (1) granting summary judgment as to Count I of Plaintiff's Complaint; (2) requiring Defendant to immediately commence the process of locating and producing records responsive to the Requests, subject only to the objections raised in its prior responses; (3) requiring Defendant to bear all fees and costs associated with the search, review, and segregation of responsive records,

as a sanction for failure to provide good faith UIPA fee estimates and as a deterrent for future misconduct; and finally, (4) awarding Plaintiff all of its attorney's fees and costs incurred in this litigation, pursuant to UIPA and this Court's equitable powers, and issues the following Order.

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of Law, the Court ORDERS as follows:

1. There is no genuine issue of material fact that Defendant failed to provide Plaintiff/its agent with its calculations used to generate its estimate for Defendant's assessment of fees. Plaintiff informally requested said information numerous times and even through a formal UIPA request which were all denied by Defendant. Defendant had no valid basis to withhold said calculations and thus, failed to provide Plaintiff with "'sound information' about the anticipated agency time required and fees to be paid to process the request as submitted, so the requester can make an informed choice whether to pursue, modify or even abandon the request.

2. As a result of the forgoing, the Court finds, inter alia, that Defendant violated HAR Section 2-71-14(a)(2)(A).

3. Based upon said violation, the Court GRANTS Plaintiff's request that all fees allowable under HAR Section 2-71-19 for the November 9, 2020, July 8, 2021, and July 27, 2021, requests be waived. Documents responsive to said requests shall be produced within thirty (30) days of the filing of this minute order, subject to further order of this Court.

4. As a result of the foregoing, the Court GRANTS Plaintiff's request for reasonable attorneys' fees and costs pursuant to HRS Section 92(f)-15(d).

5. With respect to the alternative basis for the Motion—Plaintiff's allegation that

Defendant's fees were calculated in bad faith--the Court finds that this allegation is moot because the Court has granted Plaintiff's Motion on the basis of Defendant's failure to provide Plaintiff with sound information. As a result, the Court DENIES summary judgment on this basis as moot.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, __March 24, 2023_____.

/s/ Kevin T. Morikone

JUDGE OF THE ABOVE-ENTITLED COURT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SMITH & WESSON BRANDS INC., Plaintiff, v. HAWAII STATE DEPARTMENT OF THE ATTORNEY GENERAL; JOHN DOES 1-10; JANE DOES 1-10; DOE ENTITIES 1-10, Defendants.	Civil No. 1CCV-22-0000353 (Other Civil Action) **CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a true and correct copy of the Plaintiff' SMITH & WESSON BRANDS INC's [PROPOSED] Findings of Fact and Conclusions of Law *filed March 3, 2023,* was duly served via Judiciary Electronic Filing System (JEFS) upon the following parties shown below:

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DATED: Honolulu, Hawaii, March 3, 2023

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SMITH & WESSON BRANDS INC., Plaintiff, v. HAWAII STATE DEPARTMENT OF THE ATTORNEY GENERAL; JOHN DOES 1-10; JANE DOES 1-10; DOE ENTITIES 1-10, Defendants.	Civil No. 1CCV-22-0000353 (Other Civil Action) **FINAL JUDGMENT**

FINAL JUDGMENT

Pursuant to Rules 54 and 58 of the Hawai'i Rules of Civil Procedure, judgment is hereby entered in this matter as follows:

As to the Complaint and the *Findings of Fact, Conclusions of Law, and Order Granting Plaintiff Smith & Wesson Brands Inc.'s Motion for Summary Judgment*, entered on

March 24, 2023, judgment is entered in favor of Plaintiff Smith & Wesson Brands Inc. and against Defendant Alice Clay as to all relief sought in the Complaint.

Judgment is hereby entered in favor of Plaintiff Smith & Wesson Brands Inc. and against Defendant State of Hawaii Department of Attorney General in the amount of $70,468.07, for the recovery of the following amounts:

(1) $69,999.97 in attorney's fees; and

(2) $468.10 in costs; and

(3) post-judgment interest from the date of this Final Judgment, calculated on the total of the above amounts at a rate of 10 percent per annum, pursuant to Haw. Rev. Stat. § 478-3.

All parties, claims and cross-claims, and counterclaims not addressed by the foregoing are dismissed. There being no remaining claims or issues, this judgment is final.

DATED: Honolulu, Hawaii, _March 24, 2023__.

/s/ Kevin T. Morikone

Judge of the above-entitled Court

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Attorneys for Plaintiff
SMITH & WESSON BRANDS INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SMITH & WESSON BRANDS INC., Plaintiff, v. HAWAII STATE DEPARTMENT OF THE ATTORNEY GENERAL; JOHN DOES 1-10; JANE DOES 1-10; DOE ENTITIES 1-10, Defendants.	Civil No. 1CCV-22-0000353 (Other Civil Action) **NOTICE OF ENTRY OF FINAL JUDGMENT**

NOTICE OF ENTRY OF FINAL JUDGMENT

Pursuant to the provisions of the Hawaii Rules of Civil Procedure, Rule 77(d),

NOTICE IS HEREBY GIVEN of the entry of a FINAL JUDGMENT in the above-entitled cause.

DATED: Honolulu, Hawaii, _March 24, 2023.

/s/ Lisa U. Wallrabenstein

Clerk of the above-entitled Court

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