

## GET Committee

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**From:** Rick Markham <mrkham@aol.com>  
**Sent:** Wednesday, August 05, 2020 3:52 PM  
**To:** GET Committee  
**Subject:** Settlement proposal  
**Attachments:** Proposal From Rick Markham.pdf

August 5, 2020

GET Committee Chair Molina

Re: County of Maui v. Markham  
Civil No. [17-1-000384](#)(2), GET Item 11(35)  
Civil No. [17-1-000393](#)(2), GET Item 11(10)

Dear GET Chair Molina and GET Committee:

I am submitting this settlement proposal to resolve Civil No. [17-000393](#)(2) GET Item 11(10) and Civil No [17-1-0000384](#)(2) GET Item 11(35) and offer to pay the County \$500,000 in complete settlement of the two matters. I am personally liable on both matters for approximately \$5.2 million in fines. While the latter matter includes North Shore Maui, any settlement (or discussion) between the County and myself does not violate the automatic stay because I am jointly and severally liable with North Shore Maui. I am not in bankruptcy. In fact, the above was confirmed by my bankruptcy attorney Chuck Choi, who provided his testimony to the GET committee in support of the settlement on July 14, 2020, and also stated that it would be in the County's best interest to settle now as opposed to years from now and that there is no equity in his opinion in any of these properties.

Also per James Duca, another bankruptcy specialist:

"The efforts of Mr. Markham to negotiate a settlement of the claims against both him and North Shore Maui (NSM) do not violate or implicate the automatic stay in bankruptcy, and any attempted gag order against County representatives discussing those issues with Mr. Markham are not authorized under the Bankruptcy Code. Mr. Markham is proposing using either his personal funds or the funds of his lenders to resolve claims on which he and NSM are jointly liable. Extinguishing those claims through a compromise acceptable to the County does not in any way impair NSM's bankruptcy estate. The termination of Maui's civil actions against NSM pursuant to a settlement that does not use estate funds or property is not the commencement or continuation of those actions and is not the enforcement of claims against NSM or its property. On the contrary, it would be the cessation of enforcement proceedings against the Debtor or its property, which is a benefit to NSM and not an action to its prejudice.

For a simple example, if Mr. Markham owed a bank a debt on which NSM was jointly liable, satisfying that debt (whether in full or on a compromised basis) would not be prohibited by NSM's bankruptcy.

Furthermore, any supposed gag order from the trustee would appear to be something she has no authority to issue. Indeed, even if it came from the Bankruptcy Court, it would be suspect as a prior restraint on speech, such restraints generally running afoul of the First Amendment.

Jim Duca”

I am respectfully asking that the County Council exercise its decision maker authority under MCC §3.16.020 and accept my proposal without delay as my properties are currently being liquidated for sale and the money which I am borrowing will be gone.

By agreeing the County of Maui will get the money during this uncertain time and you will save my company and allow me to move forward after over 5 years of defending myself. Please allow me to correct the wrong but I cannot do it by losing everything! Please place it on the next GET or County Council agenda and let me make this right!

Aloha from Paia town,  
Rick Markham

Rick Markham  
mrkham@aol.com

August 5, 2020

Via email: county.council@mauicounty.us; GET.Committee@mauicounty.us

Council Chair Lee  
Maui County Council

GET Committee Chair Molina

Re: County of Maui v. Markham  
Civil No. 17-1-000384(2), GET Item 11(35)  
Civil No. 17-1-000393(2), GET Item 11(10)

Dear Council Chair Lee and GET Committee Chair Molina:

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Rick Markham  
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Aloha, Rick Markham