

Government Relations, Ethics, and Transparency Committee (2023-2025) on 2024-09-10 1:30 PM

Meeting Time: 09-10-24 13:30

eComments Report

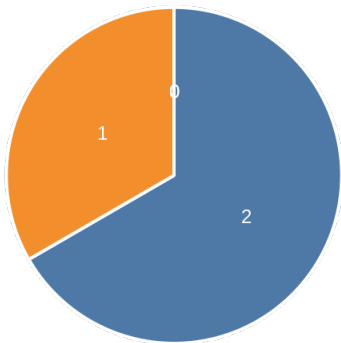
Meetings	Meeting Time	Agenda Items	Comments	Support	Oppose	Neutral
Government Relations, Ethics, and Transparency Committee (2023-2025) on 2024-09-10 1:30 PM	09-10-24 13:30	5	3	2	1	0

Sentiments for All Meetings

The following graphs display sentiments for comments that have location data. Only locations of users who have commented will be shown.

Overall Sentiment

Support (66%) Oppose (33%) Neutral (0%)
No Response (0%)



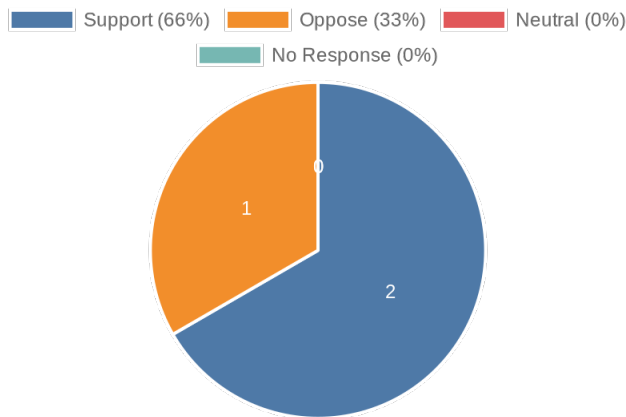
Government Relations, Ethics, and Transparency Committee (2023-2025) on 2024-09-10 1:30 PM
09-10-24 13:30

Agenda Name	Comments	Support	Oppose	Neutral
GREAT-2(24) Various Resos RESOLUTIONS RELATING TO THE APPOINTMENT OF MEMBERS TO VARIOUS BOARDS (GREAT-2(24))	1	1	0	0
GREAT-11(38) Reso 24-71 RESOLUTION 24-71, RELATING TO AUTHORIZATION OF ADDITIONAL COMPENSATION FOR SPECIAL COUNSEL KOBAYASHI SUGITA & GODA, LLP, IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL., CASE 2CCV-21-0000048 (GREAT-11(38))	1	0	1	0
GREAT-11(41) Reso 24-81 RESOLUTION 24-81, RELATING TO SETTLEMENT AUTHORIZATION: CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL., CASE 2CCV-21-0000048(2) (GREAT-11(41))	1	1	0	0

Sentiments for All Agenda Items

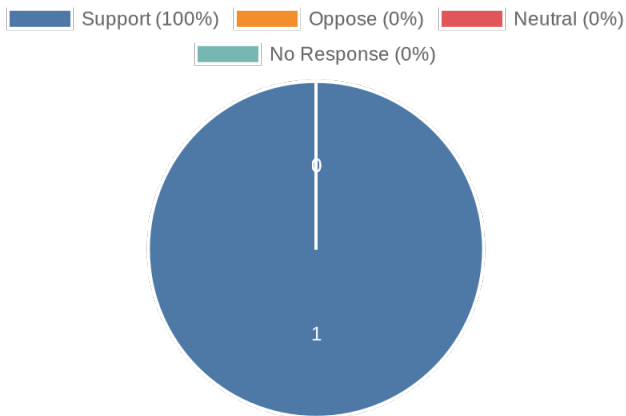
The following graphs display sentiments for comments that have location data. Only locations of users who have commented will be shown.

Overall Sentiment



Agenda Item: eComments for GREAT-2(24) Various Resos RESOLUTIONS RELATING TO THE APPOINTMENT OF MEMBERS TO VARIOUS BOARDS (GREAT-2(24))

Overall Sentiment



Guest User

Location:

Submitted At: 3:51pm 09-09-24

Aloha GREAT Committee Chair U'u-Hodges and Council Members,

Vernon Kalanikau, commenting on my behalf

I'm here to comment on Resolution 24-149.

I first met Brian Ward at our opening night as co-members serving on the South Maui Community Planning Advisory Committee.

As we worked together on drafting a community plan for South Maui, I did get to know Brian as the person, his role in Wailea and his passion and Aloha to malama and preserve the 'aina, the kai and the Hawaiian culture. When Brian engaged in our SMCPAC meetings, he demonstrated the importance of our cultural resources and our heritage should be a priority first in all discussions during our planning.

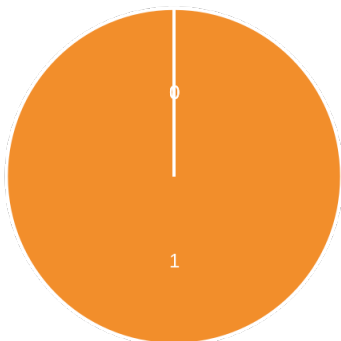
Brian also demonstrated objectiveness, inclusivity, integrity, respect and Aloha in all our meetings. Brian put in time and work, always prepared for the following meetings. Brian is passionate and cares for the South Maui community and he wants to continue to represent the community through his due diligence and knowledge that he has gained as a participating on the SMCPAC. The Maui Planning Commission will benefit from this gem, Brian Ward

Please join me GREAT Committee Chair U'u-Hodges and Council members in supporting Brian Ward to serve on the Maui Planning Commission.

Mahalo nui,
Vernon Kananiolaie Kalanikau
Kula Kai Kupuna

Overall Sentiment

Support (0%) Oppose (100%) Neutral (0%)
No Response (0%)



Chris Salem

Location:

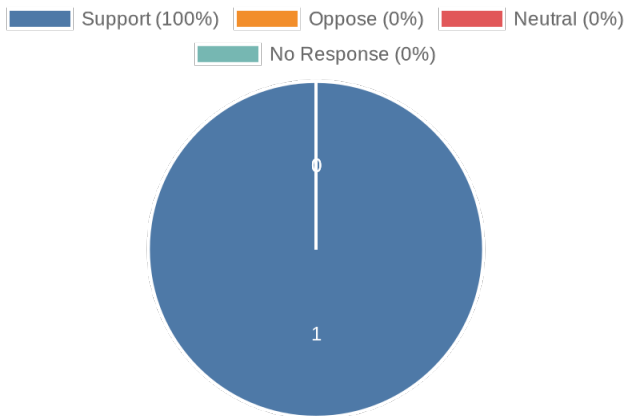
Submitted At: 8:43pm 09-09-24

Please review the Introduction on the attached Motion prior to the GREAT meeting. I released the County of Maui from Liability in consideration of the Administration acting upon their duties to hold developers accountable for their signed and conditioned subdivision obligations.

Why didn't Corporation Counsel support Mayor Victorino's promises to enforce the County laws that were adopted by this Council? Why is KSG stating that enforcing the County laws cannot happen as a condition of settlement? Did the Council sign off on this conclusion? It makes no sense..

Please ask questions in open session..

Overall Sentiment



Chris Salem

Location:

Submitted At: 8:57pm 09-09-24

Please consider the attached terms of settlement that shift the liability to the developers and their consultants. Mayor Victorino had a sensible plan to issue the violations notices to the responsible parties and bring them to the table for resolution. Then we would move on to adopting a system of assessment and collection of the developer debts owed to the County.

Corporation Counsel squashed that plan. Why?

Please ask questions in open session.

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Electronically Filed
SECOND CIRCUIT
2CCV-21-0000048
08-SEP-2024
12:30 PM
Dkt. 830 NHM

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHRISTOPHER SALEM,

Plaintiff,

vs.

COUNTY OF MAUI; RICHARD T.
BISSEN, JR, in his official capacity.
KATE BLYSTONEE, in her official
capacity as DIRECTOR OF THE
DEPARTMENT OF PLANNING;
JOHN DOES 1-100; JANE DOES 1-
100; DOE PARTNERSHIPS 1-100;
DOE CORPORATIONS 1-100;

Defendants.

CIVIL NO. 2CCV-21-0000048

PLAINTIFF'S AMENDED MOTION
FOR LEAVE TO AMEND THE FIRST
AMENDED COMPLAINT;
MEMORANDUM IN SUPPORT OF
MOTION; NOTICE OF NON-HEARING
MOTION; AND CERTIFICATE OF
SERVICE

Non-Hearing Motion

Honorable Judge Peter Cahill

Trial Date: November 25, 2024

PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT

Plaintiff CHRISTOPHER SALEM hereby requests, pursuant to *Hawaii Rules of Civil Procedure* ("HRCP") Rules 15(c), 20, 21, that the Honorable Court grant Plaintiff Salem's leave to amend the First Amended Complaint. ("FAC")

For nearly three years under the conflicted representation of former Corporation Counsel (hereinafter "Corp Counsel") Director Moana Lutey, the County Defendants intentionally withheld relevant requested government records and Plaintiff Salem's County employee whistleblower work product as a staff member of the Office of the Mayor.

On June 29, 2023, Honorable Judge Peter Cahill, who replaced recused Judge Kirstin Hamman, granted Plaintiff Salem's Motion to Compel conflicted Corp Counsel and the County Defendants to produce the government records originally requested by Plaintiff Salem's legal counsel many years prior. (Dkt #420)

In late October of 2023, the County Defendant's special Counsel Kobayashi, Sugita, and Goda, LLP (hereinafter "KSG") finally released over 30,000 pages of compelled and redacted government records. Conflicted Corp Counsel continues to withhold government records alleging they are "privileged". Legal disputes remain over conflicted Corp Counsel's alleged attorney-client privileges, which continues to prejudice Plaintiff Salem and the citizens' rights to a transparent County government. As such, further claims may arise.

New evidence, presented herein, includes the previously concealed government records, the County Defendant's recent admission that specific infrastructure represented in Developer Lot 48A, LLC's signed, conditioned SMA Permit environmental studies were never constructed, and a baseless after-the-fact declaration from Defendant Public Works Director Jordan Molina. Director Molina falsely concludes that Deputy Director Milton Arakawa had the authority to waive in the dark his private developer client's lawful obligation to complete the very same roadway infrastructure that was deferred "one time" by the Department of Public Works in Plaintiff Salem's "3 Lot or Less" subdivision.

The new evidence also concludes an investigation into fraud by Developer Lot 48A, LLC, which Honorable Judge Joseph Cardoza recognized and left the door open to reverse an Arbitration judgment for legal fees. (*Civil No.* 09-1-0040(3)) As a damaging result of the dubious judgment for legal fees, a fraudulent lien slandered Plaintiff Salem's real property titles and was the direct cause of the wrongful foreclosure of Plaintiff Salem's family home.

The Court records reveal the critical fact that Developer Lot 48A, LLC's signed and

conditioned SMA Permit environmental studies authored by Developer Lot 48A, LLC land planning firm Munikeyo, Arakawa (Milton), and Hiraga, Inc (hereinafter “MAH”) were never “missing” as the Defendants fraudulently alleged.

These government records, critical to Plaintiff Salem’s pursuit of justice in these matters, were finally discovered in Planning Department files seven years after Deputy Director Milton Arakawa signed off on his client’s unlawful oceanfront subdivision with incomplete roadway infrastructure and drainage mitigations. As the records now reveal, conditioned SMA Permit studies were hidden from Plaintiff Salem as a civil conspiracy orchestrated by Developer Lot 48A, LLC.

As the Court records affirm, on behalf of Plaintiff Salem’s mortgage lender One West Bank, FSB, special counsel KSG demanded the fraudulently induced liens be removed from Plaintiff Salem’s real property title as condition of settlement to avoid foreclosure. Factually, and has forewarned, had the County Defendants acted upon their duties to issue the appropriate violation notices to Developer Lot 48A, LLC and their professional engineer Warren S. Unemori Engineering, Inc. (hereinafter ‘Unemori’) Plaintiff Salem would have immediately satisfied Honorable Judge Cardoza’s judicial directives and saved his family home.

As a whole, the new evidence connects the dots and proves that Mayor Michael Victorino was correct to assert that former Public Works Director Milton Arakawa harmed Plaintiff Salem through a damaging civil conspiracy in collusion with his former developer client Lot 48A, LLC and licensed professional civil engineer Unemori.

Pursuant to Count III of the First Amended Complaint (“FAC”) Mayor Victorino promised to hold Developer Lot 48A, LLC lawfully accountable for their backroom dealings and violations of County laws and subdivision ordinances which Plaintiff Salem relied upon to his detriment. The evidence now reveals conflicted Corp Counsel obstructed Mayor Victorino

from performing on his duties and promises to avoid exposing their direct role in slandering Plaintiff Salem's real property title. Dishonorable Defendant Public Works Director Jordan Molina's falsified Declaration attempts to eradicate Mayor Victorino's good faith promises and knowledge of the historic facts.

In conclusion, the Second Amended Complaint ("SAC") provides the facts and evidence arising from the previously concealed government records that affirm the material fact that the County Defendants and conflicted Corp Counsel attorneys have intentionally interfered with and breached County official's duties; abused their authority; obstructed the County Auditor's independent duties and Plaintiff Salem's access to public records; were grossly negligent in their administration of the County laws and ordinances; manufactured false government records; committed fraud; aided and abetted fraud; and recently presented entirely new and manufactured defenses which expose a civil conspiracy between a private developer, County officials, and a licensed professional civil engineer. The causal connection between the conspired conduct and resulting ongoing injuries to Plaintiff Salem and the public interest is clearly evidenced in the SAC.

Therefore, this Motion is made on the grounds of concise and clearly comprehensible claims that leave to amend should be freely granted, which the Honorable Court has also affirmed during open hearings. This Motion is made pursuant to HRCF, Rules 7, 15, 20, and 21 and is supported by the accompanying Memorandum, Declaration, and Exhibits attached hereto and the referenced files herein.

DATED: Lahaina, Hawaii, September 8, 2024.

/s/ Christopher Salem

CHRISTOPHER SALEM - *Pro Se*

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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
OF THE STATE OF HAWAII

CHRISTOPHER SALEM,

Plaintiff,

vs.

COUNTY OF MAUI; RICHARD T.
BISSEN, JR, in his official capacity.
KATE BLYSTONE, in her official
capacity as DIRECTOR OF THE
DEPARTMENT OF PLANNING;
JOHN DOES 1-100; JANE DOES 1-
100; DOE PARTNERSHIPS 1-100;
DOE CORPORATIONS 1-100;

Defendants.

CIVIL NO. 2CCV-21-0000048

MEMORANDUM IN SUPPORT OF
MOTION

NON-HEARING MOTION:

Honorable Judge Peter Cahill

Trial Date: November 25, 2024

MEMORANDUM IN SUPPORT OF MOTION

I. FACTS RELEVANT TO THE AMENDMENT

On June 2, 2023, during Plaintiff Salem's Motion to Compel Government Records hearing before Honorable Judge Peter Cahill, conflicted Corp Counsel Deputy Attorney Tarnstrom made a disturbing statement to which Judge Cahill responded prophetically:

Deputy Tarnstrom: *"Your Honor, even if it shows corruption by Corporation Counsel and that we intentionally tried to hurt Mr. Salem, it's not a part of his claims."*

Judge Peter Cahill: *"His current claims."*

The Honorable Judge Cahill established the foundation for this amended complaint when he foresaw additional claims once conflicted Corp Counsel recused themselves and released the compelled government records that Corp Counsel, the County Defendants, and the independent County Auditor had been concealing from Plaintiff Salem for years. Judge Cahill expressed concerns over The Department of Corporation Counsel's conflicts with Plaintiff Salem's claims relating to the independent County Auditor. Corp Counsel's recusal reversed their long-standing refusal to acknowledge their department's obvious conflicts.

The mind-boggling quantity of previously withheld County records, County Defendant admissions, and Plaintiff Salem's work product in the Office of the Mayor expose clear evidence of a damaging scheme by Corp Counsel to cover up, aid, and abet fraud, collusion, and a civil conspiracy by County officials to serve private developers' financial interests at the public's expense. Corp Counsel's cover-ups are the direct and, or proximate cause of Plaintiff Salem's ongoing injuries and damages.

The produced records also expose a vengeance-driven, multi-departmental scheme orchestrated by conflicted Corp Counsel to intentionally harm Plaintiff Salem as a whistleblower who has exposed Corp Counsel's and the County Defendants' unscrupulous acts for decades.

Conflicted Corp Counsel continues to withhold and redact County records and communications under a dubious claim of attorney-client privilege, which Plaintiff Salem asserts is prejudicial. Redacted and withheld documents and communications may further prove the malice and prejudice against Plaintiff Salem between conflicted Corp Counsel and conspiring County officials.

With that said, the recent manufactured conclusions by "the County" alleging the Director of Public Works has the authority to decide whether roadway infrastructure, environmental mitigations, and fire hydrants represented in conditioned Department of Planning

SMA Permit studies, can be omitted in the dark without consideration of the Planning Director, has exposed a cause of action for falsification of government records and a civil conspiracy.

In conclusion, the degree of civil liability that Corp Counsel and the conspiring County officials have inflicted upon the County of Maui is beyond imagination. A prior ruling by the Honorable Court strikes at the heart of this Second Amended Complaint.

“The irreparable harm here is the people of the County of Maui having a right to have their laws enforced. There’s a disrespect for the law that is irreparable harm and damage to all of us.”

Honorable Judge Peter Cahill

II. LEGAL AUTHORITY

On February 24, 2024, during an open hearing before Honorable Judge Peter Cahill, the discussion shifted towards Plaintiff Salem’s rights to amend the First Amended Complaint.

Mr. Salem: *“What rights do I have to amend my complaint.?”*

Judge Peter Cahill: *“Look at -- look at Rule 15. And it says freely amend. The standard is very low to amend, meaning it's free -- leave to amend shall be freely granted. That's the standard.”*

Under Hawai’i Rules of Civil Procedure (“HRCP”) Rule 15(a), leave to amend pleadings “shall be freely given when justice so requires.” A request for leave to amend may be made at any time and is addressed to the sound discretion of the court. *Kahalepauole v. Associates Four*, 8 Haw. App. 7, 14, 791 P.2d 720 (1990). HRCP Rule 15(a) states:

[a] party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely give *when justice so requires* . . .

HRCP, Rule 15. (emphasis added). Under this standard, amendment is proper absent:

undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of amendment.

~*~

Hirasa v. Burtner, 68 Haw. 22, 26, 702 P.2d 772, 775 (Haw. 1985); *See also Dejetley v. Kaho'ohalahala*, 122 Haw. 251, 271, 226 P.3d 421, 441 (Haw. 2010) (holding that the trial court abused its discretion by denying leave to amend without any concurrent finding of prejudice or "other exception" warranting denial).

Hawaii Courts have consistently stated:

In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given."

Keall'e v. Hml'aiaan Elec. Co., 65 Haw. 232, 238-39, 649 P.2d 1149, 1154 (1982), quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962).

HRCF Rule 19(a), entitled "Persons to be Joined if Feasible" (emphasis added), provides:

A person who is subject to service of process shall be joined as a party in the action if (1) **in the person's absence complete relief cannot be accorded among those already parties**, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff

HRCF, Rule 20, provides:

(a) Permissive joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction,

occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

HRCPC Rule 21 provides:

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately by order of the court.

III. CORP COUNSEL REFUSES TO RETRACT FALSE PLEADINGS

Pursuant to Rule 3.3 of the Supreme Court Rules of Professional Conduct (“HRPC”), *Pro Se* Plaintiff Salem has notified KSG of their professional attorney duty to ensure that Corp Counsel retracts and reconciles the injurious consequences of all their prior falsified representations to the Honorable 2nd Circuit Court and the United States Bankruptcy Court.

At the June 6, 2023, Maui County Council regular meeting, Government Relations, Ethics, and Transparency (“GREAT”) Committee Chair U‘u-Hodgins finally publicly acknowledged the conflicts that Plaintiff Salem has alleged from the outset of the case CR 23-44, “*Christopher Salem v. County of Maui et al*, Civil 2CCV-21-0000048.

CHAIR U‘U-HODGINS: “We have been notified by Corporation Counsel Takayesu that the Judge ruled Corporation Counsel is conflicted out of the case.”

Despite Plaintiff Salem’s good faith notices, Corp Counsel’s refusal to retract their prior conflicted and false pleadings and reconcile the damaging consequences to Plaintiff Salem’s family is the direct cause of this dishonorable burden on the Honorable Court. KSG attorney Kaneshiro denies that the KSG law firm has a professional attorney's responsibility to advise their Corp Counsel “clients” to honor the HRPC.

In conclusion, Corp Counsel's and KSG's disobedience of the professional attorney rules is wrongfully perpetuating this case and controversy along with the unjustified burden on the Honorable Court. With their own self-serving, fee-driven refusal, and direct knowledge of the causes of Plaintiff Salem's injuries, KSG is complicit in a documented scheme of furtherance of the County Defendant's Fraud upon the Tribunal.

IV. SUMMARY OF FIRST AMENDED COMPLAINT CLAIMS

While withholding government records and Plaintiff Salem's County employee staff work product and whistleblower notices, conflicted Corp Counsel and KSG have repeatedly attempted to mislead and deceive the Honorable Court on Plaintiff Salem's First Amended Complaint ("FAC") claims and resulting injuries.

The County Defendants' frivolous Opposition to Plaintiff Salem's Motion for Injunctive Relief crossed the line into fraud and misrepresentation of government records and County laws and ordinances. Plaintiff Salem's Reply to County Defendant's Opposition provides the Honorable Court with clear and concise references to indisputable facts and evidence of fraud. (Dkt 706)

Specifically, KSG's recent pleadings include a manufactured Declaration from Public Works Director Jordan Molina which has no lawful basis or supporting evidence.

"the "County" duly confirmed that all required subdivision improvements for SM2 2000 0024 were completed." "Indeed, the relevant documents establish that the County confirmed that all required subdivision improvements were completed, and thus the corresponding SMA Permit SM2 2000/0042 conditions were satisfied."

"The County" as an entity, is a misleading amalgamation of individual Departments' lawful duties and authorities, including the Department of Planning. The Court records affirm that the County attorneys are playing on both sides of the fence, alternating between assigning awareness and authority to "The County" or to specific departments, whenever it suits their

frivolous argument or manufactured defense.

Defendant Director Molina's "belief" Declaration alleging that the Department of Public Works "generally" has the authority to erase infrastructure represented in a private developer's concealed SMA Permit environmental studies are factually not true on many grounds and laws, as evidenced by prior representations by the "County". (See Dkt 147 - Page 19)

"As shown above, enforcement of SMA Minor permits is clearly exclusively vested in the Planning Director. Maui County Charter §§ 8-8.3(6), 8-8.4(4), (5); SMA Rule §§ 12-202-23(a), (b) and 12-202-4. Determining whether or not there is a violation is within the original jurisdiction of the Planning Department."

Again, conflicted Corp Counsel and KSG have repeatedly made false representations to the Honorable Court of Plaintiff Salem's claims, which are clearly represented in Plaintiff Salem's FAC.

i. Plaintiff Salem's First Amended Complaint claims.

First, in violation of employee laws, conflicted Corp Counsel, the County Defendants, and Chief of Staff Tyson Miyake refused to respond in any way to Plaintiff Salem's multiple whistleblower notices as a staff member of the Office of the Mayor. (Dkt 89 - 67) As a result, the conflicted Corp Counsel and the County Defendants knowingly allowed the expressed harm to the public interest and Plaintiff Salem's family to continue.

Plaintiff Salem's inter-office memos and written employee notices include the Brown Development SMA Permit and Community Plan violations, unresolved Olowalu SMA Permit violations involving green belts and fire breaks, Lot 48A, LLC SMA Permit and subdivision violations, island-wide manipulation of the UpCountry Water Bill by the Department of Public Works, the damages caused by the withholding of the Palama Drive affordable housing agreement from the members of the Maui County Council by Corp Counsel Director Patrick Wong; documented reports submitted to Public Works Director Molina revealing irresponsible

waste of millions in public funds on County infrastructure projects, and further discovery of the former Public Works Director Milton Arakawa's continuous manipulation of the thousands of unaccounted for "3 Lots or Less" infrastructure "deferral" agreements, the evidence of which was presented directly to the County Auditor by Plaintiff Salem. (Dkt 89 - 57)

Second, Plaintiff Salem's whistleblower notices also include the damages related to a breach of duty to enforce County zoning laws and subdivision ordinances by Planning Director Michele Mclean, Deputy Planning Director Jordan Hart, Public Works Director Rowena Dagdag Andaya, Public Works Director Jordan Molina, and conflicted Corp Counsel Director Moana Lutey.

Third, Plaintiff Salem's employee notices expose Public Works staff engineer Lance Nakamura's gross negligence and refusal to correct the Department's ill-conceived internal tracking system which intentionally fails to ensure that private civil engineers incorporate their conditioned subdivision SMA Permit infrastructure and environmental mitigations into their subdivision civil engineering drawings, pursuant to Title 18 of the Maui County Code.

Fourth, Plaintiff Salem's personal claims include a malice-driven wrongful employment termination by Chief of Staff Tyson Miyake. (Dkt 89 - 67)

Fifth, claims relating to "Defendant Victorino promised to be the leader who would finally resolve through proposed legislation the longstanding issues surrounding the developer "deferral agreements." (Dkt 89 - 25)

Sixth, the concealed government records affirm that conflicted Corp Counsel interfered with Mayor Victorino's duties and lawful "promise to use the Mayor's power and authority to impose maximum fines upon Developer Lot 48A, LLC and their conspiring professional consultants" and "hold Developer Lot 48A, LLC accountable for its unlawful conduct and malicious injuries inflicted upon Plaintiff Salem's family." (Dkt 89 - 22.)

In conclusion, conflicted Corp Counsel has shifted the liability back on the County of Maui by failing to stand behind Mayor Victorino's campaign commitments to clean up the County Government and hold private developers accountable for their development obligations.

V. PARTIES TO AMENDMENT

Previously withheld County records and communications now reveal that Plaintiff Salem's personal, and whistleblower claims were not only valid but that the depth of abuse of power and malice-driven interference with the County Defendant's and County Auditor's official and independent duties by Corp Counsel runs deeper than ever imagined.

Corp Counsel and defiant legal counsel KSG continue their scheme of litigious cover-ups and unethical legal tactics through the manufacturing of an entirely new spin of frivolous defense based on a recent "belief" Declaration by Public Works Director Jordan Molina. Director Molina's convoluted "belief" Declaration establishes the foundation for serious additional claims and complicit Defendants, as follows.

A. Adding County Auditor as a Defendant with related claims.

In 2018, responding to a petition of the County residents with over 2000 signatures, the Maui County Council unanimously voted to request an Audit of the thousands of unaccounted-for and uncollected private developer roadway infrastructure "deferral" agreements executed by conflicted Corp Counsel for over four decades. In June 2018, the County Auditor self-initiated an Audit to address Plaintiff Salem's whistleblower discovery.



Self-Initiated Projects

- Audit of improvement agreements related to three lots or less subdivisions, aka “deferral agreements”.

i. *The Audit was a result of over twenty years of obstruction by Corp Counsel*

In 1999, JoAnne Johnson was elected as the West Maui Council Member. Shortly after, former County Clerk Kathy Kaohu was hired as her executive assistant. In early 2000, Plaintiff Salem contacted Johnson's office regarding the proposed County of Maui roadway infrastructure Capital Improvement Project (CIP) Phase IV of Lower Honoapiilani Road (*See Exhibit “A” - Affidavit of JoAnne Johnson*).

The Department of Public Works' grossly negligent and false notice of the commencement of construction of the Phase IV CIP adjacent to Plaintiff Salem's subdivision, led to Plaintiff Salem's discovery of unaccounted-for roadway infrastructure “deferral” agreements. Plaintiff Salem reported these findings to Council Member Johnson and Executive Assistant Kaohu almost 25 years ago.

Despite Plaintiff Salem's ongoing concerns about private developers' conditioned roadway infrastructure ultimately being paid by the County and taxpayers, conflicted Corp Counsel ignored Plaintiff Salem's whistleblower notices and continued to authorize and execute hundreds more “deferral” agreements with private developers.

The well-documented history shows that conflicted Corp Counsel and County Defendants intentionally and recklessly shifted tens of millions of dollars of private developers' financial obligations onto the County and taxpayers.

ii. *Plaintiff Salem relied on the County Auditor's duties to his detriment.*

In July 2019, Plaintiff Salem accepted Mayor Victoino's offer of a position as a legislative liaison staff member in the Office of the Mayor, with Plaintiff Salem's first task being the creation and adoption of a fair and equitable system for assessing and collecting on

thousands of developer agreements. Plaintiff Salem accepted his County position based on Mayor Victorino's expressed intent to clean up the County government, beginning with the filthy private developer "deferral" agreements.

Relying on the County Auditor's duty to provide an accurate accounting of the collectible developer "deferral" agreements to the Mayor and Maui County Council, Plaintiff Salem introduced to Mayor Victorino a nationwide professional consultant to guide the County of Maui in adopting a system for assessing the developer debts. . The County Auditor received the consultant's qualifications, proposal, and the "Fairness Bill" (PC-17) legislation, which Plaintiff Salem and Director Molina previously authored as the foundation for a fair and equitable system of collection.

Records show that after initiating the Audit in 2018, Plaintiff Salem provided the County Auditor with evidence of County Defendant violations, non-compliance with County laws, and fraud in multiple subdivision "deferral" agreements island-wide that were facilitated by Corp Counsel attorneys. The evidence included an admission from former Public Works Director David Goode confirming Salem's claims:

"Compounding all that is that some deferral agreements, three lots, had another future three lots and a future three lot, so it got subdivided again and again, had different deferrals, And in some cases, especially in West Maui, the original three-lot subdivision was a huge piece of land that went halfway up the mountain.

And so there's a possibility there's going to be some ("3 Lots or Less") deferral Agreements where theoretically there's 1,000 different owners and they each owe us \$25.

I mean it's getting really crazy..."

Budget and Finance Committee Minutes, April 19, 2012

David Goode - Director of Public Works

Undeniably, an independent audit would reveal that Corp Counsel and County Defendants executed numerous subdivision infrastructure "deferral" agreements with private developers outside the adopted County ordinance, unlawfully shifting developers' financial

obligations onto the County and taxpayers, including the most blatant abuse being in Plaintiff Salem's former subdivision.

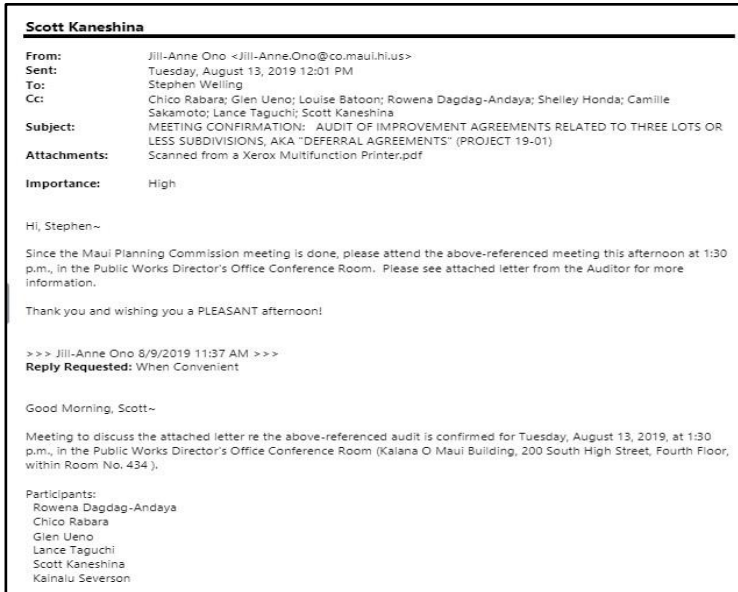
Had the County Auditor performed its independent duties in a timely manner in compliance with adopted professional auditing standards, the private developer debts would have been quantified, and collection actions would have been taken. Alternatively, by consulting with independent and non-conflicted legal counsel, the independent Auditor could determine that the developer agreements are legally unenforceable and should be removed as encumbrances on thousands of titles County-wide.

Either way, Plaintiff Salem would have been responsible for significant financial recovery for the County or slamming the door on Corp Counsel's manipulations that benefited private developers at public expense for over 40 years. In conclusion, the previously concealed government records show that the County Auditor's gross negligence was the direct and/or proximate cause of prolonging and obstructing the reconciliation of the conspired fraud that caused Plaintiff Salem's loss of his family home and professional career.

iii. *County Auditor's findings were never presented to Maui County Council*

The previously withheld records now reveal that just weeks after Plaintiff Salem's employment on July 1, 2019, the Office of the County Auditor scheduled a meeting with Mayor Victorino's newly appointed Public Works Director Rowena Dagdag Andaya, Deputy Director Stephen Welling, Public Works staff Chico Rebara, Glen Ueno, County Auditor Senior Analyst Scott Kaneshina, and Kainalu Severson.

The August 13, 2019 meeting regarding the Audit of the "3 Lot or Less" Subdivision "Deferral" agreements was referenced as having "High" Importance.



As we now know, just a few days later, on August 22nd, highly qualified Deputy Public Works Director Stephen Welling announced his resignation after only four months on the job.



Yet to be discovered is what was discussed or disclosed at that “Highly Important” August 13th Auditor meeting, which involved long-standing Public Works staff members who had direct involvement and personal knowledge of the unlawful acts and manipulation of the “3 Lot or Less” roadway infrastructure “deferral” agreements.

County records also reveal that on July 25, 2019, County Auditor Lance Taguchi sent a letter to Public Works Director Rowena Dagdag-Andaya seeking information relating to the “deferral” agreements. Through Mayor Victorino, Director Dagdag-Andaya sent an informational response letter from County officials dated August 22, 2019.

Again, Plaintiff Salem asserts that the County Defendant respondents are parties and witnesses to the decades of fraud and manipulation of the “deferral” agreements to serve private developers’ financial interests at the public expense. As the whistleblower and staff member of the Office of the Mayor, known to be actively working on a legislative solution to the deferral agreement problem, Plaintiff Salem was not included in the communications.

**DEPARTMENT COVER SHEET
FOR DOCUMENTS TO MAYOR**

RUSH
please. Thank you!! Auditor
anxious to start audit.

CONTACT PERSON: Jill Anne S. Ono DATE: August 22, 2019

DEPARTMENT: Public Works, Development Services Administration

SUBJECT/BRIEF DESCRIPTION: Transmittal Letter to Lance Taguchi, County Auditor re Audit of Improvement Agreements Related to Three Lots or Less Subdivisions, aka "Deferral Agreements" (Project 19-01) for approval for transmittal by Mayor Victorino.

DATE ACTION REQUIRED BY: ASAP, please.

iv. Corp Counsel obstructed access to records of enforcement of agreements.

The response letter from Honorable Michael P. Victorino also reveals that the County Auditor requested from Corp Counsel “internal memos and opinions from the Office of Corporation Counsel regarding enforcement of subdivision deferral agreements”. Applying their repeating pattern of obstruction of government records, conflicted Corp Counsel responded stating that the requested records were “not readily retrievable and will require additional time for completion”.

Honorable Michael P. Victorino
For Transmittal to:
Mr. Lance T. Taguchi, County Auditor
**SUBJECT: AUDIT OF IMPROVEMENT AGREEMENTS RELATED TO THREE
LOTS OR LESS SUBDIVISIONS, AKA "DEFERRAL AGREEMENTS"**
August 22, 2019
Page 2

b. *internal memos regarding the processing, tracking and enforcement of deferral agreements; and*

Response: A draft policy was circulated for review and comment on June 25, 2012. See file Email_Draft Policy.

c. *internal memos and opinions from the Office of the Corporation Counsel regarding the enforcement of subdivision deferral agreements.*

Response: The requested information is not readily retrievable and will require additional time for compilation.

The evidence and Corp Counsel's privileged logs now reveal that conflicted Corp Counsel continues to withhold relevant inculpatory documents and has interfered with the County Auditor's independent duties to cover up their own documented pattern of misdealings within countless "3 Lot or Less" subdivisions.

Plaintiff Salem asserts that conflicted Corp Counsel never had any intention to enforce the developer agreements and obstructed Plaintiff Salem's whistleblower and Director Molina's efforts to adopt a system of assessment and collection for years prior. Plaintiff Salem first attempted to do so as a private citizen, then as an executive assistant to the Maui County Council, and later as Mayor Victorino's legislative liaison. Further discovery and in-camera review of withheld government records will reveal whether any records were produced by Corp Counsel to the County Auditor pursuant to the Auditor's record request.

v. The Office of the County Auditor breached their independence duties.

As a direct result of the Office of the County Auditor's failure to perform their independent duties in a responsible time frame, the Maui County Council, staff member Plaintiff Salem, and the Mayor Victorino Administration were unable to take the first step towards establishing a fair and equitable system of assessment of the tens of millions of dollars owed to

the County of Maui.

On October 20, 2020, as a staff member of the Office of the Mayor, Plaintiff Salem sent a respectful communication to County Auditor Lance Taguchi requesting a status update on the audit of the unaccounted-for developer deferral agreements. The letter states.

‘As a staff member of the Office of the Mayor, I was hired with the stated task of adopting and facilitating a system of collection and assessment of the agreements.

With that said, the entire process is being stalled by the years of delays of your pending Audit. I am forwarding this communication to both ”

Christopher Salem
Office of the Mayor

As a staff member of the Office of the Mayor, Plaintiff Salem provided the County Auditor with further employee Whistleblower Discovery and evidence of the multiple unlawful subdivision “deferral” agreements executed by Corp Counsel attorneys and former Public Works Director Milton Arakawa that Plaintiff Salem uncovered while doing assigned research tasks for Mayor Victorino.

Prior to Judge Cahill’s compelling order, the County Auditor, and conflicted Corp Counsel had obstructed access to County records that prove that the County Auditor had possession and knowledge of the multiple unlawful developer agreements since 2018. As the record now shows, for years thereafter, the County Auditor failed to produce any Audit Findings or Reports to the Maui County Council.

The Maui County website states the Office of the County Auditor shall adhere to the following professional standards;

Professional Standards

The Office of the County Auditor adheres to very rigorous and demanding professional auditing requirements as described in Generally Accepted Government Auditing Standards, commonly referred to as GAGAS or The Yellow Book. These standards include requirements for planning the audits; ensuring properly trained and supervised staff; determining the rationale for the objectives, scope, and methodology of audits; selecting the criteria used to evaluate the audit subject, and ensuring the evidence is sufficient, relevant, and competent.

From the outset of the Audit, County Auditor Lance Taguchi had in his possession multiple private developer “3 Lot or Less” subdivision agreements executed by Corp Counsel which were clearly and admittedly executed in violation of County laws and ordinances.

“Pursuant to 7.51 of the Yellow Book, “Auditors should report identified or suspected non-compliance with provisions of laws, regulations, contracts, and grant agreements and instances of fraud directly to parties outside the audited entity..”

The County Auditor failed to report the identified “deferral” agreements executed by Corp Counsel in violation of law, including those which the former Public Works Director David Goode made reference to in open Council hearings. Instead, under the assumed advice of conflicted Corp Counsel, the County Auditor chose to suspend the entire Audit of the thousands of roadway infrastructure “deferral” agreements because of the one single, disputed subdivision “deferral” agreement alleged in Plaintiff Salem’s complaint.

Plaintiff Salem asserts that had the County Auditor directed his “properly trained” staff and independent attorneys to act in accordance with the rigorous Professional Auditing Standards, the findings and facts surrounding Public Works Director Milton Arakawa’s “3 Lot or Less” Notice of Intent to Collect mailed to five property owners in Plaintiff Salem’s former subdivision, would have been just cause for the County Auditor to notify the proper authorities in 2019 of Mail Services Fraud and collusion between County officials and Developer Lot 48A, LLC. No litigation would have been necessary.

The County Auditor's dubious and dishonorable decision to suspend the audit after years of investigation evidences complicit conduct and complete disregard for established government auditing standards by the Office of the County Auditor.

vi. *The County Auditor was aware of the fraud in Plaintiff Salem's subdivision.*

Undeniably, the County Auditor had direct access to the evidence of multiple acts of fraud and falsification of government records by Director Arakawa and Corp Counsel which have now been admitted to in the County Defendants AMENDED RESPONSIVE PRETRIAL STATEMENT, filed with the Honorable Court on January 25, 2024.

40. No additional, new "3 Lot or Less" Subdivision Deferral Agreement was authorized or recorded by the Department of Corporation Counsel for the three additional parcels (Lot 48A-1, Lot 48A-2, Lot 48A-3) subsequently subdivided by Developer Lot 48A, LLC in 2001.

The County now admits they have no contractual or infrastructure "deferral" agreement with the overlapping subdivision parcels created by Developer Lot 48A, LLC in LUCA file No. 4.805 in 2001. The Maui County Code does not lawfully allow for three additional parcels to be added to a "3 Lots or Less" subdivision "deferral" agreement, thereby deferring five parcels from their infrastructure obligations. To the contrary, the Maui County Code requires full roadway frontage improvements in all subdivisions resulting in four or more lots.

vii. *The Office of the County Auditor was aware of corruption.*

Director Arakawa, the partners of Lot 48A, LLC, and their private attorneys circumvented County laws through private warranty deeds during the overlapping subdivision of Lot 48A, unlawfully adding their 3 new parcels to the County "3 Lot or Less" subdivision agreement without Corp Counsel's approval.

It is a material fact that one of the partners who manipulated the County contract and land titles was Robert Cella, the owner of Coldwell Island Properties. Simply stated, the licensed

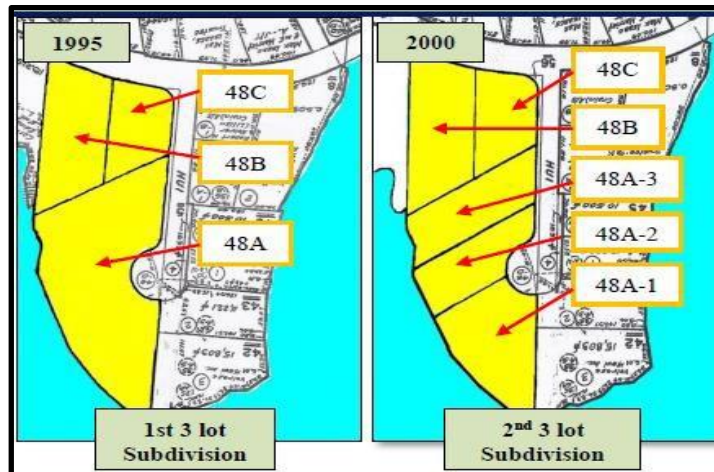
real estate experts and development partners were neither rookies nor naive about their unlawful acts.



In prior Court pleadings, Corp Counsel represented that private citizens and real estate brokers who contract away the rights and roles of the County and prevent the County from functioning appropriately under the laws are guilty of promoting corruption “at the highest level of local government.”

‘If a private citizen were able to contract away the rights and roles of County officials, the County would cease to function appropriately under the law. .. Among other things, it could promote corruption at the highest level of local government.’
Department of the Corporation Counsel (Dkt 147 - Page 14)

Factually, the highest level of corruption is exactly what followed Developer Lot 48A, LLC's manipulation of County contracts, County officials, and real property titles. Years later, Lot 48A, LLC’s former land planning partner Director Arakawa sent slanderous collection notices to five property owners, including the unlawful privately executed warranty deed owners, falsely informing them they would have to “haggle” over unspecified amounts owed to the County for a previously proposed roadway infrastructure CIP. The highest level of corruption was affirmed by Director Arakawa’s and Corp Counsel's unlawful collection notices.



As we now know, the August 2019 Auditor meeting involved Mayor Victoriono’s appointed Public Works Director Dagdag-Andaya and staff employees who were fully aware of the material fact that Director Milton Arakawa’s misdealings with Developer Lot 48A, LLC were corrupt.

The County Auditor was fully informed and noticed early in the Audit review that no adopted County law allowed for five real property titles to be bound by a “3 Lot or Less” subdivision infrastructure deferral agreement, and that Director Arakawa’s notices represented clear and indisputable evidence of falsification of government records and manipulation of County laws.

Despite the documented evidence of misdealings by County Officials and Corp Counsel attorneys since 2019, the Auditor failed to report the unlawful acts to the members of the Maui County Council or County Prosecutor. Instead, the Auditor knowingly allowed conflicted Corp Counsel to interfere with the independent Auditor’s duties and obstruct access to government records.

In conclusion, Plaintiff Salem asserts the County Auditor was grossly negligent and failed to uphold professional auditing standards in the Audit of the thousands of unaccounted-for private developer roadway infrastructure “deferral” agreements. Plaintiff Salem believes further discovery

shall reveal the audit was desperately “postponed” by the Office of the County Auditor under the conflicted representation and interference of Corp Counsel.

Honorable Alice L. Lee, Chair
and Members of the Council
June 30, 2023
Page 2

- Report on the fiscal sustainability and financial condition of the County of Maui.
- Audit of improvement agreements related to three lots or less subdivisions, aka “deferral agreements”. *Postponed*

A. Adding Public Works Director Molina as a Defendant with related claims.

The recent after-the-fact Declaration of Public Works Director Molina, presented in support of KSG’s failed objection to Plaintiff Salem’s Motion for Injunctive Relief, alleges falsified conclusions and opens Pandora’s box on KSG’s multiple attempts to further the fraud of the County Defendants and conflicted Corp Counsel.

Director Molina’s newly manufactured Declaration introduces a contrived County defense for the first time, that misrepresents County laws, duties, and records. Plaintiff Salem asserts that this deceptive and fraudulent Declaration nullifies any claims of Res Judicata from previous cases.

i. Jordan Molina replaced Stephen Welling as Deputy Director of Public Works

In September 2019, Jordan Molina was appointed Deputy Director of Public Works by Mayor Victorino, two months after Plaintiff Salem began working in the Office of the Mayor. Molina succeeded Stephen Welling, who suddenly resigned shortly after the Auditor’s “Very Important” August 13, 2019 meeting. Director Molina's resume includes being a legislative analyst with the Office of Council Services, and executive assistant to Council Member Elle Cochran, the Chair of the Infrastructure and Environmental Management Committee.

Undeniably, other than Mayor Victorino, former Council member JoAnne Johnson, and County Clerk Kathy Kaohu, no other County official than Director Molina has greater knowledge or understanding of the conflicted Corp Counsel's and former Public Works Directors' decades of fraudulent acts and obstruction of access to government records involving the unaccounted-for private developer "3 Lots or Less" deferral agreements.

"These habitual conflicts of interest need to be brought into the light, especially within the County government. The behavior of the Administration is unacceptable."

Jordan Molina - 2012

Executive Assistant to Council Member Elle Cochran

Director Molina's Declaration disregards Mayor Victorino's promise and pursuit of cleaning up the Maui County Government and commitment to resolving the decades of abuse related to the unaccounted-for private developer roadway infrastructure "deferral" agreements.

As an executive assistant to the Maui County, Council Chair of Infrastructure, Public Works Director Molina worked side by side with Plaintiff Salem, co-authoring the "Fairness Bill" (PC-17) and so is acutely aware that resolving these issues would heal the life-changing injuries to Plaintiff Salem's family, and bring millions in recovery to the County of Maui.

ii. Public Works Director Molina is complicit in Corp Counsel's malfeasance.

Undeniably, Jordan Molina witnessed the falsification of government records and fraud in Plaintiff Salem's subdivision by former Public Works Director David Goode, Director Milton Arakawa, and professional civil engineering consultant Unemori.

From: Jordan Molina <Jordan.Molina@mauicounty.us>
To: Chris Salem <chrissalem8@yahoo.com>
Sent: Wednesday, June 20, 2012 2:51 PM
Subject: Re: Fairness Bill

Hey Chris,

I made some comments on this draft. See attachment. Great start.

Jordan

>>> Chris Salem <chrissalem8@yahoo.com> 6/20/2012 10:55 AM >>>
Jordan;
Please review the attached draft of the Fairness Bill.
There will also be a related Title 18 "Clean Ups"..
Chris

The attached affidavit of former West Maui Council Member JoAnne Johson affirms Director Molina's involvement in drafting legislation to adopt a system of assessment and collection of the previously unaccounted-for developer "deferral" agreements.

"I read what I term the Fairness Bill prepared with assistance from Mr. Salem in cooperation with Council Member Elle Cochran's executive assistant

Jordan Molina.

The bill provided what I thought could be a start to achieving a fair and responsible process of collection and assessment of developers' deferred financial obligations".

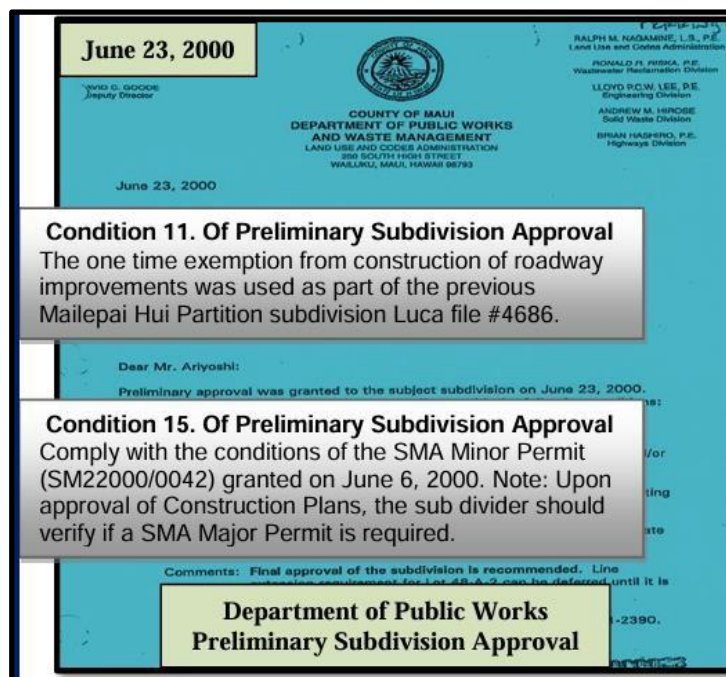
Director Molina is a witness to the material fact that former Corp Counsel Director Patrick Wong obstructed the adoption of the Fairness Bill. (PC-17). Additionally, as an Executive assistant to Council Member Don Guzman, Director Molina's mother, Kathy Kaohu, authored the Council resolution that manifested the unanimous vote requesting a County audit of the unaccounted-for "deferral" agreements, in response to a citizen-driven petition with over 2000 signatures.

Director Molina is also a direct witness to the warnings of Plaintiff Salem's family's impending injuries and loss of their family home due to County Officials' manipulation of the “3 Lot or Less” roadway infrastructure agreement in Plaintiff Salem’s subdivision. These warnings were presented to the Maui County Council by Plaintiff Salem’s then Bankruptcy Attorney, David Cain.

iii. Director Molina’s Declaration is dishonest and dishonorable.

Plaintiff Salem asserts that Public Works Director Jordan Molina’s “belief” Declaration is a Red Herring manufactured for the improper purpose of concealing fraud by the County Defendants and licensed professional civil engineer Unemori. No adopted County law or authority supports the convoluted conclusion of former Public Works Directors’ abuse of authority to serve a private developer’s financial interests.

Specifically, Director Molina is drawing false conclusions that conflict with the documented conditions #11 and #15 of the Preliminary Subdivision Conditions of Approval for LUCA File 4.805 which were issued by the Department of Public Works.



Director Molina's make-believe Declaration alleging that Public Works has the authority to simply erase Condition #15 and the private developers' responsibilities for roadway infrastructure and environmental mitigations from conditioned subdivision SMA Permits, which are administered exclusively by the Planning Department, is simply not true as a matter of law and fact.

Pursuant to Maui County Code Title 18.20.060 "The approval of the construction plans by the director shall not relieve the subdivider nor the engineer of the responsibility for any and all defects that may become evident subsequent to the plan approval."

Director Molina's make-believe Declaration also falsely alleges that Public Works has the authority to disregard Public Works' lawful Condition #11 and the material fact that "the one-time exemption from construction of the roadway improvements was previously used as part of the previous "3 Lot or Less" Mailepai Hui Partition LUCA file 4.686."

Director Molina's make-believe Declaration disregards the material fact that the Director of Public Works does not have the lawful authority to alter existing County contracts in the dark which impact existing subdivision property owners and their real property land titles.

iv. Director Molina's Declaration is just cause for being named individually.

Director Molina's Declaration is a fraudulent attempt to cover up undocumented backroom dealings between former Public Works Director David Goode, Deputy Director Milton Arakawa, and Developer Lot 48A, LLC's civil engineering firm Unemori.

Again, Director Molina's Declaration attempts to deceive the Honorable Court into believing that the Public Works Director has the authority to simply erase roadway infrastructure improvements in conditioned subdivision permits that were already deferred "one time" in a prior "3 Lot or Less" subdivision. (LUCA File No. 4.686)

Developer Lot 48A, LLC's signed and conditioned SMA Permit studies, previously

concealed for seven years, affirm that planning consultant MAH., Unemori, and Developer Lot 48A, LLC itself all represented and agreed in writing that the infrastructure improvements to Lower Honoapiilani Road were the financial obligations of Developer Lot 48A, LLC's as a result of the re-subdivision of parent parcel Lot 48A. (LUCA File No. 4.805)

As such, Director Molina's falsified Declaration in support of KSG's fabricated Opposition is far outside of the Public Works Director's authority and County laws, thereby justifying naming Jordan Molina in his personal and individual capacity.

C. Director Molina's Declaration justifies naming Unemori as Defendant

Director Molina's Declaration is a dishonest attempt to cover up the multiple fraudulent acts by Developer Lot 48A, LLC's licensed professional engineer Unemori. As the licensed professional engineer for the conditioned SMA Permit requirements that was concealed for over seven years, and being the engineer of record for Developer Lot 48A, LLC's entire subdivision application, Unemori had independent professional responsibilities to both the conditions of the Department of Planning and the conditions of the Department of Public Works.

KSG's conclusion that "the relevant documents establish that the County confirmed that all "required" subdivision improvements were completed, and thus the corresponding SMA Permit SM2 2000/0042 conditions were "satisfied", is not true as a matter of fact or law.

As the evidence reveals, Unemori used their professional stamp to violate County ordinances, engaged with County Defendants to conceal Developer Lot 48A, LLC's government records, and committed Fraud on the Tribunal to conceal government records to cover up the material fact that all "required" and conditioned SMA Permit subdivision improvements wrongfully and secretly omitted from their roadway infrastructure drawings and therefore were never performed by Developer Lot 48A, LLC.

Director Molina's unsupported Declaration illuminates Unemori's unlawful and

undocumented backroom dealings and abuse of authority by Public Works Director Milton Arakawa. Unemori is now an indispensable party to the irreparable injuries to Plaintiff Salem's family of which Mayor Victorino was a direct witness.

i. Unemori's history of seeking unlawful subdivision approvals for developers.

County and Court records affirm that Unemori has repeatedly abused its professional stamp to seek unlawful subdivision approvals for its developer clients. In both the Fairways / Palama Drive subdivision and the Pu'u Kahana subdivision, private residents endured the costly financial burden of seeking judicial enforcement of County laws that Unemori's stamp violated.

In the case of Smith Development's Pu'u Kahana subdivision application, Plaintiff Salem was burdened with \$50,000.00 in legal fees paid to the law firm Paul, Johnson, Park & Niles in order to successfully move the Maui County Planning Commission to deny the subdivision application. Unemori, who authored and submitted the application, knew or should have known that the subdivision violated County laws.

In the case of Palama Drive, Plaintiff Salem's Anuenue Housing Group settled at their own expense the protracted litigation between the developer and County with an extensively researched and vetted proposal to develop 100% workforce affordable housing and lower the massive walls from local families' backyards below.

The litigation was the direct result of illicit subdivision approvals by Public Works which were drafted and submitted by Unemori. As a licensed professional engineer, Unemori knew or should have known that they were in violation of County laws. With that said, why would Unemori draft and submit such egregious grading plans to the Department of Public Works that clearly violate the County grading ordinances if they did not have some form of prior, private agreement with Public Works Director Milton Arakawa?

In the current case, Unemori's roadway plans represent only roadway improvements to a

portion of Hui Road E, and omit the roadway infrastructure represented in the conditioned SMA Permit for Lower Honoapiilani Road. Director Molina alleges that “**Generally**, DPW has the jurisdiction to determine what roadway improvements are required as part of a subdivision permit.” Director Molina fails to cite any County law or ordinance to support his “belief” Declaration.

Again, was Unemori or Developer Lot 48A, LLC granted in the dark a second “one-time exemption” by the Public Works Directors from the construction of roadway infrastructure to Lower Honoapiilani Road in direct violation of Condition 11 of the subdivision LUCA File No. 4.805 conditions? By what authority and with what documentation?

Condition 11. Of Preliminary Subdivision Approval
The one time exemption from construction of roadway improvements was used as part of the previous Mailepai Hui Partition subdivision Luca file #4686.

Planning Dept. Condition #11
Improve the adjoining halves of Lower Honoapiilani Road and Hui Road E to the provisions of the subdivision ordinance for roads within the urban district or comply with Condition #13.

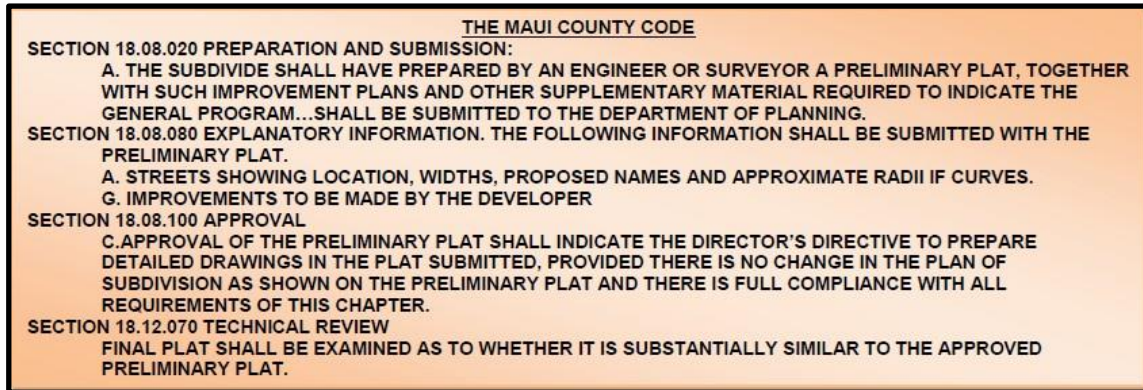
Why would Unemori risk their professional license by omitting the roadway infrastructure to Lower Honoapiilani Road from their plans without some form of written agreement with Public Works Director David Goode or Deputy Director Milton Arakawa?

Further, if there was a Director decision to omit the Lower Honoapiilani Road infrastructure, why would the County Defendants and Unemori bother to hide the conditioned SMA Permit studies from Plaintiff Salem, the members of the Maui County Council, and the Honorable Court for seven years?

Further discovery will reveal which County Defendant from Public Works instructed Unemori to omit the “deferred” roadway improvements and coerced Unemori to adjoin the

County scheme to conceal the “smoking gun” government records from Plaintiff Salem, the Maui County Council, and the Arbitrator.

Factually, the omitted roadway infrastructure to Lower Honoapiilani Road represented in the previously concealed and conditioned SMA Permit studies, represent violations of Title 18 of the Maui County Code and the SMA Rules adopted by the Maui County Planning Commission.



ii. Director Molina’s Declaration exposes the County's knowledge of Unemori’s fraud.

Director Molina’s recent Declaration illuminates the County Defendants’ and conflicted Corp Counsel’s complicit knowledge of fraud upon the Court and County of Maui by Unemori to serve private Developer Lot 48A, LLC’s financial interests in multiple acts.

Plaintiff Salem asserts that Director Molina’s Declaration is designed to cover up the Unemori fraud and backroom dealings between Public Works Director David Goode, Deputy Director Milton Arakawa, and professional engineer Unemori which led to, among other things, the SMA Permit files went “missing” for seven years. The County Planning Department illegally withheld government records from Plaintiff Salem.

The Honorable Court has been provided indisputable evidence on multiple occasions of the material fact that conflicted Corp Counsel and KSG are fully aware that Unemori committed Fraud on the Tribunal to the Circuit Court for the 2nd Circuit Court to obstruct access to the Developer Lot 48A, LLC’s “smoking gun” conditioned SMA Permit studies for over seven

years.

iii. Unemori's fraud upon the tribunal.

Request 12.

WSUE and ARIYOSHI have no documents responsive to this request; neither WSUE nor ARIYOSHI were employed to perform any services in connection with the Special Management Area Minor permit process.

Director Molina's Declaration states that "the Order of Magnitude estimate is submitted by the developer to show that the proposed project qualifies for an SMA Minor Permit". Director Molina and the County Defendants are fully aware that Unemori's conditioned Order of Magnitude Estimate represented in the Munikiyo, Arakawa, and Hiraga, Inc SM2 2000 0042 SMA Permit conditioned studies was intentionally undervalued and fraudulent to assist Developer Lot 48A, LLC in sidestepping a required and costly SMA Major Permit and public hearings.

Until the "smoking gun" SMA Permit documents were discovered seven years later, it was impossible for Plaintiff Salem to know that the conditioned SMA Permit studies and conditioned Order of Magnitude Estimate of construction costs authored by Unemori were fraudulent.

Hope your successful in convincing Planning that the improvements will cost less than \$125,000.00

Warren S. Unemori

iv. Director Molina's Declaration in support of KSG's false pleadings

There is no produced government record of Unemori requesting or receiving a waiver or directive from The Department of Public Works or the Department of Planning to omit the 220 lineal feet of "deferred" roadway infrastructure improvements along Lower Honoapiilani Road that is represented in Developer Lot 48A, LLC's signed, conditioned, and previously concealed

SMA Permit studies and Unemori's SMA Permit Order of Magnitude Valuation.

1. Installation of approximately 220 lineal feet of curb, gutter, sidewalk and related improvements along Lower Honoapiilani Road;
2. Installation of approximately 142 lineal feet of curb, gutter, sidewalk and related improvements along the north side of Hui Road "E";

Further, there is no produced government record of Developer Lot 48A, LLC or Unemori requesting or receiving a waiver of responsibility to install a fire hydrant which was unlawfully "deferred" from the subdivision conditions for the original Anka, Inc "3 Lot or Less" subdivision.

<u>WATER SYSTEM:</u>			
Fire Hydrant	1	each	\$ 4,000.00 \$ 4,000

In conclusion, Director Molina's unsupported and falsified reference to an alleged "General" jurisdiction of the Public Works Director to determine what roadway improvements are required for a subdivision has no application or jurisdiction over roadway improvements previously conditioned in SMA Permits issued by the Department of Planning.

Further, the after-the-fact omission of roadway infrastructure which was conditioned by pre-existing contractual "3 Lot or Less" roadway infrastructure deferral agreements previously recorded on the real property titles of affected subdivision parcels by Corp Counsel, is outside of the law and Public Works Director's authority. Director Molina has put into evidence a revealing statement that since 2001, Public Works Directors have abused their authority and violated the Maui County Code. Finally, fire protection is not a "deferrable" roadway improvement.

"I am deeply concerned that the SMA Permitting process has become a means for private developers to skirt their infrastructure and environmental mitigation responsibilities, since enforcement may be absent or selective."

C

ouncil Member JoAnne

11, 2015

VI. RELEVANT BACKGROUND TO AMENDED COMPLAINT

Plaintiff Salem's First Amended Complaint raises claims relating to Mayor Victorino's promises to hold Developer Lot 48A, LLC accountable for unlawfully manipulating County Officials, causing irreparable harm to Plaintiff Salem's family and the loss of their family home. Plaintiff Salem's whistleblower claims reveal a long period wherein unscrupulous County officials and conflicted County attorneys deeply betrayed the public trust to line the pockets of their political & professional alliances. The facts don't lie.

Mayor Victorino's initial days in office were filled with drama, division, and public humiliation. During the initial months of Mayor Victorino's administration, Corporation Counsel Director Pat Wong was arrested, and Public Works Director David Goode's appointment was rejected by the Maui County Council.



Maui County's top civil attorney arrested for domestic abuse



Petition to Deny Employment to David Goode as Public Works Director

After Patrick Wong's "resignation" as Director of Corp Counsel, Mayor Victorino appointed Deputy Attorney Moana Lutey to the Director position. During Acting Director Lutey's appointment hearings, Acting Director Lutey responded to Council Member Paltin's questions about the SMA Permit in question as follows

"..do you know of any reason the County should not enforce a SMA permit that the Mayor agreed to?"

Council Member Tamara Paltin - May 28, 2019

"I'm not sure what that one's about. I have really no idea. If you gave me a specific, I could go figure that out but I haven't been involved in any SMA's or being consulted on it so I'm just not sure what that issue is about." Acting Corporation Counsel Moana Lutey - May 28, 2019

To the contrary, County and Court records affirm that Deputy Corp Counsel attorney Moana Lutey was the attorney of record on multiple legal cases in the 2nd Circuit Court

involving the unfulfilled SMA Permit in question. Undeniably, Moana Lutey lied to the members of the Maui County Council to obtain the influential position of Director of Corp Counsel.

“Our community has lost faith in Corporation Counsel and I do not see the change in leadership since Ms. Lutey has become Director.

I believe I was voted onto the Council for change and I promised that I would fight for that change.”

Council Member Keoni Bowline Fernandez, May 28, 2019

The previously concealed records reveal that at the same time conflicted Corp Counsel was demanding Plaintiff Salem sign a devious “bar napkin” amendment to the agreement between Plaintiff Salem and Mayor Victorino, Mayor Victorino was actively and lawfully ratifying the agreement by seeking a report from Planning Director Mclean to document Developer Lot 48A, LLC’s unfulfilled conditioned SMA Permit.

The previously concealed government records also confirm that former Corporation Counsel Director Moana Lutey personally interfered with Mayor Victorino’s duty and directives to County Defendants to enforce County laws and ordinances against unscrupulous Developer Lot 48A, LLC and their professional consultants. At one point, Mayor Victorino called Plaintiff Salem on a Saturday morning and screamed “Get her out”.

On June 5, 2020, as a staff member of the Office of the Mayor, Plaintiff Salem noticed Corporation Counsel Director Moana Lutey to act upon her professional attorney duty to notice Developer Lot 48A, LLC and Unemori to correct their roadway plan omissions and return to the subdivision to complete the Lower Honoapiilani Road infrastructure improvements.

The Maui County Planning Commission Shoreline Management Area Rules, state as follows;

Shoreline Management Area Rules §12-202-24: Conflicts with other laws: In the case of a conflict between the other requirements of any other State law or County ordinance regarding the Special Management Area, **the more restrictive requirement shall apply** in furthering the purpose of this part.

Mayor Victorino had a well-thought-out plan, one which served the public interest and mitigated the County's exposure to serious financial liability. In consideration of Plaintiff Salem releasing the County of Maui from liability, Mayor Victorino agreed to act on his duty to enforce County laws to document Developers Lot 48A, LLC misdealings with former County Officials and ensure that the appointed County Director issued the appropriate County violation notices.

“I know Pat Wong. I know a lot about his life. Sometimes they drink and they talk. I don't drink. I listen. I know David Goode, probably 30 years. I know the shit

he's pulled. A lot of it was borderline illegal. Borderline. I'll just use that word.

Sometimes it may cross one way or the other, but it's borderline. But they know I know. I have no problem saying: hey David, hey Pat, goodbye. Because I don't need you. And what are you going to come back at me with?”

Mayor-Elect Michael P. Victorino - December 2018

“Milton, when I look at what he did, took advantage of the situation to take care of his friends” “There is a definite, I hate to use the word collusion, but there is.”

“He deserves more than a slap on the wrist, far more than a slap on the hand”

Mayor Victorino was specifically aware of the fraud by Developer Lot 48A, LLC and Warren S. Unemori Engineering, Inc., and former Public Works Director Milton Arakawa. Mayor Victorino was also aware that documenting the developer violations would complete the investigation into the fraud that Judge Cardoza recognized:

“I do recognize there's still one issue -- at least one issue under investigation, and it's possible that something that could lead to a post-judgment motion related to fraud.”

Honorable Judge Joseph Cardoza

Mayor Victorino planned to assert substantial County fines and penalties, and the potential elimination of future County contracts and permits to bring Developer Lot 48A, LLC

and Unemori into the room for dispute resolution. Mayor Victorino's plan was to resolve the County's decades-old controversy and move forward with financial recovery resulting from Plaintiff Salem's discovery of the thousands of unaccounted-for developer "deferral" agreements.

Malevolent Corp Counsel had a far different agenda that centered on maliciously exterminating Plaintiff Salem's whistleblower claims and destroying his personal and professional life. Corp Counsel's vengeance-driven plan, designed to cover up their direct role in shifting tens of millions of dollars of private developers' financial obligations onto the County and citizens of Maui County, has now backfired.

VII. THE AMENDED CLAIMS

The Second Amended Complaint shall reassert the First Amended Complaint claims and additional claims set forth on the Proposed Second Amended Complaint.

VII. CONCLUSION

The investigation into fraud which Honorable Judge Cardoza left the door open to prove in a separate arbitration-related case with Developer Lot 48A, LLC, is now complete as a result of the County Defendant's admission of the incomplete roadway infrastructure and drainage improvements to Lower Honoapiilani Road represented in Developer Lot 48A, LLC's "smoking gun" signed and conditioned SMA Permit SM2 2000 0042.

The full depths of conflicted Corp Counsel's and County Defendant's vengeance-driven cover-ups are yet to be discovered. The County Defendants continue to obstruct access to countless government records and communications under the dubious allegations of attorney-client privilege. As a direct result, former Corp Counsel Director Moana

Lutey, DSA staff member Lance Nakamura, and former Public Works Director David Goode, and Coldwell Island Properties remain subject to being named as Defendants.

While the County is not a party to the Judge Cardoza case or the arbitration, Director Molina's deceptive Declaration and KSG's fabricated conclusions relating to the SMA Permit violations have widespread legal implications in multiple legal cases wherein Plaintiff Salem shall vigorously pursue justice and recompense. *Res Judicata* is no longer a defense. Specifically, but not limited to, serious violations in United States Federal Bankruptcy Court.

Further discovery will reveal whether Developer Lot 48A, LLC or Warren S. Unemori Engineering, Inc., agree with Director Molina's damaging conclusions which place them both in a position of extreme liability. With that said, it cannot be denied that Mayor Victorino's well- thought-out plan to use an iron-fist approach to resolving this controversy years ago was a right action with which conflicted Corp Counsel obstructed and interfered.

In conclusion, by overzealously attempting to cover up the County Defendants' malicious misdealing's, the conflicted Corporation Counsel and KSG has prolonged Plaintiff Salem's and the public injuries and transferred the massive financial liability back onto the County of Maui.

Respectfully.

DATED: Lahaina, Hawaii, September 8, 2024.

/s/ Christopher Salem
CHRISTOPHER SALEM - *Pro Se*

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**PROPOSED
2ND AMENDED COMPLAINT**

CHRISTOPHER SALEM *Pro Se*
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HI 96761
Phone: 808 280-6050
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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT STATE
OF HAWAI'I

CHRISTOPHER SALEM,

Plaintiff,

vs.

COUNTY OF MAUI; RICHARD T.
BISSSEN, JR, in his official capacity.
KATE BLYSTONE, in her official
capacity as DIRECTOR OF THE
DEPARTMENT OF PLANNING;
JORDAN MOLINA, in his individual
capacity and in his official capacity as
DIRECTOR OF THE DEPARTMENT OF
PUBLIC WORKS; COUNTY AUDITOR
LANCE TAGUCHI, in his official
capacity: WARREN S. UNEMORI
ENGINEERING, INC; DEVELOPER
LOT 48A, LLC, ROBERT J CELLA,
HUGH J FARRINGTON, DOUGLAS S
SCHATZ; COLIN MORETON; JOHN
DOES 1-100; JANE DOES 1-100; DOE
PARTNERSHIPS 1-100; DOE
CORPORATIONS 1-100; DOE
ENTITIES 1-100,

Defendants.

CIVIL NO. 2CCV-21-0000048

**[PROPOSED] SECOND
AMENDED COMPLAINT**

Honorable Judge Peter Cahill

~ ~ ~

SECOND AMENDED COMPLAINT

Plaintiff CHRISTOPHER SALEM, Pro Se (“Plaintiff Salem”), hereby files his Second Amended Complaint pursuant to Hawai’i law, including but not limited to HRS §§ 603-21.5(3), 603-36(5) and 378, as follows:

I. INTRODUCTION

Plaintiff Salem, a former staff member of the Office of the Mayor, brings this case to enforce the adopted County laws and duties of County officials which were the foundation of a settlement agreement and promises made by former Mayor MICHAEL P. VICTORINO (“Mayor Victorino”) which Plaintiff Salem relied upon to his detriment.

This amended complaint is based on newly discovered evidence and previously withheld government records by The Department of the Corporation Counsel. (hereinafter "Corp Counsel"). The amended complaint asserts claims of breaches of duties by County officials, falsification of government records, and interference with Plaintiff Salem’s contractual and employment agreements by the conflicted and vengeance-driven Corp Counsel

On December 5, 2018, after almost ten hours of meetings and review of government records, Mayor Victorino and Plaintiff Salem signed a mutually beneficial settlement agreement. In consideration of Plaintiff Salem’s releasing the County of Maui from liability, Mayor Victorino agreed to instruct the Planning Department to issue an SMA Permit Notice of Violation to oceanfront Developer Lot 48A, LLC, under inter alia his authority under Article 7, § 7-5 of the Maui County Charter.

Mayor Victorino knew that the Planning Department’s issuance of an SMA Permit Notice of Violation to Developer Lot 48A, LLC was monumental as it proved the collusion between Developer Lot 48A, LLC, former Public Works Director Milton Arakawa (“Director Arakawa”), and Warren S. Unemori Engineering, Inc (“WSUE”) to conceal and falsify SMA

Permit government records.

Mayor Victorino knew that Developer Lot 48A, LLC's concealment of SMA Permit records also revealed a conspiracy with WSUE to falsify the conditioned SMA Permit application Order of Magnitude valuations of construction costs to avoid an SMA Major Permit, public hearings, and elevated environmental protections

Mayor Victorino knew that Honorable Judge Joseph Cardoza recognized fraud and conspired concealment of SMA Permit government records in a related civil case between Developer Lot 48A, LLC, and Plaintiff Salem. Mayor Victorino knew the appropriate SMA Permit violation notices from the Department of Planning's Zoning and Enforcement Division would complete a legal investigation and expose the conspiring parties to serious consequences for the irreparable harm they inflicted on Plaintiff Salem's family.

As the Director of Public Works, Director Arakawa executed an illegitimate open-ended lien against Plaintiff Salem's real property title through a Notice of Intent to Collect for the pro rata costs of Lower Honoapiilani Road Capital Improvement Project infrastructure improvements and drainage mitigations which were Developer Lot 48A, LLC's "deferred" financial responsibly as represented by their professional consultants MAH and WSUE in their signed and conditioned oceanfront subdivision SMA Permit SM2 2000 0042.

Mayor Victorino knew Director Arakawa's scheme of concealment and falsification of the SMA Permit government records caused years of unjustified legal disputes between Developer Lot 48A, LLC and Plaintiff Salem, resulting in the loss of Plaintiff Salem's family home and financial security. Mayor Victorino agreed and promised to lawfully hold Developer Lot 48A, LLC, and their licensed consultants accountable for their conspiracy which was the direct cause of Plaintiff Salem's financial injuries.

Mayor Victorino also knew that it was plaintiff Salem's injuries that led to Plaintiff

~ ~ ~

Salem's whistleblower discovery of Corp Counsel's execution of thousands of roadway infrastructure subdivision "deferral agreements" with the private developers since 1974, which were untracked and unaccounted for by Corp Counsel and the Department of Finance.

Mayor Victorino knew that Plaintiff Salem's discovery opened the door for tens of millions of dollars in financial recovery for the taxpayers and the County of Maui. As a part of their agreement, Mayor Victorino hired Plaintiff Salem as a legislative liaison to assist in the adoption of a system and formula of assessment of the "deferral agreements" and to help close the exploited loopholes in the Maui County Code and Shoreline Management Areas rules.

The compelled and previously withheld government records reveal that within weeks of being sworn into office and directly represented and advised by conflicted Corp Counsel, Mayor Victorino affirmed and ratified his signed agreement by lawfully acting upon his promises to Plaintiff Salem.

Contrary to Corp Counsel's false accusations, the records reveal that Mayor Victorino never overstepped the Planning Director's authority when he requested that Planning Director Mclean review Developer Lot 48A, LLC's SMA Permit file and report back to him with the findings. Mayor Victorino simply took the proper initial step to establish the foundation for the issuance of the violation notices as promised and required by law.

The compelled records affirm that the conflicted Corp Counsel obstructed the Planning Department's duty to perform a field inspection to document the fact that roadway infrastructure represented in Developer Lot 48A, LLC's conditioned SMA Permit environmental studies was never completed. Under Corp Counsel's conflicted interference, Mayor Victorino breached his agreements and promises to Plaintiff Salem.

During his employment within the Office of the Mayor, Plaintiff Salem discovered and reported further unethical acts by County officials, which continue to serve the financial interests of private developers at the public's expense. Specifically, but not limited to, the

confirmed SMA Permit and building code violations surrounding the massive Brown Development structure in Napili Village which was the primary cause of Plaintiff Salem's wrongful termination.

Despite Plaintiff Salem's multiple whistleblower notices, the conflicted Corporation Counsel and Mayor Victorino failed to take any action to mitigate the newly discovered harm to residents and the taxpayers of Maui County. Had they done so, Plaintiff Salem's whistleblower discovery would have been validated, and Plaintiff Salem would have been seen as a dedicated and well-respected public servant.

In conclusion, Corp Counsel's obstruction and retaliation tactics were designed to shield their Department's documented history of malfeasance, misfeasance, and nonfeasance to serve the financial interests of private developers in Plaintiff Salem's former subdivision and throughout Maui County. A recent example is the disposal of the Fairways subdivision parcels which the County of Maui acquired at the expense of Anuenue Housing Group, LLC, an affordable housing entity formed in good faith by Plaintiff Salem.

Therefore, this Second Amended Complaint seeks the performance of County officials' duties and the lawful agreements and promises made by Mayor Victorino that resulted in life-changing personal injuries to Plaintiff Salem's family. And, for a wrongful termination orchestrated by the vindictive Corp Counsel against a dedicated staff member of the Office of the Mayor who exposed the decades of misdealings with private developers by Corp Counsel and County officials.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to Hawai'i law, including but not limited to HRS § 603-21.5(3).
2. Venue is founded upon HRS § 603-36(5).

III. PARTIES

3. Plaintiff CHRISTOPHER SALEM is a resident of Napili, County of Maui, State of Hawai'i. Plaintiff Salem is a former staff member with the Office of Mayor Victorino and a former executive assistant to the Maui County Council under the Council Committee Chair of Planning. Plaintiff Salem asserts all employee rights and retaliation protection adopted under Hawai'i Revised Statutes §378-70.

4. Defendant COUNTY OF MAUI ("Defendant Maui County") is a municipality chartered under Hawai'i State law and is legally responsible for the acts and omissions of its departments, officials, and boards.

5. Defendant RICHARD BISSEN's official capacity as the current Mayor of the County of Maui, and the successor in interest to Mayor Alan Arakawa, and in performing his duties, is and was, at all relevant times, acting under color of law.

6. Defendant KATE BLYSONE, in her capacity as the current Director of the Department of Planning for the County of Maui, and, in performing her duties, is and was, at all relevant times, acting under color of law.

7. Defendant JORDAN MOLINA, in his capacity as the current Director of the Department of Public Works for the County of Maui, in performing his duties, is and was, at all relevant times, acting under the color of law. Defendant Molina is being sued in his personal and official capacity.

8. Defendant COUNTY AUDITOR LANCE TAGUCHI, in his capacity as the current County Auditor for the County of Maui, in performing his duties, is and was, at all relevant times, acting under the color of law.

9. Defendant WARREN S. UNEMORI ENGINEERING, INC . in their capacity as a licensed professional civil engineering firm.

10. Defendant DEVELOPER LOT 48A, LLC; PARTNERS ROBERT J CELLA, HUGH J FARRINGTON, DOUGLAS S SCHATZ, AND COLIN MORETON. in their individual capacities.

11. Plaintiff has reviewed the records that were made available to him in order to ascertain the true and full names and identities of all defendants in this action, but no further knowledge or information regarding the parties responsible is available at this time and Plaintiff is unable at this time to ascertain the identity of the defendants in this action designated as JOHN DOES 1-100, JANE DOES 1-100, DOE PARTNERSHIPS 1-100 AND DOE ORPORATIONS1-100 (hereinafter collectively referred to as “Doe Defendants”).

12. Said Defendants are sued herein under fictitious names for the reason that their true names and identities are unknown to Plaintiff except that they may be connected in some manner with Defendants and may be agents, attorneys, servants, employees, employers, representatives, co-venturers, co-conspirators, associates, or independent contractors of Defendants and/or were in some manner responsible for the injuries or damages to Plaintiff and their true names, identities, capacities, activities, and/or responsibilities are presently unknown to Plaintiff Salem, Pro Se.

IV. BACKGROUND

a. The County Defendants and Corp Counsel’s History of Misconduct

13. In 2001, through a neighborhood dispute with oceanfront Developer Lot 48A, LLC over their obligations to obtain an SMA Major Permit and complete the “deferred” subdivision roadway infrastructure improvements along the frontages of the underlying “3 Lot or Less” subdivision, Plaintiff Salem discovered that since 1974 County officials had failed to track or account for an unknown quantity of private developers “3 Lot or Less” subdivision infrastructure “deferral agreements”.

14. Plaintiff Salem discovered the developer “deferral” agreements were executed by Corp Counsel attorneys and recorded on the real property titles of the resulting subdivision parcels including Plaintiff Salem’s “3 Lot or Less” subdivision.

15. Plaintiff Salem discovered there was no adopted formula or system of assessment and collection on any of the developer “deferral agreements”, and no process for property owners to remove the County liens from any of the property titles, including the lien on Plaintiff Salem’s former property.

16. Consequently, millions of dollars of private developers’ “deferred” financial obligations were paid and will continue to be paid by the tax-paying residents of the County of Maui through public funds spent on roadway Capital Improvement Projects. (“CIP”)

17. As a former Council member, Mayor Victorino was aware and testified in public hearings regarding Corp Counsel’s sobering gross negligence and failure to track or account for the developer “deferral agreements” executed by their staff attorneys.

18. Mayor Victorino knew the unlawful acts by Developer Lot 48A, LLC and Director Arakawa were similar in manner and time frame to the illicit subdivision approvals for Montana Beach, Olowalu Mauka, and Palama Drive subdivisions wherein developers were granted SMA Permits and subdivision approvals in violation of the Maui County Code.

19. This pattern of misconduct was known to Mayor Victorino who inter alia voted on multi-million-dollar legal settlements resulting from citizen’s demands for enforcement of County ordinances and resulting lawsuits. The judicial records prove, in each related case, that the Corp Counsel over-zealously defended the County Director’s misconduct and lost.

20. The enforcement of Developer Lot 48A, LLC’s unfulfilled oceanfront SMA Permit also reveals the loopholes in the County’s SMA permitting and subdivision application process that certain well-connected developers, professional consultants, and County officials

have manipulated for decades.

b. *Mayor Victorino's Promises to Uphold County Laws and Ordinances.*

21. In 2018, just prior to the Mayoral elections, Plaintiff Salem and Mayor Victorino began discussing Plaintiff Salem's previous whistleblowing efforts and solutions to the uncollected "deferral" agreements and disjointed SMA permitting process.

22. The evidence reveals that the financial recovery from the unaccounted-for roadway infrastructure "deferral" agreements for the County of Maui is a direct result of what Plaintiff Salem learned through the malicious personal injuries caused by Director Arakawa's tampering with Developer Lot 48A, LLC's SMA Permit government records and interrelated manipulation of the "3 Lots or Less" deferral agreement recorded on Plaintiff Salem's property.

23. Mayor Victorino knew that Corp Counsel's failure and refusal to release the County "3 Lots or Less" subdivision lien on Plaintiff Salem's real property title upon issuance of the overlapping subdivision approvals to Developer Lot 48A, LLC, resulted inter alia in years of unjustified legal disputes between Plaintiff Salem, Developer Lot 48A, LLC, and the County of Maui, resulting in the loss of Plaintiff Salem's family home.

24. Mayor Victorino knew that Developer Lot 48A, LLC's SMA Permit records were tampered with and concealed from Plaintiff Salem and the members of the Maui County Council since 2001.

25. In open meetings, Mayor Victorino admitted that former Director Arakawa engaged in collusion with his former clients, Developer Lot 48A, LLC. Mayor Victorino stated that Director Arakawa should receive "far more than a slap on the hand" for his misconduct.

26. Mayor Victorino also repeatedly reaffirmed his commitment to put an end to the Department of Planning's manipulation of the SMA permitting process. Mayor Victorino reaffirmed his "See it, Say it" policy as Mayor of Maui County.

27. Mayor Victorino knew, or should have known, that it was illegal for former Director Arakawa to sign off on his private client Developer Lot 48A, LLC's subdivision with an unfulfilled SMA Permit.

28. After almost ten hours of meetings and negotiations, on December 5, 2018, Mayor Victorino and Plaintiff Salem signed an agreement pursuant to which, Mayor Victorino agreed to ensure that the Planning Director issued a Notice of Non-Compliance to Developer Lot 48A, LLCs for their unfulfilled and expired oceanfront subdivision SMA Permit #SM2 2000 0042.

29. Mayor Victorino and Plaintiff Salem discussed Mayor Victorino's promise to use the Mayor's power and authority to impose maximum fines upon Developer Lot 48A, LLC and their conspiring professional consultants. By taking the necessary steps to uphold the Maui County Code, Mayor Victorino agreed to bring the responsible parties to the table for settlement discussions to resolve Plaintiff Salem's damages and mitigate the County's exposure.

30. In consideration, Plaintiff Salem agreed to release the County of Maui, Mayor Arakawa, and the named County Defendants from liability. As agreed, former Public Works Director Milton Arakawa was not personally released.

31. The substantive terms of the agreement made reference to a parallel action involving violation notices sent to Olowalu Elua Associates on February 10, 2010, nine years after final subdivision approvals were unlawfully granted by former Public Works Director David Goode.

RESOLUTION "A" - TERMS AND CONDITIONS:

Christopher Salem shall release all claims against the County of Maui, Mayor Arakawa, and the named Defendants (except Defendant Milton Arakawa) in consideration of the following;

I. EXECUTIVE ACTS – MAYOR ELECT MICHAEL VICTORINO

1. On or before January 10, 2019, Mayor elect Michael Victorino shall instruct the Director of Planning to issue a Notice of Non-Compliance to Developer Lot 48, LLC to insure Developer Lot 48A, LLC returns to their development to complete their unfulfilled roadway infrastructure and drainage improvements delineated in the signed and conditioned subdivision SMA Permit SM2 2000/0042. (Subdivision Condition #15 - Luca File #4.805)
 - a) The action shall serve the public interest by preventing the citizens of Maui County from incurring Developer Lot 48A, LLC's subdivision roadway infrastructure improvement financial obligations.
 - b) The action is consistent with the notices sent to Olawalu Elua Associates, LLC on February 10, 2010, nine years after final subdivision approval was issued by Public Works Director Goode.
 - c) This action constitutes a good faith agreement between Mayor elect Michael Victorino and Christopher Salem to release Mayor elect Michael Victorino individually from personal liability for any past, present, or future acts involving Developer Lot 48A, LLC and the County of Maui relating to subdivision Luca File #4.805.

Mayor elect Michael Victorino hereby agrees to perform Condition #1 regardless of resolution or agreement of the additional Terms and Conditions set forth herein which are outside of the Mayor's power and authority as established in the Maui County Charter.

 12/5/18

Mayor Elect Victorino

 12/5/18

Christopher Salem

32. As part of the integrated agreements and promises, the parties discussed Plaintiff Salem's employment as a legislative liaison of the Office of the Mayor to adopt a system of collection and assessment of the millions of dollars of debts owed through the unaccounted-for infrastructure "deferral agreements".

33. With Plaintiff Salem's agreed-upon legislative assistance, Mayor Victorino promised to be the leader who would finally resolve, through legislation, the longstanding issues surrounding the developer "deferral" agreements.

34. Mayor Victorino also repeatedly reaffirmed his commitment to put an end to misconduct in the SMA permitting process.

35. From January 10, 2019, onward, Mayor Victorino continued to promise that after the appointment of Planning Director Michele Mclean was approved by the members of the Maui County Council, he would take the necessary steps to ensure that the Planning Department issued the Notice of Non-Compliance to Developer Lot 48A, LLC.

36. On May 28, 2019, Plaintiff Salem and Mayor Victorino met to execute Plaintiff Salem's employment agreement with the Office of the Mayor. During the meeting, Mayor Victorino reaffirmed his commitment to fulfill the terms of the Agreement and promises.

37. On July 1, 2019, in reliance on Mayor Victorino's promises, Plaintiff Salem accepted a position as a legislative liaison to the Office of the Mayor.

c. Corporation Counsel's Misrepresentations and Infliction of Emotional Distress

38. On March 8, 2019, Mayor Victorino scheduled a meeting with Plaintiff Salem, Corp Counsel Director Patrick Wong, and Managing Director Sandy Baz to discuss Corp Counsel's facilitation of the settlement agreement and to address the unaccounted-for developer "deferral agreements". The meeting became contentious, and Mayor Victorino requested the parties return to his office in the afternoon.

39. In the late afternoon on March 8, 2019, Mayor Victorino informed Director Wong that he was hiring Plaintiff Salem as a legislative liaison to adopt a system of collection and assessment of the millions of dollars owed through the "deferral agreements".

40. During the meeting, Director Wong became argumentative and accused Plaintiff Salem of wanting to be the "hero" for bringing financial recovery from the private developers to the County of Maui.

41. On March 13, 2019, Planning Director McLean's appointment was approved by the Maui County Council. Plaintiff Salem requested Mayor Victorino comply with the terms of the Agreement by instructing Planning Director McLean to issue the SMA Permit Notice of Non-Compliance to Developer Lot 48A, LLC as agreed upon.

42. On March 20, 2019, Plaintiff Salem met with Mayor Victorino, Deputy Corp Counsel Bilberry, and newly appointed Deputy Planning Director Jordan Hart regarding the Agreement.

43. Deputy Corp Counsel Bilberry presented a "bar napkin" amendment to the Agreement prepared by the Department of the Corp Counsel to Plaintiff Salem. The amendment mischaracterized the material terms of the Agreement and Plaintiff Salem refused to sign it.

44. On April 18, 2019, under the direction of Mayor Victorino, Plaintiff Salem delivered the Agreement to acting Corp Counsel Director Lutey to be forwarded to the members of the Maui County Council to deliberate on a final settlement.

45. On May 8, 2019, to justify the weeks of withholding the Agreement from the members of the Maui County Council, Director Lutey wrote a letter to Maui County Council Chair Kelly King falsely alleging that there was no consideration from Plaintiff Salem to settle upon with the County of Maui.

46. On May 28, 2019, during Director Lutey's appointment hearings to the position of Deputy Corp Counsel, Maui County Council Member Tamara Paltin asked Director Lutey if there was any reason that the County should not enforce the SMA Permit against Developer Lot 48A as agreed by Mayor Victorino.

47. Director Lutey stated she was not familiar with Developer Lot 48A, LLC's SMA Permit and had not been consulted with on the enforcement of the SMA permit. Director Lutey's

statement was false, as Court documents reveal that Director Lutey is the attorney of record on behalf of the County of Maui in an ongoing case involving Developer Lot 48A, LLC's SMA Permit under CAAP-18-0000105.

48. On August 22, 2019, Mayor Victorino delivered a letter to Plaintiff Salem's desk at his workplace which falsely stated that as the Mayor of Maui, he did not have the authority under Hawai'i Revised Statute ("HRS") 205A-3 to direct the Planning Department to enforce Developer Lot 48A, LLC's unfulfilled SMA Permit. Also, that the Planning Department has the "sole authority" on behalf of the County of Maui to enforce violations of environmental laws.

49. The receipt of Mayor Victorino's letter and the statements contained therein caused Plaintiff Salem to have an extreme anxiety attack at his workplace within the Office of the Mayor. The humiliating emotional breakdown was witnessed by fellow staff members and County employees. With shortness of breath and a racing heart, Plaintiff Salem left the Mayor's office to seek medical attention and counseling.

50. Plaintiff Salem's medical and employment records document Salem's continuous events of physical and mental anxieties caused by Mayor Victorino's confrontational and oppressive workplace environment.

d. ***Corporation Counsel's Representations of Mayor's Superior Authority***

51. On September 3, 2019, two weeks after receipt of Mayor Victorino's letter, Planning Director McLean presented a draft amendment to the current Planning Commission SMA rules. The amended SMA rules attempt to transfer the agency of enforcement of the SMA laws as established in the "Charter" to the "Planning Director".

52. On October 3, 2019, Director Lutey issued a Memorandum of Law to Maui County Council Chair Kelly King regarding the Mayor's "superior" authority to direct Corp

Counsel to continue litigating the Lahaina Injection Well case to the United States Supreme Court.

53. Director Lutey cites the delegation of authority under the Hawai'i Constitution "to frame and adopt a Charter for its (County's) own self-government". And further, pursuant to the Constitution, the Maui County Charter provisions "shall be superior to statutory provisions".

54. Under the Maui County Code and the Maui County Charter, the Mayor of the County of Maui has power, duty, and authority to enforce the ordinances of the County of Maui and all the applicable laws.

55. Under Director Lutey's legal conclusions of Mayor Victorino's "superior" authority, in regard to the injection well case validates the settlement agreement signed by Mayor Victorino legitimately settled a legal action with Plaintiff Salem that involved no monetary compensation.

56. On May 10, 2021, Director McClean publicly stated that the enforcement and revocation of SMA permits involves consultation and collective decision-making of the Corp Counsel, Maui County Council, and Mayor Victorino.

e. Workplace Intimidation by Corp Counsel and Mayor Victorino

57. During his employment, Plaintiff Salem learned that staff members of the Mayor's Office and several former Maui County Council Members were intimidated by Corp Counsel from taking action upon Plaintiff Salem's discovery of the "deferral agreements" as well as Plaintiff Salem's legal claims surrounding Developer Lot 48A, LLC's SMA Permit violations.

58. Mayor Victorino, in meetings with private residents, revealed he was also obstructed as a Council Member and intimidated by Corp Counsel from acting on Plaintiff Salem's discoveries. The records reveal that Mayor Victorino succumbed to Corp Counsel's

obstruction of their unethical pattern of shielding private developers and their consultants from financial, professional, and legal liability for manipulating County officials and the adopted County laws and ordinances.

59. Interoffice letters and memos to Mayor Victorino and Managing Director Sandy Baz regarding Plaintiff Salem's further discovery of County officials serving private developers' financial interests at the public expense have been disregarded.

60. On one occasion while discussing the Corp Counsel's misconduct in the adoption of the 2015 Up Country Water Bill, Mayor Victorino screamed at Plaintiff Salem, slammed his fist on the desk, and demanded Plaintiff Salem prove the extent of harm to the residents and taxpayers.

61. The next day, Plaintiff Salem presented the evidence to Mayor Victorino. No action was taken by Mayor Victorino to terminate the "island-wide" shifting of private developer's financial obligations onto the residents.

62. The 2015 Up Country Water Bill was solely intended and noticed to serve the property owners on the UpCounty Water list. Despite Plaintiff Salem's interoffice notices and warnings, Mayor Victorino's appointed Public Works Director Rowena Dagdag-Andaya and Defendant Deputy Director Jordan Molina continued to grant subdivision infrastructure exemptions to large developments "island-wide" for over a year.

63. In 2019, as an employee of the Office of the Mayor, Plaintiff Salem discovered that Director Arakawa and the Department of the Corp Counsel unlawfully continued to execute overlapping "3 Lots or Less" "deferral agreements" with private developers for years after the "3 Lots or Less" roadway infrastructure ordinance was repealed in 2007.

64. Plaintiff Salem has discovered that Corp Counsel and former Public Works

Director David Goode have interfered with and influenced the ongoing independent Audit of the Developer “deferral agreements” which the record reveals they illicitly authored and executed.

65. As a former Maui County Council member, being a direct witness to the discovered interrelationship between County officials’ manipulation of the County subdivision ordinances and SMA application laws, Mayor Victorino has succumbed to Corp Counsel's conflicting interference and abandoned his promises to “clean up“ County government.

66. Under the influence and interference of Corp Counsel, Mayor Victorino failed to take action against the private developers and their consultants for their financial, professional, and legal liability and manipulation of County officials and adopted County laws and ordinances.

67. Corp Counsel and Mayor Victorino under the influence and interference of Corp Counsel, have obstructed Plaintiff Salem from performing his County employee legislative liaison duties established under Plaintiff Salem’s employment discussions and agreement with Mayor Victorino.

68. During Plaintiff’s employment, Plaintiff Salem has continued to witness and endure Mayor Victorino’s aggressive outbursts, unjustified threats against at-will staff members, and misogynistic behavior.

69. Accordingly, on October 21, 2020, a notice of representation was provided to the Department of the Corp Counsel on Plaintiff Salem’s behalf, requesting the performance of the Settlement Agreement and notifying Mayor Victorino of the intent to pursue legal recourse for Plaintiff Salem’s ongoing injuries.

70. Immediately thereafter, Mayor Victorino aggressively approached Plaintiff Salem at his workplace and made implied threats to use his influential position to squash Plaintiff Salem’s claims and destroy his reputation.

71. Plaintiff Salem has continued to endure hostility and duress in the workplace inflicted by Mayor Victorino's misconduct and acts of intimidation. The events are documented in the County's personnel records.

72. In early 2020, the COVID pandemic consumed the County of Maui. Despite the ongoing potential to contract the virus, Plaintiff Salem was instructed to work for long hours, nights, and weekends without pay on the front lines of the ports of entry. At risk to himself, his family, and cared-for elderly father-in-law, Plaintiff Salem respectfully performed the assigned duties to serve the local residents of Maui County.

f. Brown Development leads to Plaintiff Salem's Wrongful termination.

73. On February 16, 2021, as a result of the Corp Counsel's interference with Mayor Victorino's promises, Plaintiff Salem was forced to retain legal counsel and file a complaint against the County Defendants, including former Planning Director Michele Mclean

74. At the very same time period, as a Community Liaison who has lived in Napili for over two decades and responding to community outrage over the Brown Development structure in the center of Napili Village, Plaintiff Salem researched Planning Department records and discovered the developer's misrepresentations on their SMA Permit application and violations of Shoreline Management Area ("SMA") Rules by the Department of Planning.

75. Amazingly, the Brown Development SMA Permit violations in Napili were similar to the SMA Permit violations that Mayor Victorino promised to ensure were enforced in Plaintiff Salem's former subdivision.

76. On June 4, 2021, Plaintiff Salem presented his findings to Mayor Victorino, Chief of Staff Tyson Miyake, Managing Director Sandy Baz, Corp Counsel Director Moana Lutey, and Personnel Director David Underwood. With no response from Plaintiff Salem's employer Mayor

Victorino, Chief of Staff Miyake acted with conflicted hostility by demanding Plaintiff Salem inform the members of the Napili community that the Brown Development was not within his area of responsibilities.

77. Plaintiff Salem explained that the SMA enforcement and related loopholes in the SMA rules were part of his legislative tasks under the employment agreements with Mayor Victorino. Plaintiff Salem informed the Personnel Director David Underwood that, as a County employee, he had a duty to report the Brown Development SMA Permit's misrepresentations and discovered violations of the law.

78. On July 25, 2021, Plaintiff Salem provided written notice to Chief of Staff Miyake of the Planning Department's issuance of an SMA Permit Notice of Warning to Brown Development for "one or more violations". Plaintiff Salem, once again, requested that the violations by Brown Development be investigated and for Mayor Victorino and Director McLean to step forward and honor their duty to likewise enforce Developer Lot 48A, LLC's SMA Permit violations as promised.

79. On August 4, 2021, without warning or written prior notice from Mayor Victorino, Chief of Staff Miyake terminated Plaintiff Salem's position as a Community Liaison of the Office of the Mayor. Plaintiff Salem asserts the termination notice from Chief of Staff Miyake was in retaliation for Plaintiff's filing of the underlying complaint and for reporting the Planning Department's parallel breach of their duties to lawfully administer the SMA rules and County ordinances.

80. Following termination, Mr. Miyake and the Office of the Corp Counsel refused to return Plaintiff's files, notebooks, and belongings which consist of Plaintiff's personal legislative work product from upwards to 20 years ago, including deferrals, CIPs, Parks, and SMA. There are four (4) bins with 10000 pages of deferral agreements that were cataloged by each County

district by Plaintiff Salem and at his sole expense.

g. Disposal of Fairways parcels exposes Director Pat Wong's unclean hands.

81. The County records reveal that Plaintiff Salem's subdivision was just one of many developments that former Public Works Director Milton Arakawa approved for private developers who employed the services of professional engineer WSUE. From Pu'uKahana to Palama Drive, WSUE's crooked civil engineering work product has been the cause of years of civil litigation and costly complaints from local neighbors.

82. While Plaintiff Salem and a neighborhood group were successfully contesting WSUE's Pu'u Kahana subdivision plans and engineering design to the Maui County Planning Commission, which cost Plaintiff Salem over \$50,000 paid to attorney Tom Pierce, Plaintiff Salem learned that WSUE's grading plans were also at the center of the escalating legal dispute in the backyards of local residents along Palama Drive. Visiting the site, Plaintiff Salem saw a professional opportunity to turn Director Arakawa's and WSUE's fertilizer into flowers.

83. Plaintiff Salem rallied together a childhood friend and nationwide affordable housing developer and professional attorney with close family ties to Hawaii. With a unified vision, they formed Anuenue Housing Group, LLC ("AHG") to resolve the litigation and develop the distressed parcels into quality affordable housing for local families. Plaintiff Salem met with Mayor Alan Arakawa in his personal Hui Road E home to review AHG's 100% affordable housing plan that included the lowering of the massive Palama Drive walls.



84. The scores of lawsuits the County of Maui was facing and the financial liability resulting from the Judge August ruling are well documented in the Court records.

85. At their sole expense, AHG engaged a local architect, civil engineer PB Sullivan Construction, Inc., and the McCorrison Miller Mukai MacKinnon LLP law firm. It took the AHG team almost two years to craft an affordable housing plan and negotiate a comprehensive global settlement that mitigated the developer's initial demands of \$20 million dollars.

86. Plaintiff Salem played a substantial role in reducing the developer's demands from \$20 million down to

87. Despite all parties agreeing, in an 11th-hour backroom deal, Corp Counsel Director Pat Wong squashed AHG's affordable housing plan with unsupported claims of potential procurement violations. Instead, Director Wong advised the Maui County Council to pay off the developers for a cash payment of \$13 million dollars.

88. Plaintiff Salem played a substantial role in negotiating the developer's demands from \$20 million down to \$13 million dollars to facilitate the AHG affordable housing plan. In bad faith, Director Wong stole AHG's work product and sincere efforts. As we now know, Corp Counsel Director Pat Wong had a prior personal and professional relationship with the developer's legal counsel.

89. Director Wong's boasting of gambling winnings soon after the County's \$13 million dollar cash payment to the developers with public funds, and his refusal to present his tax returns to the County Council when questioned, raise legitimate questions of underhanded dealings. Therefore, further discovery is justified as County officials continue to be exposed for conflicts of interest and unclean hands.

90. On April 22, 2022, the Budget, Finance, and Economic Development Committee recommended the adoption of Bill 22-84, authorizing the disposition of the Fairways at Maui Lani, identified as Tax Map Key ("TMK") (2) 3-8-096:001 through 007; TMK (2) 3-8-096:024 through 033; and TMK (2) 3-8-096:052 through 053, inclusive, to Na Hale O Maui for affordable workforce housing in perpetuity;

91. Your Committee notes the Council is authorized by the Maui County Code to: Dispose of County real property by resolution. (Section 3.44.020) Waive the requirements of a public auction for the disposition of County real property by resolution approved by a two-thirds vote of its members. (Section 3.44.030) Waive the requirement of appraisal for the disposition of real property by adoption of a resolution. (Section 3.44.070) Waive outstanding real property taxes. (Section 3.48.010.L)

92. Your Committee also notes the County of Maui acquired TMK (2) 3-8-096:001 through 055 in 2011 as part of the \$11,800,000 settlement with developer VP & PK (ML), LLC, related to fill and grade heights for homes.

93. Plaintiff Salem asserts the legal settlement with Developer VP & PK (ML, LLC) was negotiated in good faith in reliance on understanding with Director Wong that the parcels would be transferred to AHG for the facilitation of a 100% affordable housing development. In consideration, the County of Maui received significant legal and financial benefits.

2. The major components of the attached AHG Fairways Affordable Housing Agreement package and related exhibits are as follows;
 - a. Acquisition of the Fairways Lots and owner rights by way of a Purchase and Sale Agreement with the current developer (VP & PK (ML) LLC).
 - b. Settlement and dismissal of the myriad of complex pending litigation related to the subdivision grading including lowering of the existing retaining walls, grading the embankment to a gentle 3:1 ratio, providing colorful slope plantings and shade trees, removal of all of the view obstruction white fence panels.
 - c. Design, development, construction and sale of 52 single story, multi tier affordable workforce and senior housing including acquisition and completion of the related drainage requirements including easements in accordance with an affordable housing agreement with the County.
 - d. Design, development, and land dedication for neighborhood parks and public trails to connect existing neighborhoods to shopping, schools, and medical facilities.

94. While Plaintiff Salem clearly supports affordable housing for local residents, the recent transactions by the Maui County Council disprove Director Wong's last-minute, unsupported, and disputed allegations of procurement violations over a decade ago.

95. Plaintiff Salem asserts AHG has a right to recover their professional expenses and reasonable professional losses based on the County's recent contradicting decision to dispose of the parcels to private entities with no form of compensation.

V. COMPELLED RECORDS CONFIRM CONFLICTS & CONSPIRACY

a. Corp Counsel and Judge Kirstin Hamman's undisclosed conflicts

96. On June 2, 2023, Honorable Judge Peter Cahill granted Plaintiff Salem's Motion to Compel the release of County government records that had been withheld for years by conflicted Corp Counsel to cover up their direct role in the decades of County official's malfeasance, misfeasance, and nonfeasance with private developers.

97. Plaintiff Salem asserts that the concealment of the government records, along with undisclosed attorney relationships with conflicted Judge Kirstin Hamman, has resulted in prejudiced decisions and has prolonged the serious harm suffered by Plaintiff Salem's family.

98. Judge Hamman recused herself from these proceedings only after belatedly disclosing her conflicting professional attorney relationships as a legal analyst for the Maui County Council while Plaintiff Salem's whistleblower discovery of thousands of unaccounted-for private developer roadway infrastructure "deferral" agreements was exploding into Council hearings and the public light.

99. *Pro Se* Plaintiff Salem believes that Judge Hamman's biased rulings, while relevant records and professional attorney relationships were concealed by conflicted Corp Counsel, will ultimately be deemed invalid.

100. On June 6, 2023, Corporation Counsel Director Takayesu informed the County Council that "the Judge ruled Corporation Counsel is conflicted out of the case." Plaintiff Salem's claim of Corp Counsel's conflicts are well documented in Court records in this case and prior legal actions.

101. In the current case, Defendant Mayor Richard Bissen, a former Judge for the 2nd Circuit Court and Prosecuting Attorney for the County of Maui, disregarded Plaintiff Salem's notices of conflicts and has authorized the conflicted Corp Counsel to continue covering up and defending their own Department's misdealing's.

102. As such, the newly discovered evidence and Judge Hamman's recusal validates all the original claims set forth in the First Amended Complaint ("FAC") and is just cause for the additional claims expressed herein:

b. *Compelled County records are just cause for additional claims.*

103. Pursuant to Count III of the First Amended Complaint, ("FAC") to set the stage for global resolution with responsible parties who conspired to cause Plaintiff Salem's injuries, Mayor Victorino promised to hold Developer Lot 48A, LLC lawfully accountable for their backroom dealings with County officials and violations of the SMA Rules, County ordinances, and the manipulation of "3 Lots or Less" subdivision agreement recorded on Plaintiff Salem's real property title which Plaintiff Salem relied upon to his detriment.

104. The compelled and previously withheld government records reveal that within weeks of being sworn into office and directly represented and advised by conflicted Corp Counsel, Mayor Victorino affirmed his signed agreement by lawfully acting upon his promises to Plaintiff Salem.

105. Again, Contrary to Corp Counsel's false accusations, the records reveal that Mayor Victorino never overstepped the Planning Director's authority when he requested that Planning Director Mclean review Developer Lot 48A, LLC's SMA Permit file and report back to him with the findings. Mayor Victorino simply took the proper initial step to accomplish the shared objective and fulfill his promises to uphold county laws.

106. The compelled records affirm that the conflicted Corp Counsel obstructed the Planning Department's duty to perform a field inspection of the roadway infrastructure represented in Developer Lot 48A, LLC's conditioned SMA Permit environmental studies that were never completed.

c. *Compelled County records expose a civil conspiracy*

107. Pursuant to Plaintiff Salem's recent Motion for Injunctive Relief, the County Defendants were forced to admit for the first time what the Planning Department inspection would have revealed; that Developer Lot 48A, LLC's roadway infrastructure and environmental mitigations were never completed.

108. Just as the requested inspection would have done, the County Defendants' new admission substantiates the fraud and civil conspiracy between Developer Lot 48A, LLC, former Public Works Deputy Director Milton Arakawa, and licensed professional Warren S. Unemori Engineering, Inc.

109. Honorable Judge Joseph Cardoza recognized the conspired fraud in a related civil case between Developer Lot 48A, LLC, and Plaintiff Salem. (Civil No. 09-1-0040(3)) In yet another desperate attempt to obscure the evidence of conspired fraud, the County Defendants have now manufactured a false and litigious conclusion that former Public Works Deputy Director Arakawa somehow had the authority to erase his private developer clients' "deferred" infrastructure obligations, in the dark, during Developer Lot 48A, LLC's subdivision application process.

110. In a recent Declaration supporting the County Defendants' failed Opposition (Dkt 704) to Plaintiff Salem's Motion for Injunctive Relief (Dkt 692), Defendant Public Works Director Jordan Molina fabricated conclusions regarding the decisions and authorities of former Deputy Public Works Director Milton Arakawa.

111. The County Defendants' newly contrived conclusions about the Department of Public Works' alleged authorities are baseless and unsupported by substantive evidence and directly contradict government records. Their recent Opposition is unconscionable, falsely alleging for the first time that:

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“The County duly confirmed that all required subdivision improvements for SM2 2000 0024 were completed. Indeed, the relevant documents establish that the County confirmed all required subdivision improvements were completed, and thus the corresponding SMA Permit SM2 2000/0042 conditions were satisfied.”

112. Pursuant to Maui County Code Title 18.20.060 “The approval of the construction plans by the Director shall not relieve the subdivider nor the engineer of the responsibility for any and all defects that may become evident subsequent to the plan approval.”

113. There exists no County law, ordinance, authority, or government record to support this falsified conclusion by the County Defendant’s legal counsel Kobayashi, Sugita, and Goda, LLP. (‘KSG’)

114. In fact, the newly discovered evidence and compelled government records reveal the falsity of the County Defendant's allegations and prove that neither the County nor the Department of Planning (the sole authority over the administration of SMA Permits) ever confirmed that Developer Lot 48A, LLC’s conditioned SMA Permit SM2 2000 0042 was “satisfied.”

115. The obstruction of SMA Permit government records during the relevant period clearly establishes the absolute impossibility of the County Defendants' fraudulent claims. It wasn’t until seven years later that Plaintiff Salem recovered the records, with assistance from an anonymous Planning Department employee. The evidence shows that the County Defendants, Developer Lot 48A, LLC, and WSUE were engaged in a civil conspiracy to conceal the SMA Permit records.

VI. CONCLUSION

116. The compelled County records and County Defendants' falsified representations have opened the door to a multitude of legal claims against multiple parties, with evidence of a

civil conspiracy, breach of duty, fraud, collusion, and falsification of government records.

117. The compelled County records also reveal the conflicted Corp Counsel's interference with the County Auditor's independent duties. The County Auditor's failure to perform the audit which was requested by a unanimous vote of the Maui County Council, is a contributing cause to prolonging Plaintiff Salem's injuries.

118. In conclusion, the unlawful acts and conspired concealment of government records to cover up those acts were the direct cause of irreparable harm to Plaintiff Salem's family, including the loss of their family home. Undeniably, Corp Counsel Directors have been on a collective mission to cover up their dishonorable acts and destroy Plaintiff Salem's reputation and professional life.

119. With the facts and evidence now in clear view, Mayor Bissen has a duty to uphold the County laws and instruct Corp Counsel to retract their conflicted and false pleadings and reconcile the harm caused to Plaintiff Salem's family and the public

Respectfully submitted,

DATED: Lahaina, Hawai'i, September 6, 2024.

/s/Christopher Salem
Christopher Salem *Pro Se*

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COUNT I

~~Breach of Contract~~

120. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

121. Plaintiff Salem has fully performed under the Agreement and terms of employment, except for those terms the performance of which was excused, prevented, hindered, or frustrated by Defendants Maui County and Victorino.

122. By failing to issue the SMA Permit Notice of Non-Compliance to Developer Lot 48A, LLC, and otherwise, to perform as agreed upon, Mayor Victorino breached the Agreement.

123. As a direct, proximate, and foreseeable cause of the Defendants Maui County and Victorino's actions, Plaintiff has and will continue to suffer damages in an amount to be shown at trial.

COUNT II

Specific Performance

124. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

125. The Agreement unambiguously required Mayor Victorino to direct the Planning Director to issue an SMA Permit Notice of Non-Compliance to Developer Lot 48A, LLC.

126. Mayor Victorino failed to perform as required under the Agreement.

127. Plaintiff Salem complied fully with his obligations under the Agreement. As a direct, proximate, and foreseeable cause of Mayor Victorino's actions, Plaintiff Salem has and will suffer harm for which damages will not provide an adequate remedy in an amount to be shown at trial.

COUNT III

Declaratory Relief

128. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

129. Pursuant to Chapter 632, Hawai'i Revised Statutes, and Rule 57 of the Hawai'i Rules of Civil Procedure, Plaintiff Salem brings this action for declaratory relief and seeks an adjudication as to the rights and liabilities of the parties hereto, viz., that (a) Mayor Victorino shall enforce the SMA Permit against Developer Lot 48A and (b) Defendant would hold Developer Lot 48A, LLC accountable for its unlawful conduct and resolve Plaintiff Salem's damages.

130. Contrary to the August 2019 Letter, Moana Lutey's October 3, 2019, Memorandum of Law regarding the Mayor's authority to settle a lawsuit and environmental claims relating to the Lahaina Injection Well litigation gives Mayor Victorino full authority to settle a case like Plaintiff's Salem's.

131. Plaintiff Salem is also entitled to an injunction to make the above declarations meaningful and provide effective relief.

COUNT IV

~~Promissory Estoppel / Detrimental Reliance~~

132. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

133. Plaintiff Salem was the party to the ongoing litigation against County Defendants relating to the gross negligence and unlawful execution of the developer "deferral agreements".

134. Mayor Victorino made promises to Plaintiff Salem that if Plaintiff Salem dismissed his litigation against the County of Maui, Mayor Victorino would have Developer Lot

48A LLC's violations of the conditioned SMA Permit enforced.

135. Mayor Victorino made promises to Plaintiff Salem that he would make Developer Lot 48A LLC responsible for Plaintiff Salem's injuries caused by the Defendant County's failure to release the lien on Plaintiff Salem's title and scheme of concealment and falsification of the County records.

136. Mayor Victorino knew that Plaintiff Salem would rely on those promises.

137. To his detriment, Plaintiff Salem reasonably relied on each of those promises and dismissed his litigation action against the County.

138. Mayor Victorino made promises to Plaintiff Salem that he would finally resolve through legislation the longstanding issues surrounding the developer "deferral agreements" and put an end to the Department of Planning's manipulation of the SMA permitting process.

139. Enforcement of the SMA Permit against the Developer Lot 48A and making Plaintiff Salem whole, as agreed and promised, is necessary to avoid an injustice.

140. As a direct, proximate, and foreseeable cause of the Defendant's actions, Plaintiff Salem has and will continue to suffer ongoing damages in an amount to be shown at trial.

COUNT V

Negligent and Intentional Infliction of Emotional Distress

141. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

142. The Defendants have engaged in a campaign of abuse, harassment, and intimidation against Plaintiff Salem, calculated to cause severe emotional distress upon Plaintiff Salem and his family, which distress the Defendants have created and sustained.

143. The acts, conduct, and/or omissions of the Defendants and/or their employees,

agents, and/or representatives, were (a) intentional and/or reckless and/or negligent and (b) outrageous.

144. As a result, Plaintiff Salem continues to suffer extreme emotional distress, including, but not limited to the physical symptoms, anxiety, insomnia, loss of appetite, and various other stress-related physical ailments from being extremely concerned and afraid that his employment will be terminated, that his reputation will be ruined, all because of his intentions to have the Defendants comply with their duties and the adopted County laws and ordinances.

145. At the receipt of the August 2019 Letter and thereafter, Plaintiff Salem has suffered anxiety, insomnia, stress, and fear. He has also experienced embarrassment and anger due to the personal and derogatory attacks he has endured due to being the whistleblower and requesting relief from the Defendants. He has also been wrongfully treated by Defendants as a result of being a whistleblower. Plaintiff Salem has endured anxiety and frustration because of the unfulfilled Agreement and the promises made by Mayor Victorino.

146. As a direct, proximate, and foreseeable cause of the Defendants' actions, Plaintiff Salem has and will suffer damages in an amount to be shown at trial.

COUNT VI

Breach Of The Covenant Of Good Faith And Fair Dealing

147. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

148. Every contract contains an implied covenant of good faith and fair dealing that neither party will do anything that will deprive the other of the benefits of the agreement.

149. Mayor Victorino owed Plaintiff a duty of good faith and fair dealing in fulfilling its duties under the Agreement.

150. Mayor Victorino's conduct is also a breach of the covenant of good faith and fair dealing, and Plaintiff Salem has been damaged as a result.

151. Defendant Victorino's failure to act and adequately respond to Plaintiff Salem's requests for performance is a breach of an implied duty of good faith and fair dealing to Plaintiff Salem.

152. Plaintiff is entitled to compensatory and punitive damages as a result.

COUNT VII

Intentional And Negligent Misrepresentation

153. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

154. Mayor Victorino's conduct was deceptive and Mayor Victorino misrepresented the Mayor's power and authority as the Mayor of Maui County to hold Developer Lot 48A, LLC and its consultants accountable for the misconduct and the injuries caused to Plaintiff Salem and the enforcement of the SMA Permit against the Developer Lot 48A LLC and to make Plaintiff Salem whole.

155. Mayor Victorino's conduct was deceptive and he misrepresented his belief in the Mayor's authority to direct the Planning Director to issue a Notice of Non-Compliance to Developer Lot 48A, LLC.

156. Plaintiff Salem is entitled to general, special, and punitive damages as a result.

COUNT VIII

Protection Under Hawai'i Revised Statutes ("HRS") Chapter 378

157. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

158. Plaintiff Salem is an employee of the County of Maui, Office of the Mayor.

159. Defendants have engaged in discriminatory practices, including but not limited to intimidation, harassment, workplace violence, and applying pressure through threatening retaliation against Plaintiff Salem after Plaintiff Salem complained about such discriminatory treatment and after Plaintiff Salem continued to protect the public interest as a whistleblower.

160. Defendants continuously and pervasively intimidated Plaintiff Salem and directed threats at Plaintiff Salem to use his influential position to squash Plaintiff Salem's claims and destroy his reputation.

161. HRS § 378-2(3) makes it an unlawful discriminatory practice "for any person, whether an employee, employer, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so."

162. HRS § 378-2 thus makes it unlawful for an "employer" to engage in certain acts of discrimination. HRS § 378-1 broadly defines "an employer" as "any person . . . having one or more "employees" and "including any agent of such a person."

163. HRS § 378-62 makes discrimination against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment for reporting violations, unlawful.

164. HRS §378-62 states as follows:

165. "Discharge of, threats to, or discrimination against an employee for reporting violations of law. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

166. (1) The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about to report to a public body, verbally or in

writing, a violation or a suspected violation of:

167. (A) A law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States; or (. . .).”\

168. In early 2021, as a Community Liaison who has lived in Napili for over two decades and responding to community outrage over the Brown Development structure in the center of Napili Village, Plaintiff Salem researched Planning Department records and discovered the developer’s misrepresentations on the SMA Permit application and violations of Shoreline Management Area (“SMA”) Rules by the Department of Planning.

169. On June 4, 2021, Plaintiff Salem presented his findings to Mayor Victorino, Chief of Staff Tyson Miyake, Managing Director Sandy Baz, Corp Counsel Director Moana Lutey, and Personnel Director David Underwood.

170. On August 4, 2021, without warning or written prior notice from Mayor Victorino, Chief of Staff Miyake terminated Plaintiff Salem’s position as a Community Liaison of the Office of the Mayor in retaliation for reporting the developer’s misrepresentations on the SMA Permit application and violations of Shoreline Management Area (“SMA”) Rules by the Department of Planning.

171. As a result of the above-described unlawful discharge and/or discrimination, that Plaintiff was subjected to, Plaintiff is entitled to general, special, and punitive damages.

COUNT IX

UNLAWFUL TERMINATION IN CONTRAVENTION OF PUBLIC POLICY

172. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

173. Employer’s termination of Plaintiff as retaliation for Plaintiff reporting the Brown Development SMA Permit’s misrepresentations and discovered violations of the law by the

developer and by the Department of Planning, violated public policy to ensure transparency in government.

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

COUNT X
Negligent and Intentional Misrepresentation
Defendant Jordan Molina

175. Plaintiff Salem repeats, reasserts, and incorporates by reference the allegations stated in the preceding paragraphs of this Complaint.

176. Plaintiff Salem asserts that these claims are supported by a substantial amount of previously concealed and newly compelled government records, conflicting attorney/client representations, and contradictory admissions by the County Defendants. Defendant Public Works Director Jordan Molina, in a recent “belief” Declaration supporting the County Defendants' failed Opposition (Dkt 704) to Plaintiff Salem’s Motion for Injunctive Relief (Dkt 692), has intentionally and negligently misrepresented the decisions and authorities of former Deputy Public Works Director Milton Arakawa.

177. The County Defendants’ newly contrived conclusions are baseless and directly contradict government records. Their manufactured representations are unconscionable and falsely allege for the first time that:

178. “The County duly confirmed that all required subdivision improvements for SM2 2000 0024 were completed. Indeed, the relevant documents establish that the County confirmed all required subdivision improvements were completed, and thus the corresponding SMA Permit SM2 2000/0042 conditions were satisfied.”

179. Furthermore, Defendant Molina’s fraudulent representations of Public Works’ authorities are demolished by a public statement from Public Works Director Milton Arakawa

before the Maui County Council which lays responsibility for enforcement of SMA permits squarely on the Planning Department.

180. “Mr. Chair, the second three-lot subdivision was the subject of an SMA minor permit, if I’m correct. But the conditions of the SMA minor permit would still apply. From our standpoint, we would look to the Planning Department to enforce those SMA Minor conditions.”

181. The newly discovered evidence and compelled government records reveal the falsity of the County Defendant's allegations and prove that KSG’s manufactured conclusion that “the County” or the Department of Planning (the sole authority over the administration of SMA Permits) actually confirmed that Developer Lot 48A, LLC’s conditioned SMA Permit SM2 2000 0042 was “satisfied” is undocumented and has no basis in fact.

182. While the subdivision application was being processed by Public Works, none of the SMA infrastructure conditions were knowable because at that time the SMA Permit County records were officially classified as “missing”. The County Defendants' fraudulent “satisfaction” claims are impossible. Defendant Molina is aware that it wasn’t until seven years later that Plaintiff Salem obtained the records, with assistance from an anonymous Planning Department employee.

183. Defendant Molina's belief Declaration also misrepresents conditioned SMA Permit professional civil engineering studies.

184. The order of magnitude estimate portion of an SMA permit application has no bearing on DPW’s determination of what subdivision roadway improvements are required.

185. The Honorable Court is respectfully asked to take Judicial Notice of the findings expressed by Corp Counsel attorney Galazin during a Maui County Council Infrastructure Management Committee meeting that roadway improvements might be conditioned through a

SMA Permit;

186. “What that was meant to spell out was were all of the different situations in which a property owner might have to pay for roadway improvements. So it’s not only if you do a subdivision you have pay for roadway improvements, but also it might be for a SMA Permit.”

J12 - Minutes to Maui County Council Infrastructure Management Committee, February 1, 2010.

187. Defendant Molina, along with Mayor Victorino and conflicted Corporation Counsel, were aware that the SMA Permit records were tampered with to impede the lawful administration of Developer Lot 48A, LLC’s subdivision and later to alter a judicial proceeding. Defendant Molina’s representations amount to complicity in criminal acts and fraud.

188. Therefore, Defendant Molina’s falsified Declaration clearly exposes backroom dealings and a civil conspiracy involving Public Works Director Milton Arakawa, Private developer Lot 48A, LLC, and WSUE, who conspired to conceal government records and intentionally harm Plaintiff Salem, an innocent “3 Lot or Less” subdivision property owner. As a direct consequence, Plaintiff Salem will continue to incur serious damages and injuries in an amount to be determined at trial.

COUNT XI

Civil Conspiracy

**Public Works Deputy Director Milton Arakawa / Developer Lot 48A, LLC /
Warren S. Unemori Engineering, Inc**

189. Plaintiff Salem repeats, reasserts, and incorporates by reference the allegations stated in the preceding paragraphs of this Complaint.

190. Plaintiff Salem’s claims are based on previously concealed government records, newly discovered evidence, conflicting attorney-client representations with the Corporation Counsel, and admissions by County Defendants. Government officials have a fiduciary duty to

act in the public's best interest.

191. The County Defendants have recently admitted that the "deferred" subdivision roadway infrastructure, drainage mitigations, and fire hydrant along Lower Honoapiilani Road represented in a previously "missing" Department of Planning SMA Permit file, remain incomplete. This admission provides irrefutable evidence of a malicious and harmful Civil Conspiracy.

192. The County Defendants manufactured the conclusion that the Department of Public Works' approval of WSUE's "as-built" roadway infrastructure drawings confirm that "the corresponding SMA Permit SM2 2000 0042 conditions were satisfied" is entirely baseless, both in fact and in law.

193. Factually, the County Defendants' conclusion contradicts the withheld and compelled County government records. Government records document the material fact that the requested Planning Department SMA Permit studies were allegedly "missing" during the Department of Public Works' review of the re-subdivision of Lot 48A by Developer Lot 48A, LLC. Undeniably, the conspiring parties Deputy Director Arakawa, Developer Lot 48A, LLC, and WSUE were aware of their whereabouts.

194. For years thereafter, during arbitration and civil litigation, the conspiring parties used fraudulent legal tactics to prevent the discovery of damaging SMA Permit studies authored by Developer Lot 48A, LLC's land planning firm MAH, of which Deputy Director Arakawa was a partner. The Honorable Court has been presented with undeniable evidence of Fraud on the Tribunal by the licensed professional engineering firm, WSUE to further this concealment and cover-up,

195. In Robert's Hawaii School Bus, Inc. v. Laupahoehoe Transp. Co., Inc., 91 Hawai'i

224, 982 P.2d 853 (1999), the Hawaii Supreme Court recognized that a civil conspiracy claim must be based on an underlying tort. The conspiracy itself is not a separate tort but derives from the underlying wrongful acts. Count III of the First Amended Complaint ("FAC") represents the underlying tort.

196. The Court and government records confirm there was an undisclosed agreement among these parties to achieve the objectives of the conspiracy. The who, what, where, and when of the conspiracy were witnessed and known by Mayor Victorino, who had promised to lawfully hold the responsible parties accountable to mitigate the County of Maui's exposure and liability. Conflicted Corp Counsel interfered in multiple capacities.

197. The unlawful acts and conspired concealment of SMA records led to a subdivision dispute, a coerced settlement agreement with Developer Lot 48A, LLC, an illegitimate arbitration judgment lien for legal fees, a fraudulent County claim for payment mailed to Plaintiff Salem by Public Works Director Milton Arakawa for "deferred" roadway infrastructure, a foreclosure of Plaintiff Salem's family home due to Corporation Counsel's refusal to remove the lien on Plaintiff Salem's property title, and the Director of Planning's refusal to enforce the violations of Developer Lot 48A, LLC's concealed and conditioned SMA Permit SM2 2000 0042. These events confirm Honorable Judge Joseph Cardoza's belief that fraud occurred during the County's subdivision process.

198. The evidence also reveals that the conflicted Corporation Counsel interfered with Mayor Victorino's lawful promises to expose the civil conspiracy, further perpetuating the harm to Plaintiff Salem's family. As a direct, proximate, and foreseeable consequence of the civil conspiracy and Corp Counsel's interference, Plaintiff Salem's family has suffered irreparable harm and will continue to suffer damages in an amount to be determined at trial.

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COUNT XII
Specific Performance / Breach of Fiduciary Duty
Defendant Planning Director Kate Blystone

199. Plaintiff Salem hereby reasserts and incorporates by reference the allegations made in the preceding paragraphs as fully stated herein.

200. Plaintiff Salem's claims are based on previously concealed government records, newly discovered evidence, conflicting attorney-client representations with the Corporation Counsel, and admissions by County Defendants. Government officials have a fiduciary duty to act in the public's best interest.

201. Former Department of Planning Director Michele Mclean failed, refused, and neglected to document in a Planning Department field inspection the material fact that the roadway infrastructure, drainage mitigations, and fire hydrant along Lower Honoapiilani Road, as required by Developer Lot 48A, LLC's conditioned SMA Permit SM2 2000 0042, were never completed.

202. The compelled County records also reveal that conflicted Corporation Counsel interfered with Mayor Victorino's lawful written directive to Planning Director Mclean to perform a review of the SMA Permit in question, and report back to his authority the findings.

203. The County Defendants, which includes current Planning Director Kate Blystone, now admit for the first time in Court filings that the roadway infrastructure, drainage mitigations, and fire hydrant along Lower Honoapiilani Road, represented in conditioned SMA Permit SM2 2000 0042, were never completed.

204. The government records confirm that Developer Lot 48A, LLC's subdivision was signed off by former Public Works Director Milton Arakawa despite the fact that the conditioned

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SMA Permit SM2 2000 0042 environmental studies, which were authored by Director Arakawa's land planning firm, were reportedly "missing" from County files. The record reveals the allegedly "missing" SMA Permit government records were not "missing", but were fraudulently concealed in a civil conspiracy involving Developer Lot 48A, LLC and their professional subdivision civil engineer Warren S. Unemori Engineering, Inc.

205. Therefore, Planning Director Blystone, the sole authority over the administration of SMA Permits, is legally obligated to perform upon the Planning Director's duties to issue the appropriate SMA Permit violation notices to Developer Lot 48A, LLC. By doing so, the County of Maui's liability will shift back onto Developer Lot 48A, LLC, and their unscrupulous partners Robert J Cella, Hugh J Farrington, Douglas S Schatz, and Colin Moreton.

206. Director Blystone's breach of fiduciary duty would continue to obstruct justice and impede an investigation into fraud and collusion orchestrated by Developer Lot 48A, LLC which was recognized by Honorable Judge Cardoza in a related civil case. As the records reveal, conflicted Corporation Counsel has interfered with the Planning Director's duties for over a decade to cover up their documented misdealing's with private developers.

207. As a direct, proximate, and foreseeable consequence of Planning Director Blystone's refusal to perform upon the Director's duties, Plaintiff Salem's family has suffered irreparable harm and will continue to suffer damages in an amount to be determined at trial.

COUNT XIII
Breach of Fiduciary Duty
Defendant Jordan Molina

208. Plaintiff Salem repeats, reasserts, and incorporates by reference the allegations stated in the preceding paragraphs of this Complaint.

209. Plaintiff Salem's claims are based on previously concealed government records,

newly discovered evidence, conflicting attorney-client representations with the Corporation Counsel, and admissions by County Defendants. Government officials have a fiduciary duty to act in the public's best interest.

210. Defendant Molina previously served as an executive assistant to the Maui County Council under the Chair of Infrastructure and co-authored legislation intended to establish a fair system for assessing and collecting private developer roadway infrastructure "deferral" agreements (see Fairness Bill, PC-17). He is fully aware that Plaintiff Salem is a documented whistleblower who exposed the Department of Corporation Counsel's and the Department of Public Works' dubious practice of executing thousands of unaccounted-for "3 Lot or Less" subdivision roadway infrastructure "deferral" agreements.

211. Despite Plaintiff Salem's written notifications to Public Works Director David Goode and former Mayor Alan Arakawa in 2001 and for years thereafter, Corporation Counsel attorneys continued executing hundreds more deferral agreements, recklessly shifting millions of dollars of private developers' financial obligations onto the County of Maui and defrauding taxpayers. Their actions blatantly violated the Maui County Charter.

212. Defendant Molina knew that during the re-subdivision of Lot 48A by Developer Lot 48A, LLC, the County Defendants and the Department of Corporation Counsel failed to account for and track any of the "3 Lot or Less" subdivision "deferral" agreements, including the Anka, Inc. "3 Lot or Less" agreement which clouded Plaintiff Salem's real property title. (LUCA File No. 4686).

213. Defendant Molina also knew that the roadway infrastructure and drainage mitigations to Lower Honoapiilani Road, represented in Developer Lot 48A, LLC's conditioned subdivision SMA Permit SM2 2000 0042, the conditioned WSUE Order of Magnitude Valuation of Construction Costs, and MAH environmental studies, were lawfully restricted to be deferred

only one time in the original Anka, Inc. "3 Lots or Less" subdivision.

214. The County Defendants' Pre-Trial Statements admit the following:

- A document titled "Subdivision Agreement ("3 Lots or Less") was recorded with the State of Hawaii Bureau of Conveyances on November 7, 1995 (Doc. No. 95-145123), involving Anka, Inc.
- The Anka, Inc. Subdivision Agreement ("3 Lots or Less") states that "The land so subdivided **shall not** thereafter qualify for the exemption with respect to **any subsequent subdivision of any of the resulting parcels,**" quoting Section 18.20.040 of the Maui County Code at the time. The resulting parcels received no further exemption. The Department of the Corporation Counsel approved the agreement's form and legality.
- No additional or new "3 Lot or Less" Subdivision Deferral Agreement was authorized or recorded for the three parcels (Lot 48A-1, Lot 48A-2, Lot 48A-3) subsequently subdivided by Developer Lot 48A, LLC in 2001.
- On or around May 27, 2010, the County mailed separate Notices of Intent to Collect financial obligations based on deferral agreements to the (five) owners of record for parcels related to LUCA File Nos. 4.686 and 4.805. These notices were sent under Ordinance No. 3731 and signed by the County Director of Public Works, Milton Arakawa.
- The Department of Public Works included with the Notices of Intent to Collect a document that listed "12-12-96" as the "Subdivision Date" and "4.686" as the "Subdivision File No." for all five parcels.

215. Upon being hired by Mayor Victorino as Deputy Director of Public Works in 2019, Defendant Molina failed to notify the County Auditor and conflicted Corporation Counsel about his knowledge of the fact Director of Public Works Arakawa lacked the authority to bind five parcels under a "3 Lot or Less" subdivision roadway infrastructure deferral agreement involving overlapping subdivisions of the same parent parcel.

216. Defendant Molina was notified of his duties in writing by Office of the Mayor staff member, whistleblower Plaintiff Salem. Defendant Molina's and conflicted Corporation Counsel's duties are outlined in Title 18, Section 18.44.010.A of the Maui County Code.

217. In 2019 and beyond, Defendant Molina failed to inform the County Auditor, conflicted Corp Counsel, and the County Prosecutor that Director Arakawa's collection notices sent by US Mail to five property owners were falsified and directly resulted in a fraudulent lien on Plaintiff Salem's real property. Simply stated, Defendant Molina knew that a crime was

committed by Corp Counsel and Director Arakawa.

218. Defendant Molina is aware that Developer Lot 48A, LLC was lawfully responsible for the one-time "deferred" roadway infrastructure to Lower Honoapiilani Road and Hui Road E through the re-subdivision application for parent parcel Lot 48A (LUCA File No. 4.805). Defendant Molina is aware that Plaintiff Salem relied on the adopted ordinance and recorded subdivision "deferral" agreement to his detriment.

219. Defendant Molina knows that Plaintiff Salem's mortgage lender demanded the removal of the unremovable illegitimate County-induced liens on his real property title to allow their mortgage loan to be recorded in a senior position. Defendant Molina and the County's outside counsel, Kobayashi Sugita LLP ("KSG"), are aware that former Public Works Director Milton Arakawa's falsified collection notices and induced liens on Plaintiff Salem's real property title caused the wrongful foreclosure of his family home and investment property.

220. Defendant Molina knows that lawfully expunging the liens now would prove that the County Defendants had a legal obligation to do so during Developer Lot 48A, LLC's re-subdivision of parent parcel Lot 48A. Instead, Defendant Molina recently declared Public Works Director Arakawa had the authority to disregard the "shall not" language in the recorded Anka Inc. "deferral" agreement and send falsified collection notices to five property owners for his developer client's roadway infrastructure financial obligations.

221. As a complicit breach of duty, Defendant Molina failed to notify conflicted Corporation Counsel to immediately expunge the existing County's real property title liens on the five overlapping subdivision parcels currently clouded by the illegitimate "3 Lot or Less" subdivision agreement, which would serve the public interest by eliminating the County Auditor's influenced excuse to suspend the longstanding audit of the thousands of unaccounted for "deferral" agreements because of this one controversy.

222. As another complicit breach of duty, Defendant Molina failed to request Corp Counsel to provide notice to the proper authorities of the material fact that Developer Lot 48A, LLC and their partner Robert Cella, the owner of Coldwell Banker Island Properties, LLC, altered a government contract without the authorization of the Corp Counsel through warranty deeds recorded on the three parcels created in the re-subdivision of Lot 48A. (LUCA File 4.805)

223. Under the conflicted representation and interference of the Department of Corp Counsel, Defendant Molina has breached his duty to uphold and enforce the Maui County Code and the Title 18 subdivision ordinances adopted by the Maui County Council. As a direct and foreseeable result of Defendant Molina's breach of duty, Plaintiff Salem has suffered and will continue to suffer damages to be determined at trial.

COUNT XIV
Breach of Contract / Gross Negligence / Fraud
County of Maui

224. Plaintiff Salem repeats, reasserts, and incorporates by reference the allegations stated in the preceding paragraphs of this Complaint.

225. Plaintiff Salem's claims are based on previously concealed government records, newly discovered evidence, conflicting attorney-client representations with the Corporation Counsel, and admissions by County Defendants. Government officials have a fiduciary duty to act in the public's best interest.

226. The County Defendants, conflicted Corp Counsel, and the County Auditor are aware that no County law allows five parcels to be bound by a "3 Lot or Less" subdivision roadway infrastructure "deferral" agreement involving two overlapping subdivisions of the same parent parcel, the "land so subdivided". (Title 18.20.202)

227. The County Defendants admit the material fact that no additional or new "3 Lot or

Less" Subdivision Deferral Agreement was authorized or recorded for the three parcels (Lot 48A-1, Lot 48A-2, Lot 48A-3) subsequently subdivided by Developer Lot 48A, LLC in 2001.

228. On or around May 27, 2010, the County mailed separate Notices of Intent to Collect financial obligations based on deferral agreements to the (five) owners of record for parcels related to LUCA File Nos. 4.686 and 4.805. These notices were sent under conflicted Corp Counsel knowledge and representation and were signed by the Director of Public Works, Milton Arakawa. The notices constitute a breach of contract, fraud, and gross negligence.

229. As a direct and foreseeable result of Defendant Molina's breach of duty, Plaintiff Salem has suffered and will continue to suffer damages to be determined at trial.

COUNT XV
Negligence & Gross Negligence
County Auditor

230. Plaintiff Salem reasserts and incorporates by reference all preceding allegations, pleadings, and the Motion to Amend, as if fully set forth herein.

231. Plaintiff Salem's claims are based on previously concealed government records, newly discovered evidence, conflicting attorney-client representations with the Corporation Counsel, and admissions by County Defendants. As the evidence reveals, the Office of the County Auditor has exhibited a complete lack of care with conscious indifference to the damaging consequences inflicted upon Plaintiff Salem and the public interest.

232. The compelled records reveal that the Office of the County Auditor failed to maintain independence from the conflicted Corp Counsel, compromising the Office of the County Auditor's duty to serve the public interest. The County Auditor owed a professional duty to remain independent and exercise due care towards the Maui County Council, County employee whistleblower Plaintiff Salem, and the local residents of Maui County.

233. Pursuant to Government Professional Auditing Standards: The County Auditor is subject to professional standards that require independence, such as those set by the American Institute of Certified Public Accountants (AICPA) or the Institute of Internal Auditors (IIA).

234. The County Auditor's breach of duty and Professional Auditing Standards aided and abetted the decades of conflicted Corp Counsel's illicit cover-up of County officials' corruption. The Auditor's breach of this duty is a major contributing cause of this litigation and exacerbated the injuries to both Plaintiff Salem and the public interest. The now-conflicted County Auditor failed to report to the proper authorities the evidence of fraud and administrative abuse by various Public Works Directors, Deputy Directors, and the Corporation Counsel itself involving the thousands of unaccounted-for "3 Lot or Less" roadway infrastructure agreements.

235. Specifically, the County Auditor improperly withheld documented evidence of fraud by former Public Works Director Milton Arakawa and the unlawful actions of County Attorneys in the negligent administration of Plaintiff Salem's subdivision and others. Government records affirm that the County Auditor had indisputable evidence of Director Arakawa's fraudulent and criminal claims involving the falsified "3 Lots or Less" notices for payment sent by US Mail to five property owners, including Plaintiff Salem.

236. From the outset of the audit in 2019, the Office of the County Auditor had, a responsibility to review County ordinances to have a clear understanding that no law supported Director Arakawa's manipulation of the subdivision ordinances to serve the financial interests of former clients, The County Auditor failed to timely present findings to the proper authorities thereby causing irresponsible delays and obstruction of Plaintiff Salem's assigned duties with the office of the Mayor.

237. Under the influence of conflicted Corporation Counsel, the Auditor suspended the audit entirely, citing one single disputed subdivision "deferral" agreement as justification. As

the compelled County records reveal, the County Auditor scheduled meetings with County officials who had direct knowledge of Director Arakawa's misdealings just one month after whistleblower Plaintiff Salem was employed by the Office of the Mayor as a legislative liaison.

238. The County Auditor's failure to report findings to the Maui County Council or proper authorities, despite clear evidence of malfeasance, misfeasance, and nonfeasance, has directly resulted in further and future financial damage to Plaintiff Salem and the taxpaying residents of Maui County. Plaintiff Salem, relying on the Auditor to assess the scope and recovery potential of the thousands of developer "deferral" agreements in a timely manner, was detrimentally affected and harmed both as a private citizen and as a staff member in the Office of the Mayor.

239. As a direct, proximate, and foreseeable result of the County Auditor's actions, Plaintiff Salem has suffered and will continue to suffer ongoing damages, to be determined at trial.

COUNT XVI
Breach of Duty / Abuse of Power
Corporation Counsel

240. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

241. Plaintiff Salem asserts that the claims set forth herein are based on volumes of previously concealed and compelled government records, newly discovered evidence, conflicting attorney/client representations, and contradicting admissions from the County Defendants.

242. It is indisputable that the roadway infrastructure in WSUE's "As-Built" drawings does not match the infrastructure described in the conditioned "missing" SMA Permit studies and WSUE's Order of Magnitude Estimate of Construction Costs. It is equally undeniable that the roadway infrastructure construction was not completed as required by the plans submitted on

May 11, 2000.

243. The County attorneys have recently admitted that the "deferred" subdivision roadway infrastructure, drainage mitigations, and fire hydrant along Lower Honoapiilani Road—represented in a previously "missing" Department of Planning SMA Permit file—remain incomplete.

244. Pursuant to Maui County Code Title 18.20.060 “The approval of the construction plans by the Director shall not relieve the subdivider nor the engineer of the responsibility for any and all defects that may become evident subsequent to the plan approval.”

245. Pursuant to Maui County Code Title 18.44.010 - “Any person, firm, or corporation which knowingly violates this title shall be fined not more than one thousand dollars. The continuance of any such violation shall be deemed a new violation for each day of such continuance.

246. In addition, the County attorney may institute an action to prevent, restrain, correct, or abate any violation of this title and seek such relief by way of injunction or otherwise, as may be proper under the facts and circumstances of the case, in order fully to effectuate the purposes of this title.

247. In any illegal subdivision, the director may require such improvements as would reasonably comply with the provisions of this title. Such remedial improvements by the director shall be applicable to the subdivider, if he may be found, or the owners of lots in the illegal subdivision at the time of discovery, or both.”

248. Corp Counsel has breached their duty to provide notice to Warren S. Unemori Engineering, Inc., to correct their violations and seek, if necessary, such relief by injunction to fully effectuate the purpose of Title 18 of the Maui County Code in the illegal subdivision.

249. As a direct, proximate, and foreseeable result of the County Auditor's actions, Plaintiff Salem has suffered and will continue to suffer ongoing damages, to be determined at trial.

COUNT XVII
Interference with Contractual Relationships /
Breach of Covenant of Good Faith & Fair Dealing / Bad Faith
Department of Corporation Counsel

250. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

251. Plaintiff Salem asserts that the claims set forth herein are based on volumes of previously concealed and compelled government records, newly discovered evidence, conflicting attorney/client representations, and contradicting admissions from the County Defendants.

252. Former Mayor Michael Victorino made promises to Plaintiff Salem, before and after being sworn in as Mayor of Maui County, that he would lawfully hold Developer Lot 48A LLC responsible for Plaintiff Salem's injuries resulting from a conspiracy to conceal SMA Permit government records and backroom dealings with former Public Works Director Milton Arakawa.

253. Former Mayor Victorino made promises to employ whistleblower Plaintiff Salem to resolve and recover through fair and equitable legislation, the tens of millions of debts owed to the County of Maui through recorded subdivision roadway frontage "deferral" agreements" executed by conflicted Corporation Counsel, which were the subject of a County Audit.

254. As evidenced by conflicted Corporation Counsel's "bar napkin" amendment to the signed agreement between Defendant Victorino and Plaintiff Salem, conflicted Corporation Counsel knew that Plaintiff Salem would rely upon County laws and ordinances and Mayor

Victorino's promises.

255. Conflicted Corporation Counsel breached their duty to Plaintiff Salem and County Employee Salem to deal with Plaintiff Salem's injuries and whistleblower discovery in good faith by concealing government records which reveal that as Mayor, Defendant Victorino lawfully attempted to fulfill and ratify his promises and agreements with Plaintiff Salem.

256. The previously withheld and compelled records provide indisputable evidence that conflicted Corporation Counsel interfered with access to government records which prove their direct role in the interference with the administration of justice and legal proceedings by tampering with evidence and intimidating County officials.

257. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel intentionally interfered with and obstructed Mayor Victorino's efforts to lawfully act upon his promises and agreements with Plaintiff Salem.

258. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel intentionally interfered with the County Director's official duties to uphold and enforce the adopted County laws and ordinances.

259. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel interfered with the County Auditor's duty to remain independent of conflicted Corporation Counsel. Undeniably, conflicted Corporation Counsel is responsible for the disregard of the public interest through the dubious execution of the thousands of unaccounted-for private developer roadway infrastructure "deferral" agreements.

260. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel authorized former Public Works Director Milton Arakawa to engage in Mail Services Fraud by sending falsified open-ended claims for payments

to the County to five property owners for a pro-rata share of previously recorded “3 Lot or Less” subdivision agreement. Conflicted Corporation Counsel interfered with Mayor Victorino’s promises and duty to hold the conspiring parties responsible for their unlawful acts.

261. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel interfered with the Maui County Council’s duty and authority to investigate the evidence of criminal acts and wrongdoing by County officials, including asserted acts of malfeasance and fraud by conflicted Corporation Counsel.

262. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel interfered with Plaintiff Salem’s assigned tasks and duties as a staff member of the Office of the Mayor.

263. The Council and Judicial records affirm former Corporation Counsel Director Moana Lutey interfered and lied to Council Member Tamara Paltin during an open hearing inquiry into why conflicted Corporation Counsel was not legally supporting Mayor Victorino’s agreements and promises to enforce Developer Lot 48A, LLC unfulfilled SMA Permit SM2 2000 0042.

264. The Council and Judicial records affirm that the former conflicted Corporation Counsel interfered with the Maui County Council’s duties and authorities by misrepresenting Plaintiff Salem’s legal claims and withholding good faith settlement offers prior to a Court Ordered Settlement Conference.

265. Conflicted Corporation Counsel was aware of Mayor Victorino’s agreements with Plaintiff Salem, lawful promises, and assigned tasks as an employee of the County of Maui and Office of the Mayor. Conflicted Corporation Counsel intentionally and maliciously induced multiple parties and County officials to breach their duties to enforce County laws and

ordinances.

266. As a direct, proximate, and foreseeable cause of the County Defendants' actions, Plaintiff Salem has and will continue to suffer ongoing damages in an amount to be shown at trial.

COUNT XVIII
Unjust Enrichment / Tortious Interference:
Corporation Counsel

267. Plaintiff Salem reasserts and incorporates by reference all preceding allegations, pleadings, and the Motion to Amend, as if fully set forth herein.

268. Plaintiff Salem's claims are based on Maui County Council records and newly discovered evidence.

269. Corp Counsel Director Patrick Wong used a private attorney's and affordable housing group's work product to unjustly enrich the County at the expense of the private parties. The County gained millions of dollars of financial windfalls and Corp Counsel gained a legal advantage against private developers without compensation to the parties who in good faith were dealing on their behalf.

270. Corp Counsel Director Wong's use of the work product tortiously interfered with the private attorney's relationships with Plaintiff Salem and his partners causing extreme harm to both personal and professional relationships. To further the mistrust, Director Wong asserted enrichment from gambling. As a public official, Director Wong was unclean in multiple acts.

271. Being directly involved and present during the extensive negotiations, Corp Counsel Director Wong had a clear understanding that the use of the work product was to facilitate a 100% affordable housing development by the qualified members of AHG with direct financial benefit to the County, which establishes a contractual partnership relationship.

272. Therefore, Plaintiff Salem asserts AHG has a right to recover their professional expenses and reasonable professional losses based on the County's recent contradictory decision to dispose of the parcels to private entities with no form of compensation.

DATED: Lahaina, Hawai'i, September 8, 2024

/s/ Christopher Salem
CHRISTOPHER SALEM – *Pro Se*

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**COMPARE
2ND AMENDED COMPLAINT**

REVERE & ASSOCIATES
A Limited Liability Law Company

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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHRISTOPHER SALEM,

Plaintiff,

vs.

COUNTY OF MAUI; MICHAEL P.
VICTORINO, individually and in his
official capacity; MICHELE MCCLEAN
in her official capacity as DIRECTOR OF
THE DEPARTMENT OF PLANNING;
JOHN DOES 1-100; JANE DOES 1-100;
DOE PARTNERSHIPS 1-100; DOE
CORPORATIONS 1-100; DOE ENTITIES
1-100;

Defendants.

CIVIL NO. 2CCV 21-0000048
(Contract)

FIRST AMENDED COMPLAINT

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CHRISTOPHER SALEM,

Plaintiff,

vs.

COUNTY OF MAUI; RICHARD T. BISSEN, JR. in his official capacity; KATE BLYSTONE, in her official capacity as DIRECTOR OF THE DEPARTMENT OF PLANNING; JORDAN MOLINA, in his individual capacity and in his official capacity as DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS; WARREN S. UNEMORI ENGINEERING, INC.; DEVELOPER LOT 48A, LLC; ROBERT CELLA, HUGH FARRINGTON, DOUGLAS SCHATZ; COLIN MORETON; LANCE TAGUCHI; JOHN DOES 1-100; JANE DOES 1-100; DOE PARTNERSHIPS 1-100; DOE CORPORATIONS 1-100; DOE ENTITIES 1-100, COUNTY O

Defendants.

FIRST CIVIL NO.
2CCV-21 000048

[PROPOSED]
SECOND AMENDED
COMPLAINT

SECOND AMENDED COMPLAINT

Plaintiff CHRISTOPHER SALEM, Pro Se (“Plaintiff Salem” or “Plaintiff”), by and through his attorneys, Revere & Associates LLC, hereby files his First/Second Amended Complaint pursuant to Hawai’i law, including but not limited to HRS §§ 603-21.5(3), 603-36(5) and 378, as follows:

I. INTRODUCTION

Plaintiff Salem, a former staff member of the Office of the Mayor, brings this case to enforce the settlement agreement adopted County laws and duties of County officials which were the foundation of a settlement agreement and promises made by Defendant former Mayor MICHAEL P. VICTORINO (“Defendant Mayor Victorino” and “Mayor Victorino”), which Plaintiff Salem relied upon to his detriment.

This amended complaint is based on newly discovered evidence and previously withheld government records by The Department of the Corporation Counsel. (hereinafter "Corp Counsel"). The amended complaint asserts claims of breaches of duties by County officials, falsification of government records, and interference with Plaintiff Salem’s contractual and employment agreements by the conflicted and vengeance-driven Corp Counsel.

On December 5, 2018, Defendant Victorino after almost ten hours of meetings and review of government records, Mayor Victorino and Plaintiff Salem signed a mutually beneficial settlement agreement by which Plaintiff Salem agreed to terminate his legal action against the County of Maui. In exchange for consideration of Plaintiff Salem’s releasing the County of Maui from liability, Defendant Mayor Victorino agreed to direct/instruct the Planning Department to issue an SMA Permit Notice of Violation to oceanfront developer/Developer Lot 48A, LLC, under inter alia his authority under the Article 7, § 7-5 of the Maui County Charter.

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~~Defendant~~ Mayor Victorino knew that the Planning Department's issuance of ~~an~~ SMA Permit Notice of Violation to Developer Lot 48A, LLC was monumental as it proved the collusion between Developer Lot 48A, LLC, former Public Works Director Milton Arakawa ("Director Arakawa"), and ~~former Planning Director Jeff Hunt~~ ("Director Hunt" Warren S. Unemori Engineering, Inc ("WSUE")) to conceal and falsify SMA Permit government records.

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~~Defendant~~ Mayor Victorino knew that Developer Lot 48A, LLC's concealment of SMA Permit records also revealed a conspiracy with ~~their consultants Munekiyo, Arakawa, and Hiraga, Inc~~ ("MAH") and Warren S. Unemori Engineering, Inc ("WSUE") to falsify the conditioned SMA Permit application ~~assessments, environmental studies, and~~ Order of Magnitude valuations of ~~construction costs to avoid an~~ SMA Major Permit, public hearings, and elevated environmental protections.

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Mayor Victorino knew that Honorable Judge Joseph Cardoza recognized fraud and conspired concealment of SMA Permit government records in a related civil case between Developer Lot 48A, LLC, and Plaintiff Salem. Mayor Victorino knew the appropriate SMA Permit violation notices from the Department of Planning's Zoning and Enforcement Division would complete a legal investigation and expose the conspiring parties to serious consequences for the irreparable harm they inflicted on Plaintiff Salem's family.

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As the Director of Public Works, ~~Milton~~ Director Arakawa executed an illegitimate open-ended lien against Plaintiff Salem's real property title through a Notice of Intent to Collect for the pro rata costs of Lower Honoapiilani Road Capital Improvement Project infrastructure improvements and drainage mitigations which were ~~in fact~~ Developer Lot 48A, LLC's "deferred" financial responsibility as represented by their professional consultants MAH and WSUE in their signed and conditioned oceanfront subdivision SMA Permit SM2 000 0042.

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~~Defendant~~ Mayor Victorino knew Director Arakawa's scheme of concealment and

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falsification of the SMA Permit government records caused years of unjustified legal disputes between Developer Lot 48A, LLC and Plaintiff Salem, resulting in the loss of Plaintiff Salem's family home and financial security. Defendant Mayor Victorino agreed and promised to lawfully hold the developer Developer Lot 48A, LLC, and their licensed consultants responsible accountable for their conspiracy which was the direct cause of Plaintiff Salem's financial injuries.

Defendant Mayor Victorino also knew that Plaintiff it was plaintiff Salem's injuries that led to Plaintiff Salem's whistleblower discovery of Corporation Corp Counsel's execution of thousands of roadway infrastructure subdivision "deferral agreements" with the private developers since 1974, which were untracked and unaccounted for by Corp Counsel and the Department of Finance.

Defendant Mayor Victorino knew that Plaintiff Salem's discovery opened the door for tens of millions of dollars in financial recovery for the taxpayers and the County of Maui.

Defendant As a part of their agreement, Mayor Victorino hired Plaintiff Salem as a legislative liaison to assist in the adoption of a system and formula of assessment of the "deferral agreements" and to help close the exploited loopholes in the Maui County Code and Shoreline Management Areas rules.

In reliance and good faith, Plaintiff Salem honored his side of the settlement agreement. Despite Plaintiff Salem's persistent notices, Defendant Victorino breached the settlement agreement by inter alia falsely alleging the Mayor of Maui County does not have the authority to direct the Planning Department to enforce private developer's SMA Permit violations.

On May 10, 2021, Director McClean publicly stated that the enforcement and revocation of SMA permits involves consultation and collective decision making of the Corporation Counsel, Maui County Council, and Mayor Victorino.

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The compelled and previously withheld government records reveal that within weeks of being sworn into office and directly represented and advised by conflicted Corp Counsel, Mayor Victorino affirmed and ratified his signed agreement by lawfully acting upon his promises to Plaintiff Salem.

Contrary to Corp Counsel's false accusations, the records reveal that Mayor Victorino never overstepped the Planning Director's authority when he requested that Planning Director Mclean review Developer Lot 48A, LLC's SMA Permit file and report back to him with the findings. Mayor Victoino simply took the proper initial step to establish the foundation for the issuance of the violation notices as promised and required by law.

The compelled records affirm that the conflicted Corp Counsel obstructed the Planning Department's duty to perform a field inspection to document the fact that roadway infrastructure represented in Developer Lot 48A, LLC's conditioned SMA Permit environmental studies was never completed. Under Corp Counsel's conflicted interference, Mayor Victorino breached his agreements and promises to Plaintiff Salem.

During his employment within the Office of the Mayor, Plaintiff Salem exposed discovered and reported further unethical acts by County officials, which continue to serve the financial interests of private developers at the public's expense. Despite Plaintiff Salem's written notices, Mayor Victorino has refused to take any action to mitigate the newly discovered ongoing financial harm to local residents and the taxpayers of Maui County. Specifically, but not limited to, the confirmed SMA Permit and building code violations surrounding the massive Brown Development structure in Napili Village which was the primary cause of Plaintiff Salem's wrongful termination.

In fact, in retaliation to Despite Plaintiff Salem's recent round of whistleblowing, multiple whistleblower notices, the conflicted Corporation Counsel and Mayor Victorino engaged in acts of workplace intimidation and defamation, both directly failed to take any action to mitigate the newly

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~~discovered harm to residents and indirectly, which has amplified the ongoing distress placed upon the taxpayers of Maui County. Had they done so, Plaintiff Salem's whistleblower discovery would have been validated, and Plaintiff Salem and his family, culminating in wrongful termination would have been seen as a dedicated and well-respected public servant.~~

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~~In conclusion, Corp Counsel's obstruction and retaliation tactics were designed to shield their Department's documented history of malfeasance, misfeasance, and nonfeasance to serve the financial interests of Plaintiff on August 4, 2021, private developers in Plaintiff Salem's former subdivision and throughout Maui County. A recent example is the disposal of the Fairways subdivision parcels which the County of Maui acquired at the expense of Anuenue Housing Group, LLC, an affordable housing entity formed in good faith by Plaintiff Salem.~~

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~~Therefore, this ~~First~~ Second Amended Complaint seeks the performance of the County officials' duties and the lawful agreements and promises made by Mayor Victorino and damages for the continuing unfair treatment to Plaintiff Salem, which is documented in County Personnel records, witnessed, transcribed, and reaffirmed both verbally and in writing that resulted in life-changing personal injuries to Plaintiff Salem's family. And, for a wrongful termination orchestrated by the vindictive Corp Counsel against a dedicated staff member of the Office of the Mayor who exposed the decades of misdealings with private developers by Corp Counsel and County officials.~~

~~II. II. JURISDICTION AND VENUE~~

~~1. 1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to Hawai'i law, including but not limited to HRS § 603-21.5(3).~~

~~2. 2. Venue is founded upon HRS § 603-36(5).~~

~~III. III. PARTIES~~

~~3. 3. Plaintiff Salem CHRISTOPHER SALEM is a resident of Napili, County of Maui, State of Hawai'i. Plaintiff Salem is a ~~current~~ former staff member with the Office of~~

Mayor Victorino and a former executive assistant to the Maui County Council under the Council Committee Chair of Planning. Plaintiff Salem asserts all employee rights and retaliation protection adopted under Hawai'i Revised Statutes §378-70.

4. ~~4.~~ Defendant COUNTY OF MAUI ("Defendant Maui County") is a municipality chartered under Hawai'i State law and is legally responsible for the acts and omissions of its departments, officials, and boards.

5. ~~5.~~ Defendant ~~Victorino in his personal and~~ RICHARD BISSEN's official capacity as the current Mayor of the County of Maui, and the successor in interest to Mayor Alan Arakawa, and in performing his duties, is and was, at all relevant times, acting under color of law.

6. ~~6.~~ Defendant ~~Michelle McLean~~ JORDAN MOLINA, in his capacity as the current Director of the Department of Public Works for the County of Maui, in performing his duties, is and was, at all relevant times, acting under the color of law. Defendant Molina is being sued in his personal and official capacity.

7. Defendant KATE BLYSONE, in her capacity as the current Director ~~of~~ of the Department of Planning for the County of Maui, and, in performing her duties, is and was, at all relevant times, acting under color of law. ~~The Planning Director is being sued only in her official capacity.~~

8. ~~7.~~ Defendant WARREN S. UNEMORI ENGINEERING, INC. in their capacity as a licensed professional civil engineering firm.

9. Defendant DEVELOPER LOT 48A, LLC; PARTNERS ROBERT J CELLA, HUGH J FARRINGTON, DOUGLAS S SCHATZ, AND COLIN MORETON, in their individual capacities.

10. Defendant LANCE TAGUCHI, the county auditor.

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11. Plaintiff has reviewed the records that were made available to him in order to ascertain the true and full names and identities of all defendants in this action, but no further knowledge or information regarding the parties responsible is available at this time and Plaintiff is unable at this time to ascertain the identity of the defendants in this action designated as JOHN DOES 1-100, JANE DOES 1-100, DOE PARTNERSHIPS 1-100 AND DOE CORPORATIONS ~~4-CORPORATIONS~~ 1-100 (hereinafter collectively referred to as "Doe Defendants").

12. Said Defendants are sued herein under fictitious names for the reason that their true names and identities are unknown to Plaintiff except that they may be connected in some manner with Defendants and may be agents, attorneys, servants, employees, employers, representatives, co-venturers, co-conspirators, associates, or independent contractors of Defendants and/or were in some manner responsible for the injuries or damages to Plaintiff and their true names, identities, capacities, activities, and/or responsibilities are presently unknown to Plaintiff or his attorneys. Salem, Pro Se.

IV. RELEVANT HISTORY

IV. BACKGROUND

a. ~~The Defendants' Pattern~~ County Defendants and Corp Counsel's History of Misconduct

13. In 2001, through a neighborhood dispute with oceanfront Developer Lot 48A, LLC over their obligations to obtain an SMA Major Permit and complete the "deferred" subdivision roadway infrastructure improvements along the frontages of the underlying "3 Lot or Less" subdivision, Plaintiff Salem discovered that since 1974 County officials had failed to track or account for an unknown quantity of private developers "3 Lot or Less" subdivision infrastructure "deferral agreements". The unaccounted for

14. Plaintiff Salem discovered the developer "deferral" agreements were

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~~recorded~~ executed by ~~Corporation Corp~~ Counsel attorneys as liens and recorded on the real property titles of the resulting subdivision parcels including Plaintiff Salem's "3 Lot or Less" subdivision.

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9-15. Plaintiff Salem discovered there was no adopted formula or system of assessment and collection on any of the developer "deferral agreements", and no process for property owners to remove the County liens from any of the property titles, including the lien on Plaintiff Salem's former property.

10-16. Consequently, ~~the developer's~~ millions of dollars of private developers' "deferred" financial obligations were ~~shifted~~ paid and will continue to the taxpayers. As such, the citizens ~~be paid by the tax-paying residents~~ of the County of Maui ended up paying for potentially hundreds of millions of dollars of developer's "deferred" infrastructure obligations through public funds spent on ~~County of Maui~~ roadway Capital Improvement Projects ("CIP").

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11-17. As a former Council member, ~~Defendant Mayor~~ Victorino was aware and testified in public hearings regarding ~~Corporation Corp~~ Counsel's sobering gross negligence and failure to track or account for the developer "deferral agreements" executed by their staff attorneys.

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12-18. ~~Defendant Mayor~~ Victorino knew the unlawful acts by Developer Lot 48A, LLC and Director Arakawa ~~are were~~ similar in manner and time frame to the illicit subdivision approvals for Montana Beach, Olowalu ~~Mauka~~, and Palama Drive subdivisions wherein developers were granted SMA Permits and subdivision approvals in violation of the Maui County Code.

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13-19. This pattern of misconduct ~~is was~~ known to ~~Defendant Mayor~~ Victorino who inter alia voted on multi-million-dollar legal settlements resulting from citizen's demands for enforcement of County ordinances and resulting lawsuits. The judicial records prove, in each related case, that the ~~Corporation Corp~~ Counsel over-zealously defended the County Director's

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misconduct and lost.

~~14.20.~~ The enforcement of Developer Lot 48A, LLC’s unfulfilled oceanfront SMA Permit also reveals the loopholes in the County’s SMA permitting and subdivision application process ~~which~~ that certain ~~well-connected~~ developers, professional consultants, and County officials have manipulated for decades.

~~b. The Settlement Agreement and the~~ *Mayor Victorino’s Promises to Uphold County Laws and Ordinances.*

~~15.21.~~ In 2018, just prior to the Mayoral elections, Plaintiff Salem and ~~Defendant~~ Mayor Victorino began discussing Plaintiff Salem’s previous whistleblowing efforts and solutions to the uncollected “deferral” agreements and disjointed SMA permitting process.

~~16.22.~~ ~~As the~~The evidence ~~reveal,~~ reveals that the ~~resulting~~ financial recovery from the ~~unaccounted-for roadway infrastructure “deferral” agreements~~ for the County of Maui is a direct result of what Plaintiff Salem learned through the ~~costly~~ malicious personal injuries ~~maliciously~~ caused by Director Arakawa’s tampering with Developer Lot 48A, LLC’s SMA Permit government records and interrelated manipulation of the “3 Lots or Less” deferral agreement recorded on Plaintiff Salem’s property.

~~17.23.~~ ~~Defendant~~ Mayor Victorino knew that ~~Corporation~~ Corp Counsel’s failure and refusal to release the County “3 Lots or Less” subdivision lien on Plaintiff Salem’s real property title upon issuance of the overlapping subdivision approvals to Developer Lot 48A, LLC, resulted inter alia in years of unjustified legal disputes between Plaintiff Salem, Developer Lot 48A, LLC, and the County of Maui, resulting in the loss of Plaintiff Salem’s family home.

~~18.24.~~ ~~Defendant~~ Victorino and Plaintiff Salem discussed, with the knowledge of ~~Defendant~~ Victorino, Mayor Victorino knew that Developer Lot 48A, LLC’s SMA Permit records were

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tampered with and concealed from Plaintiff Salem and the members of the Maui County Council since 2001.

19-25. In open meetings, Defendant Mayor Victorino admitted that former Director Arakawa engaged in collusion with his former clients, Developer Lot 48A, LLC. Defendant Mayor Victorino stated that Director Arakawa should receive "far more than a slap on the hand" for his misconduct.

26. Defendant Mayor Victorino also repeatedly reaffirmed his commitments/commitment to put an end to the Department of Planning's manipulation of the SMA permitting process. Defendant Mayor Victorino reaffirmed his "See it, Say it" policy as Mayor of Maui County.

20-27. Mayor Victorino knew, or should have known, that it was illegal for former Director Arakawa to sign off on his private client Developer Lot 48A, LLC's subdivision with an unfulfilled SMA Permit.

21-28. After almost ten hours of meetings and negotiations, on December 5, 2018, Defendant Mayor Victorino and Plaintiff Salem signed an agreement pursuant to which, Defendant Mayor Victorino agreed to direct/ensure that the Planning Director to issue/issued a Notice of Non-Compliance to Developer Lot 48A, LLCs for their unfulfilled and expired oceanfront subdivision SMA Permit #SM2 2000 0042.

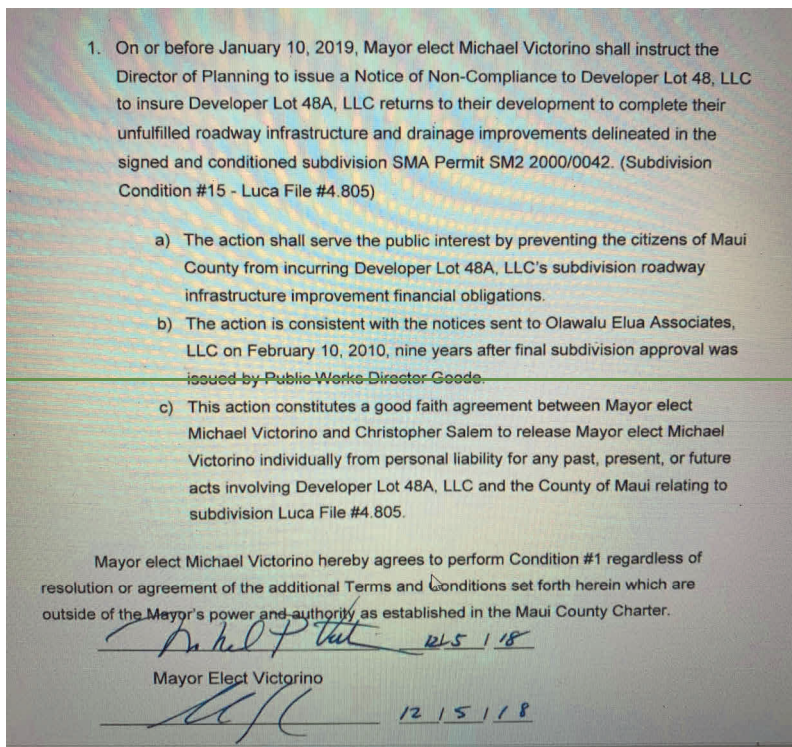
22-29. Defendant Mayor Victorino and Plaintiff Salem discussed and, upon Defendant Victorino Mayor Victorino's promise to use the Mayor's power and authority to impose maximum fines upon Developer Lot 48A, LLC and their conspiring professional consultants, By taking the necessary steps to uphold the Maui County Code, Mayor Victorino would hold Developer Lot 48A, LLC accountable/agreed to bring the responsible parties to the table for its unlawful conduct and settlement discussions to resolve Plaintiff Salem's damages and mitigate the County's

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exposure.

30. In exchange consideration, Plaintiff Salem was agreed to dismiss his pending litigation against release the County of Maui, Mayor Arakawa, and the named County Defendants excluding from liability. As agreed, former Public Works Director Milton Arakawa- was not personally released.

23. The substantive terms of the agreement are presented below:



31. made reference to a parallel action involving violation notices sent to Olowalu Elua Associates on February 10, 2010, nine years after final subdivision approvals were unlawfully granted by former Public Works Director David Goode.

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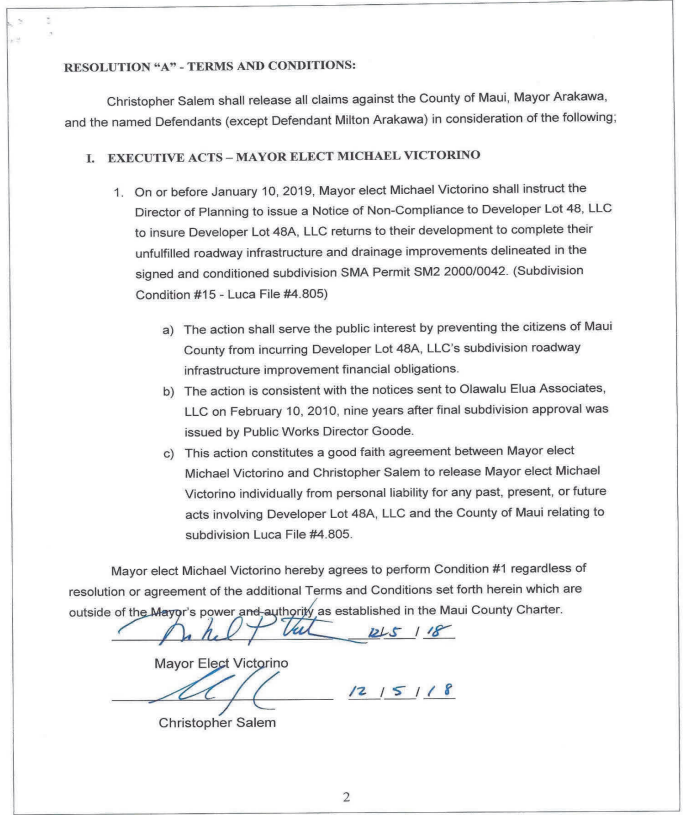
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24.32. As part of the ~~Agreement~~ integrated agreements and promises, the parties discussed

Plaintiff Salem's employment as a legislative liaison of the Office of the Mayor to adopt a system of collection and assessment of the millions of dollars of debts owed through the unaccounted-for infrastructure "deferral agreements".

25.33. With Plaintiff Salem's ~~agreed-upon~~ legislative assistance, ~~Defendant Mayor~~

Victorino promised to be the leader who would finally resolve through legislation the longstanding issues surrounding the developer "deferral" agreements.

~~26:34. Defendant Mayor Victorino also repeatedly reaffirmed his commitments/commitment to put an end to the misconduct within the SMA permitting process.~~

~~27:35. From January 10, 2019, onward, Defendant Mayor Victorino continued to promise that after the appointment of Planning Director Michele Mclean was approved by the members of the Maui County Council, he would direct/take the necessary steps to ensure that the Planning Department to issue/issued the Notice of Non-Compliance to Developer Lot 48A, LLC after Defendant Victorino's choice for the Planning Director was approved by the members of the Maui County Council.~~

~~28. Based on Defendant Victorino's continuous promises and the executed agreement, Plaintiff Salem honored his side of the agreement and terminated his litigation against the County of Maui to his detriment.~~

~~29:36. On May 28, 2019, Plaintiff Salem and Defendant Mayor Victorino met to execute Plaintiff Salem's employment agreement with the Office of the Mayor. During the meeting, Defendant Mayor Victorino reaffirmed his commitment to fulfill the terms of the Agreement and promises.~~

~~30:37. On July 1, 2019, in reliance on Mayor Victorino's promises, Plaintiff Salem accepted a position as a legislative liaison to the Office of the Mayor.~~

~~**Victorino's Breach and Post Settlement Agreement Misconduct**~~

~~***c. Corporation Counsel's Misrepresentations and Infliction of Emotional Distress***~~

~~31. On March 8, 2019, Defendant Mayor Victorino scheduled a meeting with Plaintiff Salem, Corporation/Corp Counsel Director Patrick Wong, and Managing Director Sandy Baz. The purpose of the meeting was to discuss the Corporation/Corp Counsel's facilitation of the settlement agreement and to address the unaccounted-for developer "deferral agreements".~~

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32.38. The meeting became contentious, and Defendant Mayor Victorino requested the parties return to his office in the afternoon.

33.39. In the late afternoon on March 8, 2019, Defendant Mayor Victorino informed Director Wong that he was hiring Plaintiff Salem as a legislative liaison to adopt a system of collection and assessment of the millions of dollars owed through the “deferral agreements”.

34.40. During the meeting, Director Wong became argumentative and accused Plaintiff Salem of wanting to be the “hero” for bringing financial recovery from the private developers to the County of Maui.

35.41. On March 13, 2019, Planning Director McLean’s appointment was approved by the Maui County Council. Plaintiff Salem requested Defendant Mayor Victorino comply with the terms of the Agreement by directing/instructing Planning Director McLean to issue the SMA Permit Notice of Non-Compliance to Developer Lot 48A, LLC as agreed upon.

36.42. On March 20, 2019, Plaintiff Salem met with Defendant Mayor Victorino, Deputy Corporation/Corp Counsel Bilberry, and newly appointed Deputy Planning Director Jordan Hart regarding the Agreement.

37.43. Deputy Corporation/Corp Counsel Bilberry presented a “bar napkin” amendment to the Agreement prepared by the Department of the Corporation/Corp Counsel to Plaintiff Salem. The amendment mischaracterized the material terms of the Agreement and Plaintiff Salem refused to sign it.

38.44. On April 18, 2019, under the direction of Defendant Mayor Victorino, Plaintiff Salem delivered the Agreement to acting Corporation/Corp Counsel Director Lutey to be forwarded to the members of the Maui County Council to deliberate on a final settlement.

39.45. On May 8, 2019, after to justify the weeks of withholding the Agreement from the

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members of the Maui County Council, Director Lutey wrote a letter to Maui County Council Chair Kelly King falsely alleging that there was no consideration from Plaintiff Salem to settle upon with the County of Maui.

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40-46. On May 28, 2019, during Director Lutey’s appointment hearings, to the position of the Deputy Corporation Counsel, the Maui County Council Member Tamara Paltin asked Director Lutey if there was any reason that the County should not enforce the SMA Permit against Developer Lot 48A as agreed by Defendant Mayor Victorino.

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41-47. Director Lutey falsely stated she was not familiar with Developer Lot 48A, LLC’s SMA Permit and had not been consulted with on the enforcement of the SMA permit. Director Lutey’s statement was false, as Court documents reveal that Director Lutey is the attorney of record on behalf of the County of Maui in an ongoing case involving Developer Lot 48A, LLC’s SMA Permit under CAAP-18-0000105.

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42-48. On August 22, 2019, Defendant Mayor Victorino delivered a letter to Plaintiff Salem’s desk at his workplace which falsely stated that as the Mayor of Maui, he did not have the authority under Hawai’i Revised Statute (“HRS”) 205A-3 to direct the Planning Department to enforce Developer Lot 48A, LLC’s unfulfilled SMA Permit. Also, that the Planning Department has the “sole authority” on behalf of the County of Maui to enforce violations of environmental laws.

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43-49. The receipt of Defendant Mayor Victorino’s letter and the statements contained therein caused Plaintiff Salem to have an extreme anxiety attack at his workplace within the Office of the Mayor. The humiliating emotional breakdown was witnessed by fellow staff members and County employees. With shortness of breath and a racing heart, Plaintiff Salem left the Mayor’s office to seek medical attention and counseling.

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44.50. Plaintiff Salem's Salem's medical and employment records document Salem's continuous events of physical and mental anxieties caused by Defendant Mayor Victorino's confrontational and oppressive workplace environment. Plaintiff Salem and his family have been deeply impacted by Defendant Victorino's misconduct, breach of the Agreement and his broken promises.

Defendant Victorino's duty and authority

d. Corporation Counsel's Representations of Mayor's Superior Authority

45.51. On September 3, 2019, two weeks after receipt of Mayor Victorino's letter, Planning Director McLean presented a draft amendment to the current Planning Commission SMA rules. The amended SMA rules attempt to replace transfer the agency of enforcement of the SMA laws as established in the "Charter" to the "Planning Director".

46.52. On October 3, 2019, Director Lutey issued a Memorandum of Law to Maui County Council Chair Kelly King regarding the Mayor's "superior" authority to direct Corporation Corp Counsel to continue litigating the Lahaina Injection Well case to the United States Supreme Court.

47.53. Director Lutey cites the delegation of authority under the Hawai'i Constitution "to frame and adopt a Charter for its (County's) own self-government". And further, pursuant to the Constitution, the Maui County Charter provisions "shall be superior to statutory provisions".

48.54. Under the Maui County Code and the Maui County Charter, the Mayor of the County of Maui has power, duty, and authority to enforce the ordinances of the County of Maui and all the applicable laws.

49.55. Under Director Lutey's legal conclusions of the Defendant Mayor Victorino's "superior" authority, in regard to the injection well case validates the settlement agreement

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signed by ~~Defendant~~ Mayor Victorino legitimately settled a legal action with Plaintiff Salem which ~~that~~ involved no monetary compensation.

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50.56. On May 10, 2021, Director McClean publicly stated that the enforcement and revocation of SMA permits involves consultation and collective ~~decision-making~~ of the ~~Corporation~~ Corp Counsel, Maui County Council, and Mayor Victorino.

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e. ~~Workplace Intimidation by Corp Counsel and Mayor~~

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51.57. During his employment, Plaintiff Salem learned that staff members of the Mayor's Office and several former Maui County Council Members were intimidated by ~~Department of the Corporation~~ Corp Counsel from taking action upon Plaintiff Salem's discovery of the "deferral agreements" as well as Plaintiff Salem's legal claims surrounding Developer Lot 48A, LLC's SMA Permit violations.

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52.58. ~~Defendant~~ Mayor Victorino, in ~~witnessed~~ meetings with private residents, revealed he was also obstructed as a Council Member and intimidated by ~~Corporation~~ Corp Counsel from ~~taking action~~ acting on Plaintiff Salem's discoveries. The records reveal, ~~Defendant that~~ Mayor Victorino ~~has now adjointed Corporation~~ succumbed to Corp Counsel's obstruction of their unethical pattern of shielding private developers and their consultants from financial, professional, and legal liability for manipulating County officials and the adopted County laws and ordinances.

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53.59. Interoffice letters and memos to ~~Defendant~~ Mayor Victorino and Managing Director Sandy Baz regarding Plaintiff Salem's further discovery of County officials serving private ~~developer's~~ developers' financial interests at the public expense have been disregarded.

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54.60. On one occasion while discussing the ~~Corporation~~ Corp Counsel's misconduct in

the adoption of the 2015 Up Country Water Bill, ~~Defendant~~Mayor, Victorino screamed at Plaintiff Salem, slammed his fist on the desk, and demanded Plaintiff Salem prove the extent of harm to the residents and taxpayers.

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55-61. The next day, Plaintiff Salem presented the evidence to ~~Defendant~~Mayor Victorino. No action was taken by ~~Defendant~~Mayor, Victorino to terminate the “island-wide” shifting of private developer’s financial obligations onto the residents.

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56-62. The ordinance 2015 Up Country Water Bill was solely intended and noticed to serve the property owners on the UpCounty Water list. Despite Plaintiff Salem’s interoffice notices and warnings, ~~Defendant~~Mayor, Victorino’s appointed Public Works Director Rowena Dagdag-Andaya and ~~Defendant~~ Deputy Director Jordan Molina continued to grant subdivision infrastructure exemptions to large developments “island-wide” for over a year.

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57-63. In 2019, as an employee of the Office of the Mayor, Plaintiff Salem discovered that Director Arakawa and the Department of the ~~Corporation~~Corp Counsel, unlawfully continued to execute overlapping “3 Lots or Less” “deferral agreements” with private developers for years after the “3 Lots or Less” roadway infrastructure ordinance was repealed in 2007.

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58-64. Plaintiff Salem has discovered that ~~Corporation~~Corp Counsel and former Public Works Director David Goode have interfered with and influenced the ongoing independent Audit of the Developer “deferral agreements” which the record reveals they illicitly authored and executed.

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59-65. BeingAs a former Maui County Council member, being a direct witness to the discovered interrelationship between County official’sofficials’, manipulation of the County subdivision ordinances and SMA application laws, Mayor Victorino has turned a blind eye towardssuccumbed to Corp Counsel's conflicting interference and abandoned his promises for

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accountability into “clean up” County government.

60.66. Under the influence and interference of Corp Counsel, Mayor Victorino failed to take action against the private developers and their consultants for their financial, professional, and legal liability and manipulation of County officials and adopted County laws and ordinances.

61.67. Plaintiff Salem has been obstructed by Corp Counsel and Mayor Victorino under the influence and interference of Corp Counsel, have obstructed Plaintiff Salem from performing his County employee legislative liaison duties established under Plaintiff Salem’s employment discussions and agreement in the Office of the Mayor, Victorino.

62.68. During Plaintiff’s employment, Plaintiff Salem has continued to witness and endure Defendant Mayor Victorino’s aggressive outbursts, unjustified threats against at-will staff members, and misogynistic behavior.

63.69. Accordingly, on October 21, 2020, a notice of representation was provided to the Department of the Corp Counsel on Plaintiff Salem’s behalf, requesting the performance of the Settlement Agreement and notifying Defendant Mayor Victorino of the intent to pursue legal recourse for Plaintiff Salem’s ongoing injuries.

64.70. Immediately thereafter, Defendant Mayor Victorino aggressively approached Plaintiff Salem at his workplace and made implied threats to use his influential position to squash Plaintiff Salem’s claims and destroy his reputation.

65.71. Plaintiff Salem has continued to endure hostility and duress in the workplace inflicted by Defendant Mayor Victorino’s misconduct and acts of intimidation. The events are documented in the County’s personnel records.

72. In early 2020, the COVID pandemic consumed the County of Maui. Despite the ongoing

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potential to contract the virus. Plaintiff Salem was instructed to work for long hours, nights, and weekends without pay on the front lines of the ports of entry. At risk to himself, his family, and cared-for elderly father-in-law, Plaintiff Salem respectfully performed the assigned duties to serve the local residents of Maui County.

f. Brown Development leads to Plaintiff Salem's Wrongful termination.

73. On February 16, 2021, as a result of the Corp Counsel's interference with Mayor Victorino's promises, Plaintiff Salem was forced to retain legal counsel and file a complaint against the County Defendants, including former Planning Director Michele Mclean

66-74. At the very same time period, as a Community Liaison who has lived in Napili for over two decades, in response and responding to community outrage over the Brown Development structure in the center of Napili Village, Plaintiff Salem researched Planning Department records and discovered the developer's misrepresentations on ~~the~~their SMA Permit application and violations of Shoreline Management Area ("SMA") Rules by the Department of Planning.

75. Amazingly, the Brown Development SMA Permit violations in Napili were similar to the SMA Permit violations that Mayor Victorino promised to ensure were enforced in Plaintiff Salem's former subdivision.

67-76. On June 4, 2021, Plaintiff Salem presented his findings to ~~Defendant~~Mayor Victorino, Chief of Staff Tyson Miyake, Managing Director Sandy Baz, ~~Corporation~~Corp Counsel Director Moana Lutey, and Personnel Director David Underwood. With no response from Plaintiff Salem's employer ~~Defendant~~Mayor Victorino, Chief of Staff Miyake acted with conflicted hostility by demanding Plaintiff Salem inform the members of the Napili community that the Brown Development was not within his area of responsibilities.

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68:77. Plaintiff Salem explained that the SMA enforcement and related loopholes in the SMA rules were part of his legislative tasks under the employment agreements with Defendant Mayor Victorino. Plaintiff Salem informed the Personnel Director David Underwood that, as a County employee, he had a duty to report the Brown Development SMA Permit's misrepresentations and discovered violations of the law.

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69:78. On July 25, 2021, Plaintiff Salem provided a written notice to Chief of Staff Miyake of the Planning Department's issuance of an SMA Permit Notice of Warning to Brown Development for "one or more violations". Plaintiff Salem, once again, requested that the violations by the Brown Development be investigated and for Defendant Mayor Victorino and Director McLean to step forward and honor their duty to likewise enforce Developer Lot 48A, LLC's SMA Permit violations as promised.

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70:79. On August 4, 2021, without warning or written prior notice from Defendant Mayor Victorino, Chief of Staff Miyake terminated Plaintiff Salem's position as a Community Liaison of the Office of the Mayor. Plaintiff Salem asserts the termination notice from Chief of Staff Miyake was in retaliation for Plaintiff's filing of the underlying complaint and for reporting of the Planning Department's parallel breach of their duties to lawfully administer the SMA rules and County ordinances.

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71:80. Following termination, Mr. Miyake and the Office of the Corporation Counsel refused to return Plaintiff's files, notebooks, and belongings which consist of Plaintiff's personal legislative work product from upwards to 20 years ago, including deferrals, CIPs, Parks, and SMA. There are four (4) bins with 10000 pages of deferral agreements that were cataloged by each County district by Plaintiff Salem and at his sole expense.

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g. Disposal of Fairways parcels exposes Director Pat Wong's unclean hands.

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81. The County records reveal that Plaintiff Salem’s subdivision was just one of many developments that former Public Works Director Milton Arakawa approved for private developers who employed the services of professional engineer WSUE. From Pu’uKahana to Palama Drive, WSUE’s crooked civil engineering work product has been the cause of years of civil litigation and costly complaints from local neighbors.

82. While Plaintiff Salem and a neighborhood group were successfully contesting WSUE’s Pu’u Kahana subdivision plans and engineering design to the Maui County Planning Commission, which cost Plaintiff Salem over \$50,000 paid to attorney Tom Pierce, Plaintiff Salem learned that WSUE’s grading plans were also at the center of the escalating legal dispute in the backyards of local residents along Palama Drive. Visiting the site, Plaintiff Salem saw a professional opportunity to turn Director Arakawa’s and WSUE’s fertilizer into flowers.

83. Plaintiff Salem rallied together a childhood friend and nationwide affordable housing developer and professional attorney with close family ties to Hawaii. With a unified vision, they formed Anuenue Housing Group, LLC (“AHG”) to resolve the litigation and develop the distressed parcels into quality affordable housing for local families. Plaintiff Salem met with Mayor Alan Arakawa in his personal Hui Road E home to review AHG’s 100% affordable housing plan that included the lowering of the massive Palama Drive walls.

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84. The scores of lawsuits the County of Maui was facing and the financial liability resulting from the Judge August ruling are well documented in the Court records.

85. At their sole expense, AHG engaged a local architect, civil engineer PB Sullivan Construction, Inc., and the McCorrison Miller Mukai MacKinnon LLP law firm. It took the AHG team almost two years to craft an affordable housing plan and negotiate a comprehensive global settlement that mitigated the developer's initial demands of \$20 million dollars.

86. Plaintiff Salem played a substantial role in reducing the developer's demands from \$20 million down to

87. Despite all parties agreeing, in an 11th-hour backroom deal, Corp Counsel Director Pat Wong squashed AHG's affordable housing plan with unsupported claims of potential procurement violations. Instead, Director Wong advised the Maui County Council to pay off the developers for a cash payment of \$13 million dollars.

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88. Plaintiff Salem played a substantial role in negotiating the developer's demands from \$20 million down to \$13 million dollars to facilitate the AHG affordable housing plan. In bad faith, Director Wong stole AHG's work product and sincere efforts. As we now know, Corp Counsel Director Pat Wong had a prior personal and professional relationship with the developer's legal counsel.

89. Director Wong's boasting of gambling winnings soon after the County's \$13 million dollar cash payment to the developers with public funds, and his refusal to present his tax returns to the County Council when questioned, raise legitimate questions of underhanded dealings. Therefore, further discovery is justified as County officials continue to be exposed for conflicts of interest and unclean hands.

90. On April 22, 2022, the Budget, Finance, and Economic Development Committee recommended the adoption of Bill 22-84, authorizing the disposition of the Fairways at Maui Lani, identified as Tax Map Key ("TMK") (2) 3-8-096:001 through 007; TMK (2) 3-8-096:024 through 033; and TMK (2) 3-8-096:052 through 053, inclusive, to Na Hale O Maui for affordable workforce housing in perpetuity;

91. Your Committee notes the Council is authorized by the Maui County Code to: Dispose of County real property by resolution. (Section 3.44.020) Waive the requirements of a public auction for the disposition of County real property by resolution approved by a two-thirds vote of its members. (Section 3.44.030) Waive the requirement of appraisal for the disposition of real property by adoption of a resolution. (Section 3.44.070) Waive outstanding real property taxes. (Section 3.48.010.L)

92. Your Committee also notes the County of Maui acquired TMK (2) 3-8-096:001 through 055 in 2011 as part of the \$11,800,000 settlement with developer VP & PK (ML), LLC.

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related to fill and grade heights for homes.

93. Plaintiff Salem asserts the legal settlement with Developer VP & PK (ML, LLC was negotiated in good faith in reliance on understanding with Director Wong that the parcels would be transferred to AHG for the facilitation of a 100% affordable housing development. In consideration, the County of Maui received significant legal and financial benefits.

2. The major components of the attached AHG Fairways Affordable Housing Agreement package and related exhibits are as follows;
- a. Acquisition of the Fairways Lots and owner rights by way of a Purchase and Sale Agreement with the current developer (VP & PK (ML) LLC).
 - b. Settlement and dismissal of the myriad of complex pending litigation related to the subdivision grading including lowering of the existing retaining walls, grading the embankment to a gentle 3:1 ratio, providing colorful slope plantings and shade trees, removal of all of the view obstruction white fence panels.
 - c. Design, development, construction and sale of 52 single story, multi tier affordable workforce and senior housing including acquisition and completion of the related drainage requirements including easements in accordance with an affordable housing agreement with the County.
 - d. Design, development, and land dedication for neighborhood parks and public trails to connect existing neighborhoods to shopping, schools, and medical facilities.

94. While Plaintiff Salem clearly supports affordable housing for local residents, the recent transactions by the Maui County Council disprove Director Wong's last-minute, unsupported, and disputed allegations of procurement violations over a decade ago.

95. Plaintiff Salem asserts AHG has a right to recover their professional expenses and reasonable professional losses based on the County's recent contradicting decision to dispose of the parcels to private entities with no form of compensation.

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V. COMPELLED RECORDS CONFIRM CONFLICTS & CONSPIRACY

a. Corp Counsel and Judge Kirstin Hamman’s undisclosed conflicts

96. On June 2, 2023, Honorable Judge Peter Cahill granted Plaintiff Salem’s Motion to Compel the release of County government records that had been withheld for years by conflicted Corp Counsel to cover up their direct role in the decades of County official’s malfeasance, misfeasance, and nonfeasance with private developers.

97. Plaintiff Salem asserts that the concealment of the government records, along with undisclosed attorney relationships with conflicted Judge Kirstin Hamman, has resulted in prejudiced decisions and has prolonged the serious harm suffered by Plaintiff Salem’s family.

98. Judge Hamman recused herself from these proceedings only after belatedly disclosing her conflicting professional attorney relationships as a legal analyst for the Maui County Council while Plaintiff Salem’s whistleblower discovery of thousands of unaccounted-for private developer roadway infrastructure “deferral” agreements was exploding into Council hearings and the public light.

99. Pro Se Plaintiff Salem believes that Judge Hamman’s biased rulings, while relevant records and professional attorney relationships were concealed by conflicted Corp Counsel, will ultimately be deemed invalid.

100. On June 6, 2023, Corporation Counsel Director Takayesu informed the County Council that “the Judge ruled Corporation Counsel is conflicted out of the case.” Plaintiff Salem’s claim of Corp Counsel’s conflicts are well documented in Court records in this case and prior legal actions.

101. In the current case, Defendant Mayor Richard Bissen, a former Judge for the 2nd Circuit Court and Prosecuting Attorney for the County of Maui, disregarded Plaintiff Salem’s

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notices of conflicts and has authorized the conflicted Corp Counsel to continue covering up and defending their own Department's misdealings.

102. As such, the newly discovered evidence and Judge Hamman's recusal validates all the original claims set forth in the First Amended Complaint ("FAC") and is just cause for the additional claims expressed herein:

b. Compelled County records are just cause for additional claims.

103. Pursuant to Count III of the First Amended Complaint, ("FAC") to set the stage for global resolution with responsible parties who conspired to cause Plaintiff Salem's injuries, Mayor Victorino promised to hold Developer Lot 48A, LLC lawfully accountable for their backroom dealings with County officials and violations of the SMA Rules, County ordinances, and the manipulation of "3 Lots or Less" subdivision agreement recorded on Plaintiff Salem's real property title which Plaintiff Salem relied upon to his detriment.

104. The compelled and previously withheld government records reveal that within weeks of being sworn into office and directly represented and advised by conflicted Corp Counsel, Mayor Victorino affirmed his signed agreement by lawfully acting upon his promises to Plaintiff Salem.

105. Again, Contrary to Corp Counsel's false accusations, the records reveal that Mayor Victorino never overstepped the Planning Director's authority when he requested that Planning Director Mclean review Developer Lot 48A, LLC's SMA Permit file and report back to him with the findings. Mayor Victoiono simply took the proper initial step to accomplish the shared objective and fulfill his promises to uphold county laws.

106. The compelled records affirm that the conflicted Corp Counsel obstructed the Planning Department's duty to perform a field inspection of the roadway infrastructure

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represented in Developer Lot 48A, LLC's conditioned SMA Permit environmental studies that were never completed.

c. *Compelled County records expose a civil conspiracy*

107. Pursuant to Plaintiff Salem's recent Motion for Injunctive Relief, the County Defendants were forced to admit for the first time what the Planning Department inspection would have revealed; that Developer Lot 48A, LLC's roadway infrastructure and environmental mitigations were never completed.

108. Just as the requested inspection would have done, the County Defendants' new admission substantiates the fraud and civil conspiracy between Developer Lot 48A, LLC, former Public Works Deputy Director Milton Arakawa, and licensed professional Warren S. Unemori Engineering, Inc.

109. Honorable Judge Joseph Cardoza recognized the conspired fraud in a related civil case between Developer Lot 48A, LLC, and Plaintiff Salem. (Civil No. 09-1-0040(3)) In yet another desperate attempt to obscure the evidence of conspired fraud, the County Defendants have now manufactured a false and litigious conclusion that former Public Works Deputy Director Arakawa somehow had the authority to erase his private developer clients' "deferred" infrastructure obligations, in the dark, during Developer Lot 48A, LLC's subdivision application process.

110. In a recent Declaration supporting the County Defendants' failed Opposition (Dkt 704) to Plaintiff Salem's Motion for Injunctive Relief (Dkt 692), Defendant Public Works Director Jordan Molina fabricated conclusions regarding the decisions and authorities of former Deputy Public Works Director Milton Arakawa.

111. The County Defendants' newly contrived conclusions about the Department of

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Public Works' alleged authorities are baseless and unsupported by substantive evidence and directly contradict government records. Their recent Opposition is unconscionable, falsely alleging for the first time that:

“The County duly confirmed that all required subdivision improvements for SM2 2000 0024 were completed. Indeed, the relevant documents establish that the County confirmed all required subdivision improvements were completed, and thus the corresponding SMA Permit SM2 2000/0042 conditions were satisfied.”

112. Pursuant to Maui County Code Title 18.20.060 “The approval of the construction plans by the Director shall not relieve the subdivider nor the engineer of the responsibility for any and all defects that may become evident subsequent to the plan approval.”

113. There exists no County law, ordinance, authority, or government record to support this falsified conclusion by the County Defendant’s legal counsel Kobayashi, Sugita, and Goda, LLP. (“KSG”)

114. In fact, the newly discovered evidence and compelled government records reveal the falsity of the County Defendant's allegations and prove that neither the County nor the Department of Planning (the sole authority over the administration of SMA Permits) ever confirmed that Developer Lot 48A, LLC’s conditioned SMA Permit SM2 2000 0042 was “satisfied.”

115. The obstruction of SMA Permit government records during the relevant period clearly establishes the absolute impossibility of the County Defendants' fraudulent claims. It wasn't until seven years later that Plaintiff Salem recovered the records, with assistance from an anonymous Planning Department employee. The evidence shows that the County Defendants, Developer Lot 48A, LLC, and WSUE were engaged in a civil conspiracy to conceal the SMA Permit records.

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116. The compelled County records and County Defendants' falsified representations have opened the door to a multitude of legal claims against multiple parties, with evidence of a civil conspiracy, breach of duty, fraud, collusion, and falsification of government records.

117. The compelled County records also reveal the conflicted Corp Counsel's interference with the County Auditor's independent duties. The County Auditor's failure to perform the audit which was requested by a unanimous vote of the Maui County Council, is a contributing cause to prolonging Plaintiff Salem's injuries.

118. In conclusion, the unlawful acts and conspired concealment of government records to cover up those acts were the direct cause of irreparable harm to Plaintiff Salem's family, including the loss of their family home. Undeniably, Corp Counsel Directors have been on a collective mission to cover up their dishonorable acts and destroy Plaintiff Salem's reputation and professional life.

119. With the facts and evidence now in clear view, Mayor Bissen has a duty to uphold the County laws and instruct Corp Counsel to retract their conflicted and false pleadings and reconcile the harm caused to Plaintiff Salem's family and the public

120.

DATED: Lahaina, Hawai'i, September 6, 2024.

/s/Christopher Salem
Christopher Salem Pro Se

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~~COUNT I~~
~~(Breach of Contract)~~

~~72.121.~~ Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

~~73.122.~~ Plaintiff Salem has fully performed under the Agreement and terms of employment, except for those terms the performance of which was excused, prevented, hindered, or frustrated by Defendants Maui County and Victorino.

~~74.123.~~ By failing to issue the SMA Permit Notice of Non-Compliance to Developer Lot 48A, LLC, and otherwise, to perform as agreed upon, ~~Defendant Mayor~~ Victorino breached the Agreement.

~~75.124.~~ As a direct, proximate, and foreseeable cause of the Defendants Maui County and Victorino's actions, Plaintiff has and will continue to suffer damages in an amount to be shown at trial.

~~COUNT II~~
~~(Specific Performance)~~

~~125.~~ Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

~~76.~~ Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

~~77.126.~~ The Agreement unambiguously required ~~Defendant Mayor~~ Victorino to direct the Planning Director to issue an SMA Permit Notice of Non-Compliance to Developer Lot 48A,

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LLC.

~~78-127.~~ ~~Defendant Mayor~~ Victorino failed to perform as required under the Agreement.

~~79.~~ Plaintiff Salem complied fully with his obligations under the Agreement.

~~80-128.~~ As a direct, proximate, and foreseeable cause of ~~Defendant Mayor~~ Victorino's actions, Plaintiff Salem has and will suffer harm for which damages will not provide an adequate remedy in an amount to be shown at trial.

COUNT III

Declaratory Relief

~~129.~~ Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

~~81-1.~~ Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

~~82-130.~~ Pursuant to Chapter 632, Hawai'i Revised Statutes, and Rule 57 of the Hawai'i Rules of Civil Procedure, Plaintiff Salem brings this action for declaratory relief and seeks an adjudication as to the rights and liabilities of the parties hereto, viz., that (a) ~~Defendant Mayor~~ Victorino shall enforce the SMA Permit against the Developer Lot 48A and (b) Defendant would hold Developer Lot 48A, LLC accountable for its unlawful conduct and resolve Plaintiff Salem's damages.

~~83-131.~~ Contrary to the August 2019 Letter, Moana Lutey's October 3, 2019, Memorandum of Law regarding the Mayor's authority to settle a lawsuit and environmental claims relating to the Lahaina Injection Well litigation gives ~~Defendant Mayor~~ Victorino full authority to settle a case like Plaintiff's Salem's.

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84. ~~132.~~ Plaintiff Salem is also entitled to an injunction to make the above declarations meaningful and provide effective relief.

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~~COUNT IV~~
~~(Promissory Estoppel / Detrimental Reliance)~~

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133. ~~Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.~~

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1. ~~85.~~ ~~Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.~~

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134. ~~86.~~ Plaintiff Salem was the party to the ongoing litigation against County Defendants relating to the gross negligence and unlawful execution of the developer “deferral agreements”.

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135. ~~87.~~ ~~Defendant Mayor~~ Victorino made promises to Plaintiff Salem that if Plaintiff Salem dismissed his litigation against the County of Maui, ~~Defendant Mayor~~ Victorino would have Developer Lot 48A LLC’s violations of the conditioned SMA Permit enforced.

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136. ~~88.~~ ~~Defendant Mayor~~ Victorino made promises to Plaintiff Salem that he would make Developer Lot 48A LLC responsible for Plaintiff Salem’s injuries caused by the Defendant County’s failure to release the lien on Plaintiff Salem’s title and scheme of concealment and falsification of the County records.

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137. ~~89.~~ ~~Defendant Mayor~~ Victorino knew that Plaintiff Salem would rely on those promises.

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138. ~~90.~~ To his detriment, Plaintiff Salem reasonably relied on each of those promises and dismissed his litigation action against the County.

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139. ~~91.~~ ~~Defendant Mayor~~ Victorino made promises to Plaintiff Salem that he would

finally resolve through legislation the longstanding issues surrounding the developer “deferral agreements” and put an end to the Department of Planning’s manipulation of the SMA permitting process.

140. 92. Enforcement of the SMA Permit against the Developer Lot 48A and making Plaintiff Salem whole, as agreed and promised, is necessary to avoid an injustice.

141. 93. As a direct, proximate, and foreseeable cause of the Defendant’s actions, Plaintiff Salem has and will continue to suffer ongoing damages in an amount to be shown at trial.

COUNT V

(Negligent and Intentional Infliction of Emotional Distress)

142. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

~~1. 94. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.~~

143. 95. The Defendants have engaged in a campaign of abuse, harassment, and intimidation against Plaintiff Salem, calculated to cause severe emotional distress upon Plaintiff Salem and his family, which distress the Defendants have created and sustained.

144. 96. The acts, conduct, and/or omissions of the Defendants and/or their employees, agents, and/or representatives, were (a) intentional and/or reckless and/or negligent and (b) outrageous.

145. 97. As a result, Plaintiff Salem continues to suffer extreme emotional distress, including, but not limited to the physical symptoms, anxiety, insomnia, loss of appetite, and various other stress-related physical ailments from being extremely concerned and afraid that his

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employment will be terminated, that his reputation will be ruined, all because of his intentions to have the Defendants comply with their ~~duties~~duties and the adopted County laws and ordinances.

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146. 98. At the receipt of the August 2019 Letter and thereafter, Plaintiff Salem has suffered anxiety, insomnia, stress, and fear. He has also experienced embarrassment and anger due to the personal and derogatory attacks he has endured due to being the whistleblower and requesting relief from the Defendants. He has also been wrongfully treated by Defendants as a result of being a whistleblower. Plaintiff Salem has endured anxiety and frustration because of the unfulfilled Agreement and the promises made by ~~Defendant~~Mayor Victorino.

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147. 99. As a direct, proximate, and foreseeable cause of the Defendants' actions, Plaintiff Salem has and will suffer damages in an amount to be shown at trial.

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COUNT VI

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(Breach Of The Covenant Of Good Faith And Fair Dealing)

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~~1. 100. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.~~

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149. 101. Every contract contains an implied covenant of good faith and fair dealing that neither party will do anything that will deprive the other of the benefits of the agreement.

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150. 102. ~~Defendant~~Mayor Victorino owed Plaintiff a duty of good faith and fair dealing in fulfilling its duties under the Agreement.

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151. 103. ~~Defendant~~Mayor Victorino's conduct is also a breach of the covenant of good faith and fair dealing, and Plaintiff Salem has been damaged as a result.

152. 104. ~~Defendants~~Defendant Victorino's failure to act and adequately respond to

Plaintiff Salem's requests for performance is a breach of an implied duty of good faith and fair dealing to Plaintiff Salem.

153. ~~105.~~ Plaintiff is entitled to compensatory and punitive damages as a result.

COUNT VII

(Intentional And Negligent Misrepresentation)

~~1. 106. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.~~

154. ~~107. Defendant~~ Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

155. Mayor Victorino's conduct was deceptive and ~~Defendant~~ Mayor Victorino misrepresented the Mayor's power and authority as the Mayor of Maui County to hold Developer Lot 48A, LLC and its consultants accountable for the misconduct and the injuries caused to Plaintiff Salem and the enforcement of the SMA Permit against the Developer Lot 48A LLC and to make Plaintiff Salem whole.

156. ~~108. Defendant~~ Mayor Victorino's conduct was deceptive and he misrepresented his belief in the Mayor's authority to direct the Planning Director to issue a Notice of Non-Compliance to Developer Lot 48A, LLC.

157. ~~109.~~ Plaintiff Salem is entitled to general, special, and punitive damages as a result.

COUNT VIII

(Protection Under Hawai'i Revised Statutes ("HRS") Chapter 378)

~~1. 110. Plaintiff Salem hereby realleges and incorporates by reference the~~

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~~allegations made in the preceding paragraphs, as if set forth fully herein.~~

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158. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

159. ~~111.~~ Plaintiff Salem is an employee of the County of Maui, Office of the Mayor.

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160. ~~112.~~ Defendants have engaged in the discriminatory practices, including but not limited to intimidation, harassment, workplace violence, and applying pressure through threatening retaliation against Plaintiff Salem after Plaintiff Salem complained about such discriminatory treatment and after Plaintiff Salem continued to protect the public interest as a whistleblower.

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161. ~~113.~~ Defendants continuously and pervasively intimidated Plaintiff Salem and directed threats at Plaintiff Salem to use his influential position to squash Plaintiff Salem's claims and destroy his reputation.

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162. ~~114.~~ HRS § 378-2(3) makes it an unlawful discriminatory practice "for any person, whether an employee, employer, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so."

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163. ~~115.~~ HRS § 378-2 thus makes it unlawful for an "employer" to engage in certain acts of discrimination. HRS § 378-1 broadly defines "an employer" as "any person . . . having one or more "employees" and "including any agent of such a person,"

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164. ~~116.~~ HRS § 378-62 makes discrimination against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment for reporting violations, unlawful.

165. ~~117.~~ HRS §378-62 states as follows:

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166. ~~“Discharge of, threats to, or discrimination against an employee for reporting violations of law. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:~~

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167. ~~(1) The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of:~~

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168. ~~(A) A law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States; or (. . .).”)~~

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169. ~~118. In early 2021, as a Community Liaison who has lived in Napili for over two decades, in response and responding to community outrage over the Brown Development structure in the center of Napili Village, Plaintiff Salem researched Planning Department records and discovered the developer’s misrepresentations on the SMA Permit application and violations of Shoreline Management Area (“SMA”) Rules by the Department of Planning.~~

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170. ~~119. On June 4, 2021, Plaintiff Salem presented his findings to Defendant Mayor Victorino, Chief of Staff Tyson Miyake, Managing Director Sandy Baz, Corporation Corp Counsel Director Moana Lutey, and Personnel Director David Underwood.~~

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171. ~~120. On August 4, 2021, without warning or written prior notice from Defendant Mayor Victorino, Chief of Staff Miyake terminated Plaintiff Salem’s position as a Community Liaison of the Office of the Mayor in retaliation for reporting the developer’s misrepresentations on the SMA Permit application and violations of Shoreline Management Area (“SMA”) Rules by the Department of Planning.~~

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121. ~~As a result of the above-described unlawful discharge and/or~~

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~~172. discrimination, that Plaintiff was subjected to, Plaintiff is entitled to general, special, and punitive damages as a result.~~

COUNT IX
UNLAWFUL TERMINATION IN CONTRAVENTION OF PUBLIC POLICY

~~173. 122.~~ Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

~~174. 123.~~ Employer's termination of Plaintiff as retaliation for Plaintiff reporting the Brown Development SMA Permit's misrepresentations and discovered violations of the law by the developer and by the Department of Planning, violated public policy to ensure transparency in government.

~~175. 124.~~ As a result of the unlawful discharge described above, Plaintiff has incurred damages in amounts to be proven at trial.

COUNT X
Negligent and Intentional Misrepresentation
Defendant Jordan Molina

~~176.~~ Plaintiff Salem repeats, reasserts, and incorporates by reference the allegations stated in the preceding paragraphs of this Complaint.

~~177.~~ Plaintiff Salem asserts that these claims are supported by a substantial amount of previously concealed and newly compelled government records, conflicting attorney/client representations, and contradictory admissions by the County Defendants. Defendant Public Works Director Jordan Molina, in a recent "belief" Declaration supporting the County Defendants' failed Opposition (Dkt 704) to Plaintiff Salem's Motion for Injunctive Relief (Dkt 692), has intentionally and negligently misrepresented the decisions and authorities of former Deputy Public Works Director Milton Arakawa.

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178. The County Defendants' newly contrived conclusions are baseless and directly contradict government records. Their manufactured representations are unconscionable and falsely allege for the first time that:

179. "The County duly confirmed that all required subdivision improvements for SM2 2000 0024 were completed. Indeed, the relevant documents establish that the County confirmed all required subdivision improvements were completed, and thus the corresponding SMA Permit SM2 2000/0042 conditions were satisfied."

180. Furthermore, Defendant Molina's fraudulent representations of Public Works' authorities are demolished by a public statement from Public Works Director Milton Arakawa before the Maui County Council which lays responsibility for enforcement of SMA permits squarely on the Planning Department.

181. "Mr. Chair, the second three-lot subdivision was the subject of an SMA minor permit, if I'm correct. But the conditions of the SMA minor permit would still apply. From our standpoint, we would look to the Planning Department to enforce those SMA Minor conditions."

182. The newly discovered evidence and compelled government records reveal the falsity of the County Defendant's allegations and prove that KSG's manufactured conclusion that "the County" or the Department of Planning (the sole authority over the administration of SMA Permits) actually confirmed that Developer Lot 48A, LLC's conditioned SMA Permit SM2 2000 0042 was "satisfied" is undocumented and has no basis in fact.

183. While the subdivision application was being processed by Public Works, none of the SMA infrastructure conditions were knowable because at that time the SMA Permit County records were officially classified as "missing". The County Defendants' fraudulent "satisfaction" claims are impossible. Defendant Molina is aware that it wasn't until seven years later that

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Plaintiff Salem obtained the records, with assistance from an anonymous Planning Department employee.

184. Defendant Molina's belief Declaration also misrepresents conditioned SMA Permit professional civil engineering studies.

185. The order of magnitude estimate portion of an SMA permit application has no bearing on DPW's determination of what subdivision roadway improvements are required.

186. The Honorable Court is respectfully asked to take Judicial Notice of the findings expressed by Corp Counsel attorney Galazin during a Maui County Council Infrastructure Management Committee meeting that roadway improvements might be conditioned through a SMA Permit;

187. "What that was meant to spell out was were all of the different situations in which a property owner might have to pay for roadway improvements. So it's not only if you do a subdivision you have pay for roadway improvements, but also it might be for a SMA Permit."
J12 - Minutes to Maui County Council Infrastructure Management Committee, February 1, 2010.

188. Defendant Molina, along with Mayor Victorino and conflicted Corporation Counsel, were aware that the SMA Permit records were tampered with to impede the lawful administration of Developer Lot 48A, LLC's subdivision and later to alter a judicial proceeding. Defendant Molina's representations amount to complicity in criminal acts and fraud.

189. Therefore, Defendant Molina's falsified Declaration clearly exposes backroom dealings and a civil conspiracy involving Public Works Director Milton Arakawa, Private developer Lot 48A, LLC, and WSUE, who conspired to conceal government records and intentionally harm Plaintiff Salem, an innocent "3 Lot or Less" subdivision property owner. As a direct consequence, Plaintiff Salem will continue to incur serious damages and injuries in an

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amount to be determined at trial.

COUNT XI

Civil Conspiracy

Public Works Deputy Director Milton Arakawa / Developer Lot 48A, LLC /

Warren S. Unemori Engineering, Inc

190. Plaintiff Salem repeats, reasserts, and incorporates by reference the allegations stated in the preceding paragraphs of this Complaint.

191. Plaintiff Salem's claims are based on previously concealed government records, newly discovered evidence, conflicting attorney-client representations with the Corporation Counsel, and admissions by County Defendants. Government officials have a fiduciary duty to act in the public's best interest.

192. The County Defendants have recently admitted that the "deferred" subdivision roadway infrastructure, drainage mitigations, and fire hydrant along Lower Honoapiilani Road represented in a previously "missing" Department of Planning SMA Permit file, remain incomplete. This admission provides irrefutable evidence of a malicious and harmful Civil Conspiracy.

193. The County Defendants manufactured the conclusion that the Department of Public Works' approval of WSUE's "as-built" roadway infrastructure drawings confirm that "the corresponding SMA Permit SM2 2000 0042 conditions were satisfied" is entirely baseless, both in fact and in law.

194. Factually, the County Defendants' conclusion contradicts the withheld and compelled County government records. Government records document the material fact that the requested Planning Department SMA Permit studies were allegedly "missing" during the Department of Public Works' review of the re-subdivision of Lot 48A by Developer Lot 48A.

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LLC. Undeniably, the conspiring parties Deputy Director Arakawa, Developer Lot 48A, LLC, and WSUE were aware of their whereabouts.

195. For years thereafter, during arbitration and civil litigation, the conspiring parties used fraudulent legal tactics to prevent the discovery of damaging SMA Permit studies authored by Developer Lot 48A, LLC's land planning firm MAH, of which Deputy Director Arakawa was a partner. The Honorable Court has been presented with undeniable evidence of Fraud on the Tribunal by the licensed professional engineering firm, WSUE to further this concealment and cover-up.

196. In Robert's Hawaii School Bus, Inc. v. Laupahoehoe Transp. Co., Inc., 91 Hawai'i 224, 982 P.2d 853 (1999), the Hawaii Supreme Court recognized that a civil conspiracy claim must be based on an underlying tort. The conspiracy itself is not a separate tort but derives from the underlying wrongful acts. Count III of the First Amended Complaint ("FAC") represents the underlying tort.

197. The Court and government records confirm there was an undisclosed agreement among these parties to achieve the objectives of the conspiracy. The who, what, where, and when of the conspiracy were witnessed and known by Mayor Victorino, who had promised to lawfully hold the responsible parties accountable to mitigate the County of Maui's exposure and liability. Conflicted Corp Counsel interfered in multiple capacities.

198. The unlawful acts and conspired concealment of SMA records led to a subdivision dispute, a coerced settlement agreement with Developer Lot 48A, LLC, an illegitimate arbitration judgment lien for legal fees, a fraudulent County claim for payment mailed to Plaintiff Salem by Public Works Director Milton Arakawa for "deferred" roadway infrastructure, a foreclosure of Plaintiff Salem's family home due to Corporation Counsel's

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refusal to remove the lien on Plaintiff Salem's property title, and the Director of Planning's refusal to enforce the violations of Developer Lot 48A, LLC's concealed and conditioned SMA Permit SM2 2000 0042. These events confirm Honorable Judge Joseph Cardoza's belief that fraud occurred during the County's subdivision process.

199. The evidence also reveals that the conflicted Corporation Counsel interfered with Mayor Victorino's lawful promises to expose the civil conspiracy, further perpetuating the harm to Plaintiff Salem's family. As a direct, proximate, and foreseeable consequence of the civil conspiracy and Corp Counsel's interference, Plaintiff Salem's family has suffered irreparable harm and will continue to suffer damages in an amount to be determined at trial.

COUNT XII

Specific Performance / Breach of Fiduciary Duty

Defendant Planning Director Kate Blvstone

200. Plaintiff Salem hereby reasserts and incorporates by reference the allegations made in the preceding paragraphs as fully stated herein.

201. Plaintiff Salem's claims are based on previously concealed government records, newly discovered evidence, conflicting attorney-client representations with the Corporation Counsel, and admissions by County Defendants. Government officials have a fiduciary duty to act in the public's best interest.

202. Former Department of Planning Director Michele Mclean failed, refused, and neglected to document in a Planning Department field inspection the material fact that the roadway infrastructure, drainage mitigations, and fire hydrant along Lower Honoapiilani Road, as required by Developer Lot 48A, LLC's conditioned SMA Permit SM2 2000 0042, were never completed.

203. The compelled County records also reveal that conflicted Corporation Counsel

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interfered with Mayor Victorino's lawful written directive to Planning Director Mclean to perform a review of the SMA Permit in question, and report back to his authority the findings.

204. The County Defendants, which includes current Planning Director Kate Blystone, now admit for the first time in Court filings that the roadway infrastructure, drainage mitigations, and fire hydrant along Lower Honoapiilani Road, represented in conditioned SMA Permit SM2 2000 0042, were never completed.

205. The government records confirm that Developer Lot 48A, LLC's subdivision was signed off by former Public Works Director Milton Arakawa despite the fact that the conditioned SMA Permit SM2 2000 0042 environmental studies, which were authored by Director Arakawa's land planning firm, were reportedly "missing" from County files. The record reveals the allegedly "missing" SMA Permit government records were not "missing", but were fraudulently concealed in a civil conspiracy involving Developer Lot 48A, LLC and their professional subdivision civil engineer Warren S. Unemori Engineering, Inc.

206. Therefore, Planning Director Blystone, the sole authority over the administration of SMA Permits, is legally obligated to perform upon the Planning Director's duties to issue the appropriate SMA Permit violation notices to Developer Lot 48A, LLC. By doing so, the County of Maui's liability will shift back onto Developer Lot 48A, LLC, and their unscrupulous partners Robert J Cella, Hugh J Farrington, Douglas S Schatz, and Colin Moreton.

207. Director Blystone's breach of fiduciary duty would continue to obstruct justice and impede an investigation into fraud and collusion orchestrated by Developer Lot 48A, LLC which was recognized by Honorable Judge Cardoza in a related civil case. As the records reveal, conflicted Corporation Counsel has interfered with the Planning Director's duties for over a decade to cover up their documented misdealing's with private developers.

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208. As a direct, proximate, and foreseeable consequence of Planning Director Blsytone's refusal to perform upon the Director's duties, Plaintiff Salem's family has suffered irreparable harm and will continue to suffer damages in an amount to be determined at trial.

COUNT XIII
Breach of Fiduciary Duty
Defendant Jordan Molina

209. Plaintiff Salem repeats, reasserts, and incorporates by reference the allegations stated in the preceding paragraphs of this Complaint.

210. Plaintiff Salem's claims are based on previously concealed government records, newly discovered evidence, conflicting attorney-client representations with the Corporation Counsel, and admissions by County Defendants. Government officials have a fiduciary duty to act in the public's best interest.

211. Defendant Molina previously served as an executive assistant to the Maui County Council under the Chair of Infrastructure and co-authored legislation intended to establish a fair system for assessing and collecting private developer roadway infrastructure "deferral" agreements (see Fairness Bill, PC-17). He is fully aware that Plaintiff Salem is a documented whistleblower who exposed the Department of Corporation Counsel's and the Department of Public Works' dubious practice of executing thousands of unaccounted-for "3 Lot or Less" subdivision roadway infrastructure "deferral" agreements.

212. Despite Plaintiff Salem's written notifications to Public Works Director David Goode and former Mayor Alan Arakawa in 2001 and for years thereafter, Corporation Counsel attorneys continued executing hundreds more deferral agreements, recklessly shifting millions of dollars of private developers' financial obligations onto the County of Maui and defrauding taxpayers. Their actions blatantly violated the Maui County Charter.

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213. Defendant Molina knew that during the re-subdivision of Lot 48A by Developer Lot 48A, LLC, the County Defendants and the Department of Corporation Counsel failed to account for and track any of the "3 Lot or Less" subdivision "deferral" agreements, including the Anka, Inc. "3 Lot or Less" agreement which clouded Plaintiff Salem's real property title. (LUCA File No. 4686).

214. Defendant Molina also knew that the roadway infrastructure and drainage mitigations to Lower Honoapiilani Road, represented in Developer Lot 48A, LLC's conditioned subdivision SMA Permit SM2 2000 0042, the conditioned WSUE Order of Magnitude Valuation of Construction Costs, and MAH environmental studies, were lawfully restricted to be deferred only one time in the original Anka, Inc. "3 Lots or Less" subdivision.

215. The County Defendants' Pre-Trial Statements admit the following:

- A document titled "Subdivision Agreement ("3 Lots or Less") was recorded with the State of Hawaii Bureau of Conveyances on November 7, 1995 (Doc. No. 95-145123), involving Anka, Inc.
- The Anka, Inc. Subdivision Agreement ("3 Lots or Less") states that "The land so subdivided shall not thereafter qualify for the exemption with respect to any subsequent subdivision of any of the resulting parcels," quoting Section 18.20.040 of the Maui County Code at the time. The resulting parcels received no further exemption. The Department of the Corporation Counsel approved the agreement's form and legality.
- No additional or new "3 Lot or Less" Subdivision Deferral Agreement was authorized or recorded for the three parcels (Lot 48A-1, Lot 48A-2, Lot 48A-3) subsequently subdivided by Developer Lot 48A, LLC in 2001.
- On or around May 27, 2010, the County mailed separate Notices of Intent to Collect financial obligations based on deferral agreements to the (five) owners of record for parcels related to LUCA File Nos. 4.686 and 4.805. These notices were sent under Ordinance No. 3731 and signed by the County Director of Public Works, Milton Arakawa.
- The Department of Public Works included with the Notices of Intent to Collect a document that listed "12-12-96" as the "Subdivision Date" and "4.686" as the "Subdivision File No." for all five parcels.

216. Upon being hired by Mayor Victorino as Deputy Director of Public Works in

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2019, Defendant Molina failed to notify the County Auditor and conflicted Corporation Counsel about his knowledge of the fact Director of Public Works Arakawa lacked the authority to bind five parcels under a "3 Lot or Less" subdivision roadway infrastructure deferral agreement involving overlapping subdivisions of the same parent parcel.

217. Defendant Molina was notified of his duties in writing by Office of the Mayor staff member, whistleblower Plaintiff Salem. Defendant Molina's and conflicted Corporation Counsel's duties are outlined in Title 18, Section 18.44.010.A of the Maui County Code.

218. In 2019 and beyond, Defendant Molina failed to inform the County Auditor, conflicted Corp Counsel, and the County Prosecutor that Director Arakawa's collection notices sent by US Mail to five property owners were falsified and directly resulted in a fraudulent lien on Plaintiff Salem's real property. Simply stated, Defendant Molina knew that a crime was committed by Corp Counsel and Director Arakawa.

219. Defendant Molina is aware that Developer Lot 48A, LLC was lawfully responsible for the one-time "deferred" roadway infrastructure to Lower Honoapiilani Road and Hui Road E through the re-subdivision application for parent parcel Lot 48A (LUCA File No. 4.805). Defendant Molina is aware that Plaintiff Salem relied on the adopted ordinance and recorded subdivision "deferral" agreement to his detriment.

220. Defendant Molina knows that Plaintiff Salem's mortgage lender demanded the removal of the unremovable illegitimate County-induced liens on his real property title to allow their mortgage loan to be recorded in a senior position. Defendant Molina and the County's outside counsel, Kobayashi Sugita LLP ("KSG"), are aware that former Public Works Director Milton Arakawa's falsified collection notices and induced liens on Plaintiff Salem's real property title caused the wrongful foreclosure of his family home and investment property.

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221. Defendant Molina knows that lawfully expunging the liens now would prove that the County Defendants had a legal obligation to do so during Developer Lot 48A, LLC's re-subdivision of parent parcel Lot 48A. Instead, Defendant Molina recently declared Public Works Director Arakawa had the authority to disregard the "shall not" language in the recorded Anka Inc. "deferral" agreement and send falsified collection notices to five property owners for his developer client's roadway infrastructure financial obligations.

222. As a complicit breach of duty, Defendant Molina failed to notify conflicted Corporation Counsel to immediately expunge the existing County's real property title liens on the five overlapping subdivision parcels currently clouded by the illegitimate "3 Lot or Less" subdivision agreement, which would serve the public interest by eliminating the County Auditor's influenced excuse to suspend the longstanding audit of the thousands of unaccounted for "deferral" agreements because of this one controversy.

223. As another complicit breach of duty, Defendant Molina failed to request Corp Counsel to provide notice to the proper authorities of the material fact that Developer Lot 48A, LLC and their partner Robert Cella, the owner of Coldwell Banker Island Properties, LLC, altered a government contract without the authorization of the Corp Counsel through warranty deeds recorded on the three parcels created in the re-subdivision of Lot 48A. (LUCA File 4.805)

224. Under the conflicted representation and interference of the Department of Corp Counsel, Defendant Molina has breached his duty to uphold and enforce the Maui County Code and the Title 18 subdivision ordinances adopted by the Maui County Council. As a direct and foreseeable result of Defendant Molina's breach of duty, Plaintiff Salem has suffered and will continue to suffer damages to be determined at trial.

COUNT XIV
Breach of Contract / Gross Negligence / Fraud

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County of Maui

225. Plaintiff Salem repeats, reasserts, and incorporates by reference the allegations stated in the preceding paragraphs of this Complaint.

226. Plaintiff Salem’s claims are based on previously concealed government records, newly discovered evidence, conflicting attorney-client representations with the Corporation Counsel, and admissions by County Defendants. Government officials have a fiduciary duty to act in the public's best interest.

227. The County Defendants, conflicted Corp Counsel, and the County Auditor are aware that no County law allows five parcels to be bound by a “3 Lot or Less” subdivision roadway infrastructure “deferral” agreement involving two overlapping subdivisions of the same parent parcel, the “land so subdivided”. (Title 18.20.202)

228. The County Defendants admit the material fact that no additional or new "3 Lot or Less" Subdivision Deferral Agreement was authorized or recorded for the three parcels (Lot 48A-1, Lot 48A-2, Lot 48A-3) subsequently subdivided by Developer Lot 48A, LLC in 2001.

229. On or around May 27, 2010, the County mailed separate Notices of Intent to Collect financial obligations based on deferral agreements to the (five) owners of record for parcels related to LUCA File Nos. 4.686 and 4.805. These notices were sent under conflicted Corp Counsel knowledge and representation and were signed by the Director of Public Works, Milton Arakawa. The notices constitute a breach of contract, fraud, and gross negligence.

230. As a direct and foreseeable result of Defendant Molina’s breach of duty, Plaintiff Salem has suffered and will continue to suffer damages to be determined at trial.

COUNT XV
Negligence & Gross Negligence
County Auditor

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231. Plaintiff Salem reasserts and incorporates by reference all preceding allegations, pleadings, and the Motion to Amend, as if fully set forth herein.

232. Plaintiff Salem’s claims are based on previously concealed government records, newly discovered evidence, conflicting attorney-client representations with the Corporation Counsel, and admissions by County Defendants. As the evidence reveals, the Office of the County Auditor has exhibited a complete lack of care with conscious indifference to the damaging consequences inflicted upon Plaintiff Salem and the public interest.

233. The compelled records reveal that the Office of the County Auditor failed to maintain independence from the conflicted Corp Counsel, compromising the Office of the County Auditor’s duty to serve the public interest. The County Auditor owed a professional duty to remain independent and exercise due care towards the Maui County Council, County employee whistleblower Plaintiff Salem, and the local residents of Maui County.

234. Pursuant to Government Professional Auditing Standards: The County Auditor is subject to professional standards that require independence, such as those set by the American Institute of Certified Public Accountants (AICPA) or the Institute of Internal Auditors (IIA).

235. The County Auditor’s breach of duty and Professional Auditing Standards aided and abetted the decades of conflicted Corp Counsel’s illicit cover-up of County officials’ corruption. The Auditor’s breach of this duty is a major contributing cause of this litigation and exacerbated the injuries to both Plaintiff Salem and the public interest. The now-conflicted County Auditor failed to report to the proper authorities the evidence of fraud and administrative abuse by various Public Works Directors, Deputy Directors, and the Corporation Counsel itself involving the thousands of unaccounted-for “3 Lot or Less” roadway infrastructure agreements.

236. Specifically, the County Auditor improperly withheld documented evidence of

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fraud by former Public Works Director Milton Arakawa and the unlawful actions of County Attorneys in the negligent administration of Plaintiff Salem's subdivision and others. Government records affirm that the County Auditor had indisputable evidence of Director Arakawa's fraudulent and criminal claims involving the falsified "3 Lots or Less" notices for payment sent by US Mail to five property owners, including Plaintiff Salem.

237. From the outset of the audit in 2019, the Office of the County Auditor had, a responsibility to review County ordinances to have a clear understanding that no law supported Director Arakawa's manipulation of the subdivision ordinances to serve the financial interests of former clients. The County Auditor failed to timely present findings to the proper authorities thereby causing irresponsible delays and obstruction of Plaintiff Salem's assigned duties with the office of the Mayor.

238. Under the influence of conflicted Corporation Counsel, the Auditor suspended the audit entirely, citing one single disputed subdivision "deferral" agreement as justification. As the compelled County records reveal, the County Auditor scheduled meetings with County officials who had direct knowledge of Director Arakawa's misdealings just one month after whistleblower Plaintiff Salem was employed by the Office of the Mayor as a legislative liaison.

239. The County Auditor's failure to report findings to the Maui County Council or proper authorities, despite clear evidence of malfeasance, misfeasance, and nonfeasance, has directly resulted in further and future financial damage to Plaintiff Salem and the taxpaying residents of Maui County. Plaintiff Salem, relying on the Auditor to assess the scope and recovery potential of the thousands of developer "deferral" agreements in a timely manner, was detrimentally affected and harmed both as a private citizen and as a staff member in the Office of the Mayor.

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240. As a direct, proximate, and foreseeable result of the County Auditor's actions, Plaintiff Salem has suffered and will continue to suffer ongoing damages, to be determined at trial.

COUNT XVI
Breach of Duty / Abuse of Power
Corporation Counsel

241. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

242. Plaintiff Salem asserts that the claims set forth herein are based on volumes of previously concealed and compelled government records, newly discovered evidence, conflicting attorney/client representations, and contradicting admissions from the County Defendants.

243. It is indisputable that the roadway infrastructure in WSUE's "As-Built" drawings does not match the infrastructure described in the conditioned "missing" SMA Permit studies and WSUE's Order of Magnitude Estimate of Construction Costs. It is equally undeniable that the roadway infrastructure construction was not completed as required by the plans submitted on May 11, 2000.

244. The County attorneys have recently admitted that the "deferred" subdivision roadway infrastructure, drainage mitigations, and fire hydrant along Lower Honoapiilani Road—represented in a previously "missing" Department of Planning SMA Permit file—remain incomplete.

245. Pursuant to Maui County Code Title 18.20.060 “The approval of the construction plans by the Director shall not relieve the subdivider nor the engineer of the responsibility for any and all defects that may become evident subsequent to the plan approval.”

246. Pursuant to Maui County Code Title 18.44.010 - “Any person, firm, or

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corporation which knowingly violates this title shall be fined not more than one thousand dollars. The continuance of any such violation shall be deemed a new violation for each day of such continuance.

247. In addition, the County attorney may institute an action to prevent, restrain, correct, or abate any violation of this title and seek such relief by way of injunction or otherwise, as may be proper under the facts and circumstances of the case, in order fully to effectuate the purposes of this title.

248. In any illegal subdivision, the director may require such improvements as would reasonably comply with the provisions of this title. Such remedial improvements by the director shall be applicable to the subdivider, if he may be found, or the owners of lots in the illegal subdivision at the time of discovery, or both.”

249. Corp Counsel has breached their duty to provide notice to Warren S. Unemori Engineering, Inc., to correct their violations and seek, if necessary, such relief by injunction to fully effectuate the purpose of Title 18 of the Maui County Code in the illegal subdivision.

250. As a direct, proximate, and foreseeable result of the County Auditor’s actions, Plaintiff Salem has suffered and will continue to suffer ongoing damages, to be determined at trial.

COUNT XVII
Interference with Contractual Relationships /
Breach of Covenant of Good Faith & Fair Dealing / Bad Faith
Department of Corporation Counsel

251. Plaintiff Salem hereby realleges and incorporates by reference the allegations made in the preceding paragraphs, as if set forth fully herein.

252. Plaintiff Salem asserts that the claims set forth herein are based on volumes of

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previously concealed and compelled government records, newly discovered evidence, conflicting attorney/client representations, and contradicting admissions from the County Defendants.

253. Former Mayor Michael Victorino made promises to Plaintiff Salem, before and after being sworn in as Mayor of Maui County, that he would lawfully hold Developer Lot 48A LLC responsible for Plaintiff Salem’s injuries resulting from a conspiracy to conceal SMA Permit government records and backroom dealings with former Public Works Director Milton Arakawa.

254. Former Mayor Victorino made promises to employ whistleblower Plaintiff Salem to resolve and recover through fair and equitable legislation, the tens of millions of debts owed to the County of Maui through recorded subdivision roadway frontage “deferral” agreements” executed by conflicted Corporation Counsel, which were the subject of a County Audit.

255. As evidenced by conflicted Corporation Counsel’s “bar napkin” amendment to the signed agreement between Defendant Victorino and Plaintiff Salem, conflicted Corporation Counsel knew that Plaintiff Salem would rely upon County laws and ordinances and Mayor Victorino’s promises.

256. Conflicted Corporation Counsel breached their duty to Plaintiff Salem and County Employee Salem to deal with Plaintiff Salem’s injuries and whistleblower discovery in good faith by concealing government records which reveal that as Mayor, Defendant Victorino lawfully attempted to fulfill and ratify his promises and agreements with Plaintiff Salem.

257. The previously withheld and compelled records provide indisputable evidence that conflicted Corporation Counsel interfered with access to government records which prove their direct role in the interference with the administration of justice and legal proceedings by tampering with evidence and intimidating County officials.

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258. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel intentionally interfered with and obstructed Mayor Victorino's efforts to lawfully act upon his promises and agreements with Plaintiff Salem.

259. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel intentionally interfered with the County Director's official duties to uphold and enforce the adopted County laws and ordinances.

260. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel interfered with the County Auditor's duty to remain independent of conflicted Corporation Counsel. Undeniably, conflicted Corporation Counsel is responsible for the disregard of the public interest through the dubious execution of the thousands of unaccounted-for private developer roadway infrastructure "deferral" agreements.

261. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel authorized former Public Works Director Milton Arakawa to engage in Mail Services Fraud by sending falsified open-ended claims for payments to the County to five property owners for a pro-rata share of previously recorded "3 Lot or Less" subdivision agreement. Conflicted Corporation Counsel interfered with Mayor Victorino's promises and duty to hold the conspiring parties responsible for their unlawful acts.

262. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel interfered with the Maui County Council's duty and authority to investigate the evidence of criminal acts and wrongdoing by County officials, including asserted acts of malfeasance and fraud by conflicted Corporation Counsel.

263. The previously withheld and compelled County records provide indisputable evidence that conflicted Corporation Counsel interfered with Plaintiff Salem's assigned tasks and

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duties as a staff member of the Office of the Mayor.

264. The Council and Judicial records affirm former Corporation Counsel Director Moana Lutey interfered and lied to Council Member Tamara Paltin during an open hearing inquiry into why conflicted Corporation Counsel was not legally supporting Mayor Victorino's agreements and promises to enforce Developer Lot 48A, LLC unfulfilled SMA Permit SM2 2000 0042.

265. The Council and Judicial records affirm that the former conflicted Corporation Counsel interfered with the Maui County Council's duties and authorities by misrepresenting Plaintiff Salem's legal claims and withholding good faith settlement offers prior to a Court Ordered Settlement Conference.

266. Conflicted Corporation Counsel was aware of Mayor Victorino's agreements with Plaintiff Salem, lawful promises, and assigned tasks as an employee of the County of Maui and Office of the Mayor. Conflicted Corporation Counsel intentionally and maliciously induced multiple parties and County officials to breach their duties to enforce County laws and ordinances.

267. As a direct, proximate, and foreseeable cause of the County Defendants' actions, Plaintiff Salem has and will continue to suffer ongoing damages in an amount to be shown at trial.

COUNT XVIII
Unjust Enrichment / Tortious Interference:
Corporation Counsel

268. Plaintiff Salem reasserts and incorporates by reference all preceding allegations, pleadings, and the Motion to Amend, as if fully set forth herein.

269. Plaintiff Salem's claims are based on Maui County Council records and newly

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discovered evidence.

270. Corp Counsel Director Patrick Wong used a private attorney's and affordable housing group's work product to unjustly enrich the County at the expense of the private parties. The County gained millions of dollars of financial windfalls and Corp Counsel gained a legal advantage against private developers without compensation to the parties who in good faith were dealing on their behalf.

271. Corp Counsel Director Wong's use of the work product tortiously interfered with the private attorney's relationships with Plaintiff Salem and his partners causing extreme harm to both personal and professional relationships. To further the mistrust, Director Wong asserted enrichment from gambling. As a public official, Director Wong was unclean in multiple acts.

272. Being directly involved and present during the extensive negotiations, Corp Counsel Director Wong had a clear understanding that the use of the work product was to facilitate a 100% affordable housing development by the qualified members of AHG with direct financial benefit to the County, which establishes a contractual partnership relationship.

273. Therefore, Plaintiff Salem asserts AHG has a right to recover their professional expenses and reasonable professional losses based on the County's recent contradictory decision to dispose of the parcels to private entities with no form of compensation.

RELIEF SOUGHT

WHEREFORE, Plaintiff prays for a judgment and other relief in their favor and against

Defendant as follows:

A. A. For judgment in his 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

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proven at trial;

~~B.~~ B. Declaratory/Injunctive relief, prohibiting Defendants from further discriminating against Plaintiff;

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~~C.~~ C. An award of special, general, treble and punitive damages against Defendant in amounts to be proven at trial;

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~~D.~~ D. An award of pre- and post-judgment interest;

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~~E.~~ E. An award of Attorneys' fees and costs; and

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~~F.~~ F. For such other and further relief, ~~including~~including remedies available under HRS § 378, as this Court deems just and proper and as may be permitted by law.

~~DATED: Honolulu, Hawai'i, November 08, 2021.~~

/s/ Terrance M. Revere

TERRANCE M. REVERE
MAGDALENA BAJJON
Attorneys for Plaintiff

CHRISTOPHER SALEM

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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHRISTOPHER SALEM,

Plaintiff,

vs.

COUNTY OF MAUI; RICHARD T. BISSEN, JR, in his official capacity. KATHLEEN AOKI, in her official capacity as DIRECTOR OF THE DEPARTMENT OF PLANNING; JOHN DOES 1-100; JANE DOES 1-100; DOE PARTNERSHIPS 1-100; DOE CORPORATIONS 1-100; DOE ENTITIES 1-100

Defendants.

CIVIL NO. 2CCV-21-0000048
(Other Civil Action)

CERTIFICATE OF SERVICE

Judge: Honorable Peter T. Cahill

Trial Date: November 25, 2024

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served upon the following individuals via the Judiciary Electronic Filing System (JEFS) to their last known electronic address on the date stated below:

KOBAYASHI, SUGITA & GODA LLP
Stephen G.K. Kaneshiro, Esq
999 Bishop Street, Suite 2600,
Honolulu, HI 96813 |
Attorney for County of Maui

DATED: Lahaina, Hawai'i, September 8, 2024

/s/ Christopher Salem
CHRISTOPHER SALEM – *Pro Se*

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHRISTOPHER SALEM,

Plaintiff,

vs.

COUNTY OF MAUI; RICHARD T. BISSEN, JR, in his official capacity. KATHLEEN AOKI, in her official capacity as DIRECTOR OF THE DEPARTMENT OF PLANNING; JOHN DOES 1-100; JANE DOES 1-100; DOE PARTNERSHIPS 1-100; DOE CORPORATIONS 1-100; DOE ENTITIES 1-100

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NOTICE OF NON HEARING MOTION

Judge: Honorable Peter T. Cahill

NOTICE OF NON HEARING MOTION

KOBAYASHI, SUGITA & GODA LLP
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Honolulu, HI 96813 |

Attorneys for County of Maui

DATED: Lahaina, Hawaii'i, September 8, 2024

/s/ Christopher Salem
CHRISTOPHER SALEM – *Pro Se*