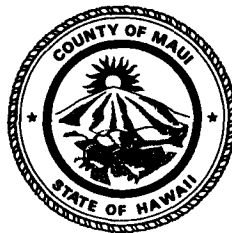


ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

EDWARD S. KUSHI  
First Deputy

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

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740; FACSIMILE: (808) 270-7152

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2015 SEP 18 04 21 PM  
OFFICE OF THE  
COUNTY COUNCIL

September 18, 2015

MEMO TO: Honorable Don S. Guzman, Chair  
Committee of the Whole

F R O M: Brian A. Bilberry, Deputy Corporation Counsel

SUBJECT: **COW 5 – Special Counsel Authorization: Christopher Salem v.  
County of Maui, et al.**

Transmitted are the following documents regarding the above-captioned matter:

1. Unfiled draft copy of the Complaint received from Burton D. Gould, attorney for Plaintiff Christopher Salem, on August 17, 2015.
2. Letter to Mayor Arakawa and Council Chair Mike White dated August 13, 2015 from Burton D. Gould
3. Letter to Patrick Wong dated August 13, 2015 from Burton D. Gould.
4. Letter dated August 24, 2015 to Council Chair Mike White regarding Council Communication 15-219.
5. Letter dated September 2, 2015, to David Raatz regarding the requests for information, HRS Chapter 92 Sunshine Laws.

If you have any questions or concerns, please feel free to call me.

BAB:ma  
Enclosures



## LAW OFFICES OF BURTON D. GOULD LLLC

Burton D. Gould, Esq.  
burtongould@ymail.com

2020 Main St, Suite 1010  
Wailuku Hawai'i 96793  
Phone (808) 269-7100  
Fax (808) 242-8288

August 13<sup>th</sup>, 2015

The Honorable Mayor Alan Arakawa  
200 S. High St. Maui O Kalana Bldg. 9<sup>th</sup> floor  
Wailuku, HI 96793

Chair of the Counsel Mike White  
200 High Street – 8<sup>th</sup> Floor  
Wailuku, HI 96787

Dear Honorable Mayor Alan Arakawa and elected members of the Maui County Council;

I am writing on behalf of my client Christopher Salem pursuant to Rule 4.2 of the Hawai'i Rules of Professional Conduct ("HRCP") "*...Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.*" (see Comments [1])

Evidenced by the attached Affidavit of Department of Transportation Director JoAnne Johnson Winer, we allege the attorneys in the Department of Corporation Counsel have facilitated, in collusion with a former and present appointed Director of the County of Maui, a massive fraud upon the public by furthering the financial interests of private developers at the expense of the taxpayers and the environment of the islands of Maui County.

To bare further evidence of this claim, Public Works Director David Goode informed the Maui County Council during public hearings that the execution of unaccounted for development agreements by Corporation Counsel over the last four decades, (which has allowed private developers to intentionally shift millions of dollars of their financial obligations to the County of Maui) has gotten "crazy". These agreements include the drafting and recording of overlapping "one time" unlawful deferrals of developer's financial obligations. As such, Director Goode has witnessed to the public and the Maui County Council that the Department of Corporation Counsel's legal services have been misused. This has allowed the Department of Corporation Council and the Department of Public Works to cause financial injury and incur financial obligations upon the County of Maui, a direct violation of Section 9-12 of the Maui County Charter.

Under Rule 1.6(c) of the HRPC, at the direction of attorney Pat Wong, Corporation Counsel must acknowledge their client Director Goode's extensive review and conclusions relating to the government records and reveal and rectify the consequences of such unlawful acts. (c) *A lawyer shall reveal information that clearly establishes a criminal or fraudulent act of the client in the furtherance of which the lawyer's services had been used, to the extent reasonably necessary to rectify the consequences of such act, where the act has resulted in substantial injury to the financial interests or property of another.*

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CORPORATION COUNSEL  
2015 AUG 17 AM 9:29

My client and the public interest has been harmed by Attorney Wong's unjustified claim that the release of developer agreements by Corporation Counsel would "*interrupt a legitimate government function*" which claim is a violation of Article 13 of the Maui County Charter, and intentionally appears to further a cover-up of unlawful activity facilitated by his Department on behalf of countless private developers. Under Rule 1.6 of the HRCF, *If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1) of these Rules. [17]*

To further frustrate the Maui County Council's and my client's attempts to facilitate immense financial recovery (or accountability) for the County of Maui, Corporation Counsel issued a declaration of Public Work Director Goode in the United States Federal Courts claiming the Administration "may, or may not" collect upon the debts owed from the executed developer agreements; a discretionary power they do not have. Again, as evidenced in the attached Affidavit of JoAnne Johnson Winer, a senior public official employed by the County Administration has declared that the statement violates Ordinance #3731 adopted by the Maui County Council and the Department of Corporation Counsel. The Declaration therefore constitutes perjury, and violates HRCF Rule 3.3(a)(1) and Rule 3.4 (a)(b).

This situation also creates a **Directly Adverse Conflict**, pursuant to HRCF Rule 1.7, as Corporation Counsel cannot represent, or cross examine, two appointed Directors who have exerted two opposing declarations and opinions relating to the rule of laws and ordinances adopted by the Maui County Council. Also, Corporation Counsel cannot request their consent under these circumstances. *When a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. Prohibited Representations [15]*

HRCF Rule 1.7 also identifies a **Personal Interest Conflict** "[10] *The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probability of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.*"

My further findings conclude that Corporation Counsel and the Department of The Corporation Counsel has unethically defended Director decisions while a private developer's legal counsel who benefitted from these decisions was simultaneously employed by their Department. As regards to Mr. Salem's claims, Corporation Counsel and his Department takes the position that a Director has made a determination, and they represent their clients' decision(s). On significant occasions Corporation Counsel and his Department failed to provide memoranda of law to support these questionable director decisions; decisions that were clearly in violation of County Ordinance, administrative rules and, or applicable law. Specifically, Corporation Counsel has provided defense of a Director's decision to refuse to enforce an unfulfilled SMA permit issued to a client of an attorney employed by their Department, causing immense harm to my client and contravening the interests of the residents of Maui County.

We affirm that Corporation Counsel and his Department is charged with the ethical responsibility of upholding the laws adopted by the Maui County Council to insure that the public may have trust and confidence in the integrity of County Government. My client, a former executive assistant to the Maui County Council, also alleges acts of retaliation and malice by attorney Pat Wong, as Corporation Counsel, when my client's was following Mayor Arakawa's directive to attempt adopt, through legislation with the members of the Maui County Council, the assessment and collection of existing debts from developer deferral agreements.

The acts of Corporation Counsel, referred to above, and in the allegations made by my client, also result in **Material Limitations Conflicts**, pursuant to HRCF Rule 1.7.[8] *Even where there is no direct adversity of interest, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests...The critical questions are the likelihood that a difference in interests will arise and, if it does, whether it will materially interfere with the lawyer's independent professional judgment...*

The Maui County Council has power and authority to prevent this claim from unnecessary escalation to the Courts, which could result in widespread consequences and calls for accountability within all branches of County government by the citizens within Maui County. In accordance with Section 3-6.2 of the Maui County Charter, the members of the Maui County Council shall have the power to conduct investigations upon the operation of any department or subject which the council may legislate, including the department of Corporation Counsel. Council member Riki Hokama has placed this request already on the Council records. The Maui County Council has the requisite power and authority to protect the public interest and my client. The County may employ special counsel as is necessary, to this effect.

My client asserts that investigation of the conduct, operations, and procurement procedures of outside and in-house attorneys by of the Department of Corporation Counsel is long overdue and in the public interest. The Maui County Council holds the power to provide for punishment of violations of the Charter and ordinances having the force and effect of law. [Section 13-10 Maui County Charter] This letter is a respectful, and final, demand upon Mayor Arakawa and the Maui County Council to join hands in representing the will of the people of Maui County. We respectfully request an immediate determination as to the following;

1. Whether Corporation Counsel and the Department of Corporation Counsel are conflicted and prohibited from representing any branches of the Maui County Government regarding the matters set forth in this letter and in Salem's unfiled draft Complaint, and the Declaration of Department of Transportation Director Johnson Winer.
2. A published legislative opinion on whether the developer contractual agreements, and overlapping contractual agreements, executed by Corporation Counsel, are lawfully collectable debts and justified encumbrances of land title.

3. The Maui County Council shall determine whether SMA Permit SM@ 2000/0042 is a valid and enforceable agreement signed and issued to developer Lot 48A, LLC by the Department of Planning.

We assert the Department of Corporation Counsel is conflicted from influence and representation of all branches of Maui County Government on the matters and claims being presented herein, to the Maui County Council and the Office of the Mayor; which branches have their independent powers established in the Maui County Charter. In these matters and claims, the acts and omissions alleged have not only harmed my client, but also impacts the interests thousands of properties and their land titles throughout Maui County. Therefore, there is an obligation and necessity to seek full public disclosures of prior and future potential conflicts of interest by Corporation Counsel, the County Administration, and members of the Maui County Council, with the private land owners and their heirs of the properties affected by the assessment and collection of the recorded developer agreements.

On behalf of my client, I am interested in resolving all matters and claims in an amicable manner directly with the members of the Maui County Council and the Mayor without conflicting influence or intimidation from Corporation Counsel. I am prepared present a global resolution which we believe is in the interests of both the County of Maui and my client. Such resolution can to bring closure to decades of continuous harm and over 15 years of debate and deliberation by the Maui County Council.

Please respond to this request to engage in meaningful resolution discussions no later than Monday August 17<sup>th</sup>, 2015. Please be advised that this letter is being written in good faith and that absent a sincere and timely response, my client's complaint will be filed without further notice.

Respectfully

A handwritten signature in black ink, appearing to read "BD Gould", written over a horizontal line.

Burton D. Gould, Esq.



## LAW OFFICES OF BURTON D. GOULD LLC

Burton D. Gould, Esq.  
burtongould@ymail.com

2020 Main St, Suite 1010  
Wailuku Hawai'i 96793  
Phone (808) 269-7100  
Fax (808) 242-8288

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CORPORATION COUNSEL  
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August 13<sup>th</sup>, 2015

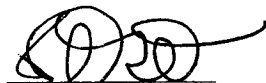
Patrick Wong, Corporation Counsel  
Department of The Corporation Counsel  
200 S. High St. Kalana O Maui Bldg 3<sup>rd</sup> Floor  
Wailuku, HI 96793

Dear Mr. Wong,

Please review the enclosed unfiled draft Complaint, Affidavit of JoAnne Johnson Winer, and the letter to The Honorable Mayor Alan Arakawa and the elected members of the Maui County Counsel.

Subsequent to your review, I respectfully request that you voluntarily recuse yourself and your department from any involvement in and, or representation of the County of Maui in the matters and determinations presently pending before the administrative and legislative branches of government.

Sincerely,

  
Burton D. Gould

enc. Attachments



## THE LAW OFFICES OF BURTON D. GOULD, LLC

Burton D. Gould  
burtongould@ymail.com

2020 Main St., Suite 1010  
Wailuku, Hawai'i 96793  
Phone: (808) 269-7100  
Fax: (808) 242-8288

September 2, 2015

County of Maui Council  
Council Services  
200 South High Street  
Kalana O Maui Bldg. 7<sup>th</sup> Floor.

Attention: Director of Council Services – David Raatz, Esq.

RE: Requests for Information  
HRS Chapter 92 Sunshine Laws

Dear Mr. Raatz;

Upon further review of the Council Communication 15-219, it has come to my attention that as the Director of Council Services, you are the author of the publicly posted resolution forwarded by the Chair of the Maui County Council Mike White to County Clerk Danny Mateo on August 18, 2015.

As a licensed attorney in the State of Hawaii, your professional obligations regarding lawful disclosures and the avoidance of conflicts of interest expand beyond those of other public officials and employees. That being said, I am requesting that you publicly retract and reconcile the consequences of your apparent oversights, evidenced in this false and misleading public Council Communication.

Furthermore, I have been made aware of your long standing employment with the County of Maui and previous direct involvement with my client and members of the Maui County Council, including current Department of Transportation Director JoAnne Johnson Winer, on the matters raised in my recent communications to the members of the Maui County Council. I am requesting that you personally make available to my office and, or address the following;

1. Copy of a filed lawsuit with the Second Circuit Court for the State of Hawaii referenced in Maui County Council communication 15-219.
2. Names of individuals involved with the investigation referenced in Maui County Council communication 15-219.

3. Copy of published scope of investigation, minutes of meetings, the findings, and the conclusions of the investigation referenced in Maui County Council communication 15-219.
4. Conflicts of interest disclosures by the individuals who conducted the investigation referenced in Maui County Council communication 15-219.
5. Disclosure of all communications to Maui County Council Members and their executive assistants which may have obstructed and, or continue to obstruct my ability to engage in resolution discussions which serve the public interest and attempt to avoid unnecessary litigation.

Please be advised, the information requested herein fall under the enforcement provision of HRS 92-12, which provides enforcement compliance jurisdiction with the Circuit Court for the State of Hawaii for violations of this Act and related decisions of the public body. Failure to produce this information shall result in a commencement of an action with the Circuit Court along requests for payments reasonable attorney fees and costs.

Further, as previously noticed in my letter dated August 24, 2015 , Maui County Council resolution 15-219, dated August 18, 2015, was posted publicly, contained false and misleading information, was not publicly retracted at the August 24th, 2015 Council Meeting and was subsequently, during that meeting, referred to the Maui County Council Committee of the Whole. As stated previously, I am calling upon you as the Director of Council Services as well as pursuant to your attorney professional obligations, to address this matter immediately, and in writing, to my office.

Sincerely,

  
Burton D. Gould

- Enc. First letter to Mike White August 24<sup>th</sup>, 2015
- Enc. Second letter to Mike White and Don Guzman August 30<sup>th</sup>, 2015
- Enc. Council Communication 15-219
- Enc. Council Agenda for August 25<sup>th</sup>, 2015
- cc: County Clerk - Mr. Danny A. Mateo
- cc: Office of Information Practices (OIP)





## THE LAW OFFICES OF BURTON D. GOULD, LLC

Burton D. Gould  
burton Gould@gmail.com

2020 Main St., Suite 1010  
Wailuku, Hawai'i 96793  
Phone: (808) 269-7100  
Fax: (808) 242-8288

August 24<sup>th</sup>, 2015

Chair of the Counsel Mike White  
200 High Street – 8<sup>th</sup> Floor  
Wailuku, HI 96787

Re: Council Communication 15-219

Dear Mr. White,

I am bringing to your attention that you have published an erroneous and false notice in Maui County Council communication 15-219, dated August 18, 2015, that my firm has filed a lawsuit in the Second Circuit Court for the State of Hawaii on behalf of Christopher Salem against the County of Maui, individual Directors, and the Department of Corporation Counsel, alleging fraud and violations of the Maui County Charter.

Mr. White, are you aware that the Department of The Corporation Counsel has also issued written and verbal communications to Maui County government officials falsely stating that my client has filed a lawsuit against the County of Maui? It appears that Corporation Counsel is engaged in unfair and deceptive practices by misleading public officials, the citizens of Maui County, and the Maui County Council in order to continue the illegitimate concealment of unlawful written agreements with developers that have furthered private interests at the expense of the taxpayers.

Your Council communication also contains findings from a “preliminary investigation” of the allegations against the individuals named in the above referenced “filed” complaint. I request that you please immediately disclose to the public and to my office;

1. What public officials or members of the Maui County Council were involved in the so-called investigation?
2. The scope of investigation, the findings, and the conclusions of the investigation.
3. Under what authority in the Maui County Charter was the investigation conducted?
4. Were conflicts of interest checks performed by the individuals who conducted the investigation and are they available for public viewing?

I request that you confirm that the individuals who performed the so-called investigation were provided a copy of the attached affidavit of Department of Transportation Director JoAnne Johnson Winer. Director Johnson Winer's findings support my client's allegations of numerous violations of law by The Department of Corporation Counsel and the Administration that have

caused immense financial injury to the public and to my client. Director Winer's willingness to step forth is admirable, and I believe that she represents truly authentic courageous leadership that all public officials can follow.

Mr. White, I am concerned that private meetings may have been conducted in violation of the Sunshine Laws. Otherwise, the proposed Council Resolutions, apparently and purposefully misuse the term "investigation" and propose false findings to mislead the Council, and the public. As such, the proposed Council Resolutions in Council Communication 15-219 raise serious legal, ethical, and procedural questions.

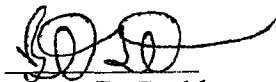
I am also concerned about the continuing conflicted influence by Corporation Counsel and the Department of The Corporation Counsel in this matter. It is our position that pursuant to the Supreme Court of the State of Hawai'i Rules of Professional Conduct, Corporation Counsel, Deputy Corporation Counsel, and the staff attorneys of the Department of Corporation Counsel are all conflicted from continuing to influence, and or advise the Maui County Council or the Administration regarding the issues raised by my client, a former executive assistant to the Maui County Council.

Finally, these resolutions seek to have the Maui County Council procure special counsel for an unfiled complaint as well the procurement of special counsel for Corporation Counsel Pat Wong in his individual capacity. It should be noted that this is prior to a legitimate and valid investigation by the Counsel into significant allegations of wrongdoing, and, or prior to a suit being filed, which we have been trying to avoid. It also seems odd that one of the resolutions seeks to procure special counsel for Pat Wong, alone, in his individual capacity, and not any of the Directors.

Please inform my office and your fellow members of the Maui County Council on Monday August 24<sup>th</sup>, 2015 who initiated, conducted, and was involved in the investigation referred to in Council Communication 15-219.

It continues to be my hope that the substantive issues relating to my client's claims may be addressed and resolved in an amicable manner, so that the interests of the County and my client may be best served.

Respectfully,



Burton D. Gould

cc. Maui County Council members

cc. Office of Information Practices

enclosed: Affidavit of JoAnne Johnson Winer

THE LAW OFFICES OF BURTON D. GOULD LLC #4775  
2020 Main Street, Suite 1010  
Wailuku, HI 96793  
(808) 242-8288  
burtongould@ymail.com

DRAFT ONLY

Burton D. Gould, Attorney for Plaintiff CHRISTOPHER SALEM

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHRISTOPHER SALEM,

Plaintiff,

vs.

THE COUNTY OF MAUI, by and through  
The DEPARTMENT OF THE  
CORPORATION COUNSEL,  
DEPARTMENT OF PUBLIC WORKS,  
DEPARTMENT OF PLANNING; and THE  
DEPARTMENT OF FINANCE; PATRICK  
WONG, individually and in his official  
capacity as CORPORATION COUNSEL,  
THE COUNTY OF MAUI; DAVID  
GOODE, individually and in his official  
capacity as DIRECTOR OF PUBLIC  
WORKS, COUNTY OF MAUI; MILTON  
ARAKAWA, individually and as former  
DIRECTOR OF PUBLIC WORKS,  
COUNTY OF MAUI; WILLIAM SPENCE,  
individually and in his official capacity  
as DIRECTOR OF PLANNING, COUNTY  
OF MAUI;; JEFFREY HUNT, individually  
and as former DIRECTOR OF  
DEPARTMENT OF PLANNING, COUNTY  
OF MAUI; JOHN DOES 1-20, JANE  
DOES 1-20; DOE PARTNERSHIPS 1-20;  
DOE CORPORATIONS 1-20; DOE  
ENTITIES 1-20 and DOE  
GOVERNMENTAL AGENCIES 1-20,

Defendants.

CIVIL NO. \_\_\_\_\_

COMPLAINT; AFFIDAVIT OF  
JOANNE JOHNSON WINER;  
SUMMONS

## **COMPLAINT**

COMES NOW Plaintiff Christopher Salem (hereinafter "Salem"), by and through his counsel, Burton D. Gould, of The Law Offices of Burton D. Gould, LLC for a Complaint against Defendant The County of Maui, ("County") by and through The Department of The Corporation Counsel ("Corp Counsel"), Department of Public Works, Department of Planning, Department of Finance ("County Defendants"); Patrick Wong, individually and as Director of Corporation Counsel, County of Maui ("Wong"), David Goode, individually and as Director of Public Works, County of Maui ("Goode"), Milton Arakawa individually and as former Director of Public Works ("Arakawa"), Jeffrey Hunt individually and as former Director of Planning ("Hunt"), William Spence, individually and as Director of Planning ("Spence") John Does 1-20, Jane Does 1-20, Doe Corporations 1-20, Doe Entities 1-20, (sometimes collectively referred to herein as "Defendants") who allege and aver as follows:

### **PARTIES**

1. At all times relevant hereto, Plaintiff Salem was a resident of the County of Maui, State of Hawaii and owner of the real property located at 8 Hui Road E, Lahaina, Hawaii, and fifty percent owner of 5106 Lower Honoapiilani Road along with his brother.

2. At times relevant hereto, Plaintiff Salem was an employee of the County of Maui, executive assistant to an elected member of the Maui County Council and Chair of the Planning Committee for the Maui County Council.

3. At all times relevant hereto, Defendant County was a government body, has rights, duties, and obligations to Plaintiff Salem and others within its area of responsibility.

4. Defendant County has various subordinate divisions and departments for which it is ultimately responsible including, but not limited to, The Department of The Corporation Counsel, The Department of Planning, The Department of Public Works, and The Department of Finance.

5. At all times relevant hereto, Defendant County Corp Counsel was a government body charged with the duty and responsibility to support County government by providing legal advice, representation, and drafting that promotes public interest and to act as the legal advisor to the County Council, Mayor, and all County of Maui departments and employees, including Plaintiff Salem, relating to the their official duties and responsibilities

6. At all times relevant hereto, Defendant County Department of Public Works was a government body charged with the duty and responsibility to protect the public's health, safety, property, and environment, by operating the County's infrastructure, administer subdivision ordinances and rules adopted by the Maui County Council thereunder, approve subdivision plans which and in conformity with the subdivision ordinances, and administer building codes on behalf of the citizens of Maui County and Plaintiff Salem.

7. At all times relevant hereto, Defendant County Department of Planning was a government body charged with duties and obligations to oversee and enforce the zoning ordinances, regulations, cultural resources, and administer and enforce the policies of the Federal Coastal Zone Management Act in the Shoreline Management Area on behalf of the citizens of Maui County and Plaintiff Salem.

8. At all times relevant hereto Defendant County Department of Finance was a government body charged with duties and obligations for the "overall financial administration of all County of Maui Departments." Defendant County Department of Finance's published mission is "to assure the efficient and effective management of the public's financial and physical resources by providing quality financial services.

9. At all times relevant hereto, Defendant Wong was an employee of the County of Maui as the Director of the Department of Corporation Counsel charged with the responsibility to uphold Federal and State laws, State of Hawaii Supreme Court Attorney Rules of Professional Conduct, and ordinances publicly adopted by the Maui County Council in accordance with the will of the people as established in the Maui County Charter.

10. At times relevant hereto, Defendant Arakawa was an employee of the Executive Branch of the County of Maui as Deputy Director and Director of Public Works with duty and responsibility to protect the public's health, safety, property, and environment by operating the County's infrastructure, administer subdivision ordinances and rules adopted by the Maui County Council thereunder, approve subdivision plans which and in conformity with the subdivision ordinances, and administer building codes on behalf of the citizens of Maui County and Plaintiff Salem.

11. At times relevant hereto, Defendant Arakawa was a partner of the land planning firm Munekiyo, Arakawa, and Hiraga, Inc. ("MAH") with a public contractual agreement with the County of Maui to perform environmental and drainage studies on the County of Maui Federal Aid Project Phase IV of Lower Honoapiilani Road (STP 3080(8)) Capital Improvement Project ("CIP") which lies immediately adjacent to the underlying subdivision wherein Plaintiff Salem formally owned a single family residence.

12. At times relevant hereto, Defendant Arakawa was simultaneously a partner of the land planning firm MAH with a private developer contractual agreement and the professional responsibility to perform land planning and environmental Shoreline Management Area ("SMA") studies for Developer Lot 48A, LLC on the Re Subdivision of oceanfront Lot 48A of the Mailepai Hui Partition Subdivision which lies immediately adjacent to the Phase IV CIP and is a parent parcel of the underlying 3 lot subdivision wherein Plaintiff Salem recently owned a single family residence.

13. At times relevant hereto, Defendant Arakawa's employment with the Executive Branch of the County of Maui as Deputy Director and Director of Public Works occurred while developer Lot 48A, LLC was in final phases of the subdivision permitting process and development of oceanfront Lot 48A of the Mailepai Hui Partition Subdivision, which is a re subdivision of one of the parent parcels of the underlying 3 lot subdivision wherein Plaintiff Salem owned a single family residence.

14. At times relevant hereto, Defendant Goode was an employee of the Executive Branch of the County of Maui as Deputy Director and Director of Public Works with duty and responsibility to protect the public's health, safety, property, and environment by operating the County's infrastructure, administer subdivision ordinances and rules adopted by the Maui County Council thereunder, approve subdivision plans which are in conformity with the subdivision ordinances, and administer building codes on behalf of the citizens of Maui County and Plaintiff Salem.

15. At times relevant hereto, Defendant Goode was the Vice President of Development Operations for Smith Development which was engaged in subdivision applications, environmental studies, public hearings, infrastructure engineering analysis, and development activities on two major developments immediately adjacent to the underlying subdivision wherein Plaintiff Salem owned a single family residence and along County of Maui Federal Aid Project Phase IV of Lower Honoapiilani Road (STP 3080(8)).

16. At times relevant hereto, Defendant Hunt was an employee of the Executive Branch of the County of Maui as the Director of Planning with duties and obligations to oversee and enforce the zoning ordinances, regulations, cultural resources, and administer and enforce the policies of the Federal Coastal Zone Management Act in the Shoreline Management Area on behalf of the citizens of Maui County and Plaintiff Salem.

17. At times relevant hereto, Defendant Spence was an employee of the Executive Branch of the County of Maui as the Director of Planning with duties and obligations to oversee and enforce the zoning ordinances, regulations, cultural resources, and administer and enforce the policies of the Federal Coastal Zone Management Act in the Shoreline Management Area on behalf of the citizens of Maui County and Plaintiff Salem.

18. John Does 1-20, Jane Does 1-20, Doe Partnerships, Doe Corporations 1-20, Doe Entities 1-20 and Doe Governmental Agencies 1-20 are persons or entities whose names, identities, and capacities are presently unknown to Plaintiffs and who are or may be

liable to Plaintiffs for actions alleged in the Complaint and may be responsible for the damages to Plaintiffs alleged herein. Plaintiffs have undertaken a diligent and good faith effort to ascertain the names and identities of such Defendants.

19. All of the acts and failures to act alleged herein were duly performed by and attributable to all Defendants, John Does 1-20, Jane Does 1-20, Doe Partnerships, Doe Corporations 1-20, Doe Entities 1-20 and Doe Governmental Agencies 1-20, each acting as a successor, agent, alter ego, employee, indirect employer, joint employer, integrated enterprise and/or under the direction and control of the others, except as specifically alleged otherwise. Said acts and failures to act were within the scope of such agency, and/or employment, and each Defendant participated in, approved and/or ratified the unlawful acts and omissions by the other Defendants complained of herein. Whenever and wherever reference is made in this Complaint to any act by a Defendant or Defendants, such allegations and reference shall also be deemed to mean the acts and failures to act of each Defendant acting individually, jointly, and/or severally.

### **JURISDICTION**

20. The Court has subject matter jurisdiction over this action pursuant to HRS 603-21.5, (general civil jurisdiction including, but, not limited to, "civil actions and proceedings...actions for impeachment of county officers, who are subject to impeachment... criminal offenses cognizable under the laws of the State, committed within their respective circuits...").

21. All matters and events giving rise to the claims set forth in this Complaint arose in the County of Maui, State of Hawaii.

22. Jurisdiction for this Complaint is proper pursuant to State of Hawai'i Constitution, HRS Ch. 46, including HRS 46-72, HRS Ch. 205A, the Maui County Charter and General Plan, Zoning and Subdivision Codes, the Comprehensive Zoning Ordinance and the Maui County Planning Commission Special Management Area Rules. Jurisdiction is also proper pursuant to HRS 657-20.



23. Venue is proper in the Circuit Court of the Second Circuit pursuant to HRS 603-36(5), as the claims for relief in this case arose within the jurisdiction of the Circuit Court of the Second Circuit of the Second Circuit, State of Hawaii and the majority of the parties and the properties, in question, are within the County of Maui, State of Hawaii.

**NOTICE OF CONFLICT OF INTEREST BY DEFENDANT COUNTY CORP  
COUNSEL AND DEFENDANT PATRICK WONG**

24. At times relevant hereto, Defendant County Corp Counsel established an attorney client relationship with Defendant Public Works Director Milton Arakawa who was a private land planning consultant for SMA Permit studies and environmental review for private developer Lot 48A, LLC at the same time is his firm was retained the County of Maui to complete the SMA Permit and environmental studies for County of Maui Federal Aid Project Phase IV of Lower Honoapiilani Road (STP 3080(8)) immediately adjacent to the Plaintiff's property.

25. At times relevant hereto, without proper notice to the members of the Maui County Council and citizens of Maui County during the outside counsel procurement process, Corp Counsel employed the legal services of Hawaii Attorney Margery Bronster who simultaneously represented land Developer Lot 48A, LLC involving legal disputes over compelled discovery of County of Maui records and subdivision entitlement documents relating to Developer Lot 48A, LLC's subdivision obligations within Mailepai Hui Partition, wherein Plaintiff Salem owned a single family home on Lot 48C.

26. At times relevant hereto, while Developer Lot 48A, LLC's legal counsel was employed by the Department of Corporation Counsel, Corporation Counsel provided legal defense for disputed decisions made by Defendant Public Works Director Milton Arakawa, who was a private land planning consultant for SMA Permit studies and environmental review for

private developer Lot 48A, LLC within Mailepai Hui Partition, where Plaintiff Salem owned a single family home on Lot 48C.

27. At times relevant hereto, while employed by the County of Maui Department of Corporation Counsel, Salem alleges that special counsel Margery Bronster intentionally concealed government records and SMA Permit studies authored by Defendant Arakawa's land planning firm during legal proceedings involving conflicting client, Developer Lot 48, LLC.

28. As evidenced herein, Corporation Counsel and County Corp Counsel violated Rule 1.7 of the State of Hawaii Supreme Court Rules Professional Conduct ("HRCPP") by failing to adopt reasonable procurement procedures for public review to determine potential conflicts of interest with private parties in both litigation and non-litigation matters within the Department of The Corporation Counsel. Oversight and procurement errors caused by a failure to institute such procedures does not excuse Corporation Counsel's violation of Rule 1.7 during the public procurement of Lot 48A, LLC's legal counsel.

29. At times relevant hereto, Defendant Goode informed the Maui County Council during public hearings, that the execution of unaccounted for development agreements by Corporation Counsel over the last four decades (which has allowed private developers to intentionally shift millions of dollars of their financial obligations to the County of Maui), has gotten "crazy". These agreements include the drafting and recording of overlapping "one time" deferrals of developer's financial obligations. As such, Defendant Goode has witnessed to the public and the Maui County Council that the Department of Corporation Counsel's legal services have been misused and have allowed the Department of Corporation Council and the Department of Public Works to cause financial injury and incur financial obligations upon the County of Maui, a direct violation of Section 9-12 of the Maui County Charter.

30. At times relevant hereto, Department of Transportation Director and former Council Member JoAnne Johnson Winer witnessed by Affidavit that no ordinance adopted by

Maui County Council allows for Corporation Counsel to twice defer developer's infrastructure financial obligations.

31. At times relevant hereto, Corporation Counsel issued a declaration of Public Work Director Goode in the United States Federal Courts claiming the Administration has the discretionary authority to "may, or may not" collect upon the debts owed from the executed developer agreements. Again, as evidenced in the attached Affidavit of JoAnne Johnson Winer, a senior public official employed by the County Administration has declared this statement violates Ordinance #3731 adopted by the Maui County Council and the Department of Corporation Counsel. Further, the Declaration therefore constitutes perjury, and violates HRCF Rule 3.3(a)(1) and Rule 3.4 (a)(b).

32. A Directly Adverse Conflict, pursuant to HRCF Rule 1.7, exists as Corporation Counsel cannot represent, or cross examine two appointed Directors who have exerted two opposing declarations and opinions relating to the rule of laws and ordinance es adopted by the Maui County Council. *When a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent.* Prohibited Representations [15]

33. HRCF Rule 1.7 also identifies a Personal Interest Conflict "[10] *The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.*"

34. Allegations of acts of retaliation and malice by Pat Wong, as Corporation Counsel, on at least two separate occasions creates further conflict of interest in representation. These alleged acts relate to failures by Corporation Counsel to disclose possible conflicts of interests to the Maui County Council and the citizens of Maui County.

35. At times relevant hereto, Corp Counsel has established an attorney client relationship and provided legal advice to public officials including Defendant Arakawa, Defendant Goode, Defendant Hunt, Defendant Spence, on matters involving disputes and complaints by Plaintiff Salem over breaches of the their administrative duties and responsibilities relating to overlapping re subdivision of oceanfront Lot 48A of the Mailepai Hui Partition Subdivision which is a parent parcel of the underlying 3 lot subdivision wherein Plaintiff Salem owned a single family home on Lot 48C.

36. At times relevant hereto, Department of The Corporation Counsel's legal services, and conflicting employment of Lot 48A, LLC's legal counsel, have been used to cause financial injury to the County of Maui. Under Rule 1.6(c) of the HRCF, Corporation Counsel must reveal and rectify the consequences of such harmful acts.

37. At times relevant hereto, in direct violation of the Hawaii Rules of Professional Conduct Rule 1.6(c), Defendant Wong has failed to reveal documents that clearly establishes a criminal or fraudulent acts by Defendant Arakawa in the furtherance of which the lawyer's services had been used, strictly necessary to comply with law and fiduciary obligations to the County of Maui, to the extent reasonably necessary to rectify the consequences of such act, where the act has resulted in substantial injury to the financial interests or property of another.

38. At times relevant hereto, Corp Counsel has provided legal advice and provided both published and non-published legal opinions and directives to Honorable Mayor Charmaine Tavares, Honorable Mayor Alan Arakawa, and to the select members of the County of Maui Council relating to their Department's irresponsible and unlawful execution of upwards to a thousand contractual financial agreements by Corp Counsel with private developers that have never been accounted for, collected upon, or revealed to the citizens of Maui County or the Maui County Council for almost four decades.

39. The Department of The Corporation Counsel is a government body and agency of Defendant County of Maui, comprising government attorneys with a duty to advise the

Mayor of Maui and the Maui County Council as well as to draft and to authorize legislation. Corporation Counsel and its Director, Defendant Patrick Wong, are bound by the State of Hawai'i Professional Rules of Conduct and subject to the Hawai'i Supreme Court and the Disciplinary Board of the Hawai'i Supreme Court, and the Office of Disciplinary Counsel of the State of Hawai'i.

40. As such, under Rule 1.7 of the Hawaii Rules of Professional Conduct, Corporation Counsel is hereby conflicted on their further legal influence, representation, or advising the Maui County Council and, or Mayor Alan Arakawa as to the claims in this Complaint; including, but not limited to, the concealed public documents and concealed and, or undisclosed conflicting private relationships which are the direct cause of immense damages to Plaintiff Salem; occurring during and after developer Lot 48A, LCC's legal counsel was employed by the Department of Corporation Counsel and Lot 48A, LLC's land planning consultant Defendant Arakawa was employed by the County of Maui.

41. The circumstances described in paragraphs 24-40 above also result in Material Limitations Conflicts, pursuant Rule 1.7.[8] Even where there is no direct adversity of interest, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests...The critical questions are the likelihood that a difference in interests will arise and, if it does, whether it will materially interfere with the lawyer's independent professional judgment...".

42. Defendant County Corp Counsel and Defendant Patrick Wong, as legal counsel to the County of Maui, are hereby noticed to remain silent and refrain from representation of the County of Maui regarding all claims of this Complaint and to also refrain from further influence, intimidation, and defamation, and any and all public statements regarding Plaintiff Salem, while the Maui County Council and the Mayor investigates Defendant Corporation Council's violations evidenced herein, under the Powers of the Maui County

Council, vested in the Maui County Charter, Article 3: Section 3-6, in order to determine whether or not Defendant County Corp Counsel and Defendant Wong's actions and, or omissions, jointly and severally, were lawful or unlawful; such actions and, or omissions as set forth in this Complaint

## INTRODUCTION

43. As evidenced herein, Plaintiff asserts that Defendants jointly and severally have breached the public trust and engaged in unscrupulous, forbidden, and unlawful behavior to perpetuate scheme of massive fraud against the citizens of Maui County. Defendants, and, or County Defendants, both individually and in collusion with each other, have, through acts and omissions constituting and including, but not limited to, fraud, gross negligence and civil conspiracy, have concealed public documents. Defendants and, or County Defendants have had, and continue to have, a direct role in serving the financial interests of private developers through the use of public funds and by providing administrative favors to developers in multiple capacities throughout the County of Maui and within the Plaintiff Salem's subdivision.

44. For over 14 years, Plaintiff Salem has unfairly placed at the forefront of conflicts in his neighborhood with a powerful and influential and hostile developer's and their conflicted legal counsel and professional representatives. Plaintiff Salem was forced to take unthinkable measures and exhaust his family's life savings to attempt to preserve his property rights on his once cherished land.

45. As evidenced herein, unlawful and deceptive developer contractual agreements executed by Defendant Corporation Counsel, concealed developer subdivision entitlement documents by the Defendant's affecting Plaintiff Salem's property rights, Director decisions by Defendant's outside of Maui County Code and their administrative authority, Defendant's multiple false public notices of commencement of the Phase IV Lower Honoapiilani Road Capital Improvement Project, ("CIP") conflicts of interest in violation of the Maui County

Charter and the State of Hawaii Supreme Court Rules of Professional Conduct, irresponsible administration of the State of Hawaii Coastal Zone Management Program, and failure and refusal of the Defendant's to enforce developer's and former client's signed Shoreline Management Area ("SMA") permits and engineering conditions of approval, is the direct and proximate cause of Plaintiff Salem's complete financial ruin.

46. Plaintiff Salem's family home has now been lost to foreclosure due to the unlawful acts by the Defendant's named herein.

47. To avoid responsibility and consequence, Defendants have engaged in violations of the United States Constitution, State of Hawaii Constitution, Hawaii Whistleblower Act, intimidation tactics, collusion, defamation, and have intentionally inflicted emotional duress upon Plaintiff Salem and his family. Further discovery and investigation may prove the Defendants have engaged in criminal misconduct.

48. Adopted by the will of people, the Maui County Charter provides the power and responsibilities of our entrusted members of the legislative branch being the Maui County Council to investigate the operations of any department and to adopt by ordinance the appropriate punishment for violations of the Maui County Charter, publicly adopted County ordinances, and rules having the force and effect of law.

49. The Mayor of the County of Maui is the chief executive office of the County of Maui and shall conduct system a systematic and continual review of the methods of each department of the most effective expenditure of public funds and to determine that such expenditures are in accordance with the budget laws and controls in force.

50. As witnessed by Mayor Alan Arakawa, Department of Transportation Director JoAnne Johnson Winer, Environmental Coordinator Rob Parsons, and numerous current and prior members of the Maui County Council, demands for investigations and releases of developer agreements executed by Defendant Corporation Counsel to the public and the Maui

County Council have been continuously circumvented and squashed by Defendant Corporation Counsel.

51. As evidenced herein, Corporation Counsel has deceptively deemed the release and discovery of concealed of public documents as “an interruption of legitimate government function”.

52. As history has proven, from the shorelines of Montana Beach to back yards of Palama Drive, Defendant Corporation Counsel’s vexatious legal diversions and frivolous defense of illicit decisions by politically appointed Directors have forced innocent citizens to engage the Courts to enforce the ordinances and laws of adopted by the Maui County Council. Ten of millions of dollars of public funds have been pointlessly squandered by Defendant Corporation Counsel in collusion with County Directors.

53. Under Article 10 of the Maui County Charter, elected and appointed officials and employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government.

54. Plaintiff Salem hereby prays for Mayor Alan Arakawa and elected members of the Maui County Council to exert their collective courage, power, authority, and ethical responsibility defined in the Maui County Charter to serve the public interest by seeking justice and accountability for the unlawful administrative decisions and specific abuses of law exhibited by the Defendants named herein.

## **PERTINENT FACTS**

### **A. General – The Malepai Hui Partition Subdivision**

55. On October 14, 1994, Anka, Inc., which owned Lot 48 of the Mailepai Hui Partition along Lower Honoapiilani Road and Hui Road E, received conditions of subdivision approval from the County of Maui Department of Public Works for a three (3) lot subdivision of their oceanfront land. (LUCA File #4.696) See A1 - Aerial photo.



56. Condition #17 of the County of Maui Department of Public Works preliminary subdivision approval stated as follows;

"A Special Management Area ("SMA") permit is not required for subdivision of land into four or fewer parcels when no associated construction activities are proposed; provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels. However, if construction activities are proposed or required then a permit may be required. See A-2 - Department of Public Works letter dated October 14, 1994

57. Condition #4 of the County of Maui Department of Public Works preliminary subdivision approval stated as follows;

"Provided this is the final subdivision of the parent parcel and no further subdivision is contemplated, we would agree the project is exempt from SMA. However, on previous plans we noted a gate was proposed at the entrance and 3 public parking stalls were shown. What happened to this plan?" See Department of Public Works letter dated October 14, 1994

58. Hui Road E is a substandard roadway that provides a State of Hawaii designated Shoreline Access (#217) with no public beach parking stalls. As we now know, the parking lot plan described on the Condition #4 lies on the corner of Hui Road E and Lower Honoapiilani Road on a portion of Lot 48C. See A3 - Public Parking lot plan.

59. Condition #13 of the County of Maui Department of Public Works preliminary subdivision approval stated as follows;

"Submit the original and four (4) copies of the Subdivision Agreement ("for Three Lots or Less") executed by the owners and extended to their heirs and executors or assigns to pay the pro rata share of the cost of future road improvements for Lower Honoapiilani Road and Hui Road E, pursuant to Section 18.20.40, subsection A of the Maui County Code." See Department of Public Works letter dated October 14, 1994

60. In 1994, the Maui County Code, 18.020.040A., stated as follows;

"Improvements to existing streets may be deferred for a subdivision containing 3 Lots or Less, provided sub-divider or owner, their heirs, executors for assigns agree to pay their pro rata share of the cost of road improvements pursuant to the terms of the ordinance authorizing said improvements by the County or to a formula determined by the County. The land so subdivided shall not thereafter qualify for the exemption with respect to any subsequent subdivision of any of the resulting parcels." See A4 - Maui County Code Title 18.20.040A.

**B. Plaintiff's acquisition of Lot 48C of the Mailepai Hui Partition Subdivision**

61. In February of 1999, Plaintiff Salem used his life savings to purchase the corner parcel Lot 48C in the Anka, Inc. "3 Lots or Less" subdivision. The pristine open space and lack of density in the adjacent parcels Lot 48A and Lot 48B of the "3 Lots or Less" subdivision was desirable and memorable. See B1 - Anka, Inc. Subdivision Map and Photo's

62. Plaintiff Salem reviewed and accepted the pro rata cost sharing of future roadway improvement obligations set forth in the "3 Lots or Less" Subdivision Agreement recorded by Defendant Corporation Counsel with the State of Hawaii Board of Conveyances in senior position on the Lot 48C title. See B2 - Document No 95-145123

63. Plaintiff Salem agreed that the pro rata sharing of the open ended one-time deferred costs to improve the roadway frontages along Lower Honoapiilani Road and Hui Road E was an acceptable condition in exchange for the expansive open space, privacy, panoramic views, and valuable limited density resulting from of Anka, Inc 3 Lot Subdivision.

64. Plaintiff Salem understood that in accordance with Maui County Code Title 18.020.040A., any further division of oceanfront Lot 48A that caused the underlying subdivision to end up with more than 4 lots, would require a substantial developer expense of full engineering and construction of roadway, drainage, and utility improvements to the entire frontages of the land of the underlying "3 Lots or Less" subdivision, which lies adjacent to Hui Road E and Lower Honoapiilani Road.

65. Plaintiff Salem understood that the open ended "3 Lots or Less" encumbrance recorded by Defendant Corporation Counsel on Defendant Salem's property title would be removed by Defendant Corporation Counsel if further subsequent land division occurred on the "land so subdivided" and any of the resulting parcels in the Anka, Inc. "3 Lots or Less" subdivision.

66. Plaintiff Salem understood that any further division of the oceanfront parcel Lot 48A parent parcels that caused the underlying subdivision to end up with more than 4 lots, would also require a substantial developer expense of an SMA Major Permit, public

hearings, shoreline access parking, park land dedication, environmental assessment, and public review in an open forum with the County of Maui Planning Commission.

67. On February 23, 1999, Plaintiff Salem closed Title Guarantee Escrow No. 98020671 on the purchase of Lot 48C of the Mailepai Hui Partition. Plaintiff Salem was provided a Warranty Deed from Anka, Inc. approved as to form by the Law Offices of Mancini, Rowland, and Welch. See B2 - Warranty Deed for Tax Key 4-3-015-055.

68. At the time of purchase of Lot 48C in 1999, Plaintiff Salem had a clear understanding that the lawful administration by the County of Maui of the one-time Anka, Inc subdivision conditions and recorded subdivision agreements, and one time exemptions from SMA Permit obligations including public hearings and environmental studies, would make the re subdivision of the adjacent oceanfront parcel, Lot 48A, financially impractical and unlikely.

**C. County of Maui Capital Improvement Project - Phase IV of Lower Honoapiilani Road**

69. In 1998, the County of Maui began the engineering design process and environmental review for the roadway and drainage improvements along the Lower Honoapiilani Road frontage of Plaintiff Salem's property. The County of Maui CIP, Phase IV of Lower Honoapiilani Road, began at Hoohui Road and terminated at Napilihau Street. (STP3080(3)(1)) See Public Notice prepared by the County of Maui Department of Public Works

70. In 1999, the land planning firm MAH was retained by the County of Maui Department of Public Works to complete an Environmental Assessment for the impacts of the proposed Phase IV of Lower Honoapiilani Road engineering and roadway improvements.

71. The preparation of the MAH Draft Environmental Assessment included consultation with Federal, State, and County agencies. See MAH Agencies and Organizations Contacted During Preparation of Draft Environmental Assessment for Phase IV of Lower Road

72. On March 31, 1999, the County of Maui produced a report depicting appropriation and expenditures for CIP's, including Phase IV of Lower Honoapiilani Road. See Capital Improvement Projects Report, dated March 31, 1999

73. On July 7, 1999, George P. Young, P.E. Chief of the Regulatory Branch of the Department of the Army, responded to a June 29, 1999 letter from Defendant Arakawa, a partner of the land planning firm MAH. See Letter from George P. Young, P.E of the Department of the Army, dated July 7, 1999.

74. Based on information and belief, Defendant Arakawa was directly involved with, and received financial compensation for the drafting and review of a 600 page Environmental Assessment by private consultant MAH for County of Maui Phase IV of Lower Honoapiilani Road CIP.

75. On February 12, 2000, the project Engineer Austin, Tsutsumi & Associates, Inc ("ATA") produced to the County of Maui Department of Public Works a detailed set of demolition, drainage, and roadway improvement plans for Phase IV of Lower Honoapiilani Road. See Roadway Improvement Plans for Phase IV of Lower Honoapiilani Road dated February 12, 2000.

76. In February of 2000, the project engineer ATA produced to the County of Maui Department of Public Works a detailed Drainage Report and Roadway Improvement Plans for Phase IV of Lower Honoapiilani Road. See Roadway Drainage Report and Plans for Phase IV of Lower Honoapiilani Road, dated February, 2000.

77. The February 2000 Phase IV of Lower Honoapiilani Road Drainage Reports and Roadway Improvement Plans, Station 130+50 to 142+60, provided clear delineation of required underground drainage structures and inlets along roadway frontage to the underlying Anka, Inc Subdivision and the roadway entry to Hui Road E. See Page 5 of Drainage Report and Roadway Improvement Plans for the frontage to the Anka, Inc Subdivision and entry to Hui Road E.

78. On May 4, 2000, MAH provided written notice to the Chief of the Maui Police Department of the commencement of construction of the Phase IV Lower Honoapiilani Roadway Improvement project "in the spring of 2001." See letter from MAH to Thomas M. Phillips, Chief of the Maui Police Department

79. On June 30, 2000, the County of Maui produced an Engineer's Preliminary Detailed Estimate for the construction costs related to the proposed Phase IV roadway and drainage improvements. See Engineers Preliminary Detailed Estimate for Phase IV of Lower Honoapiilani Road

80. On November 2, 2000, Defendant Goode sent a memo to Engineering Divisions Chief Lloyd Lee relating to the Maui County Council Committee of the Whole's decision relating to Condemnation of the Fujiwara Property to provide for right-of-way frontage land acquisition to facilitate Phase IV of Lower Honoapiilani Road. See Memo from Defendant Goode

81. On August 17, 2001, MAH informed Planning Director John Min of the publication of public notices of the availability of Environmental Assessment and Public Hearing relating to Phase IV Lower Honoapiilani Roadway Improvement project. See MAH notice to Planning Director Min, dated August 27, 2001.

82. On August 17, 2001, Defendant Goode produced a public notice soliciting comments by September 12, 2001 on the proposed Phase IV Lower Honoapiilani Road Capital Improvement Project. ("CIP") See Defendant Goode Public Comment Notice.

83. The published notice included an estimated project cost of \$10,000,000.00 with contributions of Federal Funds through the Federal Transportation Efficiency Act for the 21<sup>st</sup> Century.

84. Based on information and belief, to acquire the \$6,400,000.00 contribution in Federal Transportation Funds for the Phase IV of Lower Honoapiilani Road CIP, the County

of Maui Department of Public Works submitted project engineering estimates and scope of work to the State of Hawaii, Department of Transportation.

85. In August of 2001, Maui Electric ('MECO') provided public notice of the August 29, 2001 public hearing relating to the Federal Environmental Assessment for Phase IV of Lower Honoapiilani Road. The notice provided a forecasted commencement of MECO construction of Phase IV Lower Honoapiilani Road in August of 2002. See MECO Fact Sheet.

86. On August 29, 2001, Defendant Arakawa, former partner of MAH and newly employed Deputy Director of Public Works for the County of Maui, presented the Phase IV roadway improvement project plans to the community of West Maui in public hearings.

87. At the August 29, 2001 public hearing, County of Maui Department of Public Works Project Engineer Joe Krueger announced Phase IV of Lower Honoapiilani Road CIP would commence construction in June or September of 2002. See Transcript of Public Hearing relating to the commencement of construction of Phase IV of the Lower Honoapiilani Road.

88. At the August 29, 2001, public hearing, written comments and concerns were solicited from citizens of West Maui and cataloged by the Department of Public Works. See Comments Received following the August 29, 2001 Public Hearing.

89. On October 24, 2002, Defendant Arakawa, acting on behalf of the County of Maui Department of Public Works, presented to Director Genevieve Salmonson, Director of the State of Hawaii Office of Environmental Quality Control, 4 copies of the Final Environmental Assessment prepared by his former land planning firm MAH. See Defendant Arakawa Letter to Director Salmonson dated October 24, 2002

90. On November 24, 2002, Plaintiff Salem sent a follow up letter to Defendant Goode requesting the status of suggested design modifications to the Phase IV of Lower Honoapiilani Road. The letter provided Plaintiff Salem's graphic solutions for vehicular

speed control, drainage outlets, and pedestrian friendly roadway frontages. See Letter to Defendant Goode, dated November 24, 2002.

91. On December 10, 2002, Defendant Goode presented to the Maui County Planning Commission a request for a Special Management Area Use Permit for the Phase IV of Lower Honoapiilani Road CIP. See Planning Commission Agenda, December 10, 2002.

92. On February 12, 2003, newly appointed Public Works Director Gilbert Coloma-Agaran responded to Plaintiff Salem's November 24, 2002 requested design modifications to Phase IV of Lower Honoapiilani Road as follows;

"A total of 10 speed tables are proposed for installation at approximately 600 fee intervals along the corridor.

It should also be noted, that to minimize right-of-way acquisition requirement and impacts to landscaping and private properties (without contravening public safety and welfare) the roadway alignment has been moved Makai as much as possible in certain areas and typical roadway section has been modified.

In lieu of steel guardrails, CRM walls or Jersey-type barriers are being reviewed as alternatives. See Letter from Director Coloma-Agaran, dated February 12, 2003.

93. On April 17, 2003, ATA engineer Kent Morimoto sent copies of Plaintiff Salem's revised roadway section designs for Phase IV of Lower Honoapiilani Road directly to Plaintiff Salem and County of Maui engineer Joe Krueger. See ATA Facsimile Coversheet, date April 17, 2003.

94. On April 21, 2003, Defendant Arakawa sent a memo to Ralph Nagamine, Development Services Administrator noting that the Engineering Division has recently received all discretionary approvals for the Lower Honoapiilani Road Phase IV roadway improvement project. See Memo of Defendant Arakawa, dated April 21, 2003.

95. On April 26, 2004, West Maui Council Member JoAnne Johnson sent a copy of the proposed 2005 County of Maui Budget depicting \$8,500,000.00 in proposed County and Federal expenditures for construction of Phase IV of Lower Honoapiilani Road. See Six Year Capital Improvement Program, April 26, 2004.

96. Based on information and belief, the Maui County Budget adopted annually by the Maui County Council over the last four decades, has never recognized or quantified current the future revenues from developer's "3 Lots or Less" subdivision agreements to offset public expenditures on CIP roadway projects throughout Maui County.

97. On November 5, 2004, project engineer ATA sent a complete ledger to the Department of Public Works depicting the large group of unresolved roadway frontage right of way land easements from private land owners along Phase IV of Lower Honoapiilani Road that were necessary for the County of Maui to commence construction. See ATA Easement Summary.

98. On July 5, 2007, during Maui County Council Public Works and Facilities Committee hearings, almost ten years after commencement of the Phase IV of Lower Honoapiilani roadway improvement project, Defendant Arakawa informed the County Council and general public that the Department of Public Works failed to acquire the necessary land frontages during the early stages of the engineering design period which prevented the County of Maui from commencing construction of the Phase IV of Lower Honoapiilani Road CIP. See Minutes to Maui County Council, July 5, 2007.

99. On August 14, 2007, Defendant Arakawa sent a letter to Plaintiff Salem stating the following;

"Thank you for your interest in our project. The Lower Honoapiilani Road improvements project is being scheduled through the Statewide Transportation Improvement Program ("STIP") process conducted by the State Department of Transportation. The project is tentatively scheduled for construction in 2011 and we are currently processing land rights and utility easement documents." See Defendant Arakawa letter dated August 14, 2007.

100. On September 18, 2009, West Maui Council Member JoAnne Johnson sent a letter to Defendant Arakawa stating it was her understanding that Phase IV of Lower Honoapiilani Road was slated to commence the following year. See Council Member Johnson letter dated September 18, 2009.



101. On May 27, 2010, Defendant Arakawa sent a "Notice of Intent to Collect" to property owners along Phase IV of Lower Honoapiilani Road for their pro rata share of monies owned on roadway improvements in accordance with the recorded "3 Lots or Less" Subdivision Agreements. Defendant Arakawa informed the Phase IV property owners that the County of Maui is seeking to commence construction in calendar year 2012. See Letter from Defendant Arakawa, dated May 27, 2010.

102. On March 20, 2011 Mayor Alan Arakawa of the County of Maui provided notice in the Maui News of \$9.5 million dollars being allocated in his 2012 budget for the construction of Phase IV of Lower Honoapiilani Road CIP. See Maui News article dated March 20, 2011

103. On March 30, 2012, Council Member Elle Cochran requested from Defendant Goode a status update for the Phase IV of Lower Honoapiilani Road CIP including a breakdown of County and Federal funds expended each year since 1998, status of land right of way acquisition, and status of governmental permitting approvals. See Letter from Council Member Elle Cochran, dated March 30, 2012.

104. On April 16, 2012, Defendant Goode responded to Council Member Elle Cochran's March 30, 2012 letter as follows;

1. Funds Appropriated 1998 to 2012 – 7,849,000.00
2. Phase IV CIP expenditures from 1998 to 2012 - \$1,146,710.48.
3. 34 Easements and land frontage parcels need to be acquired. 27 have accepted offers.

Due to outstanding legal issues surrounding all agreements executed in connection with the project area; privacy issues for the affected land owners; and ongoing negotiations, the Department is constrained from providing further detail.

4. List of agency approvals attached. All agency approvals granted during 2003-2006 have expired.
5. The Department is considering re scoping the project. Until a final design is complete the Department is constrained from providing further detail which would only be speculative at this point. Anticipated challenges include: funding, community support

and acquisition of clear title to required land interests without resorting to eminent domain proceedings. See Goode Letter April 16, 2012.

105. On May 18, 2012, Council Member Elle Cochran sent a follow up letter to Defendant Goode's April 16, 2012 letter requesting further explanation regarding Phase IV of Lower Honoapiilani CIP as the follows;

"Please explain the reasoning behind the Department's consideration to re-scope the subject project.

If the Department intends to change the scope of this project, will public hearings be held to gather community input?" See Council Member Cochran letter dated May 3, 2012.

106. On June 4, 2012, Defendant Goode provided a status update to Council Member Elle Cochran on the Phase IV Lower Honoapiilani Road improvement project.

"At this point we are holding off on the redesign of Lower Honoapiilani Road Phase IV and working on the Kahananu Bridge portion of the project only. The previous design for Lower Honoapiilani Road Phase IV had been permitted and was ready to go with the main exception being land acquisition. So we are proceeding with completing, and working with owners that have questions regarding our proposed acquisitions." See Goode Letter June 4, 2012.

107. On June 12, 2012, Plaintiff Salem sent a letter to Defendant Goode requesting clarification on why the previously approved engineering plans for Phase IV of Lower Honoapiilani Road CIP was under redesign consideration. Defendant Goode did not respond Plaintiff Salem's letter. See Plaintiff letter to Defendant Goode, date June 12, 2012.

108. On August 6, 2014, the State of Hawaii Department of Transportation held a public hearing relating to 200 million dollars in funding for multiple roadway CIP's throughout the County of Maui. The funds, provided through the Statewide Transportation Improvement Program, ("STIP") were allocated for fiscal years 2015-2018. See State of Hawaii Department of Transportation Notice of Public Hearing

109. The funding ledger includes MC-19, Phase IV of Lower Honoapiilani Road (Route 3080, MP 2 MP 3.4) with an Estimated Project Cost by the County of Maui of \$16,000,000.00, \$6,000,000.00 above the costs for the previously approved and permitted roadway improvement project. See STIP Project Ledger

110. Based on information and belief, Defendant Goode and Defendant Arakawa's failure to obtain the necessary roadway easements and right of way dedications along Phase IV of Lower Honoapiilani Road has prolonged a County of Maui CIP to a time frame now exceeding over 20 years.

111. As further evidenced herein, the negligent administration and irresponsible multiple false public notices of commencement of construction of the Phase IV of Lower Honoapiilani CIP by Defendant Goode and Defendant Arakawa, has caused an extreme waste of public funds and unforeseen devastating consequences to Plaintiff Salem and his family.

**D. History of Uncollected and Unaccounted for Developer's financial obligations.**

112. Defendant Corporation Counsel, Defendant Wong, Defendant Goode, and Defendant Arakawa, have concealed from the public and the Maui County Council thousands of developer contracts and recorded subdivision agreements throughout the County of Maui executed by Defendant Corporation Counsel over the last 40 years.

113. The developer contractual agreements, commonly known as "3 Lots or Less Subdivision Agreements", were adopted by the County of Maui Council on May 3, 1974, as a one-time deferral of developers financial expense of roadway, drainage, and utility improvements along the frontages of "3 Lots or Less" subdivisions. See Minutes of the Council of the County of Maui – May 3, 1974

114. The open ended "3 Lots or Less" Subdivision Agreements, with no adopted formula or value for assessment to developers or their heirs in interest, executed by Defendant Corporation Counsel on behalf of private developers in accordance with Title 18.20.040 of the Maui County Code, are recorded by Defendant Corporation Counsel in the Bureau of Conveyances as an open ended encumbrance in senior position on the title of the resulting 3 parcels of land.

115. Maui County Code, 18.020.040, amended by Bill #34 in 1990, stated as follows;

"Improvements to existing streets may be deferred for a subdivision containing 3 Lots or Less, provided sub-divider or owner, their heirs, executors for assigns agree to pay their pro rata share of the cost of road improvements pursuant to the terms of the ordinance authorizing said improvements by the County or to a formula determined by the County.." See Maui County Code Title 18.20.040

116. Maui County Charter Section 3-6. Powers of Council, states as follows;

"The council shall be the legislative body of the county. Without limitation of the foregoing grant or of other powers given it by this charter, the council shall have the power:

1. To legislate taxes, rates, fees, assessments and special assessments and to borrow money, subject to the limitations provided by law and this charter. See Maui County Charter 3-6.

117. Maui County Charter, Section 9-7. Restrictions on Budget and Capital Program states as follows;

3. Unless otherwise specifically provided for in this charter, all fees, rates, assessments and taxes imposed by the county shall be set in the annual budget. See Maui County Charter 9-7.

118. Pursuant to Title 18.20.040 B. of the Maui County Code, developers of subdivisions of 4 lots or more are required by ordinance to complete full engineering design and construction of roadway, drainage, and utility improvements along subdivision frontages to address the public impacts and increased density caused by the developer's land division.

119. In late 2001, during the final stages of commencement of County of Maui CIP Phase IV of Lower Honoapillani Road, (STP-3080(8)) Plaintiff Salem discovered that no records or assessment rolls of the developer's "3 Lots or Less" subdivisions agreements executed throughout Maui County by Defendant Corporation Counsel were being kept by Defendant Corporation Council, Defendant Goode, or the County of Maui Department of Finance.

120. In 2001, the Maui County Council Adopted Ordinance 2963, Bill No. 41, Fiscal Year 2002 Budget including South Kihei Capital Improvement appropriations for South Kihei Road from Lipoa Street to Kulanihakoi Street. The Budget was signed my Council Members Alan Arakawa, JoAnne Johnson, and Riki Hokama. See Ordinance 3040 (2002)

121. Plaintiff Salem further discovered that no formula for assessment for collection of the developer "3 Lots or Less" subdivision agreements had ever been adopted by ordinance on the countless CIP's funded and previously approved by the Maui County Council during decades of annual budget hearings.

122. In early 2002, Plaintiff Salem provided written notice of his discovery and findings to newly elected Mayor Alan Arakawa and West Maui Council Member JoAnne Johnson. See Letter to Mayor Alan Arakawa

123. On April 24, 2002, Council Member Johnson received a letter from Defendant Goode with the following responses to Council Member JoAnne Johnson's inquiries;

Response: "*We do not have records which indicate the number of agreements that have been recorded over time.*

Response: "*The Department of Public Works and Waste Management is responsible for insuring that subsequent subdivisions construct required road improvements*" See Letter from Defendant Goode dated April 24, 2002

124. In November 24, 2002, Plaintiff Salem sent letters to Defendant Goode and newly elected Mayor Alan Arakawa, informing them that the recorded developer contractual obligations by Defendant Corporation Counsel requiring developers to pay for their subdivision impacts are not being accounted for, collected upon, and public funds are being used pay for private developers obligations. See Letter to Defendant Goode and Mayor Alan Arakawa

125. As we now know, in the years thereafter, despite notice by Plaintiff Salem of Defendant Goode of Defendant Corporation Counsel's intentional shifting developer's financial obligations through unaccounted for "3 Lots or Less" subdivision agreements was an unlawful misuse of public funds, Defendant Corporation Counsel, Defendant Goode, and Defendant Arakawa, continued writing hundreds more defective agreements with private developers and continued to conceal the developer agreements from the public and the Maui County Council.

126. On February 12, 2003, newly appointed Public Works Director Gilbert Coloma-Agaran responded to Plaintiff Salem's November 24, 2002 requested design modifications to Phase IV of Lower Honoapiilani Road as follows;

"Funds related to previous development agreements will be researched and investigated for utilization for this project. See Letter from Director Coloma-Agaran, dated February 12, 2003.

127. On April 21, 2003, Defendant Arakawa sent a memo to Ralph Nagamine, Development Services Administrator in response to Plaintiff Salem's notice of uncollected developer deferral agreements. Defendant Arakawa's memo states as follows;

"Where there is an applicable agreement, we would like DSA to proceed with the collection of the applicable pro rata share of monies of deferred frontage improvements for properties which is being undertaken by the Department. We note that the Engineering Division has recently received all discretionary approvals for its Lower Honoapiilani Road Phase IV project...

As a general policy, Engineering Division shall notify DSA of any imminent roadway improvement projects where such deferral agreement may be in force. Thereafter, DSA **shall** perform the necessary review and compliance of said agreements." See Letter from Defendant Arakawa April 21, 2003

128. On May 12, 2003, DSA Administrator Nagamine sent a memo to Engineering Division Chief Lloyd Lee, requesting the following information relating to fifteen (15) "3 Lots or Less" parcels along Phase IV of the Lower Honoapiilani Road Capital Improvement Project;

"Please calculate the pro-rata share for each parcel and send us that information. We will work with the Finance Department to collect the money." See Memo from Ralph Nagamine, April 21, 2013

129. On September 22, 2003, County of Maui Engineering Chief Lloyd Lee sent a Memo to Ralph Nagamine of Development Services Administration regarding Road Improvement Deferral Agreements along Phase IV of Lower Honoapiilani Road stating as follows;

"Thank you for sending the list of parcels affected by the deferral agreements. Please send a copy of the agreements and subdivision maps so we can calculate the pro-rata share for each parcel. Also, if there are drainage reports and traffic reports, send them to us." See Chief Lee Memo date September 22, 2003.

130. On September 29, 2003, Public Works Director Gilbert S. Coloma-Agaran wrote a letter to Plaintiff Salem responding to Plaintiff Salem's August 14, 2003 letter questioning whether all the previous developer deferral agreements along Phase IV of Lower Honoapiilani Road have been research to verify improvement obligations.

"We have identified the parcels that have obligations to participate in this Phase IV project. We are in process of contacting the appropriate person(s) regarding this. See letter from Coloma-Agaran, September 29, 2003

131. On October 1, 2003, Ralph Nagamine of Development Services Administration sent to County of Maui Engineering Chief Lloyd Lee copies of subdivision files affected by "3 Lots or Less" subdivision agreement along Phase IV of Lower Honoapiilani Road. See Memo from Ralph Nagamine dated October 1, 2003.

132. On April 15, 2004, Defendant Arakawa sent to Council Member JoAnne Johnson complete copies of the Phase IV of Lower Honoapiilani Road engineering plans, Engineers Project Cost Estimate, STIP list showing the Project, CIP Information Sheet, and Phase IV Deferral Agreements. See Letter of Transmittal from Defendant Arakawa

133. On April 23, 2004, Council Member JoAnne Johnson requested from Civil Engineer Kent Morimoto, of ATA the Honolulu, HI, engineering design firm contracted by the County of Maui for roadway improvements to Phase IV of Lower Honoapiilani Road, a complete breakdown of Engineer's Estimates of costs for the frontages of the subdivision with "3 Lots or Less" Subdivisions Agreement along Phase IV of Lower Honoapiilani Road. See Council letter dated April 23, 2004.

134. On April 30, 2004, Engineer Morimoto provided to Council Member Johnson a detailed Engineer's Estimate of each "3 Lots or Less" subdivision frontage improvements costs along with roadway section plots from the approved engineering plans for Phase IV of Lower Honoapiilani Road. See ATA Transmittal dated April 30, 2004.

135. Evidenced by ATA's licensed professional engineer Morimoto's calculations, the estimate of pro rata roadway assessments for Phase IV of Lower Honoapiilani provided to Council Member Johnson totaled \$608,785.00. See detailed ATA's Engineers Estimate, dated April 30, 2004.

136. On April 30, 2004, Defendant Arakawa had the necessary information from the project engineering ATA to provide to the Maui County Council to establish the appropriate formula for pro rata assessments for the individual "3 Lots or Less" subdivision agreements along Phase IV of Lower Honoapiilani Road.

137. On July 5, 2007, without disclosure by Defendant Corporation Council or Defendant Arakawa of the quantity of executed and recorded developer "3 Lots or Less" subdivision agreements in Maui County, the Maui County Council Public Works and Facilities Committee eliminated by ordinance the "3 Lots or Less" developer loophole in the Maui County Code. In public hearings, Defendant Arakawa made the following statement;

*"Yes the Department has, we admit, you know, we haven't done a good job as far as admitting, as far as the enforcing the deferral agreements. "See Minutes to Maui County Council hearing, July 5, 2007.*

138. The July 5, 2007, Maui County Council Public Works and Facilities Committee public hearing included comments from Council Member Riki Hokama as follows;

*"Well, I'm more concerned about whether or not we, we can lien the property, because if we can lien the property and incorporate in the next following year's property tax payment to the County then that's another way the capture the required dollar amount. And if they don't pay, we can always foreclose and sell the property as the worse scenario." See Minutes to Maui County Council hearing, July 5, 2007.*

139. The Maui County Charter, Chapter 4, Department of Finance, Section 8-4.3.9, Powers, Duties, and Functions, provides the authority to the Department of Finance as follows

*"Sell real property upon which improvement assessments or real property taxes are not paid..  
See Maui County Charter, Chapter 4, Section 8-4.3*



140. The July 5, 2007, Maui County Council Public Works and Facilities Committee public hearing included comments from attorney Cindy Young of Defendant Corporation Counsel as follows;

*"Yeah, if I could just take a moment to confer with, to look at HRS., there's a recent revision on Counties placing liens but it, I, I can't recall the provisions. If I could just take a moment to research." See Minutes to Maui County Council hearing, July 5, 2007.*

141. On August 27, 2007, Defendant Arakawa sent a letter to Plaintiff Salem stating the following;

*"Although to our knowledge, the County of Maui has not collected on Subdivision Agreements (Three Lots or Less) in the past, we are anticipating collecting upon such agreements with the Lower Honoapiilani Road Improvement Project. See Defendant Arakawa letter dated August 14, 2007.*

142. On October 12, 2009, during public hearings by the Infrastructure Management Committee Meeting of the Maui County Council, Defendant Arakawa informed the Council as follows;

*"No we don't. (Have records of how much has been deferred.) And like I mentioned when the projects do come up, our intent is we would research the stretch of road to be improved, and then we will collect on the deferral agreements. See Minutes to Maui County Council hearing, October 12, 2009.*

143. On February 1, 2010 during public hearings by the Infrastructure Management Committee Meeting of the Maui County Council, Defendant Corporation Council's attorney David Galazin informed the Council as follows;

*"These deferral agreements, and, and it depends on the specific one in issue, but general speaking these are contracts that we have with private individuals who have done development at some point.*

*It is what the County is putting in and you're going to have to pay a portion of that." See Minutes to Maui County Council hearing, February, 1, 2010.*

144. In February 19, 2010, the Maui County Council adopted ordinance 3731, a further amendment to Title 18.20.040 H. The ordinance was adopted to insure the Defendant Corporation Council and Defendant Arakawa provided property owners with Notices of Intent to collection at commence of funding for CIP as follows;

"All pre-existing conditions and roadway improvement obligations and agreements shall remain in effect and be enforced solely by the Director authored to administer the subject agreements. "Notices of Intent to Collect" **shall** be sent to property owners with outstanding obligations at the commencement of project funding, followed by collection notices to property owner at the time of right of way acquisition of County initiated or co-sponsored roadway projects." See Maui County Code Title 18.20.040 H.

145. On May 27, 2010, in accordance with Ordinance 3731, Defendant Arakawa sent a Notice of Intent to Collect to property owners along Phase IV of Lower Honoapiilani Road for their pro rata share of monies owed on roadway improvements in accordance with the recorded "3 Lots or Less" Subdivision Agreements. The letter provided the following notice;

"It should be emphasized that the final project costs have not been determined as this juncture, so it not possible to provide you with the pro rata share of the relevant to the original subdivision. It is also noted that your share would likely be determined in consultation and agreement with the other lots comprising the original subdivision. The timing of the payment is uncertain although the County is seeking to start construction sometime in calendar year 2012." See Letter from Defendant Arakawa, dated May 27, 2010.

146. On June 1, 2010, Defendant Arakawa sent a follow up letter to Plaintiff Salem informing him the **5 lots** in his subdivision were now encumbered by the "3 Lots or Less" Anka, Inc. Subdivision Agreement. See Letter from Defendant Arakawa, dated June 1, 2010.

147. On November 15, 2010, two months prior to his termination as Public Works Director, during a Maui County Council Planning Committee meeting, Milton Arakawa finally admitted to the Maui County Council the quantity of the recorded Developer "3 Lots or Less" Subdivision Deferral Agreements.

*"It's roughly around 1,700 – 1,800 of those."* See Minutes to Maui County Council hearing, November 15, 2010.

148. In response to Defendant Arakawa's disclosure, Council Member Gladys Baisa had the following response;

*"This is sobering information."* See Minutes to Maui County Council hearing, November 15, 2010.

149. In response to Defendant Arakawa's disclosure, Council Member Mike Victorino had the following response;

*"And it's astonishing that 33 years and some seven administrations and I don't know how many Councils between, that this has languished and languished, and I will take responsibility, four years, I've just heard about it. I never had any idea what the heck was going on. And now, now to have some reality set in, Mr. Chair, it's astonishing. See Minutes to Maui County Council hearing, November 15, 2010.*

150. On November 15, 2010, during the Planning Committee Meeting of the Maui County Council, Defendant Arakawa provided clarification of his position regarding property owner being required to consult with each other on their share of the amounts owed to the County of Maui as follows;

*"But the agreements that-and I have not seen all of the agreements, of course-but the agreements that I've seen all of agreements of course, they do not mention what the percentage shares... for each lot are and that's gonna be what the individual lot owners will have to haggle or negotiate over." See Minutes to Maui County Council hearing, November 15, 2010.*

151. On November 16, 2010, the Maui News published an article on the uncollected developer "3 Lots or Less" subdivision agreements. Attorney Michael Hopper of Defendant Corporation Counsel was quoted as follows;

*"Deputy Corporation Counsel Michael Hopper said the County of Maui may need to craft laws in order to collect fees and also determine if the subdivision developer or homeowner would be responsible for a lesser amount owed."*

*"I don't see any reason why the county can't collect on those agreements. See Maui News "County Unpaid for Roadwork for Decades", November 16, 2010.*

152. On December 17, 2010, Planning Committee item PC-17: DEFFERAL AGREEMENTS FOR SUBDIVISION IMPROVEMENTS, was referred to the Council Chair for term beginning January 2, 2011. See Planning Committee Communication, dated December 17, 2010.

153. On January 9, 2012, Defendant Goode sent a letter to Elle Cochran, the Chair of the Infrastructure Management Committee for the Maui County Council, providing a

statutes update on the collection of the "3 Lots or Less" subdivision deferral agreements. The letter was signed and approved for transmittal by Mayor Alan Arakawa and stated the following;

"The statutes of the deferral agreements is that we, through our Development Services Administration, have completed cataloging all known deferral agreements in the County of Maui.

Engineering Division has begun the process of identifying which deferral agreements are relevant to the Lower Honoapillani Road Phase IV improvements. This process may be more time consuming than originally contemplated as some of the tax map keys that were originally encumbered with the agreements have further subdivided, or otherwise had their tax map key changed.

Once we have identified which agreements are applicable, we will work with Department of Finance and Corporation Counsel to arrive at the fair calculation of the costs contemplated in the agreements, and then notify the affected land owners of their **required** contributions.

Once land owners have contributed, the deferral agreements can be expunged as an encumbrance to their title". See Defendant Goode letter dated January 9, 2012.

154. On March 30, 2012, Council Member Elle Cochran sent a follow letter to Defendant Goode's January 9, 2012 letter stating the following;

"In your letter dated January 9, 2012, it states that Development Services Administration has completed cataloging all know deferral agreements in Maui County. These deferral agreements represent a major revenue that is continuously overlooked each year. In an attempt to maintain compliance with the responsibilities established in the Charter of the County of Maui, Article 9, I respectfully ask your response to the following requests.

155. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 9: Financial Procedures, provides structure and procedures for preparation, submission, and funding of the annual County of Maui Budget and Capital Improvement Programs as follows;

"Section 9-3.1. The budget shall present a complete financial plan for the operations of the county and it's departments for ensuing fiscal year, showing all county funds on whether encumbered or unencumbered and estimated reserves and revenues. It shall be set up as provided by the council after consultation with the Mayor.

Section 9-6.c. The capital improvements proposed for five (5) years next succeeding the ensuing fiscal year, together with the method of financing it.

Section 9-7.3. Unless otherwise specifically provided for in this chapter, all fees, rates, assessments, and taxes imposed by the county shall be set in the annual budget.” See Maui County Charter, Article 9

156. On April 16, 2012, Defendant Goode sent a follow letter to Council Member Elle Cochran’s March 30, 2012 letter relating to Deferral Assessments as they Relate to Budget Revenues - Fees Rates, Assessments and Taxes, stating the following;

“We are in receipt of your letter dated March 30, 2012 regarding the above-referenced subject. Upon review, we are able to offer the following responses corresponding to each item in your letter.

1. A Complete catalog of all deferral agreements island wide, along with recorded agreements.
2. A list of roadway projects, both ongoing and proposed for the next five years, and an estimate of revenues from properties and deferral agreements located within each respective roadway project area.

The estimated revenues are based on the lineal feet of property fronting the County roadway. A typical deferral agreement does not specify the exact methodology for collecting these costs.

1. South Kihei Road – A total of six parcel may be affected by deferral agreements. The six parcels add up to 345 lineal feet of roadway frontage for a total of \$86,250 of potential revenue.
2. Waiko Road – No Deferral Agreements
3. Lower Honoapiilani Road – This project has already been addressed in separate correspondence and currently under review.” See Defendant Goode letter dated March 30, 2012.

157. On April 19, 2012, during Maui County Council hearings, Defendant Goode acknowledged his obligations to account for and collect upon developers deferred financial obligation as follows;

*But it’s our job, I feel our Department’s job to find those deferral agreements and make people accountable for what they agreed to do. So we will figure it out and we will work to, you know, find those and make sure that those monies come in when we do projects in those areas. ”See Minutes to Maui County Council meeting April 19, 2012.*

158. On May 18, 2012, Council Member Elle Cochran sent a follow letter to Defendant Goode’s April 16, 2012 letter stating the following;

"It was stated in your response letter that the current cost for roadway frontage improvements is estimated at \$250 per lineal foot of property fronting the County Roadway.

1. Please provide explanation of how this value was derived. If applicable, please included references from recent improvement projects to support this cost derivation.
2. Please provide confirmation as to whether the Department has quantified the amount of roadway frontage for each deferral agreement that has been cataloged.

During the Budget and Finance Committee Meeting of April 19, 2012, you had stated that there exists instances where deferral agreements encumbers more than 3 lots.

3. Please provide confirmation as to whether the Department has identified which deferral agreements now encumber more than 3 lots. See letter from Council Member Cochran dated May 18, 2012.

159. On June 4, 2012, Defendant Goode sent a follow letter to Council Member Elle Cochran's May 18, 2012, letter regarding Deferral Assessments as they Relate to Budget Revenues - Fees Rates, Assessments and Taxes, stating the following;

"This is in response to your May 18, 2012 follow-up letter to our previous letter regarding deferral agreements.

After our meeting with Corporation Counsel on this issue, we are unable to respond at this time on the matter as we are 1) researching the applicability of certain agreements on the ability to seek compensation, and 2) working out a formula for assessment for compensation on certain agreements."

Rest assured we (Department of Public Works and Corporation Counsel) are actively working on this issue as our first project (Kahananui Bridge Project) has a few parcels that affected by the above two items that are still being researched. See Defendant Goode letter dated June 4, 2012.

160. On January 16, 2013, Maui Time Magazine published a cover story "Unpaid Debts – Will the County of Maui ever collect it's Deferral Agreements?" Defendant Goode made the following public statements;

*"The Department of Public Works is going ahead with deferral agreements where applicable, and not going ahead when nothing is going on. When they come up, I'm guessing they will get rectified.*

*When the County comes in and does a project, then we would exercise the agreements. We are coming up on our first project now where we'd send out a letter to those with deferral agreements. The project, Goode explained, is the Lower Honoapiilani Road Phase IV development that affects Salem.*

*As for Salem's "Fairness Bill", Goode said that the County Corporation Counsel office said it wasn't legal." See Maui Time, January 16, 2013*

161. On March 22, 2014, Defendant Goode wrote a Viewpoint story published in the Maui News with statements as follows;

"If the sub divider elected to defer the improvements, he/she would be required to compensate the County of Maui for the cost of the improvements when performed by the County.

Many properties in Maui County have recorded agreements against their property for adjacent roadway improvements that were deferred by the original sub dividers, as allowed by ordinance. The recorded agreements make the clear that the subsequent owner of the property is responsible for the deferred improvements." See Viewpoint, March 22, 2014.

162. On October 27, 2014, the State of Hawaii Department of Transportation Improvement Program approved 200 million dollars in funding for roadway Capital Improvement Projects throughout the County of Maui. The funds, provided through the Statewide Transportation Improvement Program (STIP) are allocated for funding in fiscal years 2015-2018. See Statewide Transportation Program Fiscal Years 2015-2018.

163. Based on information and belief, prior to the request for State of Hawaii funding submission cutoff date of February 7, 2014, Defendant Goode provided the individual CIP project engineering estimates in accordance with the STIP program criteria to obtain the 2015-2018 Federal funding.

164. Based on information and belief, Defendant Goode has the necessary engineering information in his possession to issue the commencement of funding County Ordinance Title 18.020.020 H. "Notices of Intent to Collect" to property owners throughout the County of Maui who are obligated to pay their pro rata share of the approved 2015-2018 Capital Improvement Projects.

165. For almost four decades, Defendant Corporation Counsel has encumbered thousands of Maui County property titles, including Plaintiff Salem's, with an undefined open ended encumbrance in senior position on their title report that obligates property

owners to pay for and unknown amount of the original developer's "deferred" financial obligations.

166. Based on information and belief, Defendant Goode and Defendant Corporation Council has authored and executed, and failed to account for, deferral agreements requiring pro rata contributions from developers for other forms of public improvements along the frontages of residential and commercial developments. See County of Maui Agreement Deferring Placement of Utilities Underground

167. Based on information and belief, millions of dollars in public funds have been used by the County of Maui to pay for the entire cost of private developer's roadway, drainage mitigations, utility improvements, and land division impacts throughout Maui County over the last four decades.

168. As evidenced herein, in accordance with the Maui County Charter, Section 9-6.c., on March 30, 2012, Defendant Goode provided to Council Member Elle Cochran a valuation for anticipated revenues for deferred roadway frontage improvements along Phase IV of Kihei Road of \$250.00 a lineal foot.

169. The Maui County Charter, Chapter 4, Department of Finance, Section 8-4.3.12, Powers, Duties, and Functions, provides the authority to the Department of Finance as follows

"Review Assessment rolls for accessible public improvements prior to approval by the counsel and issue bills therefor after such approval has been granted. See Maui County Charter, Chapter 4, Section 8-4.12

170. Based on information and belief, Defendant Goode and the Department of Finance had the necessary engineering estimates and rolls of "3 Lots or Less" subdivision agreements in their possession to adopt by ordinance through the Maui County Council's Budget process a formula for assessment of the pro rata amounts owed on the developer "3 Lot or Less" subdivision agreements for property owners affected by the approved 2015-2018 Capital Improvement Projects.



**A. Defendant Corporation Counsel's obstruction of assessment legislation.**

171. Plaintiff Salem is a former executive assistant to the Maui County Council under the Chair of Planning with extensive professional resume in land planning, roadway engineering design and construction, and residential subdivision design and development.

172. In early 2011, newly elected Mayor Alan Arakawa instructed Plaintiff Salem and Department of Transportation Director JoAnne Johnson Winer to work with attorney Ed Kushi of Defendant Corporation Counsel to establish by ordinance a prudent and fair method and formula of assessment and collection of the developer "3 Lots or Less" subdivision agreements.

173. Plaintiff Salem engaged the professional services of Willdan Financial Services, a professional engineering, geotechnical, and environmental consulting firm, to provide roadway assessment studies to the County of Maui.

174. On March 21, 2011, a Willdan Financial Services Proposal to Provide Assessment and Engineering Services for Phase IV of Lower Honoapiilani Road was sent to Department of Transportation Director JoAnne Johnson along with a Statement of Professional Qualifications. The proposal included the following professional assessment services;

Task 1: Review Development Agreements, Studies, and Existing Legislation.

Task 2: Prepare Parcel Database and Boundary Map.

Task 3: Develop Benefit Analysis and Method of Appropriation

Task 4: Technical Memorandum Summarizing Assessment Analysis. See Willdan Financial Services Proposal, dated March 21, 2011

175. Beginning in 2012, Plaintiff Salem, as a private citizen, over a period of almost one year, took it upon himself to meet with the elected Members of the Maui County Council on multiple occasions to seek insight and support for the drafting of legislative to adopt

a formula of assessment and a prudent method of collection of the open ended "3 Lots or Less" subdivision deferral agreements.

176. On January 9, 2012, Mayor Alan Arakawa signed and approved for transmittal a letter from Defendant Goode to Council Member Elle Cochran, Chair of the Infrastructure Management Committee. The letter informed Council Member Cochran of the following;

"The statues of the deferral agreements is that we, through our Development Services Administration, have completed the cataloging all known deferral agreements the County of Maui.

Once we have identified which agreements are applicable, we will work with the Department of Finance and Corporation Counsel to arrive at a fair calculation of the costs contemplated in the agreements, and then notify the affected land owners of their required contributions.

Once land owners have contributed, the deferral agreements can expunged as and encumbrance from their title. See Letter from Defendant Goode, dated January 9, 2012

177. On April 5, 2012, Willdan Financial Services sent a letter of introduction to Council Member Elle Cochran along with a proposed scope of service including developing a benefit analysis and pro rata assessment allocation model for collection of roadway deferral agreements for the County of Maui. See Willdan letter to Council Member Elle Cochran, dated April 5, 2012.

178. On March 19, 2012, May 18, 2012, and July 1, 2012, Plaintiff Salem sent letters to Council Members Joseph Pontanilla, Chair of the Budget and Finance Committee for the Maui County Council, and Elle Cochran, Chair of the Infrastructure Management Committee, seeking assistance on obtaining individual copies of the "3 Lots or Less" subdivision agreements to determine which agreements are adjacent to prior and currently proposed Capital Improvement Projects. See Letters to Council Members Pontanilla and Cochran.

179. On July 26, 2012, Plaintiff Salem sent a letter to Danny Mateo, the Chair of the Maui County Council stating as follows;

"There has never been an adopted ordinance in the Maui County Code to allow the Department of Public Works to defer the developer's financial obligations more than one time.

The Department of Public Works has intentionally violated the Charter by failing to account for these subdivision agreements that are future revenues to the County of Maui. Since this bill will first address the unaccounted for revenues in the annual Budget, I am hereby requesting the bill be transmitted to Council and referred to the Budget and Finance Committee. See Letter to Danny Mateo, Chair of the Maui County Council, dated July 26, 2012

180. On October 8, 2012, Plaintiff Salem submitted a copy of the "Fairness Bill" to Chair of the County of Maui Cost of Government Commission seeking support for the Commission for the adoption of a formula for collection and assessment of the uncollected developer obligations. See letter to Frank De Rego, Chair of the Cost of Government Commission, dated October 8, 2012.

181. Plaintiff Salem was assisted in the drafting of the "Fairness Bill" by Jordan Molina, executive assistance to Council Member Elle Cochran, Chair of the Infrastructure Management Committee of the Maui County Council.

182. On October 11, 2012, the Cost of Government Commission reviewed and discussed the "Fairness Bill" stating as follows;

"Mr. Salem is working with a current member of the County Council to develop a bill to resolve this issue fairly both for property owners and the County.

The Commissions Deputy Corporation Counsel, Scott Hanano, explained that the Office of Council Services has staff attorneys that draft bills it is only the Department of Corporation Counsel that has the power to draft and approve the form and legality of bills considered by the Council.

He also commented that draft bill Mr. Salem request commission to review has not been approved by the Department of Corporation Counsel." See Cost of Government Minutes, October 11, 2012

183. On October 18, 2012, Council Member Danny Mateo, Chair of the Maui County Council, sent the "Fairness Bill" (PC-17) to Council Member Don Couch for Maui County Council Planning Committee scheduling. The proposed amendment to Title 18.20.040 of

the Maui County Code, was reviewed by Council Services of the Maui County Council prior to submission to Council Member Couch. See Council Communication October 18, 2012.

184. On November 7, 2012, Plaintiff Salem sent a follow up letter to Frank De Rego, Chair of the Cost of Government Commission. The theme and foundation of the letter is stated as follows;

“History has proven there is no place for citizens or County employees to go with their complaints or concerns relating to Corporation Counsel and decisions of appointed Directors.

The current structure of Maui County Government allows Corporation Counsel to influence ever branch of government and every citizen trying to protect their property rights and this community”. See Plaintiff Letter to Cost of Government Commission, November 7, 2012.

185. Plaintiff Salem has obtained a defaming and underhanded internal communication sent by Defendant Wong to Mayor Arakawa, Council Chair Danny Mateo, and all Members of the Maui County Council dated November 23, 2012 during the final stages of the scheduling of Plaintiff Salem’s “Fairness Bill” for public review and Maui County Council consideration. See Defendant Wong Memorandum dated November 23, 2012.

186. For reasons unexplained and yet discovered, Defendant Wong went against Mayor Alan Arakawa’s directive and obstructed Plaintiff Salem’s and Director Johnson Winer’s efforts to adopt through the legislative a formula for assessment and a method of collection of the developers “3 Lots or Less” subdivision deferral agreements.

187. Defendant Wong not only influenced and obstructed the legislative process by advising Council Member Don Couch to extinguish Plaintiff Salem’s good faith efforts to follow Mayor Arakawa’s directive, but also induced a campaign of untruthful defamatory allegations against Plaintiff Salem, a former County employee attempting to continue to serve the public interest.

188. Based on information and belief, Defendant Corporation Counsel has exhibited a pattern of obstructing citizen’s access to elected Members of the Maui County

Council when questions and concerns are raised relating to the decisions of the politically appointed Directors of the Maui County executive branch of government, and the Department of Corporation Counsel. See Corporation Counsel Letter dated November 17, 2014.

189. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 3, County Council, Section 3-6.5 provides the power and duty to the elected members of the Maui County Council to conduct investigations of any department or function of the County and subject upon which they the Council may legislate. See Maui County Charter, Article 3, Section 3-6.5.

**B. Defendant's unlawful shifting of Developers financial obligations to public.**

190. As evidenced *inter alia*, on May 18, 2012, Council Member Elle Cochran inquired with Defendant Goode on whether the Department of Public Works had identified which developer roadway improvement deferral agreements now encumber more than 3 lots. See letter from Council Member Cochran dated May 18, 2012.

191. Based on information and belief, Defendant Goode has failed, refused, and neglected to identify to the Maui County Council the subdivisions which Defendant Corporation Counsel has executed overlapping "one time" deferrals on developers financial obligations.

192. Plaintiff Salem has now obtained from dedicated public servants over 10,000 pages of the developer contractual "3 Lots or Less" subdivision deferral agreements executed by Defendant Corporation Counsel. The developer "Lots or Less" agreements are now cataloged in 21 notebooks and plotted by individual development location in Maui County on aerial Google maps. See Aerial Plots and 21 Notebooks of "3 Lots or Less" Subdivision Agreements.

193. As evidenced therein, Defendant Arakawa, Defendant Goode, and Defendant Corporation Counsel have violated the ordinances adopted by the Maui County Council by unlawfully executing overlapping one time "3 Lots or Less" subdivision deferral

agreements on the same parent parcels of land thru out Maui County including the Plaintiff's subdivision.

194. Undeniably, Defendant Public Works Directors Arakawa and Goode, and Defendant Corporation Counsel, have violated the ordinances adopted by the Maui County Council by intentionally assisting developers in circumventing the Title 18.20.040 - 4 lot subdivision required roadway engineering, improvements, and environmental mitigation conditions throughout Maui County.

195. On April 19, 2012, during Maui County Council hearings, Defendant Goode admitted his direct knowledge of Defendant Corporation Counsel's "crazy" execution and recordation of unlawful overlapping developer agreements as follows;

*"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 half way up the mountain. And so there's a possibility there's going to be some deferral Agreements where theoretically there's 1,000 different owners and they each owe us \$25. I mean it's getting really crazy..." See Budget and Finance Committee Minutes, April 19, 2012*

196. On June 17, 2013, during Maui County Council Infrastructure Management Committee hearings, Defendant Goode presented a request for Dedication of Road Widening Lot for the oceanfront Waiohuli-Keokea Beach Homesteads Subdivision along South Kihei Road. See Minutes to Maui County Council Infrastructure and Environmental Management Committee, June 17, 2013.

197. The Defendant Goode request involved an illegitimate grandfathering of a "3 Lots or Less" subdivision roadway improvement deferral agreement along Phase IV of South Kihei Road, executed by Defendant Corporation Counsel on February 22, 2005. Defendant Goode stated as follows;

*"This subdivision was submitted a number of years ago and had.. It was grandfathered in as it relates to its ability to do the three lots or last subdivision agreement also know as deferral agreements. So, it means when that section of South Kihei Road, which I think is Phase IV, if I'm not mistaken" See Minutes to*

Maui County Council Infrastructure and Environmental Management  
Committee, June 17, 2013.

198. On June 25, 2013, Plaintiff Salem's Chapter 11 Bankruptcy Attorney David Cain sent a letter to the Maui County Council requesting the Members conduct an investigation into the irrefutable violations of the Maui County Code and Maui County Charter by the Defendants name herein. See Attorney Cain letter to Council Member Riki Hokama, Chair of Policy and Intergovernmental Affairs Committee, dated June 25, 2013.

199. On July 5, 2013, the Maui County Council Infrastructure and Environmental Management Committee adopted by resolution the dedication of the frontage land of Lot 2-A-2-D of the Waiohuli-Keikea Beach Homesteads "3 Lots or Less" subdivision along Phase IV of South Kihei Road. See Maui County Committee Report 13-72.

200. On August 2, 2013, Council Member Riki Hokama transmitted to the members of the Maui County Council the Attorney Cain communication relating to a request for investigation into the overlapping subdivision deferral agreement. See County of Maui Council Regular Meeting Communication NO. 13-238, dated August 2, 2013

201. On November 19, 2013 during the Maui County Council Infrastructure and Environmental Management Committee meeting, the subject of the deferral of developer subdivision requirements was addressed by attorney Council Member Don S. Guzman has follows;

*"And when you stated previously, you mentioned cost assessments are being deferred. That is a concern to me. What kind of cost of assessment is being deferred? Things, I mean those are questions that I have in mind because is it something that the developer should have done and now we're taking it over and later on we absorb the cost?"*

See Minutes to Maui County Council Infrastructure and Environmental Management Committee, November 13, 2013.

202. On February 2, 2014, after the receipt and plotting of the 10,000 pages of individual developer "3 Lots or Less" Subdivision Agreements, Plaintiff Salem sent a letter to attorney Michael Hopper of Defendant Corporation Counsel stating as follows;

“Since 1974, the Maui County Code required subdivisions of more than 4 lots to install full roadway and drainage improvements to their subdivision frontages. The original oceanfront parent parcel along South Kihei Road has been subdivided 3 times resulting in 6 oceanfront parcels. Three separate overlapping one time “3 Lots or Less” subdivision deferral agreements have been drafted and recorded by Corporation Counsel.

If history repeats itself, County and Federal taxpayer funds will be used to pay for oceanfront developer’s subdivision entitlement obligations along Phase IV of South Kihei Road.” See Letter to Attorney Michael Hopper of Department of Corporation Counsel, dated February 2, 2014.

203. Evidence now proves that Defendant Corporation Council, Defendant Arakawa, and Defendant Goode, along with their predecessor Directors’ of the Department of Public Works, have expanded the exploitation of the “3 Lots or Less” subdivision deferral agreements to large residential subdivisions wherein each single family home in the development is now encumbered with a “3 Lots or Less” subdivision agreement. See A&B Subdivision SF-7 - 55.871 Acres (LUCA File No. 2.1860)

204. Evidence now proves that Defendant Corporation Council, Defendant Arakawa, and Defendant Goode, along with their predecessor Directors’ of the Department of Public Works, have expanded the exploitation of the “3 Lots or Less” subdivision deferral agreements to commercial and industrial developments throughout Maui County. See Lipoa Land, LLC and Trans Warehouse Associates (LUCA File No, 3.2036)

205. Evidence further proves that Defendant Goode and Defendant Arakawa have also exploited the one time exemption for developer’s payment of Park Fees for subdivisions, and overlapping subdivisions, containing “3 Lots or Less”, throughout Maui County. See Maui County Code, Title 18.16.320I.2.

206. On December 2, 2013, Plaintiff Salem sent a letter to Defendant Goode documenting the confirmed findings of the Department of Parks and Recreation that no records of Park Fee payments or assessments exist in the two unlawful overlapping re subdivisions of the oceanfront “3 Lots or Less” subdivision file #3.1206. See Plaintiff Salem letter to Defendant Goode, dated December 2, 2013.



207. Evidenced by the "History of Uncollected Developer Agreements", in direct violation of the Maui County Charter, Defendant's Corporation Counsel, Defendant Goode, and Defendant Arakawa, by and through the continuous execution of "3 Lots or Less" subdivision agreements, and overlapping "3 Lots or Less" Subdivision Agreements have knowingly violated the procedures and policies established by ordinance for the County of Maui to incur and to pay for millions of dollars of private developers financial obligations. See "History of Uncollected Developer Agreements".

208. As evidenced herein, Defendant Corporation Counsel has failed to serve the public interest by taking lawful corrective action or enforcement to address the multiple admissions of violations of the provisions of the Maui County Code and the Maui County Charter by Defendant Goode and Defendant Arakawa, including the multiple Defendant violations in Plaintiff Salem's subdivision which is direct and proximate cause of Plaintiff Salem being harmed and his damages.

**C. Defendant Corporation Counsel's concealment of evidence and public documents.**

209. In 2001, Plaintiff Salem discovered that unknown quantities of developer's "3 Lots or Less" subdivision deferral agreements executed throughout Maui County by Corp Counsel were unaccounted for by Corp Counsel and Defendant Goode.

210. Since 2001, Corp Counsel has obstructed every public and Maui County Council Member request and demand for complete production of all forms and types of developer deferral and assessment agreements.

211. The Maui County Charter, Article 13, Section 13-9 states as follows;

Section 13-9: All books and records of every department shall be open to inspection of any person at any time during business hours, except as other provided by law. See Maui County Charter, Article 13, Section 13-9.

212. On November 14, 2012, to facilitate the adoption of legislation for assessment of a fair formula of collection of the developer obligations, Plaintiff Salem once

again submitted a formal Request for Inspection of Public Documents to the Department of Public Works including requests for copies of ledgers and GIS maps depicting parcels of land throughout Maui County encumbered by "3 Lots or Less" Subdivision Agreements. See Request for Inspection of Public Documents.

213. On December 18, 2012, the Department of Public Works **denied** Plaintiff Salem's request for the public documents claiming a "Deliberate Process Privilege / Frustration of a Legitimate Government Function". See Written Acknowledgment to Requester dated December 18, 2012.

214. In June of 2014, Corp Counsel obstructed and refused to honor Rule 2004 Subpoenas issued in the United States Bankruptcy Court for production of complete copies of the uncollected developer contractual agreements during Plaintiff's Salem's Chapter 11 Bankruptcy. See Rule 2004 Subpoenas served upon Defendant Corporation Counsel.

215. As will be proven at trial, Defendant Corporation Counsel's concealment of public documents during Defendant's 2014 Chapter 11 Petition are the direct and proximate cause of irreparable harm and damages to Plaintiff Salem and his family.

216. As of the date of this complaint, the degree of malfeasance, misfeasance, and nonfeasance by the Defendants involving violations of the Maui County Code and the Maui County Charter have as yet to be quantified and fully discovered.

**D. Defendant's unlawful and damaging infringement of Plaintiff's property title.**

217. As evidenced herein, in accordance with Maui County Code Title 18.20.040 H, adopted by the Maui County Council on May 27, 2010, Defendant Arakawa sent via US Mail, an open ended "Notice of Intent to Collect" to property owners along Phase IV of Lower Honoapiilani Road for their pro rata share of monies owed on roadway improvements in accordance with the recorded "3 Lots or Less" Subdivision Agreements. See Letter from Defendant Arakawa, dated May 27, 2010.

218. The Court is respectfully asked to take Judicial Notice of the fact the May 10, 2010, Notice of Intent to Collect sent to Plaintiff Salem from Defendant Arakawa, states as follows;

“It should be noticed the final project costs have not been determined as of this juncture, so it not possible to provide you with the pro rata share of the costs relevant to the original subdivision.

It is also noted that your share would likely be determined in consultation and agreement with other lots comprising the original subdivision” See Defendant Arakawa Notice of Intent to Collect, dated May 27, 2010

219. As evidence herein, the original Anka Inc subdivision contained “3 Lots or Less”, Lot 48A, Lot 48B, and Lot 48C. See Anka, Inc subdivision map.

220. On June 1, 2010, Defendant Arakawa sent a follow up letter via US Mail to Plaintiff Salem informing him that 5 parcels were now bound by the Anka, Inc “3 Lots or Less” subdivision deferral agreement, including the 3 parcels created by the re subdivision of Lot 48A, resulting in Lot 48A-1, Lot 48 A-2, and Lot 48A-3. See Letter from Defendant Arakawa, dated June 1, 2010.

221. As evidenced herein, on November 15, 2010, Defendant Arakawa informed the Maui County Council Planning Committee of the following;

“Yes. And again, it’s going to be between the owners of the original 3 lots for them to figure out who pays what portion of County tab. And that’s what the original lot owners will have to haggle or negotiate over.

But I don’t believe, or the Public Works Director has the authority to now to basically determine what share would be because the preexisting agreements do not mention anything of the sort.” See Planning Committee Minutes, November 15, 2010

222. The November 15, 2010 public statement by Defendant Arakawa contradicts Defendant Arakawa’s public statement to the Maui County Council Infrastructure Management Committee on February 1, 2010 as follows;

“So the County would have to determine what the pro rata share would be.” See Minutes to Infrastructure Management Committee, February 1, 2010

223. As evidenced herein, the preexisting "3 Lots or Less" Subdivision Agreement recorded on Plaintiff Salem's Lot 48C property states as follows;

"Improvements to existing streets may be deferred for a subdivision containing 3 Lots or Less, provided sub-divider or owner, their heirs, executors for assigns agree to pay their pro rata share of the cost of road improvements pursuant to the terms of the ordinance authorizing said improvements by the County or to a formula determined by the County." See Subdivision Agreement, 3 Lots or Less, recorded November 7, 2013, Maui County Code Title 18.20.040

224. On January 15, 2011, Defendant Salem entered escrow with Old Republic Title and Escrow for the sale of the Hui Road property. (Escrow No. 6827002856) In accordance with Section C-12 of the Hawaii Association of Realtors purchase and sale agreement, Plaintiff Salem disclosed to the buyer the "Notice of Intent to Collect" mailed to Phase IV property owners by Defendant Arakawa. See Hawaii Association of Realtors Purchase and Sale Agreement, Section C-12, signed February 2, 2011

225. On February 3, 2011, Old Republic Title and Escrow sent Defendant Corporation Counsel a Request for Payoff of Lien or Judgment to obtain a pro rata payoff amount for the County of Maui "3 Lots or Less" subdivision agreement lien on Plaintiff Salem's property. See Request for Payoff of Lien or Judgment, dated February 3, 2011.

226. On February 24, 2011, Old Republic Title and Escrow Officer Connie Stevenson sent a communication directly to Defendant Wong as follows;

"On February 7, 2011 a request for figures to pay off an open Subdivision Agreement (3 Lots or Less) for TMK (2) 4-3-015055 was delivered to your office. I have spoken with Angela Andrette twice since then and she is aware the seller of the property is anxious to have this agreement paid off for his property or removed from his title so he can issue title to his buyer free and clear of this potential lien.

I have been now been asked by the seller to communication in writing. So I am requesting a statues on the demand for payment or if the County will be issuing a partial release of agreement for this parcel with a zero demand." See Old Republic communication, dated February 24, 2011.

227. Corp Counsel failed, refused, and neglected to respond to Old Republic Title and Escrow's request to facilitate Plaintiff Salem's good faith attempt to pay his "alleged" pro rate

share of the noticed collection of the roadway improvement costs associated with the Phase IV of Lower Honoapiilani Road "3 Lots or Less" subdivision agreement.

228. On February 21, 2011, Prudential Maui Realtors Agent Lawrence Carnicelli sent a letter to Old Republic Title and Escrow Officer Connie Stevenson as follows;

"Based on the professional opinions of two appraisers that have determined this property cannot be assessed due to the open ended County encumbrance, unfortunately we are limited solely to all cash buyers that do not require bank loans or appraisals. See Prudential Maui Realtors letter dated February 21, 2011.

229. Attached hereto, is copy of a letter from Hawaii Certified Residential Appraiser Blue Hawaii Consulting (#CRA-690) informing Plaintiff Salem that without a committed dollar amount owed on the senior County of Maui encumbrance on the Hui Road home, the property is not appraisable. See letter to Plaintiff Salem from Blue Hawaii Consulting.

230. Attached hereto, is a copy of Plaintiff Salem's letter to Ted Yamamura, appraiser for ACM Consultants, Inc., confirming his denial of a requested appraisal of the 8 Hui Road E property due to the open ended County of Maui encumbrance recorded in senior position on the subject property. See Plaintiff Salem letter to ACM Consultants, Inc. dated November 24, 2010.

231. On March 25, 2011, a notice of cancelation of the Hui Road escrow was sent to Plaintiff Salem from Old Republic Title and Escrow. See Old Republic Title and Escrow Notice of Cancelation dated March 25, 2011.

232. On August 30, 2011, Whaler's Realty wrote a letter to Plaintiff Salem relating to their review of the Hui Road title report in preparation for a real estate broker listing of Plaintiff's Salem's Hui Road property as follows;

"Because of the unknown financial obligations to any owner of this property, this subdivision agreement on your title provides poses an unexplainable disclosure issue and clouds the title of the subject property.

Regretfully, we must decline the opportunity to assist you with the sale of your property." See Whalers Realty letter dated August 30, 2011.

233. In May of 2014, during the a judicial foreclosure of the Plaintiff's Hui Road home, the tenant occupying the Hui Road home approached Plaintiff Salem with an offer to purchase the home for his family.

234. To facilitate the sale and escrow, on May 13 and June 24, 2014, escrow Office Rena Day of First American Title Company sent to Defendant Corporation Counsel a Request for Payoff Amount of the pro rata share of Plaintiff Salem's "3 Lots or Less" roadway improvement costs associated with Phase IV of Lower Honoapiilani Road. See First American Title Request for Payoff Amount

235. As evidenced herein, on the date of "Notice of Intent to Collect", Defendant Arakawa and the Maui County Council had in their possession complete Phase IV of Lower Honoapillani Road engineering plans and pro rata roadway construction estimates provided to the Department of Public Works, and Council Member JoAnne Johnson, by the Phase IV project engineer, ATA, for each individual "3 Lots or Less" subdivision frontage along Phase IV.

236. As evidence herein, based on information and belief, Defendant Goode completed and submitted the individual CIP project engineering cost estimates prior to the submission cutoff date of February 7, 2014, in accordance with the STIP program criteria to obtain \$16,000,000.00 in funding for Phase IV of Lower Honoapiilani Road during the 2015-1018 Federal funding period.

237. As evidenced herein, on April 16, 2012, Defendant Goode provided to Maui County Council Member Elle Cochran a current roadway calculation for the anticipated assessment amount of \$250.00 per lineal foot for "3 Lots or Less" subdivisions along Phase IV of South Kihei Road.

238. On June 30, 2014, attorney Michael Hopper of Defendant Corporation Counsel sent a letter and discreditable Declaration from Defendant Goode to Rena Day, Escrow Officer for First American Title stating as follows;

"In response to your letters of May 13, 2014, and June 24, 2014, attached please find an affidavit of David Goode provided to One West Bank, FSB proceeding. As the affidavit makes clear there is currently no pay off demand for the subdivision agreement recorded on the identified property.

Should the County perform the improvements covered by the agreement in the future, it may assess the property owner for their pro rata share in accordance with the agreement." See letter from attorney Michael Hopper, dated June 30, 2014.

239. The Declaration of Defendant Goode attached to attorney Hopper's letter dated June 30, 2014, declared under Penalty of Perjury as follows;

"The County of Maui, may or may not, elect to assert a monetary assessment against the properties at some point in the future".

240. Since 2001, Defendant Arakawa, Defendant Goode, and Corp Counsel have testified before the Maui County Council acknowledging their failure to keep records and track during annual budget hearings the revenues owed to the County of Maui from thousands of developer "3 Lots or Less" contractual subdivision agreements.

241. As evidenced herein, Defendant Arakawa, Defendant Goode, and Defendant Corporation Council have confirmed in public testimony their administrative obligations in Title 18.20.040 H of the Maui County Code adopted by the Maui County Council to notice and collect upon the "3 Lots or Less" developer agreements.

242. As evidenced herein, on January 9, 2012, Defendant Goode obtained the authorization from Mayor Arakawa to send a letter to Council Member Elle Cochran stating that once the Department of Finance and Corporation Counsel arrived at a fair calculation of the costs contemplated in the agreements the affect land owners would be notified of their "required contributions".

243. Under Chapter 5, Section 8-5.3, Maui County Charter, Powers, Duties, and Function of the Director of Public Works, Defendant Goode does not have the administrative authority to erase and amend ordinances adopted by the Maui County Council and govern whether the County of Maui "may or may not" collect upon developer's contractual obligations. See Maui County Charter, Section 8-5.3

244. As will be proven at trial, the damaging “*may or may not*” Declaration of Defendant Goode in June of 2014, along with the grossly negligent and, or fraudulent Notice of Intent to Collect mailed by Defendant Arakawa alerting property owners they will have “haggle” with fellow property owners, developers, and attorneys employed by Defendant Corporation to determine the pro rata costs owed to the County of Maui, are not supported by any law or ordinance adopted by the Maui County Council

**E. Defendant Corporation Counsel’s concealment of attorney conflicts of interests**

245. On July 3, 2008, the County of Maui’s Professional Services Procurement Selection Committee met to consider the procurement of outside counsel attorney Margery Bronster to assist the County of Maui in various legal matters arising out of the announced decision of Molokai Utilities, Inc., et al to cease and desist water services as of August 31, 2008. The Corporation Counsel procurement communication forwarded to the Maui County Council stated as follows;

“The Bronster firm has completed its conflict check and reports no conflicts” *See* Department of Corporation Counsel Attorney Brian Moto communication dated July 3, 2008

246. On August 8, 2008, the Maui County Council adopted Resolution 08-67, authorizing the employment of attorney Margery Bronster of the law firm Bronster & Hoshibata as special counsel to represent the County of Maui in all matters pertaining to the legal claims relating to water and wastewater public utility service on Molokai. *See* Maui County Council Resolution 08-67, April 8, 2008.

247. On December 19, 2008, the Maui County Council adopted Resolution 08-105, authorizing an additional \$200,000.00 in legal fees to Attorney Bronster above the original \$100,000.00 authorized in Resolution 08-67. *See* Maui County Council Resolution 08-105, December 19, 2008.

248. On June 3, 2010, the Defendant Corporation Counsel attorney Jane Lovell informed the Council Members that Defendant Corporation Counsel was running out of money



on the Bronster firm's contract. Attorney Bronster provided a litigation update to the Council Members including the following statement;

"Yes, we believe the contracts between the County and the Company put certain obligations on the Company that they have breached. And it's that we believe they should pay, not the consumers.

So it's important for us to fight the fight to show the utility is not there standing alone. Standing behind it is a developer who made promises to the County and we are going to pursue those promises in the Second Circuit Court action."

249. On June 18, 2010, the Maui County Council adopted Resolution 09-14, authorizing an additional \$200,000.00 in legal fees to Attorney Bronster in addition to the original \$300,000.00 authorized in Resolution 08-67 & 08-105. See Committee of the Whole communication, dated June 18, 2010.

250. On August 8, 2010, Chris Hamilton of the Maui News published an article "Costs piling up two years into Molokai water lawsuit" informing the public of the following;

"The County has already paid \$500,000.00 for former Attorney General Margery Bronster to serve as outside counsel, in addition to the time spent by County attorneys on the case." See Maui News, August 8, 2010.

251. On May 21, 2012, Defendant Corporation Counsel Attorney Jane Lovell responded to Plaintiff Salem's May 11, 2012, Request for Government Records pertaining to the procurement of Attorney Bronster along with copies of Conflicts of Interest Checks. Attorney Lovell informed Plaintiff Salem as follows;

**"Regarding conflict checks, our offices routinely reviews County's litigation databases prior to engaging outside counsel.** (emphasis Salem) In addition, prospective outside counsel are also asked to perform a conflict check based on their records. **Documents are not usually generated by this department in the course of these checks, as was the case here.** (emphasis Salem)

Therefore, we have no documents to produce in response to category number 3, above, other than the reference to (Bronster) conflict check contained in the procurement committee report itself." See letter from attorney Jane Lovell of Defendant Corporation Counsel, dated May 21, 2012

252. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 3, Section 3-6.6, provides the power and duty to

the elected members of the Maui County Counsel to retain and employ outside Counsel for any special matter presenting a real necessity for such employment. See Maui County Charter, Article 3, Section 3-6.6

253. On July 3, 2008, the date of procurement and employment of Bronster & Horshibata, and for years thereafter, attorney Bronster was representing developer Lot 48A, LLC in legal Arbitration proceedings and in the United States District Court (Civil No. 07-1-0540(3) relating to Plaintiff Salem's requests and demands for production of Lot 48A, LLC's oceanfront subdivision SMA permit, applications, engineering valuations, studies, and correspondence with the County of Maui.

254. On July 3, 2008, the date of procurement and employment of Bronster & Horshibata by Defendant Corporation Counsel, and for years thereafter, Developer Lot 48A, LLC private land planning firm and SMA Permit author and consultant MAH partner Defendant Arakawa, was also employed by the County of Maui as Director of Public Works.

255. On July 9, 2009, Plaintiff Salem issued a First Request for Production of Documents to Lot 48A, LLC's legal counsel Bronster Hoshibata in Arbitration Case No. 07-0357 including the following document requests;

8. Any and all documents constituting, referring, or relating to Lot 48A, LLC's application for a Special Management Area permit, including but not limited to all correspondence with, and approvals issued by government authorities, permits, and variances.

15. Any and all documents constituting, referring, or relating to estimates, proposals, and / or valuations of the cost of obtaining a Special Management Area Permit with regard to the Lot 48A, LLC Subdivision and / or any individual lots with the Lot 48A, LLC Subdivision.

256. In Response to the Plaintiff Salem's First Request for Production of Documents, Lot 48A, LLC's and Corp Counsel's legal counsel Bronster Hoshibata untruthfully and deceptively stated as follows;

"Respondent Lot 48A, LLC objects to this request on the grounds that it is overly broad, unduly burdensome, harassing, vague, and ambiguous and seeks documents already in possession of claimant.

Based on these objections, **Respondent will not be producing documents relating to or relating to the Special Management Area Permit.**” (emphasis Salem) See Respondent lot 48A, LLC’s Response to Claimant Christopher Salem’s First Request for Production of Documents

257. Evidenced by the attached letter from Maui County Council Member JoAnne Johnson, Corp Counsel and attorney Bronster concealed from the Maui County Council, Bronster Hoshibata’s simultaneous representation of Defendant County of Maui and Developer Lot 48A, LLC in a legal dispute with Plaintiff Salem over violations of the County of Maui’s subdivision ordinances and Shoreline Management Area (SMA) permitting, rules, and regulations. See Council Member JoAnne Johnson’s letter to Plaintiff Salem

258. Evidenced the attached letter from Maui Council Member JoAnne Johnson, the discovery of unfulfilled, expired, and intentionally concealed Lot 48A, LLC SMA permits and studies authored by Defendant Arakawa’s land planning firm MAH was made while Lot 48A, LLC’s attorney Bronster was employed by Corp Counsel.

259. As we now know, special counsel Bronster Hosibata received over a half million dollars in public funds for legal fees while employed by Defendant Corporation Counsel. As will be proven at trial, Bronster Hoshibata simultaneously received upwards to a half of million dollars in legal fees from private developer Lot 48A, LLC while employed by Defendant Corporation Counsel.

260. On February 7, 2014, Plaintiff Salem’s Chapter 11 Attorney David Cain provided notice and demand to Defendant Wong to address the financial injury to Plaintiff Salem caused by Defendant County Corp Counsel’s conflicting employment and the collective concealment of County of Maui public documents by attorney Margery Bronster, Corp Counsel, and Defendant Arakawa on behalf of developer Lot 48A, LLC. See letter to Defendant Pat Wong from attorney David Cain, dated February 7, 2014

261. In direct violation of the State of Hawaii Supreme Court Rules of Professional Conduct, Defendant Wong refuses to take corrective action to reconcile the

damages caused by Corp Counsel's professional attorney violations. Defendant Wong continues to serve the financial interests of private developer Lot 48A, LLC at the expense of the public and further injury to Plaintiff Salem and his family.

**F. History of Developer Lot 48A, LLC's Unlawful (re) Subdivision of Oceanfront Lot 48A**

262. On March 10, 2000, Anka, Inc sold oceanfront Lot 48A to developer Lot 48A LLC by Warranty Deed recorded with the Bureau of Conveyance. See J-1 - Declaration of Covenants, Conditions, and Restrictions Affecting Lot 48A, dated March 10, 2000 (Document No. 2000-032185)

263. The Warranty Deed and Anka, Inc Declarations attached thereto, were prepared by the law firm of Mancini, Welch and Rowland, LLP on behalf of Anka, Inc.

264. The Court is respectfully asked to take Judicial Notice that attorney Paul Mancini was formerly employed by Defendant County Corp Counsel.

265. The Anka, Inc. Declaration provided further development restrictions, view preservation, and specific financial protection for the underlying subdivision property owners including Plaintiff Salem's Lot 48C as follows;

"Lot 48A may be subdivided, but only upon the condition that the subdivision will NOT result in any cost or expense incurred by the owners of Lot 48B and Lot 48C of the underlying Anka, Inc Subdivision."

266. Based on information and belief, immediately thereafter, Lot 48A LLC began the re-subdivision process on Lot 48A to create Lots 48A-1, 48A-2 and 48A-3. See J-2 - Munekiyo, Arakawa, and Hiraga, Inc. ("MAH") plat of Lot 48A, LLC's re subdivision of Lot 48A.

267. At the time of the sale of Lot 48A to Lot 48A, LLC, Plaintiff Salem was in the architectural design process for his personal home of the adjacent parcel, Lot 48C.

268. Later discovered and unavailable for public viewing by Plaintiff Salem at the time, on April 6, 2000, a shoreline certification on the upper wash of waves was performed

on Lot 48A by Unemori Engineering, Inc. See J3 - Unemori, Engineering, Inc. shoreline certification dated April 6, 2000.

269. Later discovered and unavailable for public viewing by Plaintiff Salem at the time, on May 9, 2000, developer Lot 48A, LLC, sent a letter to Planning Director John Min authorizing Munekiyo, Arakawa (Milton), and Hiraga, Inc. to proceed with the preparation, filing, and processing for a Special Management Assessment (SMA) Permit for a 3 lot (re) subdivision of oceanfront parcel 48A. See J4 - Lot 48A, LLC, letter to Planning Director John Min from Developer, dated May 9, 2000.

270. As evidence herein, at the time the May 9, 2000 MAH letter of authorization was sent from developer Lot 48A, LLC to Planning Director John Min, MAH was also employed by the County of Maui Department of Public Works to complete a 600 Page Environmental Assessment for the impacts of the proposed Phase IV of Lower Honoapiilani Road engineering, roadway, and drainage improvements.

271. Based on information and belief, at the time Defendant Arakawa's MAH land planning firm was simultaneously employed by the County of Maui Department of Public Works and developer Lot 48A, LLC, MAH had in their immediate possession a detailed set of demolition, drainage reports, and roadway improvement plans for Phase IV of Lower Honoapiilani Road from the project engineer Austin, Tsutsumi & Associates, Inc. ("ATA")

272. As evidenced herein, the Phase IV of Lower Honoapiilani Road Drainage Reports and Roadway Improvement Plans, Station 130+50 to 142+60, provided clear delineation of roadway improvements, required underground drainage structures and inlets along the entire Lower Honoapiilani Road frontage to the underlying Anka, Inc Subdivision and the roadway entry to Hui Road E.

273. On June 23, 2000, County of Maui Public Works Director Charlie Jencks provided Preliminary Subdivision Approval to Warren S. Unemori Engineering, Inc. for the re subdivision of the oceanfront Lot 48A of the Mailepai Hui Partition Subdivision, TMK (2) 2-3-

015:004, LUCA File No. 4.805. See J5 - County of Maui Preliminary Subdivision Approval Letter, dated June 23, 2000

274. The Preliminary Subdivision Approval sent to the Developer Lot 48A, LLC's authorized representative Warren S. Unemori Engineering, Inc. stated the following in Condition #11;

"The one time exemption from construction of roadway improvements on existing streets (Hui Road E & Lower Honoapiilani Road) abutting subdivisions containing 3 Lots or Less **was used as part of the previous Mailepai Hui Partition subdivision** (Luca File No 4.686)

275. The Maui County Subdivision Code, adopted by the Maui County Council, Section 18.08.100 – Approval, states as follows;

(c) Approval of the preliminary plat shall indicate the Director's directive to prepare detailed drawings on the plat submitted, provided there is no change in the plan of subdivision as shown on the preliminary plant and there is full compliance with all requirements of this chapter.

276. Later discovered and unavailable to Plaintiff Salem at the time, without notice to the general public or fellow owners of the Anka, Inc 3 Lot Subdivision, on May 16, 2010, the May 11, 2000 the Lot 48A, LLC re subdivision preliminary plat was submitted by Warren S. Unemori Engineering, Inc. to the Engineering Division of the Department of Public Works for LUCA File #4.805.

277. Later discovered and unavailable for public viewing by Plaintiff Salem at the time, the Engineering redline comments and notations by the Engineer Division of the Department of Public Works on the Lot 48A, LLC May 11, 2000 preliminary subdivision plans included references to roadway improvements to Lower Honoapiilani Road and the radius return into Hui Road E. See J6 - County of Maui Engineering Division red line comments for LUCA file #4.805

278. The Preliminary Subdivision Approval sent to the Developer Lot 48A, LLC's authorized representative Warren S. Unemori Engineering, Inc stated the following in Condition #12;

"A detailed final drainage report and site specific erosion control plan shall be submitted with the construction plans for review and approval. The drainage report shall include, but not limited to, hydrologic and hydraulic calculations, and the schemes for disposal of runoff waters.

279. The Preliminary Subdivision Approval sent to the Developer Lot 48A, LLC's authorized representative Warren S. Unemori Engineering, Inc stated the following in Condition #15;

"Comply with the conditions of the Special Management Area (SMA) Minor Permit (SMA@ 2000 /0042 granted on June 6, 2000).

NOTE: Upon approval of the construction plans, the sub divider should verify with the Department of Planning to verify if a SMA Major Permit is required or if another SMA Minor Permit is required due to the additional construction work."

280. The Maui County Code Section adopted by the Maui County Council, Section 18.08.070 A. & 18.08.080 G, provides specific requirements to the engineer and applicant for information which shall be include with the submission of preliminary subdivision plat as follows;

Streets showing location, widths, proposed names, and approximate radii curves. The relationship of all streets to projected streets shown on the general plan, projected streets suggested by the Director to assure adequate traffic circulation in the area.

Improvements to be made by the developer and approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they may be check for compliance with the objectives of this chapter, State Laws, and other applicable ordinances.

Approval of the preliminary plat shall indicate the Directors directive to prepare detailed drawings on the plat submitted, provided there is no change in the plan of subdivision as shown on the preliminary plat and there is full compliance with all requirements of this chapter.

281. On June 6, 2000, Lot 48A, LLC was issued a SMA Minor Permit by the Department of Planning for Three Lot Subdivision of Lot 48A at Hui Road E and Related Subdivision Improvements at TMK: 4-3-105:004. See J7 - Department of Planning SMA Permit SM@ 2000 / 0042, dated June 6, 2000.

282. In accordance with Special Management Area Rules for the Maui Planning Commission, Sections 12-2002-12 and 12-202, the Planning Department made the following determinations based on the developer Lot 48A, LLC's SMA Permit application and representations;

1. The project is a development.
2. The projects has a valuation not in excess of \$125,000.00 (Valuation: \$91,400.00)

283. At the time of issuance the Lot 48A, LLC SMA Permit issuance, in accordance with the Rules of Planning Commission, the threshold for a SMA Major Permit, public hearings, and environment assessment was a development valuation greater than \$125,000.00

284. Later discovered and unavailable for public viewing by Plaintiff Salem at the time, on March 4, 2000, Lot 48A, LLC's engineering firm Unemori Engineering, Inc. executed and transmitted a \$91,400.00 Order of Magnitude Estimate development valuation to Lot 48A, LLC developer Tim Farrington. The transmittal stated as follows;

"Hope you're successful in convincing Planning that improvements will costs less than \$125,000.00" See J8 - Telecopier Transmittal from Warren S. Unemori Engineering, Inc, dated March 4, 2000.

285. Later discovered and unavailable for public viewing by Plaintiff Salem at the time, the Unemori Engineering, Inc. \$91,400.00 development valuation was Exhibit #6 to Defendant Arakawa's land planning firm MAH's authorized Special Management Area Permit Application and Assessment study prepared on behalf of Lot 48A, LLC in May of 2000. See J9 - MAH's Special Management Area Assessment, dated May of 2000.

286. As evidenced therein, Defendant Arakawa's May 11, 2000 MAH SMA Permit application and SMA permit assessment provided a narrative description of the proposed development improvements, anticipated impacts, shoreline certification by Warren S Unemori,



Inc., engineering plans, and construction valuations by licensed engineering firm Warren S. Unemori Engineering, Inc.

287. On June 6, 2000, Lot 48A, LLC was issued a SMA Minor Permit by the Department of Planning subject to the following conditions;

1. The construction shall be in accordance with the plans submitted on May 11, 2000.

288. As evidenced therein, Defendant's Arakawa May 11, 2000 MAH SMA Permit Application and Assessment, Section 5: Project Assessment Report: Description of the Proposed Improvements and Anticipated Impacts, stated as follows;

B. Proposed Action

Improvements proposed in connection with the subdivision include the following;

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, sidewalk and related improvements along the north side of Hui Road.

289. As evidenced therein, Defendant's Arakawa's May 11, 2000 MAH SMA permit Application and Assessment, Section 6.: Engineers Cost Estimate, provided a complete description, quantities, and unit prices for the grading, paving, and concrete curb and gutter, sidewalk, driveway apron, traffic control, and grassing of the entire roadway frontage improvements along Hui Road E and Lower Honoapiilani Road.

290. As will be proven at trial, the Defendants named herein were provided indisputable evidence that the Unemori Engineer, Inc.'s \$91,402 SMA Permit Order of Magnitude Estimate was false and deceptive with the stated intent of wishing "good luck" to the Developer in convincing the Department of Planning. Plaintiff Salem will be able to prove that the cost estimates denied the public and Plaintiff Salem their rights pursuant to Hawai'i State and Federal law, to protect both the coastal resources and violated Plaintiff Salem's personal property rights.

291. On October 9, 2009, Hunt admitted to the Maui County Council Planning Committee that the Department of Planning does not have the experience to question engineers SMA permit Order of Magnitude valuations.

“It’s difficult to question a professional engineer who is willing to put their stamp, which we look at as a stamp of professional integrity on a document.

We talked to Public Works and asked them well could you look at it, and their response was kind of rely on the engineers stamp.” See J10 - Minutes to Maui County Council Planning Committee, October 12, 2009

292. In defense of Unemori Engineering, Inc.’s professional conduct, in accordance with Condition #11 of the Department of Public Works Preliminary Subdivision Approval letter sent to the Developer Lot 48A, LLC’s authorized representative Warren S. Unemori Engineering, Inc., the MAH SMA Permit Order of Magnitude cost assessment did address the fact the one time deferral of the roadway improvements to Lower Honoapiilani Road and Hui Road E were exhausted on the underlying Anka, Inc “3 Lots or Less” subdivision and therefore was a requirement by ordinance for the Lot 48A, LLC (re) subdivision of the underlying Anka, Inc 3 Lots or Less Subdivision.

293. As evidenced herein, on May 11, 2000, Developer Hugh Farrington of Lot 48A, LLC signed, notarized, and authorized preparation, filing, and processing of Defendant Arakawa’s MAH Application for Special Management Area Assessment for the (re) Subdivision of Lot 48A. See J11 - Application for Special Management Area Assessment for the (re) Subdivision of Lot 48A, notarized dated May 11, 2000.

294. The Court is respectfully asked to take Judicial Notice of the findings expressed by attorney Galazin of Defendant County Corp Counsel on February 1, 2010, during Maui County Council Infrastructure Management Committee meeting as follows;

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

295. As evidenced herein, SMA Permit SM2 2000/0042 was signed and issued to Lot 48A, LLC by the Department of Planning subject to the MAH studies, conditions, assessments, and roadway construction and drainage mitigations along the frontages of Lower Honoapiilani Road and Hui Road E referenced in Defendant Arakawa's MAH SMA Permit Application and Assessments.

296. The Planning Commission's SMA rules and conditions, Section 12-202-24: Conflicts with other laws, states as follows;

"In case of conflict between the requirements of any other state law or County ordinance regarding the special management area, the more restrictive requirements shall (emphasis Salem) apply in furthering of this part." See J13 - Rules of County of Maui Planning Commission, Section 12-202-24

297. The Department of Planning has confirmed in writing Lot 48A, LLC's SMA Permit SM2 2000 / 0042 has expired, no amendments were approved by the Department of Planning, and no final compliance reports were submitted to the Department of Planning by Developer Lot 48A, LLC. See J14 - KIVA printout and letter from Department of Planning

298. On October 9, 2009, with Defendant Hunt present at the public meeting, Defendant Arakawa made the following statement to the Maui County Council Planning Committee;

"Mr. Chair, the second three lot subdivision was the subject of Minor Permit, if I am correct. But the Conditions of the SMA Minor Permit, I mean it would still apply. (underline and emphasis Salem) From, from our standpoint, we, we would look to the Planning Department to basically enforce those SMA Permit conditions." (underline and emphasis Salem) See J10 - Minutes to Maui County Council Planning Committee, October 12, 2009

299. As of this date of this complaint, Developer Lot 48A, LLC's remains in violation of the expired SMA Permit 2000 / 0042. Lot 48A, LLC's SMA Permit conditions, assessments, and roadway construction and drainage mitigations referenced in the \$91,402.00 Unemori Engineering, Inc. Order of Magnitude SMA Permit valuation and the signed MAH SMA Permit Application and Assessment remain incomplete.

300. Defendant Spence was been noticed in writing by Department of Transportation Director and former elected member of the Maui County Council JoAnne Johnson Winer, that Lot 48A, LLC's unfulfilled SMA Permit requires notice of noncompliance and enforcement by the Planning Department. See J15 - Letter from JoAnne Johnson Winer to Planning Director Spence

301. On August 14, 2014, Plaintiff Salem's bankruptcy attorney David Cain sent a letter to Defendant Wong warning the County of Maui of the extensive damages Plaintiff Salem would continue to suffer if Developer Lot 48A, LLC was not issued a Notice of Non Compliance. See J16 – Attorney Cain Letter to Defendant Wong

302. Despite notice from a fellow Director of the County of Maui, Defendant Wong and Defendant Spence have failed to take any legal corrective action or enforcement of Lot 48A, LLC's unfulfilled and expired SMA Permit in accordance with the adopted Special Management Area Rules of Enforcement, Section 12-202-23.

**G. Evidence of Defendant Arakawa's unlawful favors for private client Lot 48A, LLC**

303. In February of 2001, Plaintiff Salem discovered Developer Lot 48A, LLC's intentions to (re) subdivide Lot 48A into 3 developable lots without completing the roadway frontage improvements to Lower Honoapiilani Road and Hui Road E.

304. On February 6, 2001, Plaintiff Salem filed an Information Request Form with the County of Maui Department of Public Works requesting a review of Developer Lot 48A, LLC's proposed Lot 48A (re) subdivision map and subdivision conditions. See K1 – Department of Public Works Request Form.

305. As will be proven at trial, immediately upon employment with the County of Maui, on behalf of private client Lot 48A, LLC, **Defendant Arakawa concealed from the public and Plaintiff Salem** the signed MAH SMA Permit Application and Order of Magnitude

Valuation depicting the required roadway frontage improvements to Lower Honoapiilani Road and Hui Road E.

306. Evidenced by the Transmittal of Developer Hugh Farrington sent to Plaintiff Salem on March 13, 2001, Developer Lot 48A, LLC falsely represented to Plaintiff Salem that they were not obligated to construct the roadway and drainage improvements to the Hui road frontage of Plaintiff Salem's Lot 48C along Hui Road E, or along the Lower Honoapiilani Road frontages to Lot 48B or Lot 48C. See K2 – Transmittal of Hugh Farrington

307. Evidenced by the Transmittal of Developer Hugh Farrington, on March 13, 2001, Developer Lot 48A, LLC was now represented Mancini, Rowland, and Welch, the same law firm that drafted the as Anka, Inc; Covenants and Conditions insuring the further division of Lot 48A would not result in any costs to be incurred by Lot 48B or Plaintiff Salem, owner of Lot 48C.

308. On May 10, 2001, Planning Director John Min granted to Munekiyo & Hiraga, Inc a second time extension to Condition No. 3 of Lot 48A, LLC's SMA Permit SM2 2000/0042 as follows;

“3. That the construction of the subdivision improvements shall be initiated by August 31, 2001, and shall be completed within one (1) year of said initiation. “  
See Planning Director John Min letter to Munekiyo & Hiraga, Inc, dated May 10, 2001

309. The Court is respectfully asked to take Judicial Notice of the fact Defendant Arakawa is no longer a named partner of Munekiyo, Arakawa, and Hiraga, Inc on the May 10, 2001 letter from Planning Director John Min.

310. On July 19, 2001, Plaintiff Salem filed a Request for Government Records with the Planning Department for re subdivision of Lot 48A, including the following documentation;

- SMA Application - #SM220000042
- Improvement Valuation Summary

311. The Court is respectfully asked to take Judicial Notice that no documents were produced by the Department of Planning as requested by Plaintiff Salem.

312. As we now know, on July 19, 2001, the 30 Page Munekiyo, Arakawa, and Hiraga, Inc Special Management Area Assessment study, including the \$91,402.00 Unemori Engineering, Inc. Order of Magnitude Estimate prepared for Lot 48A, LLC, was missing from the County of Maui files.

313. As we now know, in direct violation of the Maui County Charter and the Maui County Code, immediately upon his employment as Deputy Director of Public Works in late 2000, Defendant Arakawa facilitated the October 31, 2001 final approvals of Lot 48A, LLC's (re) subdivision of Lot 48A in non-conformity with the Title 18 subdivision ordinances and noncompliance of the subdivision ordinances adopted by the Maui County Council and conditions of the signed and issued SMA Permit 2000 / 0042 authored by Defendant Arakawa's personal land planning firm MAH.

314. The Charter of the County of Maui, Article 8, Chapter 5, Section 8-5.2 provides the duty and function of Director of Public Works as follows;

The Director of Public Works and Environmental Management shall:

1. Administer the building, housing, and subdivision ordinances and rules there under.
2. Approve proposed subdivision plans which are in conformity with the subdivision ordinance.

315. Maui County Code, Section 18.12.070 : Technical Review, states as follows;

Final Plat shall be examined as to whether it is substantially similar to the approved Preliminary Plat.

316. Evidenced by the County of Maui's Department of Public Works subdivision approval tracking system for Lot 48A, LLC's LUCA File No. 4805, in accordance with Condition #15 of the Preliminary Subdivision Approval letter dated June 23, 2000, the May

11, 2000 roadway engineering construction plans referenced in the signed MAH SMA Permit Application were not submitted to the Planning Department See K3 – Maleipai Hui Partition Subdivision File No. 4805

317. As evidenced herein, Defendant Arakawa and MAH had direct knowledge that the roadway improvements and drainage mitigations referenced in Lot 48A, LLC's SMA Permit 2000 / 0042 and May 11, 2000 Subdivision Preliminary Plan would be become a financial obligation incurred by the County of Maui as a part of the Phase IV of Lower Honoapiilani Road CIP.

318. Defendant Arakawa, in direct violation of procedures, policies and provisions adopted by ordinance, incurred an illegal obligation for the County of Maui to pay for upwards to quarter million dollars in a private client Lot 48A, LLC's financial obligations.

319. As will be proven at trial, Defendant County Corp Counsel and Defendant Arakawa shall be held jointly and severally liable for the violations of the Maui County Charter as evidenced herein.

**H. Evidence of Defendant Arakawa's collusion with private Developer Lot 48A, LLC**

320. Under the terms and conditions of the underlying Anka, Inc "3 Lots or Less" Subdivision Agreement, upon issuance of (re) subdivision development rewards, entitlements, and SMA Permit to Developer Lot 48A, LLC, Defendant Arakawa and Corp Counsel were legally obligated to expunge the senior cloud and encumbrance on Plaintiff Salem's Lot 48C property title.

321. Evidenced by the findings set forth in the complete history of the Developer Lot 48A, LLC's Violations of SMA Permit and noncompliance of the County of Maui's Department of Public Works subdivision Condition #15, in August of 2001, Attorney Tom Welch entered Plaintiff Salem's neighborhood making fraudulent claims that his client was

not obligated to complete roadway and drainage improvements to Hui Road E and Lower Honoapiilani Road. See History of Developer Lot 48A, LLC Violations

322. As we now know, Attorney Welch was facilitating the fraudulent acts of developer Lot 48A, LLC by drafting a warranty deed to privately amending the “3 Lots or Less” contractual agreement authored and recorded by Corp Counsel to obligate 5 property owners on two separate subdivisions to a pro rata share of the first developer’s financial obligations.

323. As we now know, Defendant Arakawa, a public official, facilitated a conspired fraudulent act to conceal public documents to serve the financial interests of private client Developer Lot 48A, LLC.

324. As will be further proven at trial, Defendant Arakawa’s unlawful acts then continued and compounded by Defendants Goode, Wong and Spence, were the direct and proximate cause of fifteen years of duress and financial demise of Plaintiff Salem and his family. Defendant Arakawa’s willful, intentional and deceptive acts shall be proven to constitute egregious criminal conduct that violates the Maui County Charter, Maui County Code, Hawai’i State Law, and Federal law, including, but not limited to mail fraud and racketeering charges.

325. At all times, Defendant County of Maui was responsible for Arakawa’s, Goode’s, Wong’s, and Spence’s acts and omissions which have harmed the public interest and are the direct and proximate cause of harm and damages to Plaintiff Salem and his family.

**I. NOAA Studies, SMA Permit Enforcement, and Demands for Director Discipline.**

326. In January of 2010, the Office of Ocean and Coastal Resource Management of the United States Department of Commerce produced Final Evaluation Findings for State of Hawaii Coastal Zone Management Program (“HICZMP”) See HI - Hawaii Coastal Zone Management Program – Final Evaluation Findings

327. Evidenced by the findings therein, “compliance and enforcement of SMA Permit conditions continues to remain an issue”.



328. HICZMP SMA Permit applications and conditions for the County of Maui are monitored and enforced solely under the authority of the County of Maui Planning Department.

329. The Court is respectfully asked to take Judicial Notice of the multiple previous lawsuits filed by private citizens against the County of Maui were caused by the Planning Director's refusal and failure to enforce and seek compliance for Developer's signed and issued SMA Permit conditions and environmental mitigations.

330. As will be proven at trial, during the same time period when Defendant Arakawa was issuing the illicit final subdivision approval to private client Developer Lot 48A, LLC, Defendant Goode issued final subdivision to developer Olowalu Elua Associates, LLC for the Olowalu Mauka Subdivision (LUCA File No. 4.766) See H2 – Olowalu Mauka Final Subdivision Approval.

331. Final subdivision approval was conditioned upon compliance with SMA Major Permit 99/0021. Pursuant to the County of Maui Planning Commission's SMA Major Permit conditions, all infrastructure improvements, including fire, drainage, and traffic-related improvements, were to be completed prior to final subdivision approval, or be bonded in accordance with Maui County Code. (Title § 18.04.020)

332. On February 25, 2010, Maui County Zoning Inspection Sonny Huh issued a notice of violation to developer Olowalu Elua Associates, Inc. for non-compliance with the SMA Permit issued ten years prior on September 19, 2000. See H3 – Notice of Non Compliance

333. In October of 2010, after years of seeking compliance and enforcement by the Planning Director for the County of Maui of the SMA Major Permit, a lawsuit was filed by against the County of Maui by a property owner for the failure to enforce the conditions of Developer Olowalu Elua Associates, LLC's SMA Major Permit. See H4 – Maui News Article, October 3, 2010

334. As a result of the private citizen's complaints and lawsuit, Developer Olowalu Elua Associates, LLC was required to apply for a new SMA Major Permit and complete the millions of dollars of roadway, infrastructure, and environmental mitigation improvements over ten years after the subdivision received final subdivision approval from Defendant Goode in violation of the Maui County Code, Maui County Charter, and Rules of Planning Commission.

335. As will be proven at trial, Defendant Goode has a documented history of violating the Maui County Charter, including Section 10.4., Prohibitions, to serve the financial interests of private developers and future employers. *See H5 - History of Defendant Goode's violation of Maui County Charter*

336. The Olowalu action occurred on the heels of the costly Montana Beach litigation involving a Christina Hemming's private legal action against the County of Maui involving the disputed permitting of an oceanfront 3 unit project wherein the development was initially granted unlawful waivers from the public hearings by the Planning Director during the SMA Permitting process. *See H5 - Star Bulletin Article March 25, 2008*

337. The Court is respectfully requested to take Judicial Notice that attorney Tom Welch of the law firm Mancini Welch and Geiger, represented developer Montana Beach, LLC, developer Anka, Inc., developer Lot 48A, LLC, and developer Olowalu Elua Associates during the subdivision and SMA Permitting process during the time period of 2000 to 2002.

338. In August of 2001, Attorney Welch entered Plaintiff's neighborhood claiming his client Lot 48A, LLC had no obligations to complete the roadway improvements and drainage mitigations along Lower Honoapiilani Road and Hui Road E. As we now know, Defendant Arakawa, a public official and employee, and private developer Lot 48A, LLC, conspired to conceal from Plaintiff Salem the MAH SMA Permit studies and signed and executed subdivision entitlement documents which exhibited just the opposite.

339. As will be proven at trial, during the period of injurious acts to Plaintiff Salem, Attorney Welch acted as a professional consultant for multiple developers throughout

Maui County, assisting and seeking circumvention and sidestepping of the policies and procedures adopted in the HICZMP.

340. The Court is respectfully requested to take Judicial Notice of the fact the violations and injury to Plaintiff Salem caused by the Planning Departments negligent and irresponsible administration of the HICZMP, occurred during the same month's developers SMA Permit obligations were being ignored in Olowalu Mauka subdivision and being waived in Montana Beach oceanfront development

341. As will be proven at trial, the land planning procedures and environmental policies adopted in the HICZMP SMA Permit doctrines continue to be ignored by the Defendants resulting in an unjustified and immense burden placed on private citizens who are forced to engage the Courts to seek compliance and prosecution of private Developers who attempt to circumvent and skirt their SMA Permit and environmental mitigation obligations.

342. Defendant Wong refuses to acknowledge the costly legal precedence endured by the County of Maui and the repeating harm suffered by the citizens and the Maui County Council caused by irresponsible administration of the HICZMP compounded with the repeating pattern by Defendant Goode and Defendant Arakawa of issuing unlawful final subdivision approvals to private developers.

343. As will be proven at trial, under the advice and counsel of Defendant Wong, acting upon the interests of private Developer Lot 48A, LLC, Defendant Hunt and Defendant Spence have failed to fulfill their duty to administer and enforce the policies and procedures of the HICZMP and Rules of the Planning Commission causing irreparable harm to Plaintiff Salem and his family.

#### **THE MAUI COUNTY CHARTER**

344. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 10, Code of Ethics, Section 10-1., and Section 10-5, states as follows;

Section 10-1. Declaration of Policy.

Elected and appointed officers and employees shall demonstrate the highest standards of ethical conduct to the public may justifiably have trust and confidence in the integrity of government. See Maui County Charter, Article 10, Section 10-1

345. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 13, General Provisions, Section 13-9. Records and Meetings Open to the Public, states as follows;

Section 13-9 Records and Meetings Open to Public

1. All books and records of every department shall be open to inspection of any person at any time during business hours, except as otherwise provided by law. Certified copies or extracts from such books and records shall be given by the office having custody of the same to any person demand the same and paying or tendering a reasonable fee to be fixed by ordinance for such copies of extracts. See Maui County Charter, Article 13, Section 13-9.

346. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 7 Office of the Mayor, Section 7-5., states as follows

Section 7.5. Powers, Duties, Functions

8. Conduct a systematic and continual review of the finances, organizations, and methods of each department of the County to assist each department in achieving the most effective expenditure of public funds and to determine that such expenditures are in accordance with the budget laws and controls in force.

17. Enforce the provisions of this Charter, the ordinances of the County and all applicable laws. See Maui County Charter, Article 7, Section 7-5

347. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 13, General Provisions, Section 13-1.3., states as follows;

Section 13-1. Definitions

The term "law" shall mean any Federal law, any law of the State, or any ordinance of the County of Maui or any other rule having the force and effect of law. See Maui County Charter, Article 13, Section 13.1.3.

348. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 3, Power of the Council, Section 3-6., states as follows;

Section 3-6. Powers of the Council.

1. To legislate taxes, rates, fees, assessments, and special assessments and to borrow money, subject to the limitations provided by law in this Charter.
3. To conduct investigations of (a) the operation of any Department or function of the County and (b) any subject upon which the Council may legislate.
4. To require periodic and special reports from all County Departments concerning their functions and operations. Such reports shall be requested by and through the Mayor. See Maui County Charter Article 3, Section 3-6.

349. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 9, Financial Procedures, Section -12, states as follows;

Section 9-12. Payments and Obligations.

1. Every payment made in violation of the provisions of this Charter shall be illegal, and all county officers who knowingly authorize or make such payment or any part thereof shall be jointly and severally liable to the County for the full amount so paid or received."

If any County officer or employee knowingly authorizes or makes any payments or incurs any obligation in violation of the provisions and procedures and policies established by ordinance, or take part therein, that action shall be cause for removal from office. See Maui County Charter Article 9, Section 9-12.

350. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 10, Code of Ethics, Section 10-5, states as follows;

Section 10-5. Penalties.

Any person who violates the provisions of this article shall be subject to a fine to be provided by ordinance adopted by the County Council, and in addition to such fine that may be imposed, non-elected officers or employees may be suspended or removed from office or employment by the appropriate appointing authority and elected officers may be removed through the impeachment proceedings pursuant to Section 13-13.

351. The indisputable violations of the provisions, procedures, and policies established by ordinance involving acts of malfeasance, misfeasance, nonfeasance, fraud, collusion, conflicts of interest, concealment of public documents, unfair and deceptive practices, misuse of public funds, and unwarranted intimidation tactics by the Defendants named herein have violated the trust and integrity of Maui County government.

### CLAIMS

352. In accordance with Article 13-6. Claims, of the Maui County Charter, Plaintiff Salem through his legal counsel claims injury to his person and property and to the public interest by actions and omissions of all the Defendants and County Defendants named in this Complaint, jointly and severally, including, but not limited to Breaches of Fiduciary Duty, Gross Negligence, Fraud, Negligent Hiring and Retention, Civil Conspiracy, Civil Rights Violations, violations of the "Honest Services" Act, Breaches of Public Trust, Perjury, Obstruction of Justice, violations of United States Bankruptcy Law, Breaches of the Maui County Charter and the Maui County Code, violations of Hawai'i State Law, and violations of Federal Law.

353. Plaintiff Salem has suffered harm within 2 years of the date of injury and, or within the time pursuant to applicable law, including, but not limited to HRS 657-20, the continuing violation doctrine, and the time allowed for the enforcement of government contracts; breaches to those contracts; harm and damages due to fraud and unfulfilled, open and unenforced County permits, and all other damages to Salem and to the Public Interest that may be proven at trial.

354. Plaintiff Salem's family home and investment property were auctioned for sale by the Courts on January 20, 2015. Attempts by County Officials to harm Plaintiff Salem, which began in 2001, has continued unabated and irrepressible to present time.

355. Plaintiff Salem has exhausted his life savings on legal fees spent to protect his property and his interests, as a direct and proximate result of an unfulfilled, open, and unenforced Lot 48A, LLC SMA Permit.

356. Plaintiff Salem and the residents of Maui County have been harmed by Defendants, jointly and severally, by fraudulently and, or negligently implemented public policy and, or by a pattern of local custom, constituting the same, as well as by county officials exceeding their authority, in conspiracy with each other and with private interests, and by conflicts of interest which have harmed Salem and the public interest and have violated the constitutionally protected civil rights of both Plaintiff Salem and the public-at-large.

357. Plaintiff Salem has also exhausted every form of legislative and administrative remedy and notice to the Defendants to prevent the escalation of this complaint.

358. Plaintiff Salem, as a former executive assistant to the Maui County Council, has attempted to serve the public interest by avoiding filing this complaint.

359. Under the doctrine of latches, the Defendants cannot claim prejudice caused by the timing of this complaint. Developer Lot 48A, LLC's violations and fines relating to their unfulfilled SMA Permits continue to escalate and allow for financial recovery to the County of Maui.

360. Developer subdivision agreements, executed by Defendant Corporation Council, yet to be quantified, allow for the assessment and collection of funds owed to the County of Maui, under the powers and authority of the Maui County Council.

361. Defendant Salem, at his sole and personal expense and consequence, discovered and continuously demanded the recovery of the public funds owed to the County of Maui through the developer subdivision agreements by Defendant Corp Counsel.

362. Conversely, if the developer subdivision agreements authored and recorded by Defendant Corp Counsel are unenforceable and uncollectable, then the County of Maui has the duty to expunge the encumbrances on citizens land titles throughout Maui County.

363. Further, Defendant County of Maui has the obligation to enforce the Maui County Charter against those responsible for incurring millions of dollars of financial obligations to Maui County and repair the undeserved injury Plaintiff Salem and his family has suffered for over 15 years.

364. Moreover, pursuant to the continuing violation doctrine, the statute of limitations is tolled when the harmful act(s) continue to exist. "Hawai'i has long recognized that a continuing wrong may, in effect, toll the statute of limitations with respect to tortious conduct that is ongoing. In effect, the date that the tort "first accrues" moves forward into the future so long as the tortious conduct continues." Garner v. State, No. 27912 (Haw. App. 10/30/2009) (Haw. App. 2009) "...because the Court finds that these incidences are 'sufficiently related' to the latter incidences, they will be considered part of the continuing violation." Maluo v. Nakano, 125 F. Supp. 2d 1224 (Hawaii 2000) "The continuing violation inquiry does not define whether a violation has occurred. Rather, it simply determines whether violations which occurred outside the statute of limitations period are sufficiently related to the violations within the limitations period, to find the former violations are not time-barred." Counts v. Reno, 949 F. Supp. 1478 (Hawaii, 1996)

365. Plaintiff Salem has provided written notices of conflicts of interest to Corp Counsel.

366. Plaintiff Salem, and his bankruptcy counsel, have provided written notices to Defendant Corporation Counsel to retract the false statements of Declaration of Defendant Goode issued by Defendant Corporation Counsel to the United States District Court for the State of Hawaii.

367. Plaintiff Salem, and his bankruptcy counsel David Cain, have presented proper notice to Defendant Corporation Counsel to reconcile the consequences of newly discovered evidence.



368. Plaintiff Salem, and his then bankruptcy attorney David Cain, have issued Rule 2004 Subpoenas in the United States Bankruptcy Court to Defendant Corporation Counsel to release copies of all contracts executed by the Defendant Corporation Counsel on behalf of private developers.

369. As evidenced herein, Mayor Alan Arakawa and the elected members of the Maui County Counsel have the authority, obligation, and responsibility to exert their powers of enforcement and investigation of the violations exhibited herein, and to resolve and mitigate further unwarranted financial injury and harm to Plaintiff Salem and his family as well as to the citizens of Maui County, which investigation, mitigation, and resolution is in the public interest, and in the interest of judicial economy.

370. Failure of Defendant Maui County to act now, as set forth above in paragraph 348 of this Complaint, shall show justifiable cause to amend and expand upon this complaint to include the elected and appointed officials who are failing in their duties and obligations to the citizens of Maui County in accordance with all applicable County, State and Federal law.

371. The unpardonable acts exhibited by the Defendants, jointly and severally named herein, are grounds for commencement of a class action suit by the property owners affected by the illicit developer "3 Lots or Less" subdivision agreements, and for commencement of impeachment proceedings in the Circuit Court for the Second Circuit, State of Hawaii in accordance with Article 13, Section 13-13. Impeachment of Officers, of the Maui County Charter. See Maui County Charter, Article 13, Section 13-13

372. Plaintiff asserts this complaint falls under the private attorney general doctrine, as this action vindicates a right that benefits a large number of people, requires private enforcement, and is of societal importance.

373. Plaintiff Salem alleges that Defendants named herein failed in their duties to administer and enforce the conditions which were imposed upon developer(s) through the Maui County Code, developer contractual agreements, and issued developer permits.

374. Plaintiff Salem seeks the court to compel Mayor Arakawa and the Maui County Council to seek remediation and damages from the responsible parties, and not at the further expense of public funds or interest.

375. Plaintiff Salem seeks the court to compel Mayor Alan Arakawa and the Maui County Council to act dutifully and responsibly to remedy and repair the harm and consequences of the Defendants unlawful, fraudulent and, or gross negligent acts and omissions, set forth below, which have harmed Plaintiff Salem in defiance of the public interest, as follows;

- a. Defendant County of Maui, through their Departments' Corporation Counsel, and Department Public Works, have misused a Maui County Ordinance to benefit private developers in contravention of the intent and purpose of the original ordinance; which ordinance was meant to assist local families, not opportunistic private developers. The Defendants have then compounded this misuse by failing to assess and collect on developer one-time deferral agreements, thereby defrauding the County of Maui, it's residents, the State of Hawaii, and the Federal Government.
- b. For approximately more than four decades, and through present time, Defendant Corp Counsel has failed to provide proper legal advice to the Department of Public Works, and to the Maui County Council, to insure developer contractual agreements of all forms executed and recorded by their department were accounted for and made available for tracking and assessment during annual public budget hearings; and for collection by the Department of Finance and the Maui County Council.
- c. For approximately more than four decades, and through present time, Corp Counsel disregarded the public interest by executing and recording developer agreements in senior position on residential and commercial properties; which agreements create encumbrances and government liens that are open ended and which have no adopted formula for assessment or collection.
- d. Corp Counsel has violated and failed to honor the Maui County Charter by insuring that the financial obligations incurred by their authored and executed developer agreements and contracts did not become an obligation for payment by the County of Maui with public funds.
- e. Corp Counsel, Arakawa, and Goode have failed to provide proper notice to State and Federal agencies and authorities that funds requested for

infrastructure Capital Improvements Projects are being used to pay for private developers, and their heirs, deferred financial obligations.

- f. Corp Counsel, Arakawa, Wong, and Goode, have failed to honor the Maui County Charter by continuing to author, execute, and incur financial obligations upon the County of Maui to pay for deferred private developer subdivision infrastructure improvements with public funds after written notices of violations of the Maui County Code and Maui County Charter were issued by members of Maui County Council and Plaintiff Salem beginning in 2001.
- g. Upon discovery by Plaintiff Salem, Corp Counsel and Defendant Arakawa stated publicly and continuously that all the "one time" developer deferral agreements already executed and recorded by Corp Counsel were collectible, yet failed to make any efforts to collect on them at any time.
- h. Corp Counsel, Arakawa, and Goode have violated the Maui County Code and have failed to honor the Maui County Charter by executing and recording overlapping one time "3 Lots or Less" subdivision agreements on the same underlying parent parcel of land thereby incurring and expanding the shifting of private developer financial obligations to the citizens and the County of Maui.
- i. Corp Counsel failed to advise the Maui County Council to investigate and remediate consequences of the representation and admission by Defendant Goode that the execution of overlapping "3 Lots or Less" subdivision agreements had gotten "crazy".
- j. Corp Counsel has failed to expunge the encumbrances of title on the underlying properties affected by the overlapping one time "3 Lots or Less" subdivision agreements that have been executed in violation of that Maui County Code and where a Notice of Intent to Collect was sent to Plaintiff Salem; Corp Counsel harmed Salem by failing to expunge its unlawful open-ended government lien on his property.
- k. Defendant Corp Counsel failed to provide a legal opinion to the Maui County Council on whether the "3 Lots or Less" subdivision agreements were lawful instruments for relieving commercial and industrial developers of their infrastructure improvements and drainage mitigation obligations.
- l. Corp Counsel, Arakawa and Goode have failed, and continue to fail to honor the Maui County Charter and have violated the Maui County Code by not providing notices of intent collect upon the developer agreements to all affected property owners upon commencement of funding of Capital Improvement Projects throughout Maui County.
- m. Corp Counsel failed to insure the language of Defendant Arakawa's Notice of Intent to collect upon the "3 Lot or Less" subdivision agreements sent to Plaintiff Salem reflected the language of the Maui County Code, and the recorded subdivision agreements.

- n. Corp Counsel, Arakawa and Goode have failed, and continue to fail, to honor the Maui County Charter and have violated the Maui County Code by not providing anticipated revenues to be collected upon each individual developer subdivision agreement along each Capital Improvement Project proposed during annual Maui County Council public budget hearings.
- o. Defendant Corp Counsel has failed to advise the Maui County Council to adopt, through legislation, a bill to insure the property's owner encumbered by the developer contracts have the ability to remove the government cloud, encumbrance and, or lien on title through payment and compensation.
- p. Defendant Wong failed and refused to follow the instructions and directives of Mayor Arakawa to work with Department of Transportation Director JoAnne Johnson Winer and Plaintiff Salem to adopt a formula for assessment of collection of the "3 Lots or Less" subdivision agreements.
- q. Defendant Wong failed to provide a legal opinion to the Maui County Council, Plaintiff Salem, and the general public to support the published conclusion by Defendant Goode that Plaintiff Salem's "Fairness Bill" was unlawful legislation.
- r. Defendant Wong violated Plaintiff Salem's civil rights and due process by issuing a private memo to all branches of government making false, unwarranted, and defamatory representations against Salem to derail the "Fairness Bill" while it was traveling through the legislative process and while the grossly negligent and fraudulent acts of the Defendants were under review by the County of Maui Cost of Government Commission.
- s. Defendant Goode, under the representation of Defendant Wong, falsely represented in Court documents that the County of Maui "may or may not" collect upon the developer's deferred financial obligations.
- t. Corp Counsel authorized the "may or may not collect upon the developer agreement" language issued by Defendant Goode in Declaration to the United States District Court for the State of Hawaii, which false representations in court documents were inaccurate, incorrect, and not in accord with Ordinance 3731 adopted by the Maui County Council.
- u. Defendant Goode explicitly violated Maui County Ordinance 3731 to cover-up the Defendant's long term pattern of gross negligence and fraud regarding the collection of developer's deferred financial obligations.
- v. Defendant Wong has failed to honor the State of Hawaii Rules of Professional Conduct on multiple occasions.
- w. Arakawa, Wong, Goode and Spence committed Honest Services Fraud pursuant to 18 U.S.C.1341,1326 by devising and perpetuating a scheme against Salem and against the residents and citizens of Maui County, in contravention of the public interest, by making knowingly false representations in official documents that were sent through the U.S. Postal Mail and, or exceeding their authority and, or conspiring with

private interests to the detriment of Salem, Maui County, and it's citizens and residents.

- x. Corp Counsel failed to honor the Maui County Charter and protect Plaintiff Salem, and the public interest by failing to respond to a request and demand to provide a payment amount to collect upon the developer agreements and facilitate the removal of senior lien and cloud on title on Plaintiff Salem's property, which encumbrance became a lien, once Plaintiff Salem was noticed for collection by Defendant Arakawa.
- y. Defendant Corporation Counsel failed to protect Plaintiff Salem and the public interest by insuring conflicts of interests, and potential appearances of conflicts of interest, were avoided, documented, and disclosed to the Maui County Council and public during the employment of outside special counsel.
- z. Corp Counsel failed to remove themselves as legal counsel upon notice of conflicts of interests by Plaintiff Salem and Department of Transportation Director JoAnne Johnson Winer.
- aa. Corp Counsel failed to disclose to the office of Mayor, Administration Directors, and the Maui County Council that the disputes involving developer Lot 48A, LLC occurred while developer Lot 48A, LLC's legal counsel was employed by their Department.
- bb. Corp Counsel failed, and continue to fail, to insure that prospective public employees, Directors, and attorneys under consideration for employment by the County of Maui have provided complete disclosures of all ongoing private applications and interests that may come under their review and decision making while being employed by the County of Maui.
- cc. Defendant Wong failed to inform the public and the Maui County Council of his professional relationships with private developers and their legal counsel who were directly involved in litigation and legal disputes for violations of the Maui County Code and Maui County Charter by Defendant Arakawa and the County of Maui.
- dd. Corp Counsel, Defendant Arakawa, and Developer Lot 48A, LLC's legal counsel failed to insure Developer Lot 48, LLC's SMA permit studies and valuations were not concealed, and, or actively concealed the same, from the Plaintiff Salem and the Maui County Council, while Lot 48A, LLC's legal counsel was employed by Defendant County of Maui Corporation Counsel.
- ee. Corp Counsel and Defendant Arakawa failed to remove the senior lien on Plaintiff Salem's property upon discovery of Developer Lot 48A, LLC's SMA Permit studies and subdivision entitlement documents which obligated Lot 48A, LLC to complete the roadway infrastructure and drainage mitigations referenced in the "3 Lots or Less" subdivision agreement.

- ff. Defendant Arakawa failed to disclose to the Maui County Council that his land planning firm MAH authored and executed the SMA Permit studies for Lot 48A, LLC while his firm was employed as special consultant for the County of Maui Department of Public Works for environmental studies along Phase IV of Lower Honoapiilani Road.
- gg. Corp Counsel, Defendant Goode, and Defendant Arakawa, have failed to protect the public interest by further expanding and incurring the obligation of payment by the County of Maui for private developer interests and financial obligations in the signed and executed Lot 48, LLC SMA Permit.
- hh. Defendant Goode failed to honor the Maui County Code and Maui County Charter by issuing final subdivision approval to a former private client Lot 48A, LLC prior to final acceptance and compliance with the developer signed and issued Lot 48A, LLC SMA permit.
- ii. Defendant Arakawa failed to execute a bond with Developer Lot 48A, LLC in the instance where all infrastructure improvements and drainage mitigations were not completed prior to subdivision approval.
- jj. Defendant Arakawa failed to insure the roadway improvements and drainage mitigations referenced in developer Lot 48A, LLC's issued and signed SMA Permit were incorporated in the subdivision engineering plans.
- kk. Defendant Arakawa failed to insure the roadway and drainage mitigations referenced in the Lot 48A, LLC's SMA Permit application were a true and accurate accounting and representation of the actual infrastructure and drainage improvements required along the Lower Honoapiilani Road subdivision frontage.
- ll. Defendant Spence, and formerly Defendant Hunt, failed to honor the Maui County Code, Rules of Planning Commission, and Maui County Charter by failing to issue a Notice of Non Compliance to Lot 48A, LLC, thereby not requiring the private developer to return to the subdivision and complete their roadway infrastructure and drainage mitigations.
- mm. Defendant Spence and formerly Defendant Hunt failed to honor the HCZMP and the Rules of the Planning Commission by failing to investigate developer Lot 48A, LLC's false and deceptive Engineering Valuation which denied citizens the right to public hearings and environmental review.
- nn. Defendant Goode failed to honor the Maui County Code and Maui County Charter by issuing final subdivision approval to Olowalu Elua Associates, LLC prior to final acceptance and compliance with the developer signed and issued SMA Major Permit.
- oo. Defendant Goode failed to honor the Maui County Code by failing to execute a bond with Developer Olowalu Elua Associates, LLC in the

instance where all infrastructure improvements and drainage mitigations were not completed prior to subdivision approval.

- pp. Defendant Goode failed to honor the Maui County Code by erasing the conditioned roadway infrastructure improvements and drainage improvement for developer Smith Development along the Lower Honoapiilani Road frontage of the Kahana Vai subdivision just prior to issuing final subdivision approvals and Goode's employment with Smith Development.
- qq. Defendant Goode failed to honor the Maui County Code on the issuance of a Preliminary Subdivision approval to Smith Development for the Pu'uKahana subdivision along Lower Honoapiilani Road just prior to termination of employment as the Director of Public Works and employment with Smith Development.
- rr. Defendant Goode failed to honor the Maui County Charter by receiving compensation for services rendered for the public solicitation of final approvals of the Pu'uKahana subdivision application immediately after employment as Director of Public Works.
- ss. Defendant Arakawa failed to insure the necessary land acquisitions were secured for the Capital Improvement Project Phase IV of Lower of Honoapiilani Road, prior to twice providing public notice of project commencement.
- tt. Defendant Arakawa failed to honor the Maui County Code by failing to continue the publicly adopted right of way width designation for Phase IV of Lower Honoapiilani Road along the frontage of Plaintiff Salem's family land division located @ 5106 Lower Honoapiilani Road.
- uu. Defendant Goode and Defendant Arakawa failed to honor the Maui County Code and Maui County Charter by failing to insure that Park Fees are collected on each and every subdivision, and overlapping subdivision, approved by the Department of Public Works.
- vv. In 2012, Plaintiff Salem alerted the Maui County Council of Defendant Wong's undisclosed personal and professional relationship with legal counsel of the Palama Drive developers. To resolve the long standing legal dispute over alleged developer's violations of the Maui County Code, Defendant Wong advised the Maui County Council to provide financial restitution to the developers.
- ww. As such, Defendant Wong's Financial Disclosure Statements alleging "Gambling Winnings" beginning in 2012 and thereafter, are also justifiable cause for public concern and investigation by the Maui County Council.
- xx. As evidenced herein, immediately thereafter, Defendant Wong's engaged malicious and intentional in acts of intimidation against Plaintiff Salem, a former County of Maui Council employee, to retaliate against Plaintiff Salem for "blowing the whistle" on County of Maui Public officials.

## **CAUSES OF ACTION**

### **Count I. Breach of Fiduciary Duty**

376. Plaintiff incorporates by reference paragraphs 1-375 of Plaintiff's Complaint as if fully set forth herein.

377. Defendant Milton Arakawa, Defendant Jeff Hunt, Defendant David Goode, Defendant William Spence and Defendant Pat Wong (hereinafter "Defendants") breached their fiduciary duty to the County of Maui and to Plaintiff Salem by their actions and omissions in violation of the Maui County Charter and the Maui County Code, and by engaging in undisclosed conflicts of interest, fraud, and gross negligence.

378. As public officials, defendants owed a fiduciary duty to act in utmost good faith toward the County of Maui and Plaintiff Salem.

379. The Defendants' violations of the Maui County Charter and the Maui County Code through acts of fraud and gross negligence, violated their public duty, entitle Plaintiff Salem to compensatory and punitive damages, and entitle the residents and citizens of Maui County to declaratory, injunctive and equitable relief.

### **Count II Substantive and Procedural Ultra Vires**

380. Plaintiff incorporates by reference paragraphs 1-379 of Plaintiff's Complaint as if fully set forth herein.

381. The Doctrine of Ultra Vires holds that a public body granted power must not exceed the power so granted. Substantive ultra vires is where a decision has been reached outside the powers conferred on the decision taker; and procedural ultra vires is where the prescribed procedures have not been properly complied with.



382. Defendant Arakawa acted ultra vires when he sent out Notices to Collect to Plaintiff Salem which indicated that all the owners of an unlawful overlapping subdivision would have to “haggle” over the assessment of their pro-rata shares.

383. Defendants Wong and Goode acted ultra vires when Goode made public statements that the debts incurred by developer deferral agreements “may or may not be collected”.

384. Defendants Wong and Goode acted ultra vires when the above statement in paragraph 382 was also made in a Declaration to a Federal District Court wherein Plaintiff Salem was a party.

385. Defendants Arakawa, Goode, Wong, and Defendant County Corp Counsel acted ultra vires by failing to assess and to collect debts owed to the County of Maui from developer deferral agreements drafted, executed and recorded by Defendant Corp Counsel and Defendant County of Maui Department of Public Works.

386. Defendant Wong and Goode acted ultra vires by obstructing legislation that would allow the County of Maui to properly assess and collect debts owed to the County of Maui. Defendant Goode stated that the “Fairness Bill” was illegal/unlawful and Defendant Wong supported that director decision without issuing any supportive memorandum of law.

387. Defendants Hunt and Spence acted ultra vires by failing to enforce an open SMA permit on lot 48A, wherein Plaintiff Salem owned a property the underlying 3 Lot subdivision, and failed to issue a notice of non-compliance to the Developer, Lot 48A, LLC.

388. Defendants Arakawa, Goode, Wong, Hunt and Spence acted outside their authority and abused powers, acting improperly and unreasonably when they acted in contravention of County Code and the Maui County Charter and, or failed to perform their duties and obligations pursuant to their administrative responsibilities. These acts, ultra vires, are the direct and proximate cause of Plaintiff Salem’s injuries and damages.

### **Count III Negligent Hiring and Negligent Retention**

389. Plaintiff Salem incorporates by reference paragraphs 1-388 of Plaintiff's Complaint as if fully set forth herein.

390. Defendant Maui County had actual, and, or constructive knowledge through numerous notices to all Defendants, as well as to Maui County Council members and Mayor Alan Arakawa, of the violations of the Maui County Code, Maui County Charter, and outrageous and unlawful conduct by Defendants set forth herein this Complaint, that were causing serious injuries to Plaintiff Salem and to the Public Interest.

391. Defendant Maui County has a duty to maintain only competent, qualified, and safe employees who, as public officials, provide "honest services" in the administration of their duties to both the County of Maui and to the citizens and residents of Maui County.

392. Defendant Maui County breached their duty of hiring to the citizens and residents of Maui County and Plaintiff Salem by the hiring of Defendants Arakawa, Goode, Wong, and special counsel Margery Bronster.

393. Defendant County of Maui's action in failing to exercise its duty to Plaintiff Salem, to the County of Maui, and to the citizens and residents of Maui County in hiring and, or retaining incompetent, unfit, and dangerous employees. Notice had been given by Plaintiff Salem to Defendant County of Maui regarding the unlawful and, or, harmful practices of each and every Defendant, jointly and, or severally.

394. Defendant County of Maui's hiring the Defendant Directors Arakawa, Goode, Wong and special counsel Margery Bronster in violation of the Maui County Charter, is the direct and proximate cause of the injuries and losses suffered by Plaintiff Salem.

395. Defendants' actions and omissions (jointly and severally) were willful and wanton behavior with gross disregard for Plaintiff Salem's interests, safety, and well-being.

396. As a direct and, or proximate result of Defendant's wrongful acts and omissions (jointly and severally); Plaintiff Salem has sustained injuries and damages as set forth herein and is therefore entitled to receive special damages, general damages, and punitive damages in amounts to be determined at trial or hearing thereof.

#### **Count IV. Violations of Bankruptcy law**

397. Plaintiff Salem incorporates by reference paragraphs 1-396 of Plaintiff's Complaint as if fully set forth herein.

398. Defendant County of Maui Corporation Counsel, Defendant Wong, Defendant Goode violated Bankruptcy law as set forth herein, by making false and misleading statements and representations to the Bankruptcy Court in Salem's Chapter 11 Bankruptcy Petition proceedings.

399. Defendant County of Maui Corporation Counsel filed pleadings and Motions to obstruct Plaintiff Salem from obtaining highly relevant public documents relating to his property rights and claims that would reveal the extent of the fraud and / or gross negligence by the named Defendants; which false representations referred to in paragraph 375 and Defendant County Corp Counsel, Defendant Wong, and Defendant Goode's deliberate obstruction, concealment and cover-up was the direct and proximate cause of the recoverable injuries and damages suffered by Plaintiff Salem to complete the Chapter 11 Plan and Petition.

400. Under 18 U.S.C. § 157 : Bankruptcy Fraud states as follows; "Attorneys may not devise a fraudulent scheme and, for purpose of executing or concealing that scheme, either (3) make a false statement, claim, or promise (a) in relation to a bankruptcy proceeding either before or after the filing of the petition. (emphasis Salem)

401. United States Code 18 §1519, destruction, alteration, or falsification of records in Federal investigations and Bankruptcy states the following; "Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document,

or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, **imprisoned not more than 20 years, or both**. (emphasis Salem) Comment: Depending on the nature of the offense, as well as individual state laws, falsifying documents can result in a prison sentence of 5-10 years. Also, if government documents or federal authorities were involved, the legal penalties may be more severe. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose February 14, 2014 35 commencement can be foreseen. Falsifying evidence is also generally a criminal offense.

Paragraph (a) applies to evidentiary material generally, including computerized information.”

402. In United States v. Hunt, 526 F.3d. 739 (11th Cir. 2008); “Attorneys (emphasis Salem) may not alter, destroy, documents or tangible objects, with the intent to impede, obstruct, or influence investigation or proper administration of any matter with the jurisdiction of any department or agency of the United States, or any bankruptcy case.”

403. 18 U.S. Code § 152 A person who; (8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or (9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor shall be fined under this title, imprisoned not more than 5 years, or both.

404. In Gutman v. Klein, F. Supp. 2d, No. 03 CV 1570 (E.D.N.Y. Oct. 15, 2008) Judge Levy recommended default judgment for discovery misconduct. (underline Salem)

**Count V. Civil Conspiracy and 42 U.S.C 1983, 1985 and 14<sup>th</sup> Amendment  
Civil Rights Violations**

405. Plaintiff Salem incorporates by reference paragraphs 1-404 of Plaintiff's Complaint as if fully set forth herein.

406. Munekiyo, Arakawa and Hiraga, a private land planning consulting firm (of which Arakawa is a partner); Defendant Goode and former employer and private developer Smith Development; Maui County Corp Counsel and former Hawaii Attorney General Margery S. Bronster, Esq.; Wong and Goode; Spence and Maui County Corp Counsel; Wong and Spence and County Defendants with each other, committed unlawful acts, and at times with an unlawful purpose. The acts and, or omissions, as set forth in Plaintiff's Complaint Salem covered-up a pattern of gross negligence and, or fraud as it pertains to the failed execution of developer deferral agreements, the concealment of deferral agreements, the concealment of studies and evaluations belonging to SMA permits; the failure to enforce the fulfillment of obligations for Capital Improvement projects, the failure to review the engineering estimates in permit studies and evaluations that determine whether the permit should be minor or major, and conflicts of interest involving the unlawful benefiting of private interests, at the expense of Salem and the public interest. *"To establish a civil conspiracy, a plaintiff must demonstrate that the alleged conspirators undertook concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means".* Bracken v. Okua, 955 F. Supp. 2d 1138 (D. Haw. 2013)

407. Plaintiff Salem sets forth underlying torts, in his Complaint, as required by the Hawai'i Supreme Court in Ellis v. Crockett, 51 Haw. 45, 57, 451 P.2d 814, 822 (1969).

408. Defendant Wong and Defendant Goode have conspired to defraud the County of Maui, its citizens and its residents, Plaintiff Salem, the State of Hawaii and the Federal Government by failing to assess and collect debts from developer Deferral Agreements which

the two named Defendants above represent and have represented, are collectible contracts.

409. Defendant County of Maui Corp Counsel and Defendant Spence have conspired to defraud the County of Maui and Plaintiff Salem by their refusal to enforce a developer's unfulfilled and open SMA permit.

410. All the named Defendants have conspired to defraud Salem and the County and residents of Maui by concealing and, or trying to conceal documents that reveal: 1) Developer Agreements which indicate Capital Improvements that they have obligated themselves to do and, or to pay for and, 2) fraudulent engineering estimates in SMA permit evaluations.

411. Defendant Pat Wong and Defendant David Goode have conspired to violate Plaintiff Salem's due process and equal protection Constitutional Rights by making false representations in Salem's Bankruptcy Court action violating Salem's Civil Rights pursuant to 42 U.S.C. 1983, 42 U.S.C. 1985 (2), and pursuant to the 14<sup>th</sup> Amendment, which prohibits States from depriving individuals of due process. Further, Salem's civil rights were violated pursuant to above mentioned Federal Laws, by the refusal of Defendant Spence, in collaboration with Defendant County Corp Counsel, and, or Wong, to enforce an SMA permit; which permit reveals concealed unfulfilled permit conditions, fraudulent engineering estimates, and conflicts of interest between County Directors and private interests. Moreover, Wong and Spence nonetheless, continue to enforce permit violations, selectively, in the County of Maui, in further violation of Plaintiff Salem's 14<sup>th</sup> Amendment Constitutional Rights.

412. Defendant Maui County Corp Counsel conspired with Margery S. Bronster, Esq. to conceal developer obligations and studies and evaluations pertaining to Lot 48, LLC which is the subdivision in which Plaintiff Salem had his family home.

413. As a direct result of fraud, and egregious breaches of the public trust by Defendants' County of Maui, Corp Counsel, Arakawa and Goode; Salem incurred an unnecessary and fraudulently conceived personal lien on Salem and his Hui road property title which resulted in Salem unnecessarily, and unlawfully, losing his family's home.

414. Defendant Corporation Counsel conspired to conceal evidence on behalf of private developers, and impede, obstruct, and influence the proper administration of the Plaintiff Salem's Chapter 11 petition in the United States Bankruptcy Court. Under U.S.C. 18 §1519, Defendants may be found guilty of a criminal offence and fined or imprisoned up to 20 years, or both. Defendant Corporation Counsel and Defendant Wong obstructed Plaintiff Salem from meeting and communicating with elected members of the Maui County Council. Defendants and County Defendants, disfranchised and deprived Plaintiff Salem of the rights or privileges secured to other citizens and by doing so violated the Hawai'i State Constitution, Article 1: Right of Citizens.

415. Defendant Wong sent private communications to Mayor Arakawa, appointed Directors, and members of the Maui County Council to interfere and obstruct Plaintiff Salem's civil rights under Title 42 U.S.C. 1983, in retaliation, and with intent to deny to Plaintiff Salem the equal protection of the law, and to injure him and his property for lawfully attempting to enforce his rights, and the rights of a class of persons, to the equal protection of the laws.

416. Defendant Wong threatened in writing to file a restraining order against Plaintiff Salem when Plaintiff Salem reasonably demanded disclosure to the Maui County Council of Defendant Wong's personal and professional relationship with legal counsel for a private developer the County of Maui was engaged with in protracted litigation and settlement negotiations.

417. Both actions Salem alleges in paragraphs 394 and 395 above violates Salem's First Amended rights as "*1. Plaintiff [Salem] was engaged in constitutionally protected activities; 2. Defendant [Wong's] adverse action caused Plaintiff [Salem] to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in that activity; and 3. That the adverse action was motivated at least in part as a response to the exercise of Plaintiff's [Salem's] constitutional rights.*" Paige vs. Coyner July 26, 2010 Fed 6<sup>th</sup> Cir. Appellate (citing Bloch v. Ribar, 156 F.3d 673, 678 (6<sup>th</sup> Cir. 1988); *see also* id at 682,687 Further, Salem meets

*“an additional requirement common to all Section 1983 Claims: ‘a plaintiff must allege that [h]e was deprived of a right secured by a Federal Constitution or Laws of the United States by a person acting under the color of state law.’”* Id citing Wolotsky v. Huhn, 960 F.2d 1331, 1335 (6<sup>th</sup> Cir. 1992) (emphasis added)

418. *“That is not to say that public officials lack the right to inquire into the motivations and goals of their colleagues or constituents. What they cannot do, however, is take action in order to punish a citizen for exercising his or her constitutional rights. That is ‘an act taken in retaliation for the exercise of a constitutionally protected right is actionable under Section 1983 even if the act, when taken for a different reason, would have been proper.’”* Paige vs. Coyner citing Bloch, 156 F.3d at 681-82 (citation and internal alteration omitted) (emphasis Salem)

419. 42 U.S.C. 1983 states *“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”*

420. Defendants Arakawa and his private land planning consulting firm Munekiyo, Arakawa and Hiraga, conspired to defraud, and deceive the residents of Maui County by colluding unlawfully to benefit the private firm, at the expense of Salem, the County of Maui and its residents.

421. Defendant Goode and his former employer, Smith Development, conspired to defraud, and deceive the residents of Maui County by unlawfully colluding to benefit a private interest and former employer of Goode, at the expense of Salem, the County of Maui and its residents.



422. Further, Plaintiff Salem was sent an implied death threat from Developer Kent Smith in retaliation against Salem for exposing violations of Maui County Code in the preliminary subdivision approval issued by Defendant Goode as Director of Public Works. The implied death threat was sent to Plaintiff Salem while Defendant Goode was employed by Developer Kent Smith immediately after his employment as Director of Public Works.

423. The Maui County Planning Commission agreed with Plaintiff Salem's findings, and denied the application for the proposed subdivision located immediately across from Plaintiff Salem's property.

424. Plaintiff Salem alleges that Defendants' Arakawa and Goode's conspiracies constituted fraud and violated the Maui County Charter and may also constitute violations of Federal Racketeering laws i.e. RICO. *"Each defendant in a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy must have joined knowingly in the scheme and been involved himself, directly or indirectly, in the commission of at least two predicate offenses. 18 U.S.A. Sec. 1962(d)."* Tomaselli v. Beaulieu, 967 F. Supp. 2d 423 (D. Mass. 2013)

#### **Count VI. Honest Services Fraud 18 U.S.C.1341, 1326**

425. Plaintiff Salem incorporates by reference paragraphs 1-424 of Plaintiff's Complaint as if fully set forth herein.

426. Defendants Pat Wong, Goode, Arakawa, and Spence committed violations of 18 USC 1341, 1346 constituting "Honest Services Fraud".

427. The public "has an intangible right to honest government" Shushan v. United States, 117 F.2d 110 (5th Cir. 1941), cert. denied, Waguespack v. U. S., 313 U.S. 574 (1941), cert denied, Waguespack v. U. S., 314 U.S. 706 (1941).

428. Defendant Arakawa mailed, through the U.S. Postal Mail, an unlawful Notice of Intent to Collect on a developer deferral agreement, which notice constitutes a scheme to defraud

Plaintiff Salem and the County of Maui and it's residents and citizens of their intangible right to honest services, sent through the U.S. Postal Mail to Salem.

429. Defendant Arakawa's actions, omissions and false representations violated 2010 Maui County Ordinance 3731 knowingly and willfully. While making false statements to the contrary, Defendants Arakawa, Goode and Wong's actions and omissions, jointly and severally, have consistently failed to honor and to enforce the Maui County Code in regards to the assessment and collection of Developer Deferral Agreements, to the benefit of private interests, and to the detriment of the citizens and residents of Maui County, the County itself, Plaintiff Salem, the State of Hawai'i, and the United States Federal Government.

430. Furthermore, Defendants' public statements in public hearings, in the media, and in letters to Plaintiff Salem and in Bankruptcy court pleadings and declaration(s), have been unlawful, and inconsistent. Defendants' conduct reveals a long term pattern of neglect and failure and abuse of the public trust by Defendants, both jointly and severally, by their failure to comply with the Maui County Code acts and omissions in outright contravention of the Code.

431. Defendant Pat Wong and Defendant David Goode knowingly and willfully committed Honest Services Fraud by devising a scheme to defraud the Plaintiff Salem, the U.S. Bankruptcy Court, and the residents/citizens of Maui County by making false statements in court documents sent through the U.S. Postal Mail to cover-up the failure of Defendants since 2010 to enforce and to comply with Maui County Ordinance 3731.

432. Defendants' failure to implement, comply with and to enforce the Maui County Code, is the direct and proximate cause of harm to Plaintiff Salem, Maui County, its tax residents and citizens. Defendants' conduct has also harmed the Hawaii State and U.S. Federal Government, which have been defrauded into subsidizing County capital improvements unlawfully, to the benefit of private interests.

433. Defendant William Spence and Defendant Corp Counsel unlawfully refused to enforce an unfulfilled open SMA permit, harming Plaintiff Salem and the public interest and

benefiting private developer interests. Defendant County of Maui through Corporation Counsel, sent a letter to Plaintiff Salem unlawfully supporting Defendant William Spence's decision as the Director of the Maui County Planning Department.

**Count VII. Breach of duty by Public officers / Breach of the Public Trust and Offenses  
against Public Administration**

434. Plaintiff Salem incorporates by reference paragraphs 1-433 of Plaintiff's Complaint as if fully set forth herein.

435. Article 10-1 of the Maui County Charter states that "*Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government.*"

436. Section 10-4 Prohibitions: "*No officer or employer of the County shall... [Article 10-4 c.] Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of the officer's or employee's official duties or which may tend to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties.*"

437. Section 10-5. Penalties. "*Any person who violates the provisions of this Article shall be subject to a fine to be provided for by ordinance adopted by the county council, and in addition to any such fine that may be imposed, non-elected officers or employees may be suspended or removed from office or employment by the appropriate appointing authority and elected officers may be removed through impeachment proceedings pursuant to Section 13-13.*" (emphasis Salem)

438. Through false representations to Plaintiff Salem, and to Maui County and its residents and citizens, as well as the concealment of both SMA Permit studies and evaluations,

and approximately ten thousand pages of developer deferral agreements; fraudulent engineering estimates, and undisclosed conflicts of interests, Defendants jointly and severally have unlawfully assisted private interests.

439. Maui County Charter 8.2-3(b) restricts the Office of Corporation Counsel's representation "to matters relating to... official duties." The Hawai'i Supreme Court in Machado v. Bal, 31 Haw. 559 , 564(1930) (quoting 43 C.J. 695) see also E. McQuillin, *The Law of Municipal Corporations* Sec. 29.14 (3d.1990) quoted a decision which stated " [i]t is within the discretionary power of a municipality to indemnify one of its officers against liability incurred by reason of any act done by him in the **boda fide** discharge of his official duties...."[emphasis added] It was further stated by the Hawai'i Supreme Court that " It would seem wisest to leave the indemnification of the officer to the discretion of those who represent the interests of the city, that on one hand they should not be without the power to indemnify a meritorious officer, acting in good faith, for the consequences of his conduct, **and on the other hand, they should not be obliged to protect every officer, though acting in good faith, seem to them to indicate a blamable want of good care and caution.**" (emphasis Salem) Id. At 1357, 157. Quoting from Machado, 31 Haw. at 564 (which was quoting Moorhead v. Murphy, 94 Minn. 123, 102 N.W. 219, 220 (1905)) Plaintiff alleges that Defendants jointly and severally did not act in good faith, and, or acted with reckless and wanton disregard for the rights and interests of Salem, and the public interest.

440. Defendants 'jointly and severally, have made numerous "materially false statements" in official proceedings, pursuant to HRS 710-1060, 1063. "Falsification before a court, legislative committee, administrative agency, or other official proceeding, as defined in Section 710-1000(12), is deemed more culpable and more socially dangerous than similar falsity in a report, license application, or like matter, especially when these types of statements are often prepared by a lawyer.[3]..."

441. Defendants Pat Wong obstructed government operations by intentionally obstructing, impairing, and hindering Plaintiff Salem, in his capacity as a public servant, by physical interference, obstacles, and threats of force.

442. Defendant Wong blocked the drafting of legislation by Department of Transportation Director JoAnne Johnson Winer which was directed by Mayor Arakawa, in order to address the failure of the County of Maui to collect on its recorded Developer Deferral Agreements. Mayor Arakawa directed Plaintiff Salem and Joanne Johnson Winer to perform this task, for the purpose of collecting over forty years of uncollected debts owed to the County from Developer Deferral Agreements drafted by Corporation Counsel.

443. Defendant Wong then advised County officials, in his official capacity as Director of Corporation Counsel not to have communications with Plaintiff Salem and characterizing him as a "potential litigant" and "former litigant" in order to impede and preclude Salem's efforts to draft and promote legislation, known as the "Fairness Bill"; which Salem then pursued as a private citizen, after Wong squashed the previous efforts and directives of Mayor Arakawa.

444. Defendant Wong concealed from the Maui County Council a responsible resolution to the mitigate the County of Maui's losses and damages caused by protracted litigation involving the harmed local families along Palama Drive; one which provided for affordable housing by a credible nationwide affordable housing firm referred to the County of Maui by Plaintiff Salem. Instead, Defendant Wong advised the Maui County Council to provide financial compensation to the Developer, whose legal counsel had an undisclosed long standing professional relationships with Defendant Wong.

445. Defendant Goode further obstructed government operations by representing to the public that Defendant Corporation Counsel had concluded the Fairness Bill would be unlawful.

446. Defendant Goode then made knowingly false and unlawful representations in official court documents in Salem's Bankruptcy case, and to the public through the media, that the County "may or may not" collect on the development Deferral Agreements.

447. Meanwhile, Defendant Maui County, through Corporation Counsel, drafted and supported the 2010 Maui County Ordinance that provided for notice of collection to property owners who were heirs to the developer deferral agreements. Then, Maui County Corp Counsel blocked the "Fairness Bill" legislation to provide a formula for assessment of the developer deferral agreements

448. The only thing that is clear is that for 45 years or more, the intention of the Defendants was to keep drafting developer deferral agreements while never actually intending to collect the millions of dollars owed to the County of Maui.

449. Defendants, however, have allowed multiple overlapping, "one-time", three lots or less developer deferral Agreements on the same underlying property and allowed private attorneys to draft and record private warranty deeds to alter government contracts on property(s) with overlapping, "one time" three lot or less subdivision deferral agreements.

450. Defendants Hunt and Spence refuse to enforce unfulfilled SMA permits, allow unlawful minor permits with false engineering estimates.

451. Furthermore, Defendants Jeff Hunt and William Spence, working in collusion with Corporation Counsel and Defendant Pat Wong, have demonstrated a pattern of intentionally not enforcing SMA permits that would expose the unlawful subdivision practices of the Defendants.

452. *"A public official can be held liable for damages for the malicious exercise of discretion."* 2 H. App. 176, 628 P.2d 634. (Cited from Case Notes Part I HRS 663-1)

#### **Count VIII. Perjury and Obstruction of Justice**

453. Plaintiff Salem incorporates by reference paragraphs 1-452 of Plaintiff's Complaint as if fully set forth herein.

454. Defendant Goode, acting under the legal representation and counsel of Defendant Corporation Counsel, committed perjury and made false representations in a Declaration filed with United States District Court for the State of Hawaii.

455. Defendant Goode's statement that the County of Maui "may or may not" be collecting upon the "3 Lots or Less" subdivision agreement contradicts Defendant Arakawa's written notices on intent to collect and Title 18 of the Maui County Code adopted as a rule of law by the Maui County Council.

456. Acting in good faith and beyond his contractual obligations of the underlying Anka, Inc "3 Lots or Less" subdivision agreement, during an open escrow, Plaintiff Salem attempted to pay a pro rata share of the developers financial obligations to facilitate the sale of his home and removal of the senior lien on title.

457. In response to a request to Defendant Corporation Counsel for an amount to pay off and remove the senior lien from Plaintiff Salem's property title, Defendant Goode and Defendant Corporation Counsel attempted to deceive the Court by declaring an invalid rule of law beyond their statutory authority to obstruct the sale and transfer of Plaintiff Salem's property.

458. The State of Hawaii Supreme Court Rules of Professional Conduct, Rule 8.4(c), "It is professional misconduct for a lawyer engage in conduct involving dishonest, fraud, deceit or misrepresentation."

459. The State of Hawaii Supreme Court Rules of Professional Conduct, Rule 1.2(d), "a lawyer shall not counsel to engage, or assist a client, in conduct a lawyer knows is criminal or fraudulent".

460. The State of Hawaii Supreme Court Rules of Professional Conduct, Rule 1.6(b) "a lawyer shall reveal information which clearly establishes a criminal or fraudulent act of the client in the furtherance of which the lawyers services have been used to the extent reasonably

necessary to rectify the consequences of such act, where the act has resulted in substantial injury the financial interests or property of another.”

461. Hawaii Revised Statute; Section 710-1063, states “the materiality of the falsification distinguishes perjury, a felony, from the lesser offenses in this Part. Given the requisite state of mind with regard to truthfulness of the statement, falsification, in an official proceeding, which is material, constitutes the greatest risk of obstruction of justice. A "materially false statement" means: any false statement, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding”.

462. As a direct and proximate cause result of Defendant Goode’s perjury and fraudulent representations in the United States District Court for the State of Hawaii which contradict established rule of law, Salem suffered extensive injuries and damages, including the loss of his family home through foreclosure.

463. Plaintiff Salem is entitled to relief from Defendants Wong, Goode, Hunt, and Spence’s acts and omissions which constitute the obstruction of justice and perjury pursuant to the penalties set forth in HRS 710 1000-1063.

#### **Count IX. Conflicts of Interest and Unjust Enrichment**

464. Plaintiff repeats and incorporates by reference paragraphs 1-463 of this Complaint as if fully set forth herein.

465. Pursuant to the Maui County Charter, Chapter 2, Section 8-2.3.4., Defendant Corporation shall perform their duties as required by law.

466. The Maui County Charter, Article 13-1.3. Definitions, defines “law” as “Federal law, any law of the State or any ordinance of the County of Maui or any other rule having the force and effect of law”.



467. In accordance with the State of Hawaii Supreme Court attorney Rules of Professional Conduct, ("HRCP") Rule 1.11, attorneys shall not exploit public office to the advantage of a private client. A lawyer shall not have access to government information only obtainable through the lawyer's government service.

468. In accordance with HRCP, Rule 1.11, written notice shall be promptly provided to the appropriate government authority to ascertain compliance with the agencies conflicts of interest rules.

469. Pursuit to the Maui County Charter, Article 3, Section 3-6.6., the appropriate authority for written notice of potential conflicts of interest and employment of special counsel is the elected members of the Maui County Council.

470. Defendant Corporation Counsel employed attorney Margery Bronster without notice to the Maui County Council that attorney Bronster was simultaneously representing developer Lot 48A, LLC's in judicial matters, investigations, legal conflicts, and discovery involving County of Maui government records, subdivision approval documents, and administrative decisions by Defendant Arakawa.

471. Defendant Corporation Counsel denied the public and members of the Maui County Council of their ability and rights to due process to protect the public interest during the procurement of developer Lot 48A, LLC's legal counsel.

472. In accordance with the State of Hawaii Supreme Court attorney Rules of Professional Conduct, Rule 1.13.(b)(f), if a lawyer representing a government agency knows that a government officer or employee is engaged in an action or matter which is in violation of law which reasonably might be imputed to the government, the lawyer shall take the necessary measures, including divulging of information to persons outside of the government in accordance with Rule 1.6.

473. Defendant Corporation Counsel violated HRCF Rule 1.6 by failing to prevent a public official and government agency from committing an illegal act and causing substantial injury to the public good and Plaintiff Salem.

474. Defendant's, their current, former, and prospective developer employers and partners, and their conflicted legal counsel have been unjustly enriched at the public expense by Defendant's decisions evidenced herein and to a further degree yet discovered as follows;

- (a) Millions of dollars in uncollected developer contractual obligations shifted to and incurred by the County of Maui, and taxpayers of Maui County.
- (b) Upwards to \$500,000 in unjustified and unethical legal fees paid to Lot 48A, LLC's legal counsel while employed by Defendant Corporation Council.
- (c) Over \$250,000.00 in incomplete infrastructure and drainage mitigations by Lot \$48A, LLC.
- (d) \$100,000.00 in initial fine and \$10,000 a day in daily fines for developer Lot 48A, LLC's unfulfilled and expired SMA Permit.
- (e) Unknown and undiscovered amount of uncollected Park Fees.
- (f) All other relevant conflicts of interest as set forth in paragraph 353 of Salem's Complaint.

475. Under the power entrusted in the Maui County Charter, the Maui County Council has the right and duty to seek financial restitution and removal from office of the officials who have taken part in the violations of law and ordinances adopted by the Maui County Council.

476. As a direct and proximate cause result of Defendants Arakawa, Goode, and Wong's conflict of interest resulting in their unjust enrichment; Salem suffered extensive injuries and damages, including the loss of his family home through foreclosure, excessive and unwarranted financial losses, and severe emotional distress.

477. Plaintiff is entitled to General, Special, Compensatory, Aggravated and Punitive damages for the harm caused by Defendants (jointly and severally) including recovery of all expenses, costs, and attorney(s) fees in an amount to be proven at trial.

#### **Count X. Gross Negligence**

478. Plaintiff repeats and incorporates by reference paragraphs 1 – 477 of Plaintiff Salem's Complaint as if fully set forth herein.

479. Plaintiff alleges that Defendants Wong, Arakawa, Goode and Hunt committed willful and wrongful acts in their individual capacities as well as in their official capacities. Plaintiff alleges that the acts and omissions of Defendants, each and every one, and in their official capacities, constituted willful misconduct with a reckless disregard for the rights of Salem and, the public interest; failing to use the kind of care a reasonable person would use.

480. Plaintiff, in reliance upon the terms and conditions of the "3 Lots or Less" subdivision agreement authored by Defendant Corporation Counsel, purchased a parcel of land in west Maui believing the contractual agreements would preserve his property rights and intrinsic property value.

481. The developer "3 Lots or Less" subdivision agreements authored by Defendant Corporation Counsel have resulted in an open ended, unexplainable, unquantifiable, and unmovable Government encumbrances recorded on and clouding the title of thousands of property titles throughout Maui County.

482. Defendant Corporation Counsel has acted grossly negligent by infringing upon the property rights and title of thousands of parcels of land in Maui County, including Plaintiffs former home, Lot 48C of the Mailepai Hui Partition located at 8 Hui Road E, Lahaina, Hawaii.

483. Defendants have provided continuous and overlapping financial favors for private developers at the public and Plaintiffs expense, failed to adopt a formula and system for

assessment, collection and a process for the removal of a government encumbrance and, or lien of citizen's property title, and failed to release public documents for the review and investigation of the Maui County Council.

484. Defendants have acted grossly negligent by failing to keep accurate records of developer financial obligations and by failing to prevent and, or knowingly causing unlawful overlapping execution of one time agreements, thereby unlawfully increasing the obligation for the County of Maui and taxpayers to incur and pay for private developers financial obligations.

485. Through their grossly negligent actions described herein, Defendant's, acting individually and collectively in conspiracy with each other, in violation of the Maui County Charter, Article 9, Financial Procedures, Section 9-12. Payments and Obligations, unlawfully breeched the public trust by executing countless contractual agreements with private developers knowing the developers financial obligations would be incurred by the citizens of the County of Maui in direct violation of the procedures and policies established by ordinance.

486. Plaintiff, a former executive assistant with the Maui County Council, discovered the continuous pattern of gross negligence by the Defendant County of Maui Corporation Council.

487. Defendants Arakawa, Goode, Wong, Hunt and Spence have made representations that are inconsistent and their public statements and actions contravene the Maui County Code and the Maui County Charter as they pertain to Title 18 Ordinance 3731 and undisclosed conflicts of interests. Improper and ineffectual attorney conflict checks allowed former Attorney General Margery Bronster to work both for Defendant Maui County Corp Counsel and simultaneously for a Developer who colluded with the Defendant Maui County Corp Counsel to conceal permit studies from both the County Council and from Plaintiff Salem. Both Defendants Arakawa and Goode both are in violation of the Maui County Charter for their being employed by the very same developers, whose interests benefited in the County by Arakawa and Good

serving Defendant Maui County as department directors to the detriment of Salem, Maui County, and its residents.

488. Public hearing, County of Maui, February 1st, 2010, Infrastructure Management Committee: Corporation Counsel: "We can't have legislation that's going to destroy an existing contractual rights... Those existing contracts that we already have with these landowners are out there, and we are in a good position with those contracts."

489. Defendant Arakawa: "Any preexisting deferral agreement runs with the land and so they are still in effect and as I mentioned we intend to collect on those."

490. For over five years involving five annual budget hearings by the Maui County Council, there has been no attempt to assess or collect upon the developer deferral agreements.

491. County Defendants and, or Defendants, jointly and severally, have acted grossly negligent as follows;

**A. Gross Negligence of Department of Public Works**

**("3 Lots or Less" Subdivision Agreements)**

- (a) Failure of Department of Public Works to keep any developer financial obligations.
- (b) Signing off on Subdivision with SMA Permit condition unfulfilled.
- (c) Failure to immediately remove deferral cloud from Salem property after issuance of new entitlement conditions and permits to subsequent to Lot 48A, LLC.
- (d) False Public Notices of Commencement of Federal Aid roadway improvement Project without necessary land dedications in place.
- (e) Public Works Director Notices of Intent to Collect sent to property owners suggesting owners will have to haggle with each other to determine pro rata shares of obligation on

government contract.

- (f) Failure to send notices of intent to collect after 2010 ordinance change.
- (g) Rather than insure Phase IV of Lower Honoapiilani Road was a viable Capital Improvement Project properly prepared to commence construction upon, the Defendant's acted negligently in their false public notices and expense of public funds.
- (h) The Defendants engaged, and continue to engage, in private meetings, private communications, and unlawful conduct that serve private interests.
- (i) Lower Road Right of Way Designation
- (j) All other relevant claims set forth in paragraph 353 of Salem's Complaint

**B. Gross Negligence of Department of Planning**  
**(SMA Permit)**

- (k) Issuance of a SMA Minor Permit to Lot 48A, LLC.
- (l) Failure to insure Lot 48A, LLC SMA Permit fulfilled prior to Subdivision Approval.
- (m) Planning Director Hunt False claims of completed SMA Permits by Lot 48A, LLC
- (n) Refusal to enforce Lot 48A, LLC Permit upon discovery of expiration and non-compliance.
- (o) Concealment of Public Documents – SMA Permit Studies.
- (p) Issuance of oceanfront single family home SMA Permits on Subdivision Lots where underlying subdivision SMA is not fulfilled.

- (q) Issuance of shoreline certifications for private developers outside underlying subdivision boundaries established by prior shoreline certifications.
- (r) All other relevant claims as set forth in paragraph 353 of Salem's Complaint

**C. Gross Negligence of Department of Corporation Counsel**

- (s) Failure of Corporation Council to keep any records of developer financial obligations.
- (t) Continuation of the drafting and recording Developer Subdivision Deferral Agreements by Corporation Counsel after notices to implement assessment formulas and collection measures of outstanding Developer assessment obligations and recorded agreements.
- (u) Executing multiple one time subdivision deferral agreement on parent parcel.
- (v) Failure of Corporation Council to perform Conflict Check on Lot 48A. LLC Attorney Margery Bronster.
- (w) Corporation Counsels failure to respond to Old Republic Title request to obtain pay off amount to remove lien from title.
- (x) Failure of Government Agency to perform Conflict Check on Appointed Directors.
- (y) All other relevant claims as set forth in paragraph 353 of Salem's Complaint.

**D. Gross Negligence of the Department of Finance**

- (z) Failure of Department of Finance to keep any records of Developers financial obligations

**E. Defendants Breaches of Duty**

492. The Maui County Council and Maui County Planning Commission has a duty to adopt reasonable procedural requirements for the review and approval of the residential subdivision applications and Shoreline Management Area permit applications.

493. The Maui County Council adopted reasonable procedural requirements and ordinances in Title 18 of the Maui County Code for the review and approval of residential subdivision applications.

494. The Maui County Planning Commission adopted reasonable procedural requirements in Title 12 of the Maui County Code for the review and approval of the requirements of the Coastal Zone Management Act through Shoreline Management Area applications.

495. Under Hawaii State law, the Defendants, as public officials and County employees, owe the same duty to act in a non-negligent manner as do ordinary citizens acting in like circumstances.

496. The Defendants repeatedly breached their duty to follow the adopted procedural requirements by acting grossly negligent in their decision making that contract ordinances, rules, and administrative duties, as follows;

- a. Defendant Arakawa and Defendant Goode repeatedly and continuously neglected and breached their official duties established in Chapter 5, Section 8-5.3.2 of the Maui County Charter, by approving developer's subdivisions prior to insuring compliance with conditions of the issued developer SMA Permits.
- b. Defendant Spence and Hunt repeatedly and continuously neglected their official duties established in Chapter 8, Section 8-8.3 of the Maui County Charter, by failing to insure developers issued SMA Permits conditions and environmental mitigations were constructed, inspected, enforced, and in compliance with engineering valuations and consultant studies.



- c. Defendant Wong and, or Defendant County Corp Counsel have repeatedly and continuously officially supported Defendant Directors Arakawa, Goode, Hunt and Spence in decisions that have been in direct contravention of the Maui County Charter and the Maui County Code.

**F. Defendant County's and Defendants Breach of Administrative Responsibilities**

- (a) Failure and refusal of Defendant Maui County Corporation Counsel to remove encumbrances for property owners and lien for Salem creating a cloud on property Titles.
- (b) Defendant Maui County Counsel Corporation Counsel and Defendant Directors' Wong, Goode, Spence making public representations in contravention of County law.
- (c) Failure of Defendant Maui County to Investigate Consultant/Engineering Fraud on SMA Valuations resulting in the granting of unlawful minor permits and the circumvention of Hawai'i State Environmental law.
- (d) Refusal by Maui County Planning Department Directors to enforce signed and issued SMA Permit Conditions
- (e) Grossly Negligent Administration of Federal CZMA Environmental Laws
- (f) Failure and unwillingness to honor State law on 45 day review period for preliminary subdivisions.
- (g) Failure and unwillingness to honor Maui County code relating to continuation of established right of way established via a public hearing process.
- (h) Failure of Maui County and its departments to enforce laws and ordinances pursuant to the Maui County Code, the Maui County

Charter, Hawai'i State and U.S. Federal law.

- (i) All other relevant claims set forth in paragraph 353 of Salem's Complaint.

497. As a direct and proximate cause result of Defendants grossly negligent acts, jointly and severally, Salem suffered extensive injuries and damages, including, but not limited to, the loss of his family home through foreclosure and excessive debilitating financial losses and severe emotional distress.

498. Plaintiff is entitled to General, Special, Compensatory, Aggravated, and Punitive damages in an amount to be proven at trial, including recovery of all expenses, costs, and attorney(s) fees.

**Count XI. Breach of Covenant of Good Faith and Fair Dealing**

499. Plaintiff repeats and incorporates by reference paragraphs 1-498 of this Complaint as if fully set forth herein.

500. Through their actions described herein, Defendant's, acting individually and collectively in conspiracy with each other, breeched the covenant of good faith and fair dealing implied in every contract under Hawaii law, and made a part of Plaintiff's purchase agreements for Lot 48C of the Mailepai Hui Partition located at 8 Hui Road E, Lahaina, Hawaii.

501. Defendant's failed to abide by the contractual terms of a "3 Lots or Less" subdivision agreement recorded in senior position on the property acquired by Plaintiff Salem.

502. As a direct and proximate cause result of Defendants breaches', Salem suffered extensive injuries and damages, including the loss of his family home through foreclosure.

503. Plaintiff is entitled to General, Special, Compensatory, Aggravated and Punitive damages for the harm caused by Defendants (jointly and severally) including recovery of all expenses, costs, and attorney(s) fees in an amount to be proven at trial.

## **Count XII. Fraud**

504. Plaintiff repeats and incorporates by reference paragraphs 1 through 503 of this Complaint as if fully set forth herein.

505. Under H.R.S. contract law, through their actions described herein, Defendant Corporation Counsel, acting individually and collectively in conspiracy with each other, engaged in fraud by making false representations and inducing the Plaintiff to justifiably rely, to his detriment, upon the expressed terms and conditions of the "3 Lots or Less" subdivision agreement made a part of Plaintiff's purchase agreements for Lot 48C of the Mailepai Hui Partition located at 8 Hui Road E, Lahaina, Hawaii.

506. Defendant Corporation Counsel and Defendant Arakawa facilitated the fraud referred to in paragraph 446, by allowing a contractual agreement between 3 property owners and the County of Maui to be privately altered by land developers without notice to Plaintiff Salem. Through a private warranty deed drafted and recorded by Developer Lot 48A, LLC's private attorney Tom Welch, 3 new parcels were added to a contractual agreement authored and recorded by a government agency, Defendant Corporation Counsel.

507. Defendant Arakawa provided written notice to Plaintiff Salem that 5 lots were bound by the "3 Lots or Less" subdivision agreement. In doing so, he acted beyond his authority by attempting to establish a new rule of law and to assist an act of fraud constructed by a private developer and Defendant Arakawa's former client in private practice.

508. Defendant Arakawa also provided written and public notice to Plaintiff Salem and the Maui County Council stating the pro rata share of monies owed would be determined through consultation and negotiations between 5 property owners unlawfully bound by a "3 Lots or Less" subdivision agreement.

509. At the time of written notice, property owners within the Mailepai Hui Partition who were added to the "3 Lots or Less" subdivision agreement were represented by legal counsel who was simultaneously employed by Defendant Corporation Counsel.

510. Defendant Arakawa acted beyond his authority when he attempted to make a new rule of law that contradicted the expressed language of the "3 Lots or Less" subdivision agreement adopted through Maui County Code Title 18 by the Maui County Council.

511. Pursuit to H.R.S. Chapter §91(b), a court is required to declare that an agency's rule is void if it goes beyond the agency's statutory authority or was adopted without complying with statutory rule making procedures.

512. Defendant Arakawa's unethical, unfair, deceptive and injurious acts include, but are not limited to, the following;

- (a) While employed as a County of Maui official, Defendant Arakawa concealed a private developer client Lot 48A, LLC's subdivision approval, engineering valuations, and land division entitlement documents.
- (b) Defendant Arakawa issued final subdivision approval to a private developer client in violation of Title 18 of the Maui County Code and in violation of Article 8, Chapter 5, and Section 8-5.3 of the Maui County Charter.
- (c) Assisted a private developer client in deceiving the Department of Planning to deny citizens their rights to protect coastal resources and personal property rights adopted under Title 12 of the Maui County Code.
- (d) In the violation the Anka, Inc covenants, conditions, and deed restrictions, assisted and conspired with a private developer client and legal counsel employed by Defendant Corporation

Counsel by concealing Lot 48A, LLC SMA Permit studies and Order of Magnitude development valuation from Plaintiff Salem and members of the Maui County Council.

- (e) Approved subdivision infrastructure construction plans on behalf of a private developer client Lot 48A, LLC that did not represent conditions of subdivision approval, in violation of Title 18 of the Maui County Code.
- (f) Continued to execute contracts on behalf of private developer knowing the County of Maui and taxpayers would incur countless developer's financial obligations, in direct violation of Article 9, Section 9-12.1, of the Maui County Charter.
- (g) Assisted Defendant Corporation Counsel in concealment of hundreds of developer contractual agreements from the Maui County Council and public in violation of Article 13, Section 13-9.1., of the Maui County Charter.
- (h) Facilitate, and conspired with Defendant Corporation Council on the execution of overlapping "3 Lots or Less" subdivision agreements for developers in violation of Title 18 of the Maui County Code and Article 8, Chapter 5, Section 8-5.3 of the Maui County Charter.
- (i) Provided multiple false public notices of commencement of construction of Capital Improvement Project Phase IV of Lower Honoapiilani Road.
- (j) Provided written notice to property owners of intent to collect upon the "3 Lots or Less: subdivision agreements that

misrepresented rule of law adopted by the Maui County Council in Title 18 of the Maui County Code.

- (k) Informed the Maui County Council that it was the Planning Departments responsibility to enforce Lot 48A, LLC's expired and unfulfilled SMA Permit; a condition of subdivision approval which Defendant Arakawa signed off on and disregarded.

513. Defendant's unethical, fraudulent and deceptive practices induced Plaintiff Salem to do that which he would otherwise not do, or even consider doing, in multiple events and actions involving the acquisition and futile efforts to preserve his vested property rights over a period of over 15 years which severely harmed Salem.

514. Defendant Wong and Defendant Goode exceeded their authority, jointly and severally, by representing to the public and to the Bankruptcy Court, during a Chapter 11 Bankruptcy proceeding of Salem, that the County of Maui "may or may not collect" on uncollected developer deferral agreements, in contravention of County Ordinance 3731.

515. Defendants Arakawa, Goode, Wong, and Spence in collusion with the developer adjacent to Salem's hui road subdivision, had concealed subdivision permit studies and evaluations regarding Plaintiff Salem's subdivision; which documentation revealed that the adjacent developer was responsible for the developer deferral debt charged to Salem.

516. As a direct and proximate cause result of Defendant's grossly fraudulent acts, as set forth herein, including any and all other relevant claims of fraud set forth in paragraph 353 of Salem's Complaint. Salem suffered extensive injuries and damages, including, but not limited to, the loss of his family home through foreclosure.

517. Plaintiff is entitled to general, special, compensatory, aggravated and punitive damages due to the acts and omissions Defendant Arakawa, Defendant Maui County Corp

Counsel, Defendant Goode, Defendant Hunt and Defendant Spence including recovery of all expenses, costs, and attorney(s) fees in an amount to be proven at trial.

### **Count XIII. Unfair and Deceptive Practices**

518. Plaintiff repeats and incorporates by reference paragraphs 1 - 517 of Plaintiff Salem's Complaint as if fully set forth herein.

519. Defendant's, acting individually and collectively in conspiracy with each other, breached the State of Hawaii Unfair and Deceptive Trade Practice Act, H.R.S. §§480-2 and 480-13 by engaging in a practice that is unfair, deceptive, offends public policy, and substantially injurious to consumers and Citizens of Maui County, including, but not limited to Plaintiff Salem.

520. "Consumer" means a natural person who, primarily for personal, family or household purposes...commits money, property, or services in a personal investment." "Real estate or residences did not qualify as "goods" under this section, but did qualify as "personal investments"; homebuyer thus had standing as "consumer" to bring claim under Section 480-13. 80 H. 54, 905 P.2d 29.

521. As a direct and proximate cause result of Defendant's fraudulent acts, Salem suffered extensive injuries and damages, including the loss of his family home through foreclosure.

522. Plaintiff Salem is entitled to treble damages as set forth in HRS 480-2 and HRS 480-13, for the harm caused by Defendants (jointly and severally) to Salem's property in an amount to be proven at trial.

#### **Count XIV. False Light**

523. Plaintiff Salem incorporates by reference paragraphs 1-522 of Plaintiff Salem's Complaint as if fully set forth herein.

524. Defendant Patrick Wong, in a memo written and circulated to County government officials, published false and misleading statements about Plaintiff Salem which portrayed Salem in a false light intentionally and knowingly, and without regard for the false light in which Plaintiff Salem would be placed.

525. Defendant Patrick Wong committed this act with the intent to harm Salem and to ruin Salem's credibility thereby preventing Salem from bringing to light the fraudulent and other unlawful conduct of Defendants, including, but not limited to, Defendant Patrick Wong.

526. Defendant Patrick Wong's action to harm Salem in this manner would be considered highly offensive to a reasonable person. In fact, it was highly offensive to County Officials who know and who work and have worked with Plaintiff Salem.

527. Furthermore, Defendant Patrick Wong and Defendant Goode's knowingly false representations in court documents in Plaintiff Salem's Chapter 11 Bankruptcy case also portrayed Salem in a false light and caused harm to Plaintiff Salem thereby.

528. As a direct and proximate cause result of Defendant Wong and Defendant Goode's intentional acts, Salem suffered injuries and damages, to his reputation and his credibility and obstructed legislation and blocked the collection of millions of dollars of debts owed to the County and maintained an open-ended government encumbrance which became an open-ended lien, on Salem's property.

529. Plaintiff Salem is entitled to general, special, compensatory and punitive damages caused by the Defendants including recovery of all expenses, costs, and attorney(s) fees in an amount to be proven at trial.



## Count XV. Intentional Infliction of Emotional Distress

530. Plaintiff repeats and incorporates by reference paragraphs 1 through 529 of Plaintiff Salem's Complaint.

531. "An individual is liable for intentionally inflicting emotional distress when his conduct is 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency'" Howell v. New York Post Co. 81 N.Y. 2D 115, 121,595 N.Y.S. 2D 350 (1993). "Specifically, a plaintiff must prove (1) extreme and outrageous conduct; (2) intent to cause, or reckless disregard of a substantial probability of causing, severe emotional distress; (3) causal connection between the conduct and injury; and (4) severe emotional distress." Stuto v. Fleishman, 164 F. 3d 820, 827 (2<sup>nd</sup> Cir. 1999) cited in Turley v. Arcedlor-Mittal

532. The conduct exhibited by Defendants (jointly and severally) constitutes a pattern of behavior that constitutes outrageous conduct that is extreme and which has a substantial probability of causing severe emotional distress in the Plaintiff and for which all the Defendants (jointly and severally) showed a completely reckless disregard.

533. Defendant Goode issued preliminary subdivision approval to developer Smith Development on the Pu'uKahana subdivision application directly across the street from Plaintiff Salem's property. Immediately thereafter, Defendant Goode was employed by Smith Development.

534. Defendant Goode violated the Maui County Charter, Article 10, Code of Ethics, Section 10-4., by receiving compensation from a private interest on a subdivision application which was under Defendant Good's direct and active consideration as Director of Public Works.

535. After years of opposition from multiple property owners impacted by the proposed Pu'uKahana subdivision, including Plaintiff Salem and his legal counsel Tom Pierce, the Pu'uKahana subdivision application was denied by the Maui County Planning Commission.

536. Defendant Goodes preliminary subdivision approval was rejected by the Planning Commission due to violations of the Maui County Code. Immediately upon denial, Defendant Goode's employer Kent Smith sent Plaintiff Salem an implied death threat.

537. Defendant Wong's attempts to character assassinate Salem; his motions to interfere with Salem's requests for discovery of concealed documents by Defendants have directly caused Salem severe distress.

538. Defendant Goode's attempt, in a declaration to the Bankruptcy Court, during Salem's Chapter 11 was a brazen attempt, through false representations, to harm Salem by misrepresenting the County Code and Title 18 Ordinance of 2010 requiring the assessment and collection of uncollected obligations.

539. Defendants' attempts, jointly and severally, to cover-up acts and omissions constituting fraud and, or gross negligence and civil conspiracy harmed Salem and caused him unimaginable emotional distress.

540. Defendants acted intentionally and recklessly, conduct was extreme and outrageous; acts are the cause of the distress; and Plaintiff suffers severe emotional distress as a result of defendant's conduct.

541. As a direct and proximate cause result of Defendant's negligent acts, Salem suffered extensive injuries and damages, including severe anxiety due to the loss of his family home through foreclosure, the complete exhaustion of all Salem's financial resources attempting to address the harm being caused to Plaintiff by Defendants jointly and severally as set forth in the Complaint herein, and the consequence of excessive stress on his wife and family.

542. As a direct and, or proximate result of Defendants wrongful acts, and, or omissions against Salem, (jointly and severally) Salem has suffered injuries and damages as set forth herein and is therefore entitled to receive special damages, and, or general damages in amounts to be determined at trial or hearing thereof.

### **Count XVI. Negligent Infliction of Emotional Distress**

543. Plaintiff repeats and incorporates by reference paragraphs 1 through 542 of Plaintiff Salem's Complaint as if fully set forth herein.

544. As a result of Defendants wrongful conduct (jointly and severally), Salem sustained a mental condition requiring medication.

545. As a direct and, or proximate result of Defendants wrongful conduct, (jointly and severally) Salem has suffered injuries and damages as set forth herein and is therefore entitled to receive special damages, and, or general damages in amounts to be determined at a trial or hearing thereof.

### **Count XVII. Trespass to Chattel**

546. Plaintiff repeats and incorporates by reference paragraphs 1 through 545 of Plaintiff Salem's Complaint as if fully set forth herein.

547. Defendants jointly and severally knowingly interfered with Plaintiff Salem's lawful possession of his property on Hui road; interfering with Salem's possessory interest by maintaining and supporting an open-ended government encumbrance and cloud over Salem's title on his hui road property which precluded Salem from being able to market and to sell his property and which diminished its value.

548. Furthermore, and later when Salem entered into escrow with a tenant, who desired and intended to purchase said property; Defendant Pat Wong made materially false representations to the Title company, to the effect that the encumbrance recorded on said property by the County of Maui did not constitute a lien; and that the County may or may not collect on the debt owed through a developer deferral agreement; which debt, in actuality, was required to be assessed and collected by law.

549. Defendant Arakawa and Defendant Goode unlawfully interfered with Salem's property by failing to assess and collect the fees Salem allegedly owed the County which open-

ended encumbrance and cloud over Salem's title, became a lien after Defendant Arakawa issued a Notice to Collect the debt to Plaintiff Salem.

550. Through Fraud, false representations and, or gross negligence, Defendants committed Trespass to Chattel against Plaintiff Salem's property.

#### **Count XVIII. Constructive Taking**

551. Plaintiff Salem incorporates by reference paragraphs 1-550 of Plaintiff Salem's Complaint as if fully set forth herein.

552. Failure of Defendant Maui County Corp Council to respond to Title Company demand for compliance with C-12 of State of Hawaii real property purchase contract resulted in loss of sale and diminishment of value of Plaintiff Salem's property interest.

553. Defendant Maui County Corp Council and Defendant Goode allowed an open ended government lien on Salem's property title, precluding appraisers and mortgage lending to Plaintiff Salem, resulting in substantial diminishment of real property value and his inability to sell his property.

554. Further, Defendant Wong and Defendant Goode exceeded their authority by falsely representing to an escrow title officer in Salem's escrow proceeding that the open-ended County government encumbrance on Salem's property did not constitute a lien

555. Defendants Maui County Corp Council, Defendant Arakawa and Defendant Goode committed fraud through the concealment of SMA permit studies and evaluations and undisclosed conflicts of interest creating \$250,000 lien on Salem's Hui road property; resulting in Salem's inability to eliminate fraudulent lien, sell his property, and avoid foreclosure.

## RELIEF

WHEREFORE, based upon the facts and findings detailed above, the Plaintiff requests that judgment be entered against the Defendants and for Plaintiff Salem and in the public interest as follows:

- (i) Enter an Order to restrain any and all Defendants named herein to discontinue further public defamation and intimidation against Plaintiff Salem and his family.
- (ii) Enter an Order to the Defendants named herein to disclose all conflicts of interests, or appearance of conflicts of interest, for all claims and parties named herein.
- (iii) Enter a Restraining Order, due to conflicts of interest, to Defendant Wong and to Corp Council to restrain said Defendants from representing the Defendants named herein (with the exception of allowing individual Defendants to represent themselves as individuals, but not in their official capacities)
- (iv) Enter an Order to Compel the County of Maui to release to the public and to the Maui County Council all development contractual agreements of all types and categories executed by Defendant Corporation Counsel which are subject by County Ordinance to past, current, and future assessment and collection.
- (v) Enter an Order to restrain the Defendant County of Maui from funding roadway Capital Improvement Projects until all developer reimbursement agreements have been accounted for and released to the Maui County Council and public for review.
- (vi) Enter an Order to the Defendant County of Maui, Corporation Counsel to declare which individual developer agreements are assessable and collectable currently or retroactively by ordinance and law.
- (vii) Enter an Order to Defendant County of Maui to appoint a special investigator to review all engineering valuations in developer agreements for which minor permits have been issued by the County of Maui.
- (viii) Enter an Order to the Maui County Council to disclose all personal, professional, or direct and distant family members who are heirs to assessable development agreements executed by Defendant Corporation Counsel throughout Maui County.
- (ix) Enter an Order to the County of Maui to immediately expunge from citizen's property titles all one time "3 Lot or Less" subdivision agreements which have been overlapped by subsequent unlawful "3 Lots or Less" subdivision agreements.

- (x) Enter an Order to Maui County Council to adopt through legislation a formula for assessment or rescission of the notices of intent to collect upon the "3 Lots or Less" Subdivision Agreements sent to property owners and their heirs in interest by Defendant Arakawa.
- (xi) Enter an Order to Corp Counsel to declare a breach of contract with the owners and heirs to the Anka, Inc one "3 Lots or Less" subdivision agreement by allowing 5 lots to bound by the "3 Lots or Less" agreement without notice to fellow contractual properties including Plaintiff Salem.
- (xii) Enter Findings that Defendant Corporation Counsel Pat Wong and Defendant David Goode committed perjury in a Declaration filed with the United States Bankruptcy Court for the State of Hawaii which is not supported by law, and, or ordinance and simultaneously violated Salem's civil rights pursuant to 42 U.S.C. 1983, 1985 and the 14<sup>th</sup> Amendment to the United States Constitution.
- (xiii) Enter an Order to declare SMA Permit SM2 2000 / 0042 is a valid and enforceable subdivision entitlement condition between the County of Maui and developer Lot 48A, LLC.
- (xiv) Enter an Order to declare SMA Permit SM2 2000 / 0042 is unfulfilled, expired, and requires reapplication to the Planning Department of the County of Maui.
- (xv) Enter an Order to prevent further issuance of Building permits or SMA Permits in oceanfront 3 lot subdivision developed by Lot 48A, LLC until all subdivision infrastructure and drainage improvements are complete and accepted.
- (xvi) Enter an Order to Defendant Spence and Mayor Arakawa to impose maximum sanctions including maximum fines and penalties to Developer Lot 48A, LLC for attempting to defraud Maui County and shift their financial obligations to citizens of Maui County.
- (xvii) Enter an Order for the Maui County Council to impose appropriate penalties pursuant to the Maui County Charter, upon Defendant Goode for violations of ordinances and rules having the force and effect of law.
- (xviii) Enter an Order for the Maui County Council to impose appropriate penalties pursuant to the Maui County Charter, upon Defendant Pat Wong for failing to and, or causing violations of ordinances and rules having the force and effect of law; and for retaliating against a resident and former employee of Maui County engaged in the implementation of legislation at the direction and request of the Mayor of Maui County.
- (xix) Issuing a finding that Defendants Arakawa, Wong, Goode and Spence violated Plaintiff Salem's civil rights pursuant to U.S.C. 42 Section 1983.
- (xx) Issuing a finding that Defendants Arakawa, Wong, Goode and Spence have committed violations of 18 USC 1341, 1346 constituting "Honest Services Fraud".

- (xxi) Enter an Order for Mayor Arakawa and the Maui County Council to remove Defendant Goode from office for multiple violations of the Maui County Charter and Maui County Code.
- (xxii) Enter Order that Maui County Council impose maximum punishment on Defendant Arakawa including incarceration for violations of Maui County ordinances and rules having the force and effect of law and for acts of conspiracy and collusion with a private client with clear intent harm a private citizen while employed by the County of Maui.
- (xxiii) Enter an Order to the Maui County Council to investigate and account for uncollected park fees for subdivisions approved by the Department of Public Works throughout Maui County.
- (xxiv) General, Special and Compensatory damages to Plaintiff Salem for the loss of family home, financial ruin incurred by protecting property interests, lost economic opportunities; impairment of earning capacity; ruined 600 + credit score; for medical bills past, present and future, pain and suffering and mental anguish and emotional distress; and loss of enjoyment of life. Punitive damages to compel the Defendant County of Maui and individual Defendants who are and, or were public officials to uphold and maintain the public trust and render "honest services" in the exercise of their duties and responsibilities as public servants, and so that Defendant the County of Maui will retain County employees properly and adequately and to deter acquiescence or approval of similar breaches of the public trust and tortious conduct in the future.
- (xxv) Aggravated damages for the manner in which Plaintiff's injuries have been aggravated by Defendants unethical and unlawful behavior in response to Plaintiff's notices and good faith attempts to rectify and resolve the issues set forth in Salem's Complaint.
- (xxvi) prejudgment and post judgment interest
- (xxvii) Attorneys' fees and costs incurred in this matter.
- (xxviii) Such other and further recovery as the Court may deem just and proper.

Respectfully submitted,

Dated: \_\_\_\_\_  
Wailuku, Hawaii

\_\_\_\_\_  
Burton D. Gould, Attorney  
for Plaintiff Christopher Salem

AFFIDAVIT OF JO ANNE JOHNSON WINER 2015 AUG 17 AM 9:30

I, JoAnne Johnson Winer, state as follows;

1. I am a citizen of the United States of America, a resident of the County of Maui, State of Hawaii and I am over 21 years of age.

2. As a resident of West Maui, I was elected to the Maui County Council on November 2, 1999 and served for ten years until reaching term limitations and I currently serve as Director of Transportation for the County of Maui.

3. On or about 1999, I hired Kathy Kaohu as my executive assistant to the Maui County Council. Ms. Kaohu is currently an executive assistant to Maui County Council Member Don Guzman. She also assisted me in research on issues while on the Council and on issues related to "deferral agreements."

4. On or about late in 2000, my office was contacted by West Maui resident Christopher Salem regarding questions and concerns over the proposed design for a County of Maui Capital Improvement Project for Phase IV of Lower Honoapiilani Road relating to public safety, environmental impacts and view planes, since the project ran adjacent to his property.

5. In cooperation with Austin, Tsutsumi Associates, Inc. (project consultants for Phase IV) and County Project Manager Joe Krueger, Mr. Salem volunteered his professional knowledge and expertise to help create a more sensitive and safe redesign of the Phase IV roadway improvements, which I believe are still on file with the County.

6. As a member of the Maui County Council, I approved the expenditures for this Phase IV Capital Improvement Project during our annual budget hearings as a part of



our annual budget process. During this process, I understood from the information provided that the project would begin in 2002 and the construction would take about a year.

7. I do not believe that Council members were aware at the time the funding was approved that the Department of Public Works had failed to acquire the numerous land rights and necessary easements to initiate the field construction of the Phase IV roadway upgrades. To the best of my knowledge the Phase IV Capital Improvement Project is currently stalled and I am unclear if approvals and/or funding are in place.

8. In late 2000, Mr. Salem also brought to my attention outstanding obligations owed to the County of Maui from developer contractual agreements commonly known as "3 Lots or Less" roadway improvement "Deferral Agreements."

9. We met with Councilmember Riki Hokama to determine if his historical knowledge could help us to understand this process and how these obligations could still be outstanding. Councilmember Hokama was not aware of who was tracking these obligations and was also concerned about these obligations. He did not want to use public monies to pay for improvements that were the responsibility of either developers or owners.

10. Since Mr. Salem owned a property along Phase IV of Lower Honoapiilani Road he shared his firsthand knowledge of how this worked with us. He advised us that in accordance with terms of a "3 Lots or Less" subdivision agreement recorded on his land title by our attorneys in Corporation Counsel, the original developers deferred the cost of roadway and drainage improvements. Mr. Salem explained that this obligated

current and future property owners within the 3 Lot subdivisions to pay to the County of Maui their "pro rata" share of the Phase IV Capital Improvement Project.

11. I later learned from Mr. Salem's ongoing inquiries and notices to our County departments, the Department of Corporation Counsel, Department of Finance, and Department of Public Works that no department was assigned to track the collection and assessment of an unknown quantity of developers contractual financial obligations owed to the County of Maui. As a result, it was unknown how many of these agreements existed or how much money might be owed to the County of Maui. I believe I also received a letter from Public Works confirming that no records were being kept by their department of these agreements.

12. Through this process I also learned that subdivisions of 4 lots or more were required by ordinance to mitigate the impacts of their developments by installing complete roadway and drainage improvements along their frontages without any form of deferral or developer exemptions available.

13. I recall receiving a copy of a letter sent from Mr. Salem to Mayor Alan Arakawa alerting the administration that public funds were likely being used to pay for private developer's financial obligations without any form of reimbursement to the County of Maui, since deferral agreements were not being tracked.

14. From 2002 and for years thereafter, I continued to raise my concerns in annual Maui County Council budget hearings regarding how these deferral agreements actually obligated the County of Maui to pay for and incur private owner's financial obligations.

15. Prior to my tenure as a council member, I learned that the first three phases of Lower Honoapiilani Road had been upgraded and improved as County of Maui Capital Improvement Projects with County of Maui and Federal funds. However, no funds were provided through deferral agreement collections.

16. As I came to learn over time, on these 3 phases, the County of Maui paid with public taxpayer funds the entire costs of developer's roadway frontage and financial obligations without making any attempts to notice or collect upon the development debts owed.

17. My numerous inquiries to then Department of Public Works Director Milton Arakawa, requesting a list of developer's subdivisions that were subject to assessment and collection throughout Maui County, failed to achieve any results.

18. In 2007, out of frustration, I proposed legislation to the members of Maui County Council to Title 18 that was adopted (I think it was ordinance 3513 and Bill Number 77) by Maui County Council in 2007. I believed that by doing so, it would limit the expenditure of public funds on private developer's or owners financial obligations that had been ongoing since 1974.

19. On October 12, 2009, I proposed further language to a proposed Title 18 bill that would insure that financial obligations set forth in previously executed and recorded "deferral agreements" would be assessed and collected by the County of Maui.

20. The resulting Ordinance 3731 was enacted and insured that proper advanced Notice of Intent to Collect would be sent by the director authorized to administer the developer agreement at the commencement of future funding of roadway

Capital Improvement Projects and at the time land right of way acquisition was initiated by the County of Maui.

21. Ordinance 3731 insured that developers and their heirs would be obligated to pay a pro rata share of roadway capital improvements in order to prevent those costs from being shifted to Maui County taxpayers.

22. In compliance with the adopted ordinance, I recall that Director of Public Works, Milton Arakawa, then sent letters of Notice of Intent to Collect to multiple property owners along the Phase IV Capital Improvement Project of Lower Honoapiilani Road, including Mr. Salem.

23. Director Arakawa informed property owners that the County would ask them for a payment of the pro rata share of costs of the Phase IV roadway improvements as per the terms of their deferral agreements. Director Arakawa also notified the property owners that Phase IV construction would now commence in 2012.

24. Director Arakawa, I believe also informed the affected property owners that their pro rata share would likely be determined in consultation and agreement between other property owners within their subdivision. However, I could never find any authorization within our legislation that would allow such a notice and determination.

25. It was not until November of 2010 that Public Works Director Milton Arakawa finally disclosed to the County Council that he believed there were perhaps as many as 1800 open-ended deferral agreements affecting the land title of thousands of properties in Maui County that had been executed and recorded by Corporation Counsel. This was very disturbing to many of us.

26. I was also made aware by Mr. Salem that Director Arakawa had informed

the property owners in Mr. Salem's subdivision that 5 property owners from two separate overlapping 3 Lot subdivisions were obligated to pay a pro rata share of the 3 Lots or Less Subdivision Agreement. Mr. Salem asked me if I was aware of how this could happen and I advised him that I knew of no ordinance adopted by the Maui Council that would allow two separate overlapping subdivisions of the same parcel of land to twice defer their roadway infrastructure and financial obligations and I had no explanation as to how this could even happen.

27. In early 2011, I met with Mayor Alan Arakawa and Mr. Salem and I was instructed by Mayor to work with Corporation Counsel Attorney Ed Kushi and Mr. Salem to see if there was a possible formula or process for assessment and collection of the deferred developer financial obligations that the Mayor might present for consideration to the Maui County Council. The knowledge that both Mr. Salem and I had of the subject matter was why I believe we were asked to come up with some possible suggestions to the Mayor.

28. The effort to provide input never came to fruition since Corporation Counsel advised the Mayor that our input was not needed. I was also questioned by Corporation Counsel as to why I was even involved in this matter inasmuch as I was no longer a Councilmember. I explained that I had specific knowledge of the issue and felt that I could contribute to resolving the matter to the benefit of all concerned. I am aware that after Corporation Counsel countered Mayor Arakawa's directive, Mr. Salem took it upon himself as a private citizen to meet with Council members and their assistants to draft legislation to adopt a fair and reasonable process for collection and assessment of the developer's deferred financial obligations.

29. 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 the start to achieving a fair and responsible process for collection and assessment of developer's deferred financial obligations. Mr. Salem advised that the bill also appeared to have support from members of the Maui County Council. I do not know what happened to the legislation beyond what I was told by Mr. Salem.

30. I am unaware if the Department of Public Works or Corporation Counsel ever addressed the concerns raised by Mr. Salem regarding the five owners with two overlapping three lot subdivisions. There should be some type of response as it does not appear to be allowed under our county ordinances. If it is not legal, then how can Corporation Counsel allow it to be permitted?

31. Corporation Counsel informed Mr. Salem, and I believe, during public testimony, our County Council as well as the general public, that releasing copies of the developer contractual agreements would be "an interruption of a legitimate government function". I did not agree with this interpretation.

32. I recalled reading in a Maui News article that Public Works Director David Goode publicly stated that Corporation Counsel deemed the "Fairness Bill" illegal. From what I understood, the "Fairness Bill" was reviewed by Council Services attorneys prior to being forwarded to the County Council for consideration and no issues regarding illegality were raised.

33. I question whether or not a written memorandum was ever issued by Corporation Counsel to the members of the Maui County Council explaining why the

"Fairness Bill" was unlawful or inconsistent with the 2010 Ordinance that was approved by Corporation Counsel. This was always a part of the standard procedure when I was on the Council.

34. During my years of public service as a Council Member of the County of Maui, the attorneys in Corporation Counsel always led me to believe that the "3 Lot or Less" contractual agreements drafted and recorded by the Department were collectable debts owed to the County of Maui.

35. Why the Fairness Bill that was submitted was not considered or an alternate proposal drafted so that monies owed to the people of Maui County were able to be collected? I was disturbed with the way Mr. Salem's integrity was questioned and how his motivation to resolve this issue was portrayed both privately and publicly during the discussions surrounding the bill.

36. I believe Mr. Salem's efforts in seeking responsible government over the past fifteen years were on behalf of the best interests of the citizens of Maui County. From what I personally witnessed, his dedication and commitment to the youth programs of West Maui has been exemplary despite the suffering his family has endured and continues to endure by bringing these issues into the public light.

37. It was recently brought to my attention that Public Works Director David Goode advised that the County of Maui "*may or may not*" be collecting upon the developer contractual obligations previously noticed for collection to property owners by Public Works Director Arakawa. I do not agree with this position as it contradicts the intent and stated language of ordinance 3731 that was publicly adopted by our Maui

County Council. Consistent with all legislation adopted by the Maui County Council, Ordinance 3731 was reviewed and approved by Corporation Counsel and is a law.

38. I have reviewed a letter from Director Goode, which was approved by Mayor Arakawa on January 9, 2012, wherein he stated his department has completed the cataloging of all known deferral agreements and it is his intent to work with the Department of Finance and Corporation Counsel to arrive at fair formula for calculation and assessment and notify the affected land owners of their required contributions.

39. I have also reviewed a letter from Director Goode on April 16, 2012, which provided the projected revenues from collection of developer deferral agreements on affected parcels along the South Kihei Road Capital Improvement Project.

40. I also reviewed a recent document showing Mr. Salem's analysis of the developer deferral agreements on residential, commercial, and industrial properties recorded by the Department of Public Works and Corporation Counsel throughout Maui County.

41. Why are public officials not bound to follow ordinance 3731 which required that Notices of Intent to Collect deferred developer contractual financial obligations were distributed? Why does it appear that the County is shifting private obligations to the public in violation of the County Charter?

42. An additional concern is the obligation to insure that there are no unfulfilled SMA Permit obligations wherein developers have failed to complete their roadway improvement and drainage mitigations that also may end up being paid for with County funds during Capital Improvement Projects. What is being done to insure that these obligations are being met and who is tracking them?



43. During a Maui County Council Infrastructure Management meeting on February 1, 2010, Attorney Galazin of Corporation Counsel informed the Council members of the different situations in which a developer may have to pay for roadway improvements and drainage mitigations, including obligations set forth in subdivision applications and SMA Permit studies and applications.

44. As I learned during the final years of my tenure as a Council Member, the Planning Department was not tracking SMA requirements that would insure compliance of developers in completing their SMA Permit roadway and drainage mitigations. They appear to rely solely on the integrity of developers and complaints from citizens to administer developer compliance.

45. 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.

46. During my latter days as of member of the Maui County Council, I became aware that developers of Olowalu Mauka subdivision had failed to complete their subdivision obligations and environmental mitigations conditioned in an SMA Major Permit issued almost 10 years prior and as a result a lawsuit was filed by a private resident who was sold a property in the developers Olowalu Mauka subdivision.

47. My understanding was that the Olowalu subdivision received final subdivision approval from the County even though there were incomplete SMA Permit conditions. This occurred during the very same time period that Mr. Salem raised his concerns that developer's "3 Lots or Less" contractual agreements executed by Corporation Counsel were not being kept track of, assessed, or collected upon. Mr. Salem

also complained that his 3 lot subdivision was being re-subdivided a second time by Developer Lot 48A, LLC in violation of the Maui County Code and the SMA Permitting process.

48. As I learned from being called as a witness in legal arbitration proceedings involving a dispute over Developer Lot 48A, LLC's obligations to pay their pro rata share of the Phase IV Capital Improvements affecting the land title of Mr. Salem's property, the County Department of Public Works signed off on Developer Lot 48A, LLC's oceanfront subdivision with what I viewed as an incomplete and unfulfilled SMA Permit during the same time period whereby the same county department granted the Olowalu subdivision approvals with unfulfilled SMA Permit obligations.

49. I also learned that the Developer Lot 48A, LLC's attorney was working for the County of Maui Department of Corporation Counsel at the same time she was employed by Lot 48A, LLC in the legal proceedings. I saw nowhere in the procurement reports that this was disclosed to the members of the Council. I also learned Developer Lot 48A, LLC's SMA Permit studies were not provided to the arbitrator and they included the disputed roadway and drainage improvements to the frontage of Mr. Salem's property along of Phase IV of Lower Honoapiilani Road.

50. When I was informed that the former land planning firm of a county official was the same SMA consultant retained by the County of Maui to complete the SMA environmental studies and permitting for Phase IV of Lower Honoapiilani Road as well as being the SMA Permit consultant for the Developer Lot 48A, LLC for the re-subdivision of the "3 Lots or Less" subdivision I became extremely concerned. This is

the same subdivision in which Mr. Salem owned an original parcel of land abutting Phase IV of Lower Honoapiilani Road. To my knowledge there was no disclosure made to this effect.

51. I witnessed Mr. Salem's vehement protest and complaints that the overlapping subdivision of the original "3 Lots or Less" subdivision by Lot 48A, LLC required developer Lot 48A, LLC to obtain a SMA Major Permit through public hearings. My belief is that the one time exemption from an SMA Major permit was exhausted on the original 3 Lots or Less Subdivision. I still question how this could happen if laws are in place to protect the rights of the public?

52. Mr. Salem further argued that the engineering valuation for the Lot 48A, LLC's SMA permit underestimated the impacts of the oceanfront subdivision and costs associated with the development to intentionally avoid environmental studies and public review. Even after my inquiries to the Planning Department about this issue and also the SMA requirements I do not believe this has ever been resolved or investigated.

53. I was made aware that deferral agreements recorded by Corporation Counsel on Mr. Salem's property along with Director Arakawa's written notice to Mr. Salem caused residential appraisers and real estate brokers to refuse to represent his property for sale.

54. I was also advised that Mr. Salem attempted to pay the County of Maui a pro-rata share of the "3 Lots or Less" subdivision agreement to try to remove the open ended lien on his property during an open escrow even though it was developer Lot 48A, LLC's obligation to do so. I was told by Mr. Salem that Corporation Counsel refused to accept his payment or remove the lien on his property to facilitate the escrow.

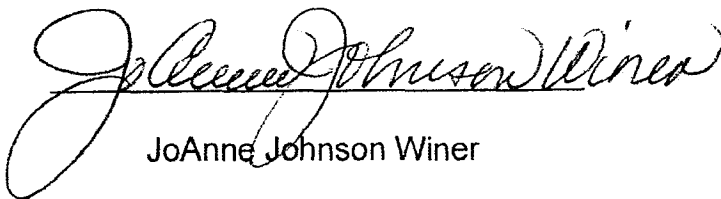
55. I remain dedicated to the people of Maui County and I truly believe that our citizens expect all public officials to protect their interests and act with integrity.

56. As a former member of the Maui County Council, I witnessed time and again where private citizens were forced to uphold the ordinances adopted by the Maui County Council to protect citizen's individual and public property rights, when this should in effect be the obligation of the County of Maui.

57. I have gone through Mr. Salem's lengthy and detailed timelines and also his analysis of what has taken place and I would agree that what he has uncovered appears to reveal a failure to enforce laws uniformly, collect monies due the County, adhere to SMA and subdivision laws and disclose possible conflicts of interest. These issues should be thoroughly investigated and resolved, which I believe Mr. Salem has attempted to do on a number of occasions.

58. Mr. Salem should not be punished for shining the light on these issues but thanked for having the courage to bring them to the County in the first place.

59. I am prepared to testify under oath to the events described in this affidavit to insure that the public's trust is fairly represented.

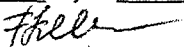
  
JoAnne Johnson Winer

Doc. Date: 8-11-15 # Pages: 14  
Flyuza Wasano Second Circuit  
Doc. Description: affidavit

 8-11-15  
Notary Signature Date  
NOTARY CERTIFICATION

State of Hawaii  
County of Maui

Sworn to and subscribed before me on  
day of AUG 11 2015



Flyuza Wasano  
Notary Public, State of Hawaii  
My commission expires 08/11/2017

