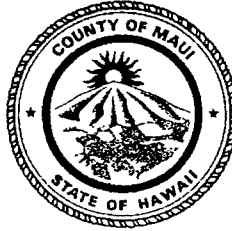


MICHAEL P. VICTORINO
Mayor

PATRICK K. WONG
Acting Corporation Counsel

EDWARD S. KUSHI, JR.
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761



RECEIVED

2019 JUN 27 AM 9:00

OFFICE OF THE
COUNTY COUNCIL

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
FACSIMILE: (808) 270-7152

June 27, 2019

MEMO TO: Mike Molina, Chair
Governance, Ethics, and Transparency Committee

FROM: Brian A. Bilberry, Deputy Corporation Counsel

SUBJECT: Litigation Matter – Case Status GET-11(3)
Jacob Firth and Elva Marie Espinosa Brumblay v. County of Maui, et al., Civil No. 18-1-0234(4)

Our Department respectfully requests the opportunity to discuss with the Committee the litigation of the above-referenced case, update on the status of the litigation, and to further discuss mediation and settlement options with regard to the above-reference lawsuit. We would like this matter heard at the currently scheduled July 9, 2019 committee meeting.

A copy of Plaintiff Jacob Firth and Elva Marie Espinosa Brumblay's Complaint filed on May 29, 2018, and a copy of the Resolution Authorizing Settlement of *Jacob Firth and Elva Marie Espinosa Brumbaly v. County of Maui, et al., Civil No. 18-1-0234(4)*, are attached.

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 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.

cc: Tivoli Faaumu, Chief of Police

Resolution

No. _____

AUTHORIZING SETTLEMENT OF JACOB FIRTH
AND ELVA MARIE ESPINOSA BRUMBLAY v.
COUNTY OF MAUI, ET AL., CIVIL NO. 18-1-0234(2)

WHEREAS, Plaintiffs Jacob Firth and Elva Marie Espinosa Brumblay filed a lawsuit against the County of Maui and the State of Hawaii in the Circuit Court of the Second Circuit, State of Hawaii, on May 29, 2018, Civil No. 18-1-0234(2), alleging negligence and emotional distress; and

WHEREAS, the County of Maui filed its Answer to the Complaint on June 19, 2018; 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

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

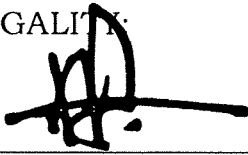
Resolution No. _____

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 hereby 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 hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case; and
3. That it hereby 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, the Chief of Police, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



BRIAN A. BILBERRY
Deputy Corporation Counsel
County of Maui

COPY

Served on TWK
5/30/18

CYNTHIA K. WONG
Attorney at Law, LLC

FILED

2018 MAY 29 PM 3:08

CYNTHIA K. WONG, ESQ. 6053
2035 Main Street, Suite 2
Wailuku, Maui, Hawaii 96793
cyn@legalmaui.net
Phone: 808-727-2921
Facsimile: 808-727-2924

CLERK
COURT

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CORPORATION DIVISION
2018 MAY 30 PM 12:50

Attorney for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

JACOB FIRTH and ELVA MARIE
ESPINOSA BRUMBLAY,

Plaintiffs,

v.

COUNTY OF MAUI, STATE OF HAWAII,
JOHN DOES 1-5, JOHN DOE
CORPORATIONS 1-5, JOHN
DOE PARTNERSHIPS 1-5, ROE NON-
PROFIT CORPORATIONS 1-5, and
ROE GOVERNMENTAL AGENCIES 1-5,

Defendants.

CIVIL NO. 18-1-0234 (2)
(Non-Motor Vehicle Tort)

COMPLAINT; SUMMONS

COMPLAINT

1. At all times relevant herein, plaintiff JACOB FIRTH is and was a citizen and resident of the County of Maui, State of Hawaii.

2. At all times relevant herein, plaintiff ELVA MARIE ESPINOSA BRUMBLAY is and was a citizen and resident of the County of Maui, State of Hawaii, and is the mother of plaintiff JACOB FIRTH.

3. Defendant COUNTY OF MAUI is a corporate body politic, duly created and/or incorporated under the laws in the State of Hawaii, subject and amenable to the jurisdiction and process of this Court.

I hereby certify that this is a full, true and correct copy of the Original

Clerk, Second Circuit Court

4. At all relevant times herein, defendant COUNTY OF MAUI, MAUI POLICE DEPARTMENT (hereinafter MPD) was a division within the COUNTY OF MAUI that was responsible for providing medical care and treatment to incarcerated persons and persons held in the custody of the MPD, including plaintiff FIRTH.

5. Defendant STATE OF HAWAII is a governmental entity, a corporate body politic, created and existing under the laws in the State of Hawaii, subject and amenable to the jurisdiction and process of this Court.

6. At all relevant times herein, defendant STATE OF HAWAII, DEPARTMENT OF PUBLIC SAFETY (hereinafter DPS) was an office and/or division within the STATE OF HAWAII that was responsible for providing medical care and treatment to incarcerated persons, including plaintiff FIRTH, and is subject to liability pursuant to the State Tort Liability Act.

7. Plaintiffs have diligently and in good faith attempted to ascertain names, identities, and possible defendants whose identities are presently unknown to plaintiffs. Such attempts include requesting the applicable investigative reports, police reports, surveillance videos, and attempting to contact presently known witnesses to the occurrence. Despite the foregoing, the identities of other defendants, whose conduct may have been a legal cause of plaintiffs' injuries and damages, remain unknown to plaintiffs.

8. Plaintiffs allege, on information and belief, that, directly or indirectly, the conduct of other defendants, presently unknown to plaintiffs, was or may have been a legal cause of the occurrence complained of and/or the injury, damage, or loss thereby sustained by plaintiffs as a result of which, all defendants, unidentified and identified, may be legally, jointly and severally, liable to plaintiffs for the injuries and losses sustained, inasmuch as the conduct of each defendant may have coincided with and/or concurred with that of each and every other defendant, named or unnamed.

9. All events described herein occurred in the County of Maui, State of Hawaii and are within the jurisdiction of the Circuit Court of the Second Circuit, State of Hawaii.

10. On or about February 21, 2018, plaintiff FIRTH was taken into custody by defendants, and/or any of them, and was unable to or not afforded the ability to make bail. He was held in custody at MPD from February 21, 2018 to February 22, 2018 and was transported to the DPS holding cell of the District Court of the Second Circuit located at 2145 Hoapili Street, Wailuku, Maui.

11. Plaintiff FIRTH was suffering symptoms while in the custody of defendants, and/or any of them, including, but not limited to, dizziness, disorientation, visual disturbances, auditory disturbances, tremors, anxiety, profuse sweating, shaking, which symptoms became worse causing a deterioration of plaintiff FIRTH's medical condition over the course of the incarceration and custodial transport. Plaintiff FIRTH requested that he be allowed to contact his mother, plaintiff ESPINOSA BRUMBLAY, who is a registered nurse, to obtain medication and/or medical care but he was denied the opportunity by defendants, and/or any of them.

12. Despite the deterioration of plaintiff FIRTH's symptoms and his request for medical attention, defendants, and/or any of them, failed to provide plaintiff FIRTH with any medical care and treatment.

13. On or about February 22, 2018, while in the custody of defendants, and/or any of them, plaintiff FIRTH suffered a seizure and fell, causing, among other injuries, a skull fracture and bleed to his brain, after which he was transported to Maui Memorial Medical Center and later transferred to the Queen's Medical Center.

14. Defendant COUNTY OF MAUI, MPD, were negligent in their duties and responsibilities, including but not limited to, the hiring, training and

supervision of the officers who failed to provide plaintiff FIRTH with timely or adequate medical care.

15. Defendant STATE OF HAWAII, DPS, were negligent in their duties and responsibilities, including but not limited to, the hiring, training and supervision of the officers who failed to provide plaintiff FIRTH with timely or adequate medical care.

16. Defendants, and/or any of them, who were responsible for providing and/or ensuring that plaintiff FIRTH received adequate care and necessary medical attention, failed to do so.

17. Defendants, and/or any of them, breached their duty of care owed to plaintiff FIRTH while he was in their custody and failed to allow him to contact his mother, plaintiff ELVA MARIE ESPINOSA BRUMBLAY.

18. Defendants, and/or any of them, negligently failed to provide appropriate medical care and treatment, negligently failed to allow FIRTH to obtain medication, and/or seek help from his mother, and negligently failed to seek treatment in a timely manner so as to prevent the significant permanent injuries plaintiff FIRTH suffered.

19. The conduct of defendants, and/or any of them, was negligent, which negligence was a legal cause of injuries, damages and losses sustained by plaintiffs.

20. As a legal result of foregoing, plaintiff FIRTH has suffered, and will continue to suffer, severe and permanent physical injury and suffering, mental distress, loss of wage and/or impairment of earning capacity, diminution of enjoyment of life's activities, diminution of the consortium, guidance, aloha, services, companionship,

expenses incurred for treatment of his injuries, together with other damages as shall be proved at time of trial.

21. As a further legal result of the foregoing, plaintiff ESPINOSA BRUMBLAY has suffered, and will continue to suffer, severe and permanent mental distress, loss of filial consortium, companionship, guidance, aloha, and relation with her son, JACOB FIRTH, as well as loss of wage and/or earning capacity, together with such other damages as shall be proved at time of trial.

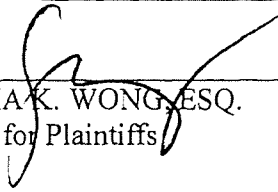
22. As a further legal result of the foregoing, plaintiff ESPINOSA BRUMBLAY has suffered losses for the defendants', and/or any of their, negligent infliction of emotional distress, as a result of being in close proximity and seeing her son and his injuries shortly after he suffered his seizure.

23. Plaintiff FIRTH engaged in no negligent conduct which was a legal cause of his injuries.

WHEREFORE, upon a hearing hereof, plaintiffs pray that judgment be entered in their favor and against defendants, and/or any of them, for such damages as plaintiffs have sustained, pre-judgment and post-judgment interest, attorney's fees, costs of suit, and such other damages as to which plaintiffs shall be entitled to pursuant to Rule 54 of the Hawaii Rules of Civil Procedure.

MAY 29 2018

DATED: Wailuku, Maui, Hawaii, _____.



CYNTHIA K. WONG, ESQ.
Attorney for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JACOB FIRTH and ELVA MARIE)	CIVIL NO. _____
ESPINOSA BRUMBLAY,)	(Non-Motor Vehicle Tort)
)	
Plaintiff,)	SUMMONS
)	
v.)	
)	
COUNTY OF MAUI, STATE OF HAWAII,)	
JOHN DOES 1-5, JOHN DOE)	
CORPORATIONS 1-5, JOHN)	
DOE PARTNERSHIPS 1-5, ROE NON-)	
PROFIT CORPORATIONS 1-5, and)	
ROE GOVERNMENTAL AGENCIES 1-5,)	
)	
Defendants.)	
_____)	

SUMMONS

TO THE DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with the court and serve upon CYNTHIA K. WONG, ATTORNEY AT LAW, L.L.L.C, plaintiffs' attorney, whose address is 2035 Main Street, Suite 2, Wailuku, Maui, Hawaii 96793, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty-day time limit, judgment by default will be taken against you for the relief demanded in the complaint.

If you fail to obey this summons this may result in an entry of default and default judgment.

Pursuant to Rule 4(b) of the Hawaii Rules of Civil Procedure, this summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open

to the general public, unless a judge of the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.

MAY 29 2018

DATED: Wailuku, Maui, Hawaii, _____

/sgd/ D. FELLASAP (scat)

CLERK OF THE ABOVE-ENTITLED COURT