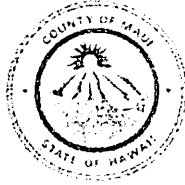


RICHARD T. BISSEN, JR.
Mayor

VICTORIA J. TAKAYESU
Acting Corporation Counsel

SONYA H. TOMA
First Deputy

LYDIA A. TODA
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808)270-7740

RECEIVED
2023 FEB 15 PM 12:40
OFFICE OF THE
COUNTY CLERK

February 15, 2023

Via email only at county.clerk@mauicounty.us

Honorable Alice L. Lee, Chair
and Members of the Council
County of Maui
Wailuku, Hawaii 96793

SUBJECT: Litigation Matter – Settlement Authorization
ASHLEY HOOKS VS. COUNTY OF MAUI, ET AL.
Civil No.: 2CCV-21-0000034(2)

Dear Chair Lee and Council Members:

Please find attached separately a proposed resolution entitled "AUTHORIZING SETTLEMENT OF ASHLEY HOOKS VS. COUNTY OF MAUI, ET AL., CIVIL NO.: 2CCV-21-0000034(2)." The purpose of the proposed resolution is to discuss settlement options with regard to the above-referenced lawsuit.

May I request that the proposed resolution be scheduled for discussion and action, or referral to the appropriate standing committee as soon as possible, but no later than the week of March 6, 2023, as trial is scheduled to begin April 17, 2023. Also attached herewith is the Complaint filed in this matter.

It is anticipated that an executive session will be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and/or the Committee.

Should you have any questions or concerns, please do not hesitate to contact us. Thank you for your anticipated assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "TK", written over a horizontal line.

THOMAS KOLBE
Deputy Corporation Counsel

cc: John Stufflebean, P.E., Director, Department of Water Supply
Attachments

Resolution

No. 23-84

AUTHORIZING SETTLEMENT OF ASHLEY HOOKS VS.
COUNTY OF MAUI, ET AL., CIVIL NO.: 2CCV-21-0000034(2)

WHEREAS, Plaintiff Ashley Hooks filed a complaint in Second Circuit Court, State of Hawaii, on February 5, 2021 as Civil No.: 2CCV-21-0000034(2), against the County of Maui, alleging a violation of Hawaii Whistle-Blower Protection Statute and Unlawful Termination; 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 in an executive meeting before the Government Relations, Ethics, and Transparency Committee; and

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 ASHLEY HOOKS VS. COUNTY OF MAUI, ET AL. under the terms in an executive meeting before its Government Relations, Ethics, and Transparency Committee;

Resolution No. 23-84

2. That it authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under terms and conditions as may be imposed by the Corporation Counsel consistent with the Council's settlement approval;

3. That it authorizes the Director of Finance of the County of Maui to satisfy settlement of this case, under terms and conditions as may be imposed by the Corporation Counsel consistent with the Council's settlement approval; and

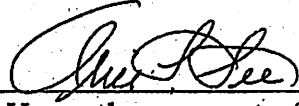
4. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Water Supply, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY



THOMAS KOLBE
Deputy Corporation Counsel
County of Maui
LIT 6255

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chris Lee", is written above a horizontal line.

Upon the request of the Mayor.

SHOWA LAW OFFICE, LLLC
ANDREW DAISUKE STEWART 7810-0
735 Bishop Street, Suite 318
Honolulu, Hawaii 96813
Tel. (808) 772-9297
Fax. 1 (866) 772-9407
Attorney for Plaintiff
ASHLEY HOOKS

Electronically Filed
SECOND CIRCUIT
2CCV-21-0000034
05-FEB-2021
11:43 AM
Dkt. 1 CMP

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

ASHLEY HOOKS,)	Civil No. _____
)	
Plaintiff,)	
)	
vs.)	
)	
COUNTY OF MAUI; JEFFREY T.)	COMPLAINT; SUMMONS; DEMAND
PEARSON, IN HIS OFFICIAL)	FOR JURY TRIAL
CAPACITY AS DIRECTOR,)	
DEPARTMENT OF WATER SUPPLY,)	
COUNTY OF MAUI; MICHAEL P.)	
VICTORINO, IN HIS OFFICIAL)	
CAPACITY AS MAYOR, COUNTY OF)	
MAUI; DOE DEFENDANTS 1 -20;)	
DOE CORPORATE ENTITIES 1-20;)	
DOE GOVERNMENTAL)	
ENTITIES 1-20,)	
)	
Defendants.)	
_____)	

COMPLAINT

Comes now Plaintiff, ASHLEY HOOKS, by and through his attorney, SHOWA LAW OFFICE, LLLC, and hereby files this Complaint, and alleges and avers the following causes of action against Defendant COUNTY OF MAUI; JEFFREY T. PEARSON, IN HIS OFFICIAL CAPACITY AS DIRECTOR, DEPARTMENT OF WATER SUPPLY, COUNTY OF MAUI; MICHAEL P. VICTORINO, IN HIS OFFICIAL CAPACITY AS MAYOR, COUNTY OF MAUI;

DOE DEFENDANTS 1 -20; DOE CORPORATE ENTITIES 1-20;DOE GOVERNMENTAL ENTITIES 1-20, (hereinafter collectively “Defendants”).

THE PARTIES

1. Plaintiff ASHLEY HOOKS (“Plaintiff”) is and was at all times relevant a resident of the County of Maui and was employed as a Water Treatment Operator II by the Department of Water Supply, County of Maui.

2. Defendant DEPARTMENT OF WATER SUPPLY, COUNTY OF MAUI, being sued through its Director, JEFFREY T. PEARSON, in his official capacity is a municipal entity belonging to the County of Maui, State of Hawaii.

3. Defendant MAUI COUNTY, being sued through its Mayer, MICHAEL T. VICTORINO, in his official capacity is a municipality located within the State of Hawaii.

4. DOE DEFENDANTS 1 – 20, DOE CORPORATIONS 1 – 20 and DOE GOVERNMENTAL ENTITIES 1 - 20 (collectively referred to herein as “DOE DEFENDANTS” or “other presently unidentified Defendants) are sued herein under fictitious names for the reason that their true names and identities are presently unknown to Plaintiff except that they are connected in some manner with Defendants or were the agents, principals, partners, officers, directors, members, servants, employees, employers, representatives, co-venturers, associates, consultants, vendors, suppliers, manufacturers, subcontractors, contractors, sureties, insurers, owners, lessees, sublessees, lessors, guarantors, assignees, assignors, licensees or licensors of Defendants or were in some manner presently unknown to Plaintiff, engaged in the activities alleged herein, or were in some manner

responsible for the injuries and damages to Plaintiff, or conducted some activity or activities in a negligent or wrongful manner which was a proximate cause of the injuries and damages to Plaintiff, and Plaintiff prays for leave to certify the true names, identities, capacities, activities, and responsibilities of DOE DEFENDANTS when the same are ascertained.

JURISDICTIONAL STATEMENT

5. At all times relevant, Defendants were governmental entities located within the County of Maui, State of Hawaii and subject to the Court's jurisdiction pursuant to Hawaii Revised Statute § 634-35.

6. Venue is proper because the claims for relief arose in the County of Maui, State of Hawaii, and all incidents described herein took place within the jurisdiction of the Circuit Court of the Second Circuit, State of Hawaii.

7. This Court has jurisdiction pursuant to Hawaii Revised Statutes § 603-21.5(a)(3) and venue is proper pursuant to Hawaii Revised Statutes § 603-36(5).

8. This Court has subject matter jurisdiction over this dispute pursuant to Hawaii Revised Statute § 378-62.

FACTUAL ALLEGATIONS

9. Plaintiff was employed as a Water Treatment Operator II for Department of Water Supply, County of Maui.

10. On June 17, 2020, Plaintiff emailed Jennifer Nikaido at the State of Hawaii Department of Health's Safe Drinking Water Branch informing her that on May 16, 2020, a filter cleaning solution had contaminated the water supply for the County of Maui but that employees

for the Department of Water Supply Water Supply and were afraid of retribution by their supervisors based on past incidents of retaliation.

11. On July 8, 2020, Jennifer Nikkado responded to Plaintiff's email, stating: "The Safe Drinking Water Branch has investigated the operation of the Kamole Water Treatment Facility on May 16, 2020 and determined that an uncertain amount of citric acid entered the Clearwell and caused a turbidity spike at the Kamole Water Treatment Facility. A violation letter was issued to the County of Maui, Department of Water Supply on July 7, 2020, which required public notification within 30 days to all Makawao water system customers and further corrective actions to prevent a repeat of the events."

12. In July 2020, the Department of Water Supply distributed a letter entitled "IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER Makawao Water System Failed to Provide Appropriate Level of Treatment May 2020," which stated in relevant part, as follows: "Water samples were taken on May 16, 2020, exceeded the standard of 1.0 NTU for approximately 11 minutes. The elevated levels of turbidity were caused by a small amount of filter cleaning solution inadvertently entering the system.

13. Defendants terminated Plaintiff's employment on or about July 10, 2020.

COUNT I – VIOLATION OF HRS SECTION 378-62

(HAWAII WHISTLE-BLOWER PROTECTION STATUTE)

14. Plaintiff repeats and realleges and by reference incorporates the allegations contained in the above paragraphs.

15. On or about May 16, 2020, an uncertain amount of citric acid entered the Clearwell and caused a turbidity spike at the Kamole Water Treatment Facility in violation of federal regulations and guidelines issued by the U.S. Environmental Protection Agency, including but not limited to, 40 Code of Federal Regulations Part 9 and Part 141, as well as, Hawaii Administrative Rules Title 11, Chapter 20.

16. On June 17, 2020, Plaintiff emailed Jennifer Nikaido at the State of Hawaii Department of Health's Safe Drinking Water Branch informing her that on May 16, 2020, a filter cleaning solution had contaminated the water supply for the County of Maui and that employees for the Department of Water Supply were afraid of retribution by their supervisors based on past incidents of retaliation.

17. On or about July 10, 2020, Defendants terminated Plaintiff's employment in retaliation for reporting the water contamination to the Department of Health's Clean Water Division.

18. As a result of the above-described unlawful discharge and/or discrimination Plaintiff was subjected to, Plaintiff has incurred damages in amounts to be proven at trial.

**COUNT II - UNLAWFUL TERMINATION IN CONTRAVENTION OF PUBLIC
POLICY**

19. Plaintiff repeats and realleges and by reference incorporates the allegations contained in the above paragraphs.

20. Employer's termination of Plaintiff as retaliation for Plaintiff reporting the water contamination of the Makawao water system, violated

public policy in favor of ensuring a safe water supply for the County of Maui and the State Hawaii, as well as, violated the public policy to ensure transparency in government.

21. As a result of the unlawful discharge described above, Plaintiff Plaintiff has incurred damages in amounts to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor against all Defendants as follows:

A. For judgment in its favor on each and every count as alleged against the Defendants claimed herein, and presently unidentified Defendants, jointly and severally, in the type of relief or amount of damage set forth therein of for such amount as may be proven at trial.

B. For special damages against Defendants and presently unidentified Defendants, and each of them, jointly and severally, in an amount to be proven at trial.

C. Plaintiff be awarded further special, general, and/or consequential damages.

D. Punitive damages as may be proven at trial.

E. Plaintiff be awarded all costs of suit, including reasonable attorney's fees and costs, interest, all costs of investigation, and such other and further relief as the Court deems equitable in the premises, including but not limited to reinstatement of Plaintiff to his former position with the County of Maui.

DATED: Honolulu, Hawaii, February 5, 2021.

/s/ Andrew D. Stewart

ANDREW DAISUKE STEWART
SHOWA LAW OFFICE, LLC

Attorney for Plaintiff
ASHLEY HOOKS