

COUNCIL OF THE COUNTY OF MAUI
GOVERNANCE, ETHICS, AND
TRANSPARENCY COMMITTEE

November 8, 2019

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Governance, Ethics, and Transparency Committee, having met on October 15, 2019, makes reference to County Communication 19-29, from Council Chair Kelly T. King, relating to litigation matters.

By correspondence dated June 27, 2019, the Department of the Corporation Counsel requested consideration of the possible settlement of Tommy Russo v. County of Maui, et al., Civil 14-00515 JMS-KSC. Attached to the request is a proposed resolution entitled "AUTHORIZING SETTLEMENT OF TOMMY RUSSO VS. COUNTY OF MAUI, ET AL. CIVIL NO. 14-00515 JMS-KSC," along with a copy of the complaint.

The purpose of the proposed resolution is to authorize settlement of the case.

Your Committee notes the complaint alleges negligence by the County for the unlawful seizure, unlawful arrest, false arrest, battery, assault, and violation of Plaintiff Tommy Russo's First Amendment rights, related to the obstruction of a traffic stop and failure to comply with a lawful order while he was filming news events along Haleakala Highway, Maui, Hawaii, on November 20, 2012.

Your Committee further notes the Supreme Court of Hawai'i issued an opinion in the case on December 14, 2017, concluding the "filming of government officials engaged in their duties in a public place' . . . is protected by the First Amendment to the United States Constitution and by the independent protections afforded by article I, section 4 of the Hawai'i Constitution."

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By correspondence dated August 19, 2019, the Department of the Corporation Counsel transmitted a revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF TOMMY RUSSO VS. COUNTY OF MAUI, ET AL., CIVIL NO. 14-00515 JMS-KSC."

The purpose of the proposed resolution is to authorize the Department to settle the case as it relates to the claims against the County of Maui. The revised proposed resolution incorporates nonsubstantive revisions.

Your Committee also notes Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement of claims or civil litigation in excess of \$7,500.

The Corporation Counsel provided a brief overview of the case.

Because the case involves ongoing litigation, the Corporation Counsel requested the opportunity to convene an executive meeting.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes; and Section 92-5(a)(8), Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 7-1 to recommend adoption of the revised proposed resolution. Committee Chair Molina and members Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye." Committee Vice-Chair Rawlins-Fernandez voted "no." Committee member Hokama was excused.

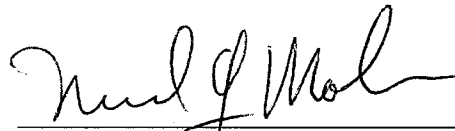
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Your Governance, Ethics, and Transparency Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF TOMMY RUSSO VS. COUNTY OF MAUI, ET AL., CIVIL NO. 14-00515 JMS-KSC," be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF
TOMMY RUSSO VS. COUNTY OF MAUI, ET AL.,
CIVIL NO. 14-00515 JMS-KSC

WHEREAS, Plaintiff Tommy Russo filed a lawsuit in the United States District Court for the District of Hawaii on November 17, 2014, Civil No. 14-00515 JMS-KSC, against the County of Maui, et al., claiming unlawful seizure, unlawful arrest, violation of his rights under the First Amendment, false arrest, battery, assault, and gross negligence, among other claims, and seeking special, general, and punitive damages; and

WHEREAS, the County of Maui filed its Answer on March 24, 2015; and

WHEREAS, this case was stayed on June 3, 2015, pending an appeal in the underlying criminal case; and

WHEREAS, on March 31, 2017, an order on the underlying criminal appeal was issued; and

WHEREAS, on June 7, 2019, a settlement conference was held in this case; and

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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 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

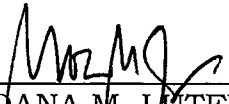
2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case; and

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.

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APPROVED AS TO FORM
AND LEGALITY:



MOANA M. LUTEY
Corporation Counsel
County of Maui
Lit 5447