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Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

August 7, 2019

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2019 AUG - 7 PM 4: 14
OFFICE OF THE
COUNTY CLERK

The Honorable Kelly T. King
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair King:

**SUBJECT: PROPOSED RESOLUTION ENTITLED
"AUTHORIZING THE EMPLOYMENT OF SPECIAL
COUNSEL TO PURSUE SANCTIONS AND OTHER
REMEDIES FOR FRAUDULENT FORECLOSURES."**

May I request the matter relating to a proposed resolution entitled "Authorizing the Employment of Special Counsel to Pursue Sanctions and Other Remedies for Fraudulent Foreclosures" be placed on the next Council meeting agenda.

Respectfully,

A handwritten signature in black ink, appearing to read "Tasha Kama".

TASHA KAMA
Councilmember

TK/EPD/epd: Correspondence/Sent/2019/2019-08 August

COUNTY COMMUNICATION NO. 19-337

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF
SPECIAL COUNSEL TO INVESTIGATE AND
LITIGATE ACTIONABLE CLAIMS AGAINST BANK
OF AMERICA AND THE BANKING AND
MORTGAGE INDUSTRY

WHEREAS, wrongful foreclosure and other bad acts committed by the banking and mortgage industry exacerbate Maui County's affordable-housing crisis, negatively impact Maui County's economy, and have resulted in decreased real property tax revenue and increased County expenditures related to housing and social services throughout Maui County; and

WHEREAS, the above described actions or failures to act include the Bank of America's failure to fulfill loan commitments to Native Hawaiians and others, as described in Resolution 18-178; and

WHEREAS, the Council would like to retain special counsel with expertise and experience to investigate and litigate actionable claims related to said mortgage industry acts or failures to act that have harmed and continue to harm the County's interests; and

WHEREAS, the Council alone is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote;

WHEREAS the Council finds that there is a real necessity to retain special counsel to investigate and litigate actionable claims against Bank of America and other banking and mortgage industry participants as described herein above; and

WHEREAS, the Council recognizes the procurement of contracts on the County's behalf, including for special counsel, is usually a function of the executive branch; and

WHEREAS, because the County's proposed legal action on wrongful mortgage industry activity is a Council-initiated action, it is appropriate for the Council Chair, as the legislative branch's chief procurement officer, to execute the contract with special counsel; now, therefore,

Resolution No. _____

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

1. That the Council authorizes the employment of special counsel to represent the County to investigate and litigate actionable claims as described hereinabove; and
2. That the total compensation for investigation of the actionable claims described hereinabove shall not exceed \$25,000. Within 30 days of the date of the contract, the special counsel will submit its confidential report to the Council's Governance, Ethics, and Transparency Committee with an analysis of the County's actionable claims; and
3. That the compensation for the special counsel related to litigation of any such actionable claims shall be based on a contingent fee agreement to be negotiated and executed by the Council Chair on the County's behalf, consistent with the Hawai'i Public Procurement Code and the Council's established procedures for the procurement of special counsel; and
4. That compensable costs include fees for printing and witnesses; fees for copies necessarily obtained for use in the case; fees of the clerk and marshal; fees of the court reporter for necessary transcripts; docket fees; compensation of court-appointed experts and interpreters; and pre-approved travel; and
5. That non-compensable costs include telephone calls; facsimile charges; postal charges; messenger charges; fees for computerized legal research; investigative expenses; and other costs reasonably considered part of a law firm's overhead; and
6. That the expenditures of additional funds or substantial changes to the responsibilities of the special counsel require prior Council approval; and
7. The Council must adopt a resolution expressly authorizing the filing of a complaint, motion, or other legal papers in court

Resolution No. _____

prior to the special counsel submitting documents on the County's behalf with any State or Federal court or agency; and

8. That certified copies of this resolution be transmitted to the Council Chair, the Mayor, the Corporation Counsel, the Office of Counsel Services, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY



Department of the Corporation Counsel
County of Maui

chr:misc:special counsel resolution c:dr