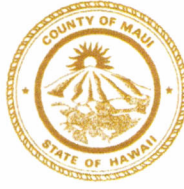


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March 1, 2021

MEMO TO: Michael J. Molina, Chair  
Government Relations, Ethics and Transparency Committee

FROM: Peter A. Hanano, Deputy Corporation Counsel 

SUBJECT: BANK OF AMERICA'S COMMITMENT TO PROVIDE  
MORTGAGES FOR NATIVE HAWAIIANS ON HAWAIIAN HOME  
LANDS (GREAT-19)

## **I. BACKGROUND**

In October 2019, the Maui County Council enacted Resolution 19-171 (the "2019 Resolution") authorizing "the employment of special counsel . . . to investigate actionable claims for wrongful foreclosure and other bad acts or failures to act committed by the banking and mortgage industry," which had detrimentally impacted Maui's economy. The Resolution's preamble specifically references "the Bank of America's failure to fulfill loan commitments to native Hawaiians, Filipinos, and others." Pursuant to the Resolution, the Council hired special counsel and appropriated \$25,000 for a 30-day investigation. At the end of this period, special counsel submitted a confidential report to the Council's Governance, Ethics, and Transparency Committee with an analysis of the County's actionable claims. On the basis of the report, the Committee recommended that the Council pass a resolution to pursue potential claims further.

On July 10, 2020, the Council adopted this recommendation and enacted Resolution 20-97 (the "2020 Resolution") authorizing "the employment of special counsel to represent the County in the initiation and pursuit of legal claims against Bank of America and other mortgage lenders [for] failure to fulfill loan commitments, fraudulent foreclosures, and similar unlawful conduct." The preamble to the 2020 Resolution specifically references "potential legal claims

against Bank of America and other mortgage lenders for failure to fulfill loan commitments to native Hawaiians, Filipinos, and others,” but does not name any specific loan commitment(s) as the focus of possible litigation.

“Within hours” of the Council passing the 2020 Resolution, the Bank of America filed a lawsuit in the United States District Court for the District of Hawaii against the County of Maui. The Bank sought a declaration from the Hawaii Federal District Court that the County “has no claims” based upon the Bank’s 1994 pledge to loan \$150 million to native Hawaiians for housing on Hawaiian Home Lands.

On September 18, 2020, County of Maui, who was represented by special counsel, Bronster, Fujichaku, and Robbins, filed a Motion to Dismiss. The Bank of America filed its Opposition on November 23, 2020, and the County filed its Reply on November 30, 2020. A hearing was held via video on December 14, 2020. After hearing oral arguments, the federal district court granted the County’s Motion to Dismiss. The judgment was filed on December 28, 2020. Pursuant to the Federal Rules of Appellate Procedure, Rule 4(a)(1)(A), a notice of appeal must be filed within 30 days from the entry of judgment in order to appeal a decision of the district court. To date, Bank of America has not filed a notice of appeal.

During the course of the unanticipated litigation described above, the County incurred approximately \$90,000.00 in legal fees defending against the lawsuit by Bank of America. The purpose of this Resolution is to authorize additional funds to compensate special counsel Bronster, Fujichaku, and Robbins to pursue legal claims against the Bank of America and other mortgage lenders for failure to fulfill loan commitments, fraudulent foreclosures, and similar unlawful conduct, and to defend the County against Bank of America, N.A. v. County of Maui, Civil 1:20-CV-00310 JMS-WRP.

PAH:tlq