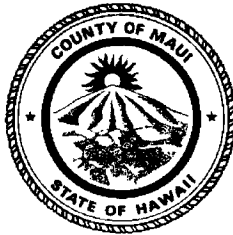


ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

EDWARD S. KUSHI  
First Deputy

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

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

March 22, 2018

MEMO TO: Donald Guzman, Chair  
Parks, Recreation, Energy, and Legal Affairs Committee

FROM: Moana M. Lutey, Deputy Corporation Counsel *M*

SUBJECT: LITIGATION MATTERS – Settlement of Claims and Lawsuits  
(PRL-1) AUTHORIZING SETTLEMENT OF MOLLIE M. KLINGMAN  
VS. THE COUNTY OF MAUI, ET AL.; CIVIL NO.: 16-00399 ACK-  
RLP

Our Department respectfully requests the opportunity to present information to the Parks, Recreation, Energy, and Legal Affairs Committee and to discuss settlement options with regard to the above-referenced lawsuit.

Copies of the Resolution authorizing settlement and the First Amended Complaint are attached.

This matter is in active litigation and will involve discussion of confidential communications and attorney work product information. As such, 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.

We request that a representative from Department of Police be in attendance during discussion of this matter. Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your anticipated assistance in this matter.

cc: Tivoli Faaumu, Chief of Police

# Resolution

AUTHORIZING SETTLEMENT OF  
MOLLIE M. KLINGMAN v. THE COUNTY OF MAUI ET AL.,  
CIVIL NO. 16-00399 ACK-RLP

WHEREAS, Plaintiff Mollie M. Klingman filed a lawsuit in the United States District Court for the District of Hawaii on July 20, 2016, Civil No. 16-00399 ACK-RLP, against the County of Maui, alleging gender discrimination and emotional distress; and

WHEREAS, the County of Maui filed a Motion to Dismiss Plaintiff's Complaint on August 25, 2016; and

WHEREAS, the County of Maui's Motion to Dismiss Plaintiff's Complaint was granted on November 28, 2016; and

WHEREAS, the Court allowed Plaintiff to file a First Amended Complaint, which was filed on December 12, 2016; and

WHEREAS, the First Amended Complaint added some clarification to Plaintiff's claims while eliminating the emotional distress claims; and

WHEREAS, the County of Maui filed its Answer to the First Amended Complaint on December 27, 2016; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and

**Resolution No. \_\_\_\_\_**

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 Parks, Recreation, Energy, and Legal Affairs 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 Parks, Recreation, Energy, and Legal Affairs Committee; and

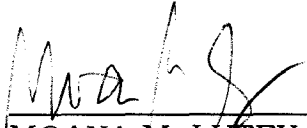
2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

**Resolution No. \_\_\_\_\_**

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:



---

MOANA M. LUTEY  
Deputy Corporation Counsel  
County of Maui

12/20/16 @ 3:55 pm accepted by  
Caleb Rowe

MICHAEL JAY GREEN 4451  
841 Bishop Street, Suite 2201  
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Attorneys for Plaintiff  
MOLLIE M. KLINGMAN

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MOLLIE M. KLINGMAN,	)	CIVIL NO. 16-00399 ACK-RLP
	)	
Plaintiff,	)	FIRST AMENDED COMPLAINT;
	)	DEMAND FOR JURY TRIAL;
vs.	)	SUMMONS
	)	
THE COUNTY OF MAUI, MAUI	)	
POLICE DEPARTMENT; JOHN	)	
DOES 1-10; JOHN DOE	)	
CORPORATIONS 1-10; JOHN DOE	)	
PARTNERSHIPS 1-10; and JOHN	)	

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CORPORATION COUNSEL  
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DOE GOVERNMENT ENTITIES 1-10;)  
 )  
 Defendants. )  
 )  
 )  
 \_\_\_\_\_ )

**FIRST AMENDED COMPLAINT**

COMES NOW Plaintiff, MOLLIE M. KLINGMAN, by and through her attorneys, MICHAEL JAY GREEN, DENISE M. HEVICON and CAPRICE R. ITAGAKI, and as a First Amended complaint against THE COUNTY OF MAUI, MAUI POLICE DEPARTMENT; JOHN DOES 1-10; JOHN DOE CORPORATIONS 1-10; JOHN DOE PARTNERSHIPS 1-10; and JOHN DOE GOVERNMENT ENTITIES 1-10; hereby alleges and avers as follows:

**INTRODUCTION**

1. This is an action to redress the discrimination against the Plaintiff, based on her sex, and other unlawful employment practices in violation of 42 U.S.C. § 2000(e) et seq. and Hawaii state law, Hawaii Revised Statutes Chapter 378, et. seq.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction of the action under 28 U.S.C. §1343 and 42 USC §2000e et. seq. in order to protect rights guaranteed by 42 USC §1981,

Title VII of the 1964 Civil Rights Act (42 USC §2000e et seq.), the Fourteenth Amendment to the United States Constitution; and pendant jurisdiction over state law claims.

3. All of the matters as herein alleged occurred within the jurisdiction of the District of Hawaii.

4. Pendant jurisdiction is based on 28 U.S.C. § 1367, and United Mine Workers v. Gibbs, 383 U.S. 715, 86 S.Ct. 1130 (1966), as the violation of the Civil Rights Law alleged herein is substantial and the pendent causes of action derive from a common nucleus of operative facts.

#### **PARTIES**

5. Plaintiff MOLLIE M. KLINGMAN (“Plaintiff”) is and was at all relevant times herein, a resident of the County of Maui, State of Hawaii.

6. Defendant THE COUNTY OF MAUI, MAUI POLICE DEPARTMENT (“Defendant COUNTY”), is a duly organized municipal corporation organized and existing under and by virtue of the laws of the State of Hawaii. At all times mentioned herein Defendant County was the employer of Chief Tivoli S. Faamu and Deputy Chief Dean Rickard during all the relevant acts and omissions described herein.

7. Chief Tivoli S. Faamu and Deputy Chief Dean Rickard were

working within the course and scope of their employment with the Defendant County during all the relevant acts and omissions described herein. Therefore, Defendant County is responsible for their acts and/or omissions under the theories of *respondeat superior*, agency and ratification.

8. Defendants JOHN DOES 1-10, JOHN DOE CORPORATIONS 1-10, JOHN DOE PARTNERSHIPS 1-10, and JOHN DOE GOVERNMENT ENTITIES 1-10 are persons, corporations, partnerships, or government entities (hereinafter collectively “Doe Defendants”) sued under fictitious names for the reason that their true names and identities are presently unknown except that they are connected in some manner and/or were responsible for the actions of Defendants alleged herein. Plaintiff prays leave to amend this Complaint to insert the true names, identities, capacities, activities and/or responsibilities of Doe Defendants when they are ascertained.

**CONDITIONS PRECEDENT / ADMINISTRATIVE BACKGROUND**

9. Plaintiff has fulfilled all conditions precedent to the institution of this action under 42 U.S.C. Section 2000e and Hawaii Revised Statutes Chapter 378.

10. Plaintiff timely filed a Complaint with the Equal Employment Opportunity Commission (“EEOC”) and the Hawaii Civil Rights Commission (“HCRC”). The EEOC provided a Right to Sue Letter dated April 29, 2016 and



received by Plaintiff on May 5, 2016. The HCRC issued a Right to Sue Letter on November 7, 2016.

**STATEMENT OF FACTS**

11. Plaintiff MOLLIE M. KLINGMAN started working for the Maui Police Department in 1987. She was the first female recruit to receive the Outstanding Recruit Award.

12. In 2011, she was promoted to Captain and assigned as Support Services Bureau - Technical Services Captain. During her tenure at the Support Services Bureau which lasted over two (2) years, she was assigned as the Acting Assistant Chief/Inspector of Support Services Bureau over twenty five (25) times. She was tasked with the daily operations and responsibilities of running the Support Services Bureau - which included but was not limited to:

- a. Facility manager overseeing building maintenance and repair contracts for the Wailuku Police Headquarters;
- b. Motorpool coordinator responsible for the motor vehicle fleet;
- c. Commanded Records and Identification Section (clerical and records staff, crime lab and evidence room employees);
- d. Commanded Communication Section (dispatchers and receiving desk personnel);

- e. Commanded Information Technology Section;
- f. Wrote and oversaw the funding of several grant projects;
- g. Prepared annual budget submissions;
- h. Wrote and oversaw the implementation of Capital Improvement Projects; and
- i. Assisted the Assistant Chief with construction of the brand new Kihei Police Station.

13. Plaintiff became very experienced at running the Support Services Bureau.

14. In February 2013 she transferred to a position as Lahaina District Commander. Lahaina District Commander is a position that is held by a Captain.

15. In 2013, Plaintiff applied for the position of Police Inspector. This is the next rank higher than a Captain. One must be a Captain in order to qualify to apply for the Police Inspector's position. The Police Inspector that is in charge of the Support Services Bureau is also called the Assistant Chief.

16. Plaintiff underwent the application/interview process but was not selected.

17. She was told by the then Assistant Chief of Support Services Bureau

(Lawrence Hudson) that she should not have bothered to submit an application because that position was going to be filled by Dean Rickard (a male). Hudson told her that she should “know how it is.”

18. Dean Rickard was selected for the position of Assistant Chief of Support Services Bureau, and a promotion to Police Inspector.

19. At that time, Plaintiff did not put much credence into Lawrence Hudson’s words because she had faith in the merit system that was supposed to be fairly employed for the promotion of employees of Maui County.

20. In August 2014, then Captain Tivoli Faaumu contacted Plaintiff and informed her that he put in an application for Chief of Police and that he had asked Assistant Chief Rickard to be his Deputy Chief. Plaintiff informed Chief Faaumu that she would be applying for Rickard’s upcoming vacant Police Inspector/Assistance Chief of Support Services Bureau position.

21. On September 8, 2014, Captain Tivoli Faaumu was appointed Chief of Police of the Maui Police Department and Rickard became the Deputy Chief of Police.

22. On or about September 24-25, 2014 the Hawaii State Law Enforcement Officers Association held its annual conference at the Ritz Carlton Hotel in Kapalua, Maui.

23. At the conference while having drinks together, Officer Rusty Iokia, a union representative for Maui Police Department, had a conversation with Deputy Chief Dean Rickard. During that conversation Rickard told Iokia that the next Assistant Chief/Police Inspector would be “Jags”. That is the nickname for Captain John Jakubczak, a male police officer.

24. The “Maui Police Department Non-Competitive Promotional Opportunity Police Inspector” notice was posted on November 3, 2014. This Notice indicated that an applicant had to have a certain level of training and experience which included a minimum of two (2) years at the rank of Captain or above.

25. Plaintiff and Jakubczak were similarly situated in that they both held the rank of Captain with the Maui Police Department for at least two (2) years. Both Plaintiff and Jakubczak held supervisory positions with the Maui Police Department and had been tasked with supervising less senior police officers.

26. Plaintiff also met the education requirement contained in the Notice. It is unknown what type of education Jakubczak had.

27. Plaintiff had more seniority with the Maui Police Department in both time in service and in the position of Captain than Jakubczak.

28. She had also actually worked in the Support Services Bureau for two

years and had been assigned as the Acting Assistant Chief/Inspector of Support Services Bureau over twenty five (25) times.

29. Jakubczak did not have this experience with the Support Services Bureau.

30. On or about November 6, 2014, Plaintiff submitted an application for Rickard's vacant Police Inspector position (also known as Assistant Chief).

31. On December 2 2014, Plaintiff underwent a twenty-three (23) minute promotion board interview for the Assistant Chief position at the "Chief's Library". The board members were Police Chief Faaumu and Deputy Chief Rickard.

32. During the interview, Plaintiff was not asked any questions relevant to the vacant position. The interview was unstructured and informal. Plaintiff was not allowed to give an opening statement or a closing statement and she was asked very limited questions pertaining to the position she was being interviewed for.

33. The vacant Police Inspector position was given to John Jakubczak, a less experienced and less qualified male.

34. Plaintiff requested a meeting with Chief Faaumu to inquire about the promotion process. Deputy Chief Rickard joined the meeting. Deputy Chief Rickard became very confrontational with Plaintiff during the meeting.

35. On January 10, 2015, Officer Iokia told Plaintiff about the conversation he had with Rickard in September 2014 regarding the promotion of “Jags” to Assistant Chief.

36. Upon information and belief, The Commission on Accreditation of Law Enforcement Agencies (“CALEA”) has routinely found that women are continually unrepresented in the Maui Police Department, especially in the command structure.

**COUNT I: Title VII Discrimination**

37. Plaintiff incorporates and re-alleges the preceding paragraphs of the Complaint as if fully set forth herein.

38. Plaintiff is a member of a protected class, within the meaning of Title VII of the Civil Rights Act of 1964.

39. Plaintiff was qualified for the vacant Police Inspector position (also known as Assistant Chief) with the Maui Police Department.

40. Plaintiff had adequately performed, and exceeded, her job duties and responsibilities and was more qualified than any other candidate for the position.

41. Despite Plaintiff’s qualifications and excellent performance, she was not promoted to the Inspector/Assistant Chief position

42. Defendant County filled Plaintiff’s position with a male, who did not

have the same qualifications and experience as Plaintiff. This male and Plaintiff were similarly situated in that they were both Captains with a minimum of two years experience and each were eligible to compete for the Police Inspector position.

43. Defendant County, its agents and employees, engaged in actions and practice in violation of Title VII of the Civil Rights Act of 1964, and 42 U.S.C. Section 2000 et seq.

44. As a direct and proximate result of Defendant County's conduct, Plaintiff sustained damages, injury and/or harm, and is entitled to all remedies available under the law.

**COUNT II: Discriminatory Practices (Haw. Rev. Stat. Chap. 378)**

45. Plaintiff incorporates and re-alleges the preceding paragraphs of the Complaint as if fully set forth herein.

46. Plaintiff is a member of a class protected by Hawaii Revised Statutes Chapter 378.

47. Defendants engaged in discriminatory acts and practices against Plaintiff in the terms, conditions, or privileges of her employment.

48. As a direct and proximate result of Defendant County's conduct,

Plaintiff sustained damages, injury and/or harm, and is entitled to all remedies available under the law.

WHEREFORE Plaintiff demands judgment against Defendants:

- a. Awarding Plaintiff back pay, prejudgment interest, and damages for all employment benefits she would have received but for the discriminatory and retaliatory acts and practices of the Defendants;
- b. An award of special damages;
- c. An award of compensatory damages;
- d. Attorneys fees and costs of suit; and
- e. Any and all such further relief as the Court deems just and proper in

this action.

DATED: Honolulu, Hawaii, December 12, 2016.

/s/ Denise M. Hevicon  
MICHAEL JAY GREEN  
DENISE M. HEVICON  
CAPRICE R. ITAGAKI

Attorneys for Plaintiff  
MOLLIE M. KLINGMAN



IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

MOLLIE M. KLINGMAN,	)	CIVIL NO. 16-00399 ACK-RLP
	)	
Plaintiff,	)	DEMAND FOR JURY TRIAL
	)	
vs.	)	
	)	
THE COUNTY OF MAUI, MAUI	)	
POLICE DEPARTMENT; JOHN	)	
DOES 1-10; JOHN DOE	)	
CORPORATIONS 1-10; JOHN DOE	)	
PARTNERSHIPS 1-10; and JOHN	)	
DOE GOVERNMENT ENTITIES 1-10;	)	
	)	
Defendants.	)	
	)	
	)	

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury to hear and decide all issues of fact.

DATED: Honolulu, Hawaii, December 12, 2016.

/s/ Denise M. Hevicon  
MICHAEL JAY GREEN  
DENISE M. HEVICON  
CAPRICE R. ITAGAKI

Attorneys for Plaintiff  
MOLLIE M. KLINGMAN

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

MOLLIE M. KLINGMAN,	)	CIVIL NO. 16-00399 ACK-RLP
	)	
Plaintiff,	)	SUMMONS
	)	
vs.	)	
	)	
THE COUNTY OF MAUI, MAUI	)	
POLICE DEPARTMENT; JOHN	)	
DOES 1-10; JOHN DOE	)	
CORPORATIONS 1-10; JOHN DOE	)	
PARTNERSHIPS 1-10; and JOHN	)	
DOE GOVERNMENT ENTITIES 1-10;	)	
	)	
Defendants.	)	
	)	
	)	

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**SUMMONS**

STATE OF HAWAII

To the above-named Defendants:

You are hereby summoned and required to file with the court and serve upon Michael Jay Green, Denise M. Hevicon, and Caprice R. Itagaki, Plaintiff's attorneys, whose service address is Davies Pacific Center, 841 Bishop St., Suite 2201, Honolulu, Hawaii 96813, an answer to the First Amended Complaint which is herewith served upon you, within 21 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 First Amended Complaint.

**WARNING TO DEFENDANT(S):** Failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

**PROCESS SERVER:** You are prohibited from making personal delivery of this summons between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the district or circuit courts permits, in writing on the summons, personal delivery during those hours.

DATED: Honolulu, Hawaii, December 14, 2016

/S/ SUE BEITIA, CLERK by EA, Deputy Clerk  
CLERK OF THE ABOVE-ENTITLED COURT

