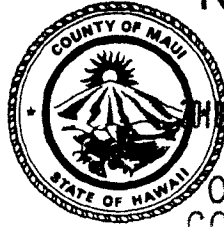


ALAN M. ARAKAWA
Mayor



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OFFICE OF THE
COUNTY COUNCIL

PATRICK K. WONG
Corporation Counsel

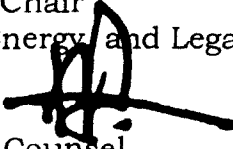
EDWARD S. KUSHI
First Deputy

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, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

February 7, 2018

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

FROM: Brian A. Bilberry 
Deputy Corporation Counsel

SUBJECT: PRL-1 LITIGATION MATTERS; Authorizing the Employment of
Special Counsel in *David Taylor v. Alan Arakawa, et al.*; Civil No.
18-1-0056(1)

Our Department respectfully requests the opportunity to present two resolutions in executive session authorizing the employment of special counsel for Defendant Alan Arakawa, as a Defendant named in his individual capacity and in his capacity as the Mayor of the County of Maui, and Defendant County of Maui in the above-captioned litigation.

We would like to request that this matter be taken up at the February 13, 2018 PRL Committee meeting, or as soon as possible as this matter is time sensitive.

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

Should you have any questions or concerns, please do not hesitate to contact Brian Bilberry, Gary Murai, or me. Thank you for your anticipated assistance in this matter.

Enclosures

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL
COX FRICKE LLP IN
DAVID TAYLOR V. ALAN ARAKAWA, ET AL.;
CIVIL NO. 18-1-0056(1)

WHEREAS, the Council is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote, pursuant to Section 3-6(6) of the Revised Charter of the County of Maui (1983), as amended; and

WHEREAS, the Council finds that, because of the potential for a conflict of interest, and to the extent consistent with the Hawaii Rules of Professional Conduct, there is a real necessity to retain the law firm of Cox Fricke LLP (“special counsel”) to represent Alan Arakawa in his individual capacity, as Defendant in David Taylor v. Alan Arakawa, et al., Civil No. 18-1-0056(1), filed in the Circuit Court of the Second Circuit; and

WHEREAS, in the opinion of the Department of the Corporation Counsel, Charter Section 8-2.3 and Rule 1.7 of the Hawaii Rules of Professional Conduct require special counsel to represent the above-named defendant; and

WHEREAS, to the extent consistent with the Hawaii Rules of Professional Conduct it appears there is a real necessity and it would be in the best interest of the County of Maui to authorize the employment of special counsel to represent the above-named defendant; and

WHEREAS, special counsel's conduct shall reflect its understanding that the County of Maui is a public entity that has obligations, concerns and interests that extend beyond those of a private litigant; and

WHEREAS, special counsel shall take all reasonable steps to minimize attorneys' fees and costs; and

WHEREAS, the Department of the Corporation Counsel may provide necessary support services to special counsel to minimize costs, if consistent with the Hawaii Rules of Professional Conduct; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby authorizes the employment of Cox Fricke LLP to represent Alan Arakawa in his individual capacity, as Defendant in David Taylor v. Alan Arakawa, et al., Civil No. 18-1-0056(1), filed in the Circuit Court of the Second Circuit; and

2. That total compensation for the employment of all special counsel employed to represent Defendant in this case, pursuant to this resolution, shall not exceed \$75,000; and

3. That partner Joachim Cox, Esq. shall provide services at an hourly rate not to exceed \$360.00; and

4. That partner Robert Fricke, Esq. shall provide services at an hourly rate not to exceed \$360.00; and

5. That associate Kamala S. Haake, Esq. shall provide services at an hourly rate not to exceed \$220.00; and

6. That associate Kimberly A. Vossman, Esq. shall provide services at an hourly rate not to exceed \$220.00; and

7. That paralegal services shall be provided at an hourly rate not to exceed \$100.00; and

8. That the compensability of costs shall be in general accord with the intent of 28 U.S.C. § 1920; and

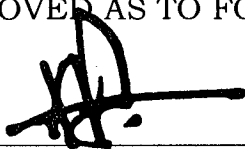
9. That the compensable costs shall include: (a) fees for printing and witnesses; (b) fees for copies necessarily obtained for use in the case; (c) fees of the clerk and marshal; (d) fees of the court reporter for necessary transcripts; (e) docket fees; and (f) compensation of court-appointed experts and interpreters; and

10. That the non-compensable costs shall include: (a) telephone calls; (b) facsimile charges; (c) postal charges; (d) messenger charges; (e) fees for computerized legal research; (f) travel, unless justified by extraordinary or compelling circumstances; (g) investigative expenses; and (h) other costs reasonably considered part of a law firm's overhead; and

11. That the expenditures of additional funds or substantial changes to the responsibilities of the parties shall require prior Council approval; and

12. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY



Brian A. Bilberry
Deputy Corporation Counsel, County of
Maui

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL KOBAYASHI,
SUGITA & GODA, LLP IN
DAVID TAYLOR V. ALAN ARAKAWA, ET AL.;
CIVIL NO. 18-1-0056(1)

WHEREAS, the Council is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote, pursuant to Section 3-6(6) of the Revised Charter of the County of Maui (1983), as amended; and

WHEREAS, the Council finds that, because of the potential for a conflict of interest, and to the extent consistent with the Hawaii Rules of Professional Conduct, there is a real necessity to retain the law firm of Kobayashi Sugita & Goda ("special counsel") to represent the County of Maui, and Alan Arakawa in his capacity as the Mayor of the County of Maui, as Defendants in David Taylor v. Alan Arakawa, et al., Civil No. 18-1-0056(1), filed in the Circuit Court of the Second Circuit; and

WHEREAS, in the opinion of the Department of the Corporation Counsel, Charter Section 8-2.3 and Rules 1.7 and 3.7 of the Hawaii Rules of Professional Conduct require special counsel to represent the above-named defendants; and

WHEREAS, to the extent consistent with the Hawaii Rules of Professional Conduct it appears there is a real necessity and it would be in the best interest of the County of Maui to authorize the employment of special counsel to represent the above-named defendants; and

WHEREAS, special counsel's conduct shall reflect its understanding that the County of Maui is a public entity that has obligations, concerns and interests that extend beyond those of a private litigant; and

WHEREAS, special counsel shall take all reasonable steps to minimize attorneys' fees and costs; and

WHEREAS, the Department of the Corporation Counsel may provide necessary support services to special counsel to minimize costs, if consistent with the Hawaii Rules of Professional Conduct; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby authorizes the employment of Kobayashi Sugita & Goda to represent the County of Maui, and Alan Arakawa in his capacity as the Mayor of the County of Maui, as Defendants in David Taylor v. Alan Arakawa, et al., Civil No. 18-1-0056(1), filed in the Circuit Court of the Second Circuit; and

2. That total compensation for the employment of all special counsel employed to represent Defendants in this case, pursuant to this resolution, shall not exceed \$75,000; and

3. That partner David M. Louie, Esq. shall direct the legal services as lead counsel for at an hourly rate not to exceed \$360.00; and

4. That partner Joseph A. Stewart, Esq. shall provide services at an hourly rate not to exceed \$300.00; and

5. That associate Aaron Mun, Esq. shall provide services at an hourly rate not to exceed \$190.00; and

6. That associate Nicholas R. Monlux shall provide services at an hourly rate not to exceed \$210.00; and

7. That paralegal Travis R. Yokoyama shall provide services at an hourly rate not to exceed \$100.00; and

8. That the compensability of costs shall be in general accord with the intent of 28 U.S.C. § 1920; and

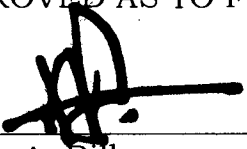
9. That the compensable costs shall include: (a) fees for printing and witnesses; (b) fees of the clerk and marshal; (c) fees of the court reporter for necessary transcripts; (d) docket fees; and (e) compensation of court-appointed experts and interpreters; and

10. That the non-compensable costs shall include: (a) telephone calls; (b) facsimile charges; (c) postal charges; (d) messenger charges; (e) fees for computerized legal research; (f) travel, unless justified by extraordinary or compelling circumstances; (g) investigative expenses; and (h) other costs reasonably considered part of a law firm's overhead; and

11. That the expenditures of additional funds or substantial changes to the responsibilities of the parties shall require prior Council approval; and

12. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY



Brian A. Bilberry
Deputy Corporation Counsel, County of
Maui

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2018 JAN 30 PM 3: 53

N. ANAYA

EX OFFICIO CLERK

BRONSTER FUJICHAKU ROBBINS
A Law Corporation

MARGERY S. BRONSTER 4750
LANSON K. KUPAU 5687
MELINDA WEAVER 10464
1003 Bishop Street, Suite 2300
Honolulu, Hawai'i 96813
Telephone No.: (808) 524-5644
Facsimile No.: (808) 599-1881

Attorneys for Plaintiff
DAVID TAYLOR

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

DAVID TAYLOR,

Plaintiff,

vs.

ALAN ARAKAWA, individually and in
his capacity as Maui County Mayor,
and COUNTY OF MAUI,

Defendants.

CIVIL NO. 18-1-0056 (1)
(Declaratory Action)

COMPLAINT; DEMAND FOR JURY
TRIAL; SUMMONS

COMPLAINT

Plaintiff DAVID TAYLOR ("Plaintiff"), through his attorneys, Bronster
Fujichaku Robbins, brings this cause of action against the above referenced
Defendants and alleges and states as follows:

THE PARTIES

1. Plaintiff DAVID TAYLOR ("Plaintiff"), is, and was at all relevant
times, a resident of the County of Maui, State of Hawai'i.

I do hereby certify that the foregoing
is a true copy of the original.


Ex Officio Clerk

2. Defendant ALAN ARAKAWA (“Defendant Arakawa”), is and was at all relevant times the Mayor of the County of Maui and a resident of the County of Maui, State of Hawai‘i.

3. Reference to Defendant Arakawa, includes his individual capacity and his capacity as the Mayor of the County of Maui.

4. Defendant COUNTY OF MAUI (“Defendant County”), is, and was at all relevant times, a municipal corporation of the County of Maui, State of Hawai‘i.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the claims set forth in this Complaint pursuant to Haw. Rev. Stat. §§ 603-21.5 and 632-1.

6. This Court has personal jurisdiction over Defendants pursuant to Haw. Rev. Stat. § 634-35.

7. Venue is appropriate in this Circuit pursuant to Haw. Rev. Stat. § 603-36.

FACTUAL ALLEGATIONS

8. Plaintiff has been an employee for the County of Maui for the past 25 years and a Professional Engineer for the past 22 years.

9. On January 2, 2011, Defendant Arakawa appointed Plaintiff as Director of Water Supply. As required by Section 8-11.5 of the Charter of the County of Maui (“Charter”), Plaintiff’s appointment was confirmed by the Maui County Council (“Council”).

10. On January 2, 2015, after being re-elected, Defendant Arakawa re-appointed Plaintiff as Director of Water Supply. Again, as required by the Charter, Plaintiff's appointment was confirmed by the Council.

11. Pursuant to Section 6-2(3) of the Charter, Plaintiff's term as Director of Water Supply expires at the end of Defendant Arakawa's mayoral term on January 2, 2019.

12. In his career of public service to the people of Maui, Plaintiff had never been investigated for any wrongdoing or reprimanded for mismanagement.

13. In the two weeks prior to October 9, 2017, Plaintiff was repeatedly contacted on behalf of Defendant Arakawa and requested to attend a campaign function in support of Defendant Arakawa's run for Lieutenant Governor on October 9, 2017.

14. Due to a prior commitment for the County, Plaintiff was unable to attend Defendant Arakawa's function.

15. On October 10, 2017, Defendant Arakawa asked to see Plaintiff at his office. When Plaintiff arrived, Defendant Arakawa demanded Plaintiff's resignation as Director of Water Supply.

16. Defendant Arakawa provided Plaintiff no justifiable explanation for his decision.

17. In November 2017, Plaintiff informed Defendant Arakawa that he would not resign as Director of Water Supply.

18. On November 15, 2017, Defendant Arakawa wrote to Plaintiff stating that Plaintiff was removed from his position as Director of Water Supply and placed on indefinite administrative leave. In his letter, Defendant Arakawa wrote "I am removing you as Directory of Water Supply, subject to approval by the County Council." No reasons were stated for the removal. Defendant Arakawa did so even though the Charter required that Plaintiff could only be removed with Council approval.

19. On November 15, 2017, Maui County Corporation Counsel, Patrick Wong ("Wong"), sent a letter (County Communication No. 17-482) to Council Chair, Mike White, with an attached proposed Resolution Approving the Removal of Dave Taylor as Director of Water Supply ("Proposed Resolution").

The Proposed Resolution stated:

WHEREAS, Section 8-11.5 of the Revised Charter of the County of Maui (1983), as amended, authorizes the Mayor to appoint the Director of Water Supply with the approval of the County Council, and to remove the Director of Water Supply with the approval of the County Council; and

WHEREAS, Mayor Alan Arakawa has removed Dave Taylor as the Director of Water Supply, effective November 15, 2017; now therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby approves the removal of Dave Taylor as the Director of Water Supply; and
2. That certified copies of this resolution be transmitted to the Mayor, and Managing Director, the Corporation Counsel, and Dave Taylor.

20. The Proposed Resolution did not contain any reasons to support Plaintiff's removal as director.

21. On November 15, 2017, Plaintiff contacted Corporation Counsel Wong and requested legal advice concerning his rights, responsibilities and liabilities as the Director of Water Supply.

22. Corporation Counsel Wong refused to provide Plaintiff with any advice. Corporation Counsel Wong's refusal violates Section 8-2.3(2) of the Charter, which states that "the corporation counsel shall ... be the chief legal advisor and legal representative of ... all departments ... and of all officers and employees in matters relating to their official duties."

23. During this period, Corporation Counsel Wong was advising Defendant Arakawa as to Plaintiff's removal as Director of Water Supply, which presented an obvious conflict of interest.

24. Despite that Plaintiff was entitled to conflict free counsel related to his official duties, Corporation Counsel failed to retain outside counsel for Plaintiff.

25. On November 16, 2017, Defendant Arakawa unexpectedly attended a Board of Water Supply ("BWS") meeting. At the meeting, Defendant Arakawa informed the BWS that he had "dismissed" Plaintiff as Director of Water Supply and that Plaintiff's dismissal would be presented to the Council for approval.

26. Defendant Arakawa stated that he dismissed Plaintiff because he had not engaged in long term planning and various projects were too slow.

27. Defendant Arakawa told the BWS that regardless of whether the Council approved Plaintiff's dismissal, he had no intention of having Plaintiff return as the Director of Water Supply. Defendant Arakawa further stated that he intended to move the deputy director into Plaintiff's position.

28. Defendant Arakawa made his pronouncement without informing Plaintiff or the Council of the allegations against Plaintiff and an opportunity to be heard.

29. Deputy Director of Water Supply, Gladys Baisa ("Baisa"), is not a registered engineer. Section 8-11.5 of the Charter requires that "the director or deputy director of water supply shall be a registered engineer."

30. In addition, from November 16, 2017 to present, Defendant Arakawa, through the deputy director of water supply, has been using Plaintiff's license as a Professional Engineer on official Department of Water Supply documents without his authorization. Defendant Arakawa's unlawful taking of Plaintiff's license to comply with the Charter, despite dismissing him, was confirmed by Defendant Arakawa himself in public statements to the Council on December 11, 2017.

31. For example, on November 20, 2017, in a letter to Defendant Arakawa and Council chair Mike White concerning the exchange of Maui County real property, Deputy Director Baisa signed the letter as "G. Baisa for David Taylor, P.E. Director." Defendant Arakawa signed and approved the letter on November 22, 2017. In a Monthly Source and Groundwater Use Report to Defendant Arakawa and Council chair Mike White dated December 6,

2017, Deputy Director Baisa again signed as "G. Baisa for David Taylor, P.E. Director." And again, Defendant Arakawa signed and approved the letter on December 10, 2017.

32. The unauthorized use of Plaintiff's Professional Engineer license exposes Plaintiff to liability and presents a safety hazard for the people of Maui.

33. Section 464-2 of the Hawai'i Revised Statutes ("Haw. Rev. Stat.") states that "in order to safeguard life, health, and property, no person ... shall practice professional engineering ... in the State unless the person is duly licensed under this chapter."

34. Moreover, Haw. Rev. Stat., § 464-14(a) states that "any person who practices, offers to practice, or holds oneself out as authorized and qualified to practice professional engineering ... in the State ... without having first acquired a license in accordance with this chapter ... or who falsely impersonates any duly licensed practitioner ... shall be fined not more than \$500 or imprisoned not more than one year or both."

35. Section 436B-27(b), Haw. Rev. Stat., states that "any person, who engages in an activity requiring a license issued by the licensing authority and who fails to obtain the required license, or who uses any word, title, or representation to induce the false belief that the person is licensed to engage in the activity ... shall be guilty of a misdemeanor and each day of unlicensed activity shall be deemed a separate offense."

36. On December 1, 2017, when questioned by Council member Kelly King regarding the effect of Plaintiff's removal as the Director of Water Supply,

Deputy Corporation Counsel Edward Kushi (“Kushi”) advised the Council that Plaintiff had been “terminated” as Director of Water Supply. Deputy Corporation Counsel Kushi also advised the Council that Plaintiff was not an “at-will” employee of Defendant County. The Council decided to refer the matter to committee and return for a full vote on December 15, 2017.

37. On December 5, 2017, Council member Yuki Lei Sugimura (“Sugimura”), Chair for the Policy, Economic Development and Agriculture Committee, submitted to Corporation Counsel a Resolution Disapproving the Removal of Dave Taylor as Director of Water Supply (Resolution No. 17-176).

38. On December 7, 2017, Council member Sugimura requested that the resolution to remove Plaintiff be placed on the Council’s next meeting agenda.

39. On December 11, 2017, the Council held a hearing on the resolution to remove Plaintiff (PEA-52). No one testified in support of the removal of Plaintiff as director. Many employees and members of the public testified in support of Plaintiff remaining as director.

40. At the hearing, Defendant Arakawa provided two new reasons for removing Plaintiff as director that he had not mentioned at the BWS meeting on November 16, 2017. This time, Defendant Arakawa testified that his decision to remove Plaintiff was based on an August 2017 employee survey and confidential comments that he received from employees, some of whom Defendant Arakawa described as his personal friends.

41. Defendant Arakawa refused to disclose this “confidential information” to Plaintiff.

42. Pursuant to Haw. Rev. Stat., § 92-5(a)(2), Plaintiff voluntarily waived his right to have a closed meeting concerning his removal and requested an open hearing.

43. Section 92-5(a)(2), Haw. Rev. Stat., mandates that “a board may hold a meeting closed to the public pursuant to section 92-4 ... (2) to consider the ... dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, **an open meeting shall be held.**”

44. At Defendant Arakawa’s urging, Plaintiff was denied his right to an open meeting. As a result, a closed meeting was held under the guise of Haw. Rev. Stat., §§ 92-5(a)(4) and 92-5(a)(5) (criminal misconduct).

45. Plaintiff was denied the opportunity to attend the closed meeting and Defendant Arakawa refused to inform Plaintiff of the contents of so-called “confidential information” he claimed to have received from County employees.

46. Upon information and belief, Defendant Arakawa met with the Council in executive session and revealed the basis of his decision to dismiss Plaintiff as Director of Water Supply, including the confidential information he refused to provide Plaintiff.

47. The Charter of the County of Maui (2017 Ed.) states as follows:

Section 8-11.5. Director and Deputy Director of Water Supply.

The director of water supply shall be appointed by the mayor with the approval of the council, and may be removed by the mayor with the approval of the council. The director of water supply shall have had a minimum of five years of experience in a management capacity, either in public service or private business, or both. The deputy director of water supply shall be appointed by the mayor and may be removed by the mayor. The director or deputy director of water supply shall be registered engineer.

(emphasis added).

48. The people of Maui made a clear distinction in the Charter regarding the appointment and removal of the Director and Deputy Director of Water Supply. The plain and unambiguous reading of Section 8-11.5 requires that the director can only be placed in that position with (1) the appointment of the mayor and (2) the approval of the Council. Likewise, the Charter mandates that in order for a director to be removed, it requires (1) a decision by the mayor to remove and (2) **approval of the Council to remove**. If the Council does not agree to remove the director, the director remains in that position until the expiration of the term pursuant to Section 6-2(3).

49. An objective reading of the Charter reveals that the people of Maui made a conscious decision to treat the director and deputy director differently with respect to appointment and removal. Unlike the director, Section 8-11.5 places sole decision for the appointment and removal of the deputy director within the sound discretion of the mayor without the approval of the Council.

50. On Friday, December 15, 2017, the Council voted unanimously, 9-0, to reject the mayor's request to remove Plaintiff as director and approved

Resolution No. 17-176 Disapproving the Removal of Dave Taylor as Director of Water Supply.

51. At the December 15, 2017 hearing, Council members emphasized that Plaintiff was not being accused of any wrongdoing and noted a history of employment devoid of any allegations of mismanagement.

52. Council members questioned whether Defendant Arakawa had the legal authority to remove Plaintiff as director without the Council's approval. When asked, Corporation Counsel Wong declined to advise the Council at the hearing whether Defendant Arakawa had the legal authority to remove Plaintiff as director without Council approval. Corporation Counsel Wong stated that this was the first time the County had ever faced a situation similar to the instant matter.

53. Several Council members referred to Plaintiff's removal as director by Defendant Arakawa as a "termination."

54. Then on Monday, December 18, 2017, the next business day after the Council refused to terminate Plaintiff, Defendant Arakawa sent a letter to Plaintiff and again placed him on administrative leave:

It has come to my attention that there exist some irregularities in the operation of your department for which a complete and thorough investigation shall be conducted immediately. Until such time as the investigation is complete, you shall be on administrative leave with pay.

You're to fully cooperate with the investigation in every way. You're prohibited from contacting any employee and anyone from the Department of Water Supply pending this investigation. Please be reminded that the County of Maui does not tolerate any acts of

retaliation against anyone involved in this investigation.

55. As before, Defendant Arakawa failed to provide Plaintiff with the basis for which he is being removed as director.

56. As he stated to at the BWS November 16, 2017 hearing, Defendant Arakawa never intended to abide by the Council's decision even if it was decided to keep Plaintiff on as director.

57. Defendant Arakawa has an obligation to abide by the Charter and the laws of the State of Hawai'i.

58. Following Plaintiff's removal, Defendant Arakawa and Defendant County made public statements that Plaintiff is under criminal investigation.

59. Plaintiff has not violated any laws in the performance of his duties as Director of Water Supply. Any and all actions taken by Plaintiff as the Director of Water Supply were lawful and pursuant to the advice of Corporation Counsel.

60. Subsequent to Plaintiff's removal as the Director of Water Supply, Defendants implied that Plaintiff violated Hawai'i law regarding the issuance of an extension to complete water system improvements.

61. Two months after Plaintiff's removal, Defendant Arakawa claimed that his decision to remove Plaintiff was the result of a letter from a constituent's legal counsel.

62. However, the referenced letter was sent to the Deputy Director of Water Supply Baisa on December 7, 2017. This was **22 days after** Defendant Arakawa removed Plaintiff as director.

63. Further, the referenced letter stated that constituent's legal counsel did not review the Department of Water Supply's documents until November 28, 2017, which was 13 days after Defendant Arakawa removed Plaintiff as director.

64. More importantly, any such extensions to complete water system improvements by Plaintiff are lawful, were granted pursuant to the advice of Corporation Counsel, and have been a long standing practice by the Department of Water Supply prior to Plaintiff's appointment as director.

65. Defendant Arakawa has not been equal or fair in his treatment of Plaintiff. Assuming, *arguendo*, that a complaint or allegation had been made, others in similar situations were allowed to remain in their positions and fulfill their duties.

66. Plaintiff was not afforded due process of law prior to his termination as Defendants did not inform Plaintiff of the content of the allegations against him nor provide him with an opportunity for a fair hearing. Instead, Defendant Arakawa unilaterally terminated Plaintiff from his position as the Director of Water Supply in violation of the Charter and Hawai'i law.

COUNT I
(Declaratory Judgment)

67. Plaintiff restates the allegations above as if fully stated herein.

68. An actual controversy exists between Plaintiff and the Defendants as to the Plaintiff's rights under the Charter to return to work as the appointed Director of Water Supply.

69. An actual controversy exists between Plaintiff and the Defendants as to Defendants' unauthorized use of Plaintiff's professional license after November 15, 2017.

70. In order to remove the Director of Water Supply, Section 8-11.5 of the Charter requires (1) the mayor's decision to remove the Director of Water Supply from office and (2) the approval of the Council to remove.

71. On December 15, 2017, the Council voted unanimously to reject Defendant Arakawa's request to remove Plaintiff as the Director of Water Supply.

72. On December 18, 2017, Defendant Arakawa ignored the Council's decision and removed Plaintiff as Director of Water Supply and prohibited Plaintiff from returning to work or having any contact with Department of Water Supply employees.

73. Plaintiff has a right, under Section 8-11.5 of the Charter, to return to work as the Director of Water Supply until January 2, 2019. Plaintiff has been denied that right by Defendant Arakawa.

74. Since November 16, 2017, Defendants have, without Plaintiff's authorization, used Plaintiff's professional license in violation of Section 8-11.5 of the Charter and Hawai'i law.

75. Plaintiff is entitled to a declaratory judgment that Section 8-11.5 of the Charter requires the Council's approval before a Director of Water Supply can be removed from office.

76. Plaintiff is entitled to a declaratory judgment that he has a right to return to work as the Director of Water Supply and fulfill his appointment until January 2, 2019.

77. Plaintiff is entitled to a declaratory judgment that since November 15, 2017, Defendants have unlawfully used Plaintiff's professional license without his authorization.

78. Plaintiff is entitled to a declaratory judgment that since November 15, 2017, Defendants have violated Section 8-11.5 of the Charter and Hawai'i law.

79. Plaintiff is entitled to a declaratory judgment that as required in Section 8-2.3(2) of the Charter, he was entitled to legal counsel concerning his rights, duties and responsibilities as Director of Water Supply.

80. Pursuant to Haw. Rev. Stat. § 632-1 and Rule 57 of the Hawai'i Rules of Civil Procedure ("HRCP"), the foregoing declaratory judgments serve to terminate the uncertainty or controversy giving rise to this dispute.

COUNT II
(Injunctive Relief)

81. Plaintiff restates the allegations above as if fully stated herein.

82. Defendants' actions in removing Plaintiff from the Director of Water Supply and their unauthorized use of Plaintiff's professional license since November 15, 2017, have caused and will cause Plaintiff irreparable injury to Plaintiff's employment, future business and employment opportunities, professional license, and reputation in the community.

83. Plaintiff asserts that he will prevail on the merits of his claims against Defendants.

84. Defendants must immediately allow Plaintiff to return to work as the Director of Water Supply.

85. Defendants must immediately be enjoined from using Plaintiff's professional license without his authorization in violation of Section 8-11.5 of the Charter and Hawai'i law.

COUNT III
(Defamation as to Defendant Arakawa, Individually)

86. Plaintiff restates the allegations above as if fully stated herein.

87. Defendant Arakawa has made false and defamatory statements against Plaintiff, claiming that he committed criminal acts that resulted in the loss of his employment. Defendant Arakawa made such statements knowing that they were false or without using reasonable care to determine whether they are false.

88. Without any privilege, Defendant Arakawa has communicated these false statements to the Council and the public.

89. Defendant Arakawa's defamation of Plaintiff was done with malice and with the intent to injure Plaintiff's good name and reputation and to interfere with his employment, due to the ill will Defendant Arakawa harbored toward Plaintiff.

90. As a result of result of Defendant Arakawa's false allegations, Plaintiff has suffered a loss of business reputation, as well as his position as Director of Water Supply in an amount to be proven at trial.

91. The conduct of Defendant Arakawa was willful and outrageous warranting punitive damages in an amount to be proven at trial.

COUNT IV
(Slander Per Se as to Defendant Arakawa, Individually)

92. Plaintiff restates the allegations above as if fully stated herein.

93. Defendant Arakawa's false public statements that Plaintiff is under criminal investigation imputes a criminal offense has been committed by Plaintiff and has injured Plaintiff in his office as Director of Water Supply, his profession as a licensed Professional Engineer, and has held Plaintiff up to scorn and ridicule or feeling of contempt, impairing Plaintiff's enjoyment within his community. Defendant Arakawa made such statements knowing that they were false and/or without using reasonable care to determine whether they are false.

94. Without any privilege, Defendant Arakawa has communicated these false statements to the Council and the public.

95. Defendant Arakawa's defamation of Plaintiff was done with malice and with the intent to injure Plaintiff's good name and reputation and to interfere with his employment.

96. The defamatory statements made by the Defendant Arakawa harmed Plaintiff's reputation. Statements such as those made by Defendant Arakawa have a tendency to injure and have injured Plaintiff in his occupation, his future business, and employment prospects have been harmed.

97. As a result of Defendant Arakawa's actions, Plaintiff has sustained damages in an amount to be determined at trial.

98. The conduct of Defendant Arakawa was willful and outrageous, warranting punitive damages in an amount to be proven at trial.

**COUNT V
(Wrongful Termination)**

99. Plaintiff restates the allegations above as if fully stated herein.

100. Plaintiff was employed by the County of Maui as the Director of Water Supply.

101. The Director of Water supply is not an "at-will" employee.

102. The Charter provides that Defendant Arakawa may not terminate the Director of Water Supply without the approval of the Council.

103. Plaintiff was terminated by Defendant Arakawa without the approval of the Council.

104. As a result of Defendant Arakawa's actions, Plaintiff has sustained damages in an amount to be determined at trial.

105. Defendant County is liable for the actions of Defendant Arakawa as stated herein under the doctrine of respondeat superior.

**COUNT VI
(Intentional Infliction of Emotional Distress as to Defendant Arakawa,
Individually)**

106. Plaintiff restates the allegations above as if fully stated herein.

107. Defendants' actions and omissions against Plaintiff as described herein were outrageous, unreasonable, intentional, and caused Plaintiff severe and substantial emotional distress.

108. As a result of Defendants' actions Plaintiff has suffered injuries; the associated damages of these injuries and emotional distress to be proven at trial.

109. Moreover, the conduct of Defendant Arakawa was willful and outrageous warranting punitive damages in an amount to be proven at trial.

COUNT VII
(Violation of Due Process - Hawai'i State Constitution)

110. Plaintiff restates the allegations above as if fully stated herein.

111. Defendants violated Plaintiff's Constitutional right to due process under Haw. Const. Art. I § 5.

112. Plaintiff was employed by the County of Maui as the Director of Water Supply.

113. The Director of Water supply is not an "at-will" employee.

114. The Charter provides that Defendant Arakawa may not terminate the Director of the Water Board without the approval of the Council.

115. Plaintiff was terminated by Defendant Arakawa without the approval of the Council.

116. As a result of Defendant Arakawa's actions, Plaintiff has sustained damages in an amount to be determined at trial.

117. Defendant County is vicariously liable for the actions of Defendant Arakawa as stated herein under the doctrine of respondeat superior.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following remedies and relief against Defendants as follows:

A. For Declaratory Relief holding that Plaintiff remains the Director of Water Supply until the end of Defendant Arakawa's term on January 2, 2019;

B. For Injunctive Relief allowing Plaintiff to immediately return to work as the Director of Water Supply;

C. For Injunctive Relief to enjoin Defendants from using Plaintiff's name and/or Professional Engineer license on Department of Water Supply documents without Plaintiff's permission;

D. An award of compensatory damages, including consequential and incidental damages;

E. For Special Damages in an amount to be shown at trial;

F. An award of punitive and/or liquidated or exemplary damages against Defendant Arakawa in his individual capacity for his willful and outrageous misconduct.

G. An award of attorneys' fees and costs incurred as a result of this action; and

H. Such other and further relief as this Court deems just and equitable under the circumstances.

DATED: Honolulu, Hawai'i, JAN 30 2018.

A handwritten signature in cursive script, appearing to read "Margery S. Bronster", written over a horizontal line.

MARGERY S. BRONSTER
LANSON K. KUPAU
MELINDA WEAVER

Attorneys for Plaintiff
DAVID TAYLOR

THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

DAVID TAYLOR,

Plaintiff,

vs.

ALAN ARAKAWA, individually and in
his capacity as Maui County Mayor,
and COUNTY OF MAUI,

Defendants.

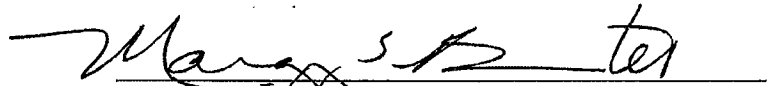
CIVIL NO. _____
(Declaratory Action)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all claims stated herein that are triable
to a jury.

DATED: Honolulu, Hawai'i, JAN 30 2018.



MARGERY S. BRONSTER
LANSON K. KUPAU
MELINDA M. WEAVER

Attorneys for Plaintiff
DAVID TAYLOR

THE CIRCUIT COURT OF THE SECOND CIRCUIT

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DAVID TAYLOR,

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and COUNTY OF MAUI,

Defendants.

CIVIL NO. _____
(Declaratory Action)

SUMMONS

SUMMONS

STATE OF HAWAII

TO THE ABOVE NAMED DEFENDANT(S):

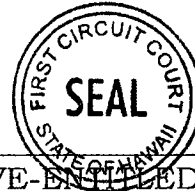
You are hereby summoned and required to file with the Court and serve upon the law offices of Bronster Fujichaku Robbins, attorneys for Plaintiff, whose address is 1003 Bishop Street, Suite 2300, Honolulu, Hawaii 96813, an answer to the complaint which is herewith served upon you, within twenty (20) 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.

Pursuant to Rule 4(b) of the Hawaii Rules of Civil Procedure, 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.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Wailuku, Hawai'i, JAN 30 2018.

N. ANAYA



EX OFFICIO CLERK OF THE ABOVE-ENTITLED COURT