

**RICHARD T. BISSEN, JR.**  
Mayor

**VICTORIA J. TAKAYESU**  
Acting Corporation Counsel

**MIMI DESJARDINS**  
First Deputy

**LYDIA A. TODA**  
Risk Management Officer



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2023 OCT 30 AM 9:45

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

October 27, 2023

Via email only at [county.clerk@mauicounty.us](mailto:county.clerk@mauicounty.us)

Honorable Alice L. Lee, Chair  
and Members of the Council  
County of Maui  
Wailuku, Hawaii 96793

SUBJECT: LOU BAFFA V. COUNTY OF MAUI AND MAUI ELECTRIC CO.  
LTD., CASE NO. 2CCV-22-0000163 – AUTHORIZING  
SETTLEMENT OF LOU BAFFA V. COUNTY OF MAUI, ET AL.

Dear Chair Lee and Council Members:

Please find attached separately a proposed resolution entitled  
"AUTHORIZING SETTLEMENT OF LOU BAFFA V. COUNTY OF MAUI AND  
MAUI ELECTRIC CO. LTD., CASE NO. 2CCV-22-000163".

May I request that the proposed resolution be scheduled for discussion  
and action, or referral to the appropriate standing committee as soon as  
possible. Also attached herewith is the Complaint, filed June 22, 2022, in this  
matter.

It is anticipated that an executive session may be necessary to discuss  
questions and issues pertaining to the powers, duties, privileges, immunities,  
and liabilities of the County, the Council, and/or the Committee.

Should you have any questions or concerns, please do not hesitate to  
contact us. Thank you for your anticipated assistance in this matter

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Gores", written over a horizontal line.

JOHN J. GORES  
Deputy Corporation Counsel

cc: Jordan Molina, Director of Public Works  
Attachments

Served on TWK  
on 7/19/2022 @ 4pm

LOWENTHAL & LOWENTHAL, LLC  
By: JACOB K. LOWENTHAL (9945)  
33 North Market Street, Suite 101  
Wailuku, Maui, Hawai'i 96793  
Telephone: (808) 242-5000  
Facsimile: (808) 242-1500  
Email: jkl@lowenthal-hawaii.com

Electronically Filed  
SECOND CIRCUIT  
2CCV-22-0000163  
22-JUN-2022  
02:03 PM  
Dkt. 1 CMPS

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

LOU BAFFA,

Plaintiff,

vs.

COUNTY OF MAUI; MAUI ELECTRIC  
COMPANY, LIMITED; JOHN DOES 1-  
20; JANE DOES 1-20; DOE  
CORPORATIONS 1-20; DOE  
PARTNERSHIPS 1-20; DOE NON-  
PROFIT ENTITIES 1-20; DOE  
GOVERNMENTAL ENTITIES 1-20.

Defendants.

Civil No. \_\_\_\_\_  
(Other Non-Vehicle Tort)

COMPLAINT; SUMMONS.

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CORPORATION COUNSEL

Plaintiff, LOU BAFFA, by and through her attorneys, hereby makes the following claims:

PARTIES

1. Plaintiff LOU BAFFA is, and at all times relevant hereto was, a resident of the County of Maui.
2. Defendant COUNTY OF MAUI is a governmental entity of the State of Hawai'i and is subject to the jurisdiction of this Court.
3. Defendant MAUI ELECTRIC COMPANY, LIMITED, is a domestic profit corporation doing

business in the County of Maui and is subject to the jurisdiction of this Court.

4. Plaintiff is presently unable to ascertain the true names of Defendants John Does 1-20, Jane Does 1-20, Doe Corporations 1-20, Doe Partnerships 1-20, Doe Non-Profit Entities 1-20, and Doe Governmental Entities 1-20 (herein Doe Defendants), who are therefore sued herein under fictitious names. Doe Defendants are connected with the named Defendants; and/or are the agents, servants, employees, representatives, or independent contractors of the named Defendants; and/or were in some manner engaged in the activities alleged herein; and/or were in some manner responsible for the injuries and damages sustained by Plaintiff. Pursuant to Hawai'i Rules of Civil Procedure Rule 17(d), Plaintiff will seek leave of Court to identify and substitute the true names, capacities, and responsibilities of the Doe Defendants when they are ascertained.

#### **JURISDICTION AND VENUE**

5. The Circuit Court of the Second Circuit, State of Hawaii, has jurisdiction over this matter pursuant to Haw. Rev. Stat. § 603-21.5.
6. Venue is proper pursuant to Haw. Rev. Stat. § 603-36(5) because the claim for relief arose in this Circuit.

#### **FACTUAL ALLEGATIONS**

7. At all times relevant herein, Defendants, and/or any of them, created, caused, allowed to exist, owned, leased, operated, cleaned, controlled, managed, and/or supervised, failed to inspect and/or maintain its premises, and/or failed to warn about and/or failed to eliminate a condition on the premises which was foreseeably dangerous to members of the public, including Plaintiff,

which condition created an unreasonable risk of harm to Plaintiff, and was a cause of Plaintiff's injury, on the Front Street sidewalk in front of the Wharf Cinema Center in Lahaina.

8. On or about December 29, 2020, Plaintiff was walking on the Front Street sidewalk in front of the Wharf Cinema Center in Lahaina.
9. The sidewalk is owned and maintained by Defendant COUNTY OF MAUI.
10. There was a recessed area in the sidewalk where Defendant MAUI ELECTRIC COMPANY, LIMITED's utility box was installed.
11. Plaintiff's foot was caught by the recessed, vertical section of concrete in the sidewalk.
12. Plaintiff fell forward, landing hard on and breaking her knee.
13. Plaintiff sustained serious injuries.

**LIABILITY**  
**(NEGLIGENCE)**

14. Plaintiff alleges and incorporates by reference the preceding paragraphs of the Complaint as though fully set forth herein.
15. Plaintiff was reasonably anticipated to be on Defendants' sidewalk and utility box.
16. Defendants had a duty toward Plaintiff to exercise reasonable care to maintain its sidewalk and utility installations in a safe condition and remove unreasonable risks of harm that arose from the way in which their business was conducted or operated.
17. Defendants knew or should have known of the unreasonable risk of harm.
18. Defendants had sufficient control over the property to be able to take reasonable steps to remove the unreasonable risk of harm or to give adequate warning of that risk.

19. Defendants failed to take reasonable steps to remove the unreasonable risk of harm or to give adequate warning of that risk.
20. Additionally, Defendants' mode of operation, specifically their method of allowing the MECO box to be installed in such a way as to create a tripping hazard in the middle of the sidewalk, created a condition that posed an unreasonable risk of harm.
21. Defendants' failures and/or mode of operation were a legal cause of injury to Plaintiff.

### INJURIES AND DAMAGES



22. As a direct and proximate result of the Defendants' actions, Plaintiff has sustained injuries for which she is entitled to be compensated, including but not limited to the following:
  - a. Past, present and future pain and suffering;
  - b. Past, present and future mental distress and anguish;
  - c. Health care expenses for past and future treatment related to the above; and
  - d. Lost wages.

WHEREFORE, Plaintiff respectfully requests the following:

- a. That Defendants be found jointly and severally liable for the injuries, damages and losses described above;
- b. That appropriate relief be granted, including awards of general and special damages in amounts to be proven at trial, along with reasonable attorney's fees and costs, and such other and further equitable relief as the Court deems just and proper.

Dated: Wailuku, Maui, Hawai'i 6/22/2022.

/s/ JACOB K LOWENTHAL  
JACOB K. LOWENTHAL  
Attorney for Plaintiff  
LOU BAFFA

<b>STATE OF HAWAI'I CIRCUIT COURT OF THE SECOND CIRCUIT</b>	<b>SUMMONS TO ANSWER CIVIL COMPLAINT</b>	
<b>CASE NUMBER</b>	<b>PLAINTIFF'S NAME &amp; ADDRESS, TEL NO</b> LOWENTHAL & LOWENTHAL, LLLC JACOB K. LOWENTHAL (9945) 33 North Marked Street, Suite 101 Wailuku, Hawai'i, 96793 808-242-5000	
<b>PLAINTIFF</b> LOU BAFFA		
<b>DEFENDANT(S)</b> COUNTY OF MAUI; MAUI ELECTRIC COMPANY, LIMITED; JOHN DOES 1-20; JANE DOES 1-20; DOE CORPORATIONS 1-20, DOE PARTNERSHIPS 1-20; DOE NON- PROFIT ENTITIES 1-20; DOE GOVERNMENTAL ENTITIES 1-20		
<b>TO THE ABOVE-NAMED DEFENDANT(S)</b>		
<p>You are hereby summoned and required to filed with the court and serve upon          JACOB K. LOWENTHAL</p>		
<p>plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within          20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default          will be taken against you for the relief demanded in the complaint.</p>		
<p><b>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON          PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED          COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</b></p>		
<p><b>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT          JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</b></p>		
DATE ISSUED <u>06/22/2022</u>	<div style="border: 1px solid black; padding: 5px;"> <p>Effective Date of 28-Oct- 2019            Signed by: /s/ D. Pellazar Clerk,            2nd Circuit, State of Hawai'i</p>  </div>	
<div style="display: flex; align-items: flex-start;">  <p>If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:            Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: <a href="mailto:adarequest@courts.hawaii.gov">adarequest@courts.hawaii.gov</a>. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.</p> </div>		