

COUNCIL OF THE COUNTY OF MAUI
GOVERNANCE, ETHICS, AND
TRANSPARENCY COMMITTEE

November 22, 2019

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Governance, Ethics, and Transparency Committee, having met on November 4, 2019, makes reference to County Communication 19-29, from Council Chair Kelly T. King, relating to litigation matters.

By correspondence dated October 16, 2019, the Department of the Corporation Counsel requested consideration of a proposed resolution to authorize settlement of Robert G. Straub v. County of Maui and Teena Rasmussen, United States District Court, Civil 17-00516 JMS-RLP, and transmitted a copy of the First Amended Complaint. The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes the First Amended Complaint, brought by former County employee Robert G. Straub, includes the following allegations or “counts”:

- Count One: Family Medical Leave Act (“FMLA”) interference;
- Count Two: FMLA retaliation;
- Count Three: Americans with Disabilities Act (“ADA”) association discrimination; and
- Count Four: age discrimination in violation of the Age Discrimination in Employment Act (“ADEA”) and Section 378-2, Hawaii Revised Statutes (“HRS”).

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By correspondence dated October 29, 2019, the Department of the Corporation Counsel transmitted a revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF ROBERT G. STRAUB v. COUNTY OF MAUI AND TEENA RASMUSSEN, USDC, CIVIL NO. 17-00516 JMS-RLP." The revised proposed resolution incorporates a substantive revision to correct the spelling of defendant Rasmussen's name and nonsubstantive revisions.

Your Committee notes Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement of claims or civil litigation in excess of \$7,500.

Your Committee further notes Chief United States District Judge J. Michael Seabright issued an order on summary judgment motions in the case on October 10, 2019, dismissing two of the Plaintiff's four counts, published on the Westlaw database at 2019 WL 5088738. Judge Seabright summarized his ruling as follows:

Summary judgment is granted in favor of the County as to Count One (claim for violation of the FMLA based on interference arising from Straub's termination), and in favor of the County and Rasmussen as to Count Four (claims for violation of the ADEA and HRS § 378-2 based on age discrimination).

Counts Two (claim for violation of the FMLA based on retaliation arising from the County's discontinuation of purchasing t-shirts from Straub's business) and Three (claim for violation of the ADA based on association discrimination) remain against the County.

Because the case involves ongoing litigation, a Deputy Corporation Counsel requested the opportunity to convene an executive meeting.

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Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes; and Section 92-5(a)(8), Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 6-0 to recommend adoption of the revised proposed resolution. Committee Vice-Chair Rawlins-Fernandez and members Kama, Lee, Paltin, Sinenci, and Sugimura voted “aye.” Committee Chair Molina and members Hokama and King were excused.

Your Governance, Ethics, and Transparency Committee RECOMMENDS that Resolution _____, attached hereto, entitled “AUTHORIZING SETTLEMENT OF ROBERT G. STRAUB v. COUNTY OF MAUI AND TEENA RASMUSSEN, USDC, CIVIL NO. 17-00516 JMS-RLP,” be ADOPTED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF
ROBERT G. STRAUB v. COUNTY OF MAUI AND
TEENA RASMUSSEN, USDC, CIVIL NO. 17-00516 JMS-RLP

WHEREAS, Plaintiff Robert G. Straub filed a lawsuit in the United States District Court for the District of Hawaii on October 13, 2017, Civil No. 17-000516 JMS-RLP, against the County of Maui, claiming Family Medical Leave Act (“FMLA”) interference, FMLA retaliation, Americans with Disabilities Act association discrimination, and age discrimination; and

WHEREAS, Plaintiffs filed a first amended complaint on November 9, 2017 that added Teena Rasmussen as a defendant; and

WHEREAS, on September 24, 2019, the District Court for the District of Hawaii granted Summary Judgment in favor of the County and Teena Rasmussen on the Counts related to FMLA interference and age discrimination; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and

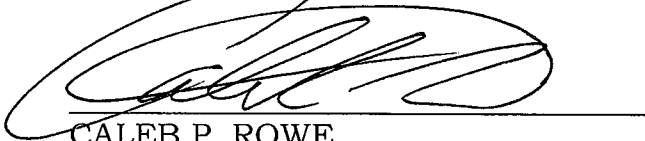
Resolution No. _____

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it approves settlement of this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and
2. That it authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case; and
3. That it authorizes the Director of Finance to satisfy said settlement of this case; and
4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:

A handwritten signature in black ink, appearing to read 'Caleb P. Rowe', is written over a horizontal line.

CALEB P. ROWE
Deputy Corporation Counsel
County of Maui
LIT 5728