

RICHARD T. BISSEN, JR.
Mayor

VICTORIA J. TAKAYESU
Corporation Counsel

MIMI DESJARDINS
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

February 6, 2024

RECEIVED
2024 FEB - 8 AM 10:44
OFFICE OF THE
COUNTY CLERK

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: YOGI, TERENCE & DIANE v. E.H. a minor, et. al., CASE NO. 2CC-18-000408 AUTHORIZING SETTLEMENT OF MAUI ELECTRIC COMPANY, LIMITED'S CROSS-CLAIM AGAINST THE COUNTY OF MAUI.

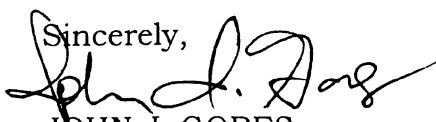
Dear Chair Lee and Council Members:

Please find attached separately a proposed resolution entitled "AUTHORIZING SETTLEMENT OF MAUI ELECTRIC COMPANY, LIMITED'S CROSS-CLAIM AGAINST THE COUNTY OF MAUI IN YOGI, TERENCE & DIANE v. E.H. a minor, et. al., CASE NO. 2CC-18-000408".

May I request that the proposed resolution be scheduled for discussion and action, or referral to the appropriate standing committee as soon as possible. Also attached herewith is the Second Amended Complaint, filed September 8, 2020 in this matter, along with Maui Electric Company, Limited's cross-claim against the County of Maui, filed October 15, 2020 and the County of Maui's Answer to Maui Electric Company, Limited's Cross-Claim filed on December 1, 2020.

It is anticipated that an executive session may 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,

JOHN J. GORES
Deputy Corporation Counsel

cc: Jordan Molina, Director of Public Works
Attachments

LAW OFFICES OF JAN K. APO

JAN K. APO 2906
MARK D. RECK 9316
NAOMI M. KUSACHI 9982
24 North Church Street, Suite 302
Wailuku, Maui, Hawaii 96793
Telephone No. (808) 244-6073
Facsimile No. (808) 244-6244

Electronically Filed
SECOND CIRCUIT
2CC181000408
08-SEP-2020
09:46 AM

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

TERENCE YOGI and DIANE YOGI,	)	Civil No. 18-1-0408 (1)
individually and as Special Administrator of	)	
THE ESTATE OF E.C.Y.	)	(Motor Vehicle Tort)
	)	
Plaintiffs,	)	SECOND AMENDED COMPLAINT;
	)	SECOND AMENDED SUMMONS
vs.	)	
	)	
E.H., a minor; BRITTANY HARRIS,	)	
Individually and as Next Friend of E.H., a	)	
minor; COUNTY OF MAUI; MAUI	)	
ELECTRIC COMPANY, LIMITED, a	)	
domestic profit corporation; JOHN AND JANE)	)	
DOES 1-10; DOE PARTNERSHIPS 1-10;	)	
DOE CORPORATIONS 1-10; and	)	
DOE GOVERNMENTAL ENTITIES 1-10,	)	
	)	
Defendants.	)	
	)	

SECOND AMENDED COMPLAINT

COME NOW Plaintiffs TERENCE YOGI and DIANE YOGI, individually and as Special Administrator of THE ESTATE OF E.C.Y. ("Plaintiffs"), by and through their counsel, the Law Offices of Jan K. Apo, and for their claims for relief against Defendants state as follows:

1. E.C.Y., a deceased minor born June 18, 2002, was at all relevant times a resident

of the County of Maui, State of Hawai'i, until the time of her death on September 11, 2018.

2. Plaintiff TERENCE YOGI ("Plaintiff Terence"), who is the father of E.C.Y., was at all relevant times a resident of the County of Maui, State of Hawai'i.

3. Plaintiff DIANE YOGI ("Plaintiff Diane"), who is the mother of E.C.Y. and the Special Administrator of THE ESTATE OF E.C.Y., was at all relevant times a resident of the County of Maui, State of Hawai'i.

4. Upon information and belief, Defendant E.H. ("Defendant E.H."), a minor born February 2, 2002, was at all relevant times, a resident of the County of Maui, State of Hawai'i.

5. Upon information and belief, Defendant BRITTANY HARRIS ("Defendant Brittany"), the natural mother, guardian and Next Friend of Defendant E.H., was at all relevant times, a resident of the County of Maui, State of Hawai'i.

6. Upon information and belief, Defendant COUNTY OF MAUI ("County of Maui") is and was, at all relevant times, a municipal corporation organized under the laws of the State of the Hawaii.

7. Upon information and belief, Defendant MAUI ELECTRIC COMPANY, LIMITED ("MECO") now known as HAWAIIAN ELECTRIC COMPANY is and was, at all relevant times, a domestic profit corporation registered to do business in the State of Hawaii.

8. Defendants John and Jane Does 1-10, John Doe Partnerships 1-10, John Doe Corporations 1-10, and John Doe Government Entities 1-10 are sued herein under fictitious names for the reason that their true names and identities are presently unknown to Plaintiffs, except that they were connected in some manner with named Defendants and/or are persons, corporations, entities, agents, representatives, business entities, associations, employers, employees, or governmental entities or agencies responsible for the manufacture, operation,

maintenance, and purchase of the motor vehicle involved herein, or were in some other manner presently unknown to Plaintiffs engaged in the activities alleged herein, and/or were in some manner responsible for the injuries and damages to THE ESTATE OF E.C.Y. Plaintiffs will identify the true names and capacities, activities and/or responsibilities when the same are ascertained. Plaintiffs have made diligent and good-faith efforts to ascertain the identities of those responsible, including a review of material generated in the investigation of the incident which forms the basis of this action.

9. The circumstances that gave rise to this action involve a single car motor vehicle accident involving the vehicle colliding into a utility pole which occurred on September 11, 2018 in Kahului, County of Maui, State of Hawaii, within the jurisdiction of this Court.

10. This matter and controversy exceed, exclusive of interest, costs, and attorneys' fees, the minimal jurisdictional limits of this Court.

FACTS APPLICABLE TO ALL COUNTS

11. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 10 above.

12. On September 11, 2018, at around 13:00, E.C.Y. was a rear-seat passenger in a vehicle driven by E.H traveling north on Hansen Road in Kahului, Maui County, Hawaii.

13. The County of Maui was the owner responsible for the portion of Hansen Road on which this fatal automobile accident occurred.

14. E.H failed to negotiate a left bend on Hansen Road and lost control of the vehicle, resulting in a collision with a utility pole on the northbound shoulder.

15. The Police Report states that the subject utility pole was owned by MECO.

16. E.C.Y. sustained fatal injuries as a result of the collision.

17. Such wrongful death meets the statutory requirements of H.R.S. §431:10C-306(b)(1) allowing Plaintiffs to file this claim for damages.

18. Defendant Brittany was the newly registered owner of the vehicle involved in the September 11, 2018 collision and entrusted Defendant E.H with the vehicle.

COUNT I
NEGLIGENCE OF DEFENDANT E.H./WRONGFUL DEATH

19. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 18 above and brings this wrongful death action pursuant to H.R.S. §663-3 and all other applicable law.

20. Defendant E.H. breached his duty of due care to operate his vehicle in a safe, reasonable and proper manner.

21. Defendant breached his duty to E.C.Y. by engaging in the negligent acts and/or omissions which include, but are not limited to the following:

- a. Causing his vehicle to leave the paved roadway and collide into a utility pole.
- b. Failing to maintain control of his vehicle.
- c. Failing to maintain a proper lookout;
- d. Failing to remain attentive to driving;
- e. Failing to direct proper and reasonable attention to the circumstances ahead;

22. The negligence of Defendant E.H. directly and proximately caused the wrongful death of E.C.Y.

COUNT II
LIABILITY OF DEFENDANT BRITTANY/WRONGFUL DEATH

23. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 22 above and brings this wrongful death action pursuant to H.R.S. §663-3 and all other applicable law.

24. Defendant Brittany breached her duty of due care by negligently entrusting the subject vehicle to Defendant E.H.

25. The negligence of Defendant Brittany directly and proximately caused the death of E.C.Y.

26. Pursuant to H.R.S. §577-3, parents of unmarried minor children are jointly and severally liable in damages for the tortious acts committed by their children.

27. Pursuant to H.R.S. §286-112, the parent of a minor who signed the application for the minor's license to drive a motor vehicle will be jointly and severally liable for any damages caused by the minor's negligence.

28. As the parent of Defendant E.H. and upon belief that she signed Defendant E.H.'s application for a license to drive, Defendant Brittany is jointly and severally liable for the damages caused by Defendant E.H.

COUNT III
NEGLIGENT DESIGN, CONSTRUCTION,
AND MAINTENANCE OF ROADWAY /
LIABILITY OF DEFENDANT COUNTY OF MAUI

29. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 28. above and brings this wrongful death action pursuant to H.R.S. §663-3 and all other applicable law.

30. Defendant COUNTY OF MAUI has a duty to design, construct, and maintain its

roadways in a reasonably safe manner and/or condition, including the duty to keep the shoulders thereof in a reasonably safe condition.

31. Defendant COUNTY OF MAUI's duty to design, construct, and maintain its roadways in a reasonably safe condition, including the duty to keep the shoulders thereof in a reasonably safe condition is owed to all persons traveling on the roadway, including E.C.Y.

32. Defendant COUNTY OF MAUI breached this duty when it negligently failed to design, construct, and maintain Hansen Road. Such negligence includes but is not limited to the following acts and omissions:

- a. Designing and approving the defective plan to place the utility pole at the position on the shoulder of the roadway which presented a foreseeable and unreasonable risk of harm to motorists.
- b. Installing and placing the utility pole at a position which presented a foreseeable and unreasonable risk of harm to motorists.
- c. Authorizing and approving MECO to locate and install the utility pole at a position which presented a foreseeable and unreasonable risk of harm to motorists.
- d. Failing to provide appropriate warning and/or signage alerting drivers of the roadway hazard;
- e. Implementing an unsafe speed limit;
- f. Posting an unsafe speed limit for Hansen Road;
- g. Failing to post appropriate and safe speed limit signs for Hansen Road;
- h. Failing to conduct appropriate traffic studies and/or conducting negligent traffic studies;

- i. Designing and constructing the roadway and the curve or bend in the roadway so as to create an unreasonable risk of harm;
- j. Failing to inspect, monitor or evaluate the safety of the roadway location;
- k. Modifying, renovating and repairing this roadway location in a negligent manner;
- l. Negligent construction or implementation of the roadway and shoulder design;
- m. Creating a curvature in the roadway which was defective and presented an unreasonable risk of harm.

33. The negligence of COUNTY OF MAUI directly and proximately caused or was a contributing factor in causing the wrongful death of E.C.Y.

34. Defendant COUNTY OF MAUI is jointly and severally liable for the damages sustained by Plaintiffs.

COUNT IV
LIABILITY OF DEFENDANT MAUI ELECTRIC COMPANY, LIMITED/
WRONGFUL DEATH

35. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 34. above and brings this wrongful death action pursuant to H.R.S. §663-3 and all other applicable law.

36. As a public utility, Defendant MECO owes a duty to motorists, including passengers of motorists, to use reasonable care when placing utility poles adjacent to roadways.

37. Defendant MECO negligently breached this duty when it placed the utility pole at its position on the shoulder of the roadway. Such negligence includes, but is not limited to, the following acts and/or omissions:

- a. Designing and approving the defective plan to place the utility pole at the position on the shoulder of the roadway which presented a foreseeable and unreasonable risk of harm to motorists.
- b. Installing and placing the utility pole at a position which presented a foreseeable and unreasonable risk of harm to motorists.
- c. Authorizing and approving MECO to locate and install the utility pole at a position which presented a foreseeable and unreasonable risk of harm to motorists.
- d. Failing to provide appropriate warning and/or signage alerting drivers of the roadway hazard;

38. The negligence of Defendant MECO directly and proximately caused or was a contributing factor in causing the wrongful death of E.C.Y.

39. Defendant MECO is jointly and severally liable for the damages sustained by Plaintiffs.

COUNT V
LOSS OF CONSORTIUM OF PLAINTIFF TERENCE YOGI

40. Plaintiffs restate the allegations of Paragraphs 1 through 39 and incorporate those paragraphs by reference.

41. As a direct and proximate result of Defendants' wrongful conduct, acts, and/or omissions, Plaintiff TERENCE YOGI, the father of E.C.Y., has suffered and will continue to suffer mental and emotional trauma because of loss of society, companionship, comfort, protection and care provided to and from his daughter.

42. As a direct and proximate result of Defendants' wrongful conduct, acts, and/or omissions, Plaintiff TERENCE YOGI has suffered severe emotional distress and will continue to incur pain and suffering and mental and emotional distress.

COUNT VI
LOSS OF CONSORTIUM OF PLAINTIFF DIANE YOGI

43. Plaintiffs restate the allegations of Paragraphs 1 through 42 and incorporate those paragraphs by reference.

44. As a direct and proximate result of Defendants' wrongful conduct, acts, and/or omissions, Plaintiff DIANE YOGI, the mother of E.C.Y., has suffered and will continue to suffer mental and emotional trauma because of loss of society, companionship, comfort, protection and care provided to and from her daughter.

45. As a direct and proximate result of Defendants' wrongful conduct, acts, and/or omissions, Plaintiff DIANE YOGI has suffered severe emotional distress and will continue to incur pain and suffering and mental and emotional distress.

DAMAGES

46. Plaintiffs incorporate by reference the allegations set forth in paragraph 1 through 45 above.

47. As a direct and proximate result of the negligence of Defendants, the following damages have been incurred:

- a. Physical pain and anguish suffered by E.C.Y. prior to her death;
- b. Mental pain and anguish suffered by E.C.Y. prior to her death;
- c. Loss of enjoyment of life activities suffered by E.C.Y.;
- d. Loss of past and future earnings suffered by E.C.Y.;
- e. Funeral and burial expenses of E.C.Y.;

f. Plaintiffs' mental and emotional trauma because of loss of society, companionship, comfort, protection and care provided to and from their daughter.

WHEREFORE, as to all counts herein, Plaintiffs pray that this Court order, adjudge, and decree, and enter judgment against as follows:

1. Special damages in an amount to be determined at trial;
2. General damages in an amount to be determined at trial;
3. Such other legal and/or equitable damages, sufficient to engage the jurisdiction of this Court, including such fees and costs as allowed by law, and which this Court deems appropriate in light of the evidence adduced at trial;

DATED: Wailuku, Hawai'i, September 8, 2020

/s/ Naomi M. Kusachi

JAN K. APO

MARK D. RECK

NAOMI M. KUSACHI

Attorneys for Plaintiffs

SECOND AMENDED

STATE OF HAWAII CIRCUIT COURT OF THE SECOND CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	
CASE NUMBER 18-1-0408(1)	PLAINTIFF'S NAME & ADDRESS, TEL. NO. LAW OFFICES OF JAN K. APO JAN K. APO 2906 MARK D. RECK 9316 NAOMI M. KUSACHI 9982 24 N. Church Street, Suite 302 Wailuku, Hawaii 96793 (808) 244-6073	
PLAINTIFF TERENCE YOGI and DIANE YOGI, individually and as Special Administrator of THE ESTATE OF E.C.Y.		
DEFENDANT(S) E.H., a minor; BRITTANY HARRIS, Individually and as Next Friend of E.H., a minor; COUNTY OF MAUI; MAUI ELECTRIC COMPANY, LIMITED, a domestic profit corporation; JOHN AND JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; and DOE GOVERNMENTAL ENTITIES 1-10		
TO THE ABOVE-NAMED DEFENDANT(S) You are hereby summoned and required to filed with the court and serve upon THE LAW OFFICES OF JAN K. APO 24 N. Church Street, Suite 302 Wailuku, Hawaii 96793 plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS. A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.		
DATE ISSUED 09-08-2020 	Effective Date of 28-Oct- 2019 Signed by: /s/ D. Pellazar Clerk, 2nd Circuit, State of Hawai'i 	
 If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation: Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: adarequest@courts.hawaii.gov. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.		

JAMES E. ABRAHAM #9538
American Savings Bank Tower
1001 Bishop Street, Suite 1100
P.O. Box 2750
Honolulu, Hawai'i 96840-0001
Telephone: (808) 543-7824
Facsimile: (808) 543-4710
Email: james.abraham@hawaiianelectric.com

Electronically Filed
SECOND CIRCUIT
2CC181000408
15-OCT-2020
11:28 AM
Dkt. 46 XCL

Attorney for Defendant
MAUI ELECTRIC COMPANY, LIMITED

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

TERENCE YOGI and DIANE YOGI,	)	CIVIL NO. 18-1-0408 (1)
individually and a Special Administrator of	)	(Motor Vehicle Tort)
THE ESTATE OF E.C.Y.	)	
	)	
Plaintiffs,	)	MAUI ELECTRIC COMPANY, LIMITED'S
	)	CROSS-CLAIM AGAINST DEFENDANTS
vs.	)	E.H., a minor, BRITTANY HARRIS,
	)	Individually and as Next Friend of E.H., and
E.H., a minor; BRITTANY HARRIS,	)	COUNTY OF MAUI; SUMMONS
Individually and as Next Friend of E.H., a	)	
minor; COUNTY OF MAUI; MAUI	)	
ELECTRIC COMPANY, LIMITED, a	)	
domestic profit corporation; JOHN AND	)	
JANE DOES 1-10; DOE PARTNERSHIPS	)	
1-10; DOE CORPORATIONS 1-10; and	)	
DOE GOVERNMENTAL ENTITIES 1-10,	)	
	)	
Defendants.	)	
	)	

**MAUI ELECTRIC COMPANY, LIMITED'S CROSS-CLAIM AGAINST
DEFENDANTS E.H., A MINOR, BRITTANY HARRIS, INDIVIDUALLY AND AS
NEXT FRIEND OF E.H., AND COUNTY OF MAUI**

COMES NOW, Defendant MAUI ELECTRIC COMPANY, LIMITED

(hereinafter "Cross-Claimant"), by and through its attorney, James E. Abraham, files its
Cross-Claim against Cross-Claim Defendants E.H., a minor, BRITTANY HARRIS,

Individually and as Next Friend of E.H., and COUNTY OF MAUI (hereinafter "Cross-Claim Defendants"), alleges and avers as follows:

1. At all times relevant herein, Cross-Claimant MAUI ELECTRIC COMPANY, LIMITED was a domestic corporation, organized and existing under and by virtue of the laws of the State of Hawai'i.

2. Upon information and belief, at all times relevant herein, Cross-Claim Defendant E.H., a minor born February 2, 2002, was a resident of the County of Maui, State of Hawai'i.

3. Upon information and belief, at all times relevant herein, Cross-Claim Defendant BRITTANY HARRIS, the mother, guardian and Next Friend of Defendant E.H., was a resident of the County of Maui, State of Hawai'i.

4. Upon information and belief, at all times relevant herein, Cross-Claim Defendant COUNTY OF MAUI was a governmental agency operating in the County of Maui, State of Hawai'i.

5. Plaintiffs TERENCE YOGI and DIANE YOGI ("Plaintiffs") have filed a Second Amended Complaint alleging that Plaintiffs sustained certain injuries and/or damages relating to an incident which occurred on or about September 11, 2018 in Kahului, County of Maui, State of Hawai'i.

6. If Plaintiffs were injured and/or damaged as alleged in their Second Amended Complaint, said injuries and/or damages, if any, were proximately caused by the negligence, breach of duty, unlawful conduct, and other fault on the part of the Cross-Claim Defendants, and not the result of any negligence and/or other wrongful acts and/or omissions of Cross-Claimant.

7. The negligence or other fault of the Cross-Claim Defendants was active and primary, while the negligence of Cross-Claimant, if any, was passive and secondary.

8. Cross-Claimant is entitled to a defense, full indemnification, contribution and/or reimbursement, including attorneys' fees and costs, from the Cross-Claim Defendants.

WHEREFORE, Cross-Claimant MAUI ELECTRIC COMPANY, LIMITED prays as follows:

A. That Plaintiffs' Second Amended Complaint be dismissed with prejudice as to Defendant/Cross-Claimant MAUI ELECTRIC COMPANY, LIMITED;

B. If it be determined that Plaintiffs are entitled to a judgment, that such judgment be entered against the Cross-Claim Defendants, and not against Cross-Claimant;

C. If it is determined that Plaintiffs are entitled to judgment against Cross-Claimant, that Cross-Claimant has judgment over and against the Cross-Claim Defendants for the entire amount thereof, together with attorney's fees and costs of this action;

D. In the alternative, if the above relief is not granted and if it is determined that Cross-Claimant and the Cross-Claim Defendants are joint tortfeasors, that the relative degree of fault of each tortfeasor be determined and that Cross-Claimant have judgment against the Cross-Claim Defendants for any excess which may be paid by Cross-Claimant over and above its pro rata share of such judgment, if any, in favor of Plaintiffs;

E. That Cross-Claimant have judgment on its Crossclaim by way of indemnity from the Cross-Defendants, including costs of defense and attorney's fees; and

F. That Cross-Claimant be granted such other and further relief as the Court deems fit, proper and just in the premises.

DATED: Honolulu, Hawai'i, October 15, 2020.

/s/ James E. Abraham

JAMES E. ABRAHAM
Attorney for Defendant/Cross-Claimant
MAUI ELECTRIC COMPANY, LIMITED

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

TERENCE YOGI and DIANE YOGI,	)	CIVIL NO. 18-1-0408 (1)
individually and a Special Administrator of	)	(Motor Vehicle Tort)
THE ESTATE OF E.C.Y.	)	
	)	
Plaintiffs,	)	SUMMONS
	)	
vs.	)	
	)	
E.H., a minor; BRITTANY HARRIS,	)	
Individually and as Next Friend of E.H., a	)	
minor; COUNTY OF MAUI; MAUI	)	
ELECTRIC COMPANY, LIMITED, a	)	
domestic profit corporation; JOHN AND	)	
JANE DOES 1-10; DOE PARTNERSHIPS	)	
1-10; DOE CORPORATIONS 1-10; and	)	
DOE GOVERNMENTAL ENTITIES 1-10,	)	
	)	
	)	
Defendants.	)	

SUMMONS

STATE OF HAWAI'I

To the Above-Named Defendant/Cross-Claim Defendants

E.H., A MINOR,
BRITTANY HARRIS, INDIVIDUALLY AND AS NEXT FRIEND OF E.H., and
COUNTY OF MAUI

You are hereby summoned and required to file with the court and serve upon

James E. Abraham, counsel for Defendant/Cross-Claimant MAUI ELECTRIC COMPANY,
LIMITED, whose address and telephone number are P.O. Box 2750, Honolulu, Hawaii
96840-0001, (808) 543-7824, an Answer to the Cross-Claim which is herewith served upon
you, within twenty (20) days after service of this Summons upon you, exclusive of the day

of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claim.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Wailuku, Hawai'i, _____.

Clerk of the Above-Entitled Court

Terence Yogi, et al., v. E.H., et al.; *Civil No. 18-1-0408 (1)*; SUMMONS IN THE
CIRCUIT COURT OF THE SECOND CIRCUIT

DEPARTMENT OF THE
CORPORATION COUNSEL

205

MOANA M. LUTEY

6385

Corporation Counsel

KEOLA R. WHITTAKER

11200

GLEN R. PASCUAL

7072

Deputies Corporation Counsel

County of Maui

200 South High Street

Wailuku, Maui, Hawai'i 96793

Telephone No.: (808) 270-7741

Facsimile No.: (808) 270-7152

E-mail: Keola.R.Whittaker@co.maui.hi.us

E-mail: Glen.R.Pascual@co.maui.hi.us

Attorneys for Cross-Claim Defendant

COUNTY OF MAUI

Electronically Filed
SECOND CIRCUIT
2CC181000408
01-DEC-2020
03:57 PM
Dkt. 70 ANSW

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

TERENCE YOGI and DIANE YOGI,
individually and as Special Administrator
of THE ESTATE OF E.C.Y.,

Plaintiffs,

vs.

E.H., a minor; BRITTANY HARRIS,
individually and as Next Friend of E.H., a
minor; COUNTY OF MAUI; MAUI
ELECTRIC COMPANY, LIMITED, a
domestic profit corporation; JOHN AND
JANE DOES 1-10; DOE
PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; and DOE
GOVERNMENTAL ENTITIES 1-10,

Defendants.

Civil No.: 18-1-0408(1)
(Motor Vehicle Tort)

CROSS-CLAIM DEFENDANT COUNTY OF
MAUI'S ANSWER TO CROSS-CLAIM
PLAINTIFF MAUI ELECTRIC COMPANY,
LIMITED'S CROSS-CLAIM FILED
OCTOBER 15, 2020; CERTIFICATE OF
SERVICE

Caption continued on next page

Trial Date: June 29, 2021

E.H., a minor; BRITTANY HARRIS,
Individually and as Next Friend of E.H.,
A minor,

Cross-Claim Plaintiffs,

vs.

COUNTY OF MAUI; MAUI ELECTRIC
COMPANY, LIMITED,

Cross-Claim Defendants.

MAUI ELECTRIC COMPANY,
LIMITED,

Cross-Claim Plaintiff,

vs.

E.H., a minor; BRITTANY HARRIS,
Individually and as Next Friend of E.H., a
minor; COUNTY OF MAUI,

Cross-Claim Defendants.

**CROSS-CLAIM DEFENDANT COUNTY OF
MAUI'S ANSWER TO CROSS-CLAIM PLAINTIFF MAUI
ELECTRIC COMPANY, LIMITED'S CROSS-CLAIM FILED OCTOBER 15, 2020**

COMES NOW Cross-Claim Defendant COUNTY OF MAUI, by and through its attorneys, Moana M. Lutey, Corporation Counsel, Keola R. Whittaker and Glen R. Pascual, Deputies Corporation Counsel, and hereby answers Cross-Claim Plaintiff MAUI ELECTRIC COMPANY, LIMITED's ("MECO") Cross-Claim Against Defendants E.H., a minor, BRITTANY HARRIS, Individually and as Next Friend of E.H. (collectively, "E.H. Defendants"), and COUNTY OF MAUI ("County"), filed on October 15, 2020 (the "Cross-Claim") as follows:

FIRST DEFENSE:

1. The Cross-Claim fails to state a claim or cause of action against the County upon which relief may be granted.

SECOND DEFENSE:

2. The County is without sufficient information to form any belief as to the truth or falsity of the allegations contained in paragraphs 1, 2, and 3, of the Cross-Claim.

3. The County admits the allegations in Paragraph 4 of the Cross-Claim.

4. In response to the allegations in Paragraph 5 of the Cross-Claim, County states that the pleading referenced therein speak for itself.

5. The County denies allegations in Paragraphs 6, 7, and 8 of the Cross-Claim as they pertain to the County.

6. The County denies any and all remaining allegations of the Cross-Claim not specifically answered above.

THIRD DEFENSE:

7. MECO is barred from maintaining its action against the County based upon the applicable statute of limitations.

FOURTH DEFENSE:

8. MECO is barred from maintaining its action against the County by reason of MECO's failure to exhaust administrative and/or other remedies.

FIFTH DEFENSE:

9. The County intends to rely upon any and all common law and statutory immunities available to it as a defense against MECO's claims.

SIXTH DEFENSE:

10. County claims the benefit of all limitations on damages which are, or may be, available to it, including but not limited to, Section 663-1, Hawaii Revised Statutes, and those which may be applicable at common law or pursuant to statute, charter or ordinance.

SEVENTH DEFENSE:

11. MECO's claims are barred because County did not violate any state or federal law or right.

EIGHTH DEFENSE:

12. MECO's claims are barred because County did not violate any common law or statutory duty owed to Plaintiffs TERENCE YOGI and DIANE YOGI, individually and as Special Administrator of THE ESTATE OF E.C.Y. (collectively, "Plaintiffs") or MECO and even if such a duty existed, the County did not breach said duty.

NINTH DEFENSE:

13. MECO's claims, in whole or in part, are barred by MECO's own knowledge and/or acquiescence.

TENTH DEFENSE:

14. MECO has failed to mitigate its damages.

ELEVENTH DEFENSE:

15. Any damages or injuries incurred by MECO that were caused by an act of God or by natural and unavoidable causes or pre-existing conditions beyond the control of the County and for which the County cannot be held liable.

TWELFTH DEFENSE:

16. The County intends to rely on any and all other matters constituting avoidance or affirmative defenses, as set forth in Rule 8(c) of the Hawaii Rules of Civil Procedure.

THIRTEENTH DEFENSE:

17. MECO is barred from maintaining this action against the County based upon the defenses of waiver, laches, release, and estoppel.

FOURTEENTH DEFENSE:

18. MECO's claims are barred by its own misconduct or neglect of work.

FIFTEENTH DEFENSE:

19. The County was not negligent or malicious.

SIXTEENTH DEFENSE:

20. The County affirmatively states that the acts and/or omissions of MECO and/or others including but not limited to E.H. Defendants, not including the County, were the sole cause of the alleged damages sustained by MECO, and that such acts and/or omissions of MECO and/or others bar MECO from any recovery from the County.

SEVENTEENTH DEFENSE:

21. MECO is barred from maintaining their action against the County by contributory and/or comparative negligence or other wrongful conduct which was the proximate cause of any alleged damages sustained by MECO.

EIGHTEENTH DEFENSE:

22. The County asserts the affirmative defense of qualified immunity.

NINETEENTH DEFENSE:

23. The County cannot be held liable for damages attributable to any other party.

TWENTIETH DEFENSE:

24. MECO is barred from maintaining its action against the County because they cannot identify any legal or other requirement that County failed to follow.

TWENTY-FIRST DEFENSE:

25. The County is not a joint tortfeasor as defined by Section 663-11, Hawaii Revised Statutes, because it is not liable to Plaintiffs.

TWENTY-SECOND DEFENSE:

26. The County reserves the right to assert any affirmative or other defenses that become known through discovery, and will seek leave to amend its Answer to allege any such affirmative or other defenses, and to assert any additional defenses, claims, cross-claims or counterclaims as discovery and the evidence may merit.

WHEREFORE, the County prays as follows:

A. That the Cross-Claim be dismissed with prejudice as to all claims against the County, and judgment be entered in favor of the County and against MECO;

B. That the County be awarded its reasonable attorneys' fees and costs incurred in defending against the Cross-Claim; and

C. That the County be granted such other and further relief as is just and equitable in the circumstances.

DATED: Wailuku, Maui, Hawai'i, December 1, 2020.

MOANA M. LUTEY
Corporation Counsel
Attorneys for Cross-Claim Defendant
COUNTY OF MAUI

By /s/ Keola R. Whittaker
KEOLA R. WHITTAKER
GLEN R. PASCUAL
Deputies Corporation Counsel

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

TERENCE YOGI and DIANE YOGI,
individually and as Special Administrator
of THE ESTATE OF E.C.Y.,

Plaintiffs,

vs.

E.H., a minor; BRITTANY HARRIS,
individually and as Next Friend of E.H., a
minor; COUNTY OF MAUI; MAUI
ELECTRIC COMPANY, LIMITED, a
domestic profit corporation; JOHN AND
JANE DOES 1-10; DOE
PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; and DOE
GOVERNMENTAL ENTITIES 1-10,

Defendants.

Civil No.: 18-1-0408(1)

(Motor Vehicle Tort)

CERTIFICATE OF SERVICE

E.H., a minor; BRITTANY HARRIS,
Individually and as Next Friend of E.H.,
A minor,

Cross-Claim Plaintiffs,

vs.

COUNTY OF MAUI; MAUI ELECTRIC
COMPANY, LIMITED,

Cross-Claim Defendants.

MAUI ELECTRIC COMPANY,
LIMITED,

Cross-Claim Plaintiff,

vs.

E.H., a minor; BRITTANY HARRIS,
Individually and as Next Friend of E.H., a
minor; COUNTY OF MAUI,

Cross-Claim Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served on the following parties at their last known address on the date and in the manner specified below:

JAN K. APO
NAOMI M. KUSACHI
MARK D. RECK
Law Offices of Jan K. Apo
24 North Church Street, Suite 302
Wailuku, Hawai'i 96793
Attorneys for Plaintiffs
TERENCE YOGI and DIANE YOGI,
individually and as Special Administrator
of THE ESTATE OF E.C.Y.

via JEFS

RANDALL Y.S. CHUNG
Chung & Ikehara
Suite 300 Richards Building
707 Richards Street
Honolulu, Hawai'i 96813
Attorneys for Defendants
E.H., a minor and BRITTANY HARRIS,
individually and as Next Friend of E.H.,
a minor

via JEFS

JAMES E. ABRAHAM
1001 Bishop Street, Suite 1100
Honolulu, Hawaii 96840
Attorney for Defendant
MAUI ELECTRIC COMPANY LIMITED

via JEFS

DATED: Wailuku, Maui, Hawai'i, December 1, 2020.

MOANA M. LUTEY
Corporation Counsel
Attorneys for Cross-Claim Defendant
COUNTY OF MAUI

By /s/ Keola R. Whittaker
KEOLA R. WHITTAKER
GLEN R. PASCUAL
Deputies Corporation Counsel