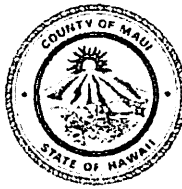


**RICHARD T. BISSEN, JR.**  
Mayor

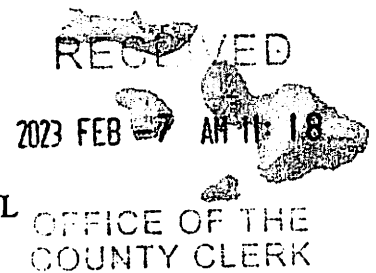
**VICTORIA J. TAKAYESU**  
Acting Corporation Counsel

**SONYA H. TOMA**  
First Deputy

**LYDIA A. TODA**  
Risk Management Officer



**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**



February 3, 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: CHRISTOPHER SALEM v. COUNTY OF MAUI, ET AL.,  
Civil No. 2CCV-21-0000048(2)  
AUTHORIZING SETTLEMENT OF CHRISTOPHER SALEM  
VS. COUNTY OF MAUI, ET AL.**

Dear Chair Lee and Council Members:

Please find attached separately a proposed resolution entitled "AUTHORIZING SETTLEMENT OF CHRISTOPHER SALEM VS. COUNTY OF MAUI, ET AL." The purpose of the proposed resolution is to obtain settlement authority in the above-referenced action.

May I request that the proposed resolution be scheduled for discussion and action, or referral to the appropriate standing committee as soon as possible, but no later than March 9, 2023. Also attached herewith is the First Amended Complaint filed 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,

/s/ Kristin K. Tarnstrom  
Kristin K. Tarnstrom  
Deputy Corporation Counsel

Chair Lee and Council  
February 3, 2023  
Page | 2

cc: Kekuhaupio “Keku” Akana, Managing Director, Department of  
Management, County of Maui

Attachments

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A Limited Liability Law Company

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Attorneys for Plaintiff  
CHRISTOPHER SALEM

**Electronically Filed**  
**SECOND CIRCUIT**  
**2CCV-21-0000048**  
**09-NOV-2021**  
**08:58 AM**  
**Dkt. 89 CAMD**

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

CHRISTOPHER SALEM,

Plaintiff,

vs.

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

Defendants.

CIVIL NO. 2CCV-21-0000048  
(Contract)

**FIRST AMENDED COMPLAINT**

///

## **FIRST AMENDED COMPLAINT**

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

### **I. INTRODUCTION**

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

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

Defendant Victorino knew that the Planning Department’s issuance of a SMA Permit Notice of Violation to Developer Lot 48A, LLC was monumental as it proved the collusion between Developer Lot 48A, LLC, former Public Works Director Milton Arakawa (“Director Arakawa”), and former Planning Director Jeff Hunt (“Director Hunt”) to conceal and falsify SMA Permit government records.

Defendant Victorino knew that Developer Lot 48A, LLC’s concealment of SMA Permit records also revealed a conspiracy with their consultants Munekiyo, Arakawa, and Hiraga, Inc (“MAH”) and Warren S. Unemori Engineering, Inc (“WSUE”) to falsify the conditioned SMA

Permit application assessments, environmental studies, and valuations to avoid a SMA Major Permit, public hearings, and elevated environmental protections.

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

Defendant Victorino knew Director Arakawa's scheme of concealment and falsification of government records caused years of unjustified legal disputes between Developer Lot 48A, LLC and Plaintiff Salem, resulting in the loss of Plaintiff Salem's family home and financial security. Defendant Victorino agreed and promised to hold the developer and their consultants responsible for Plaintiff Salem's financial injuries.

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

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

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

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

During his employment within the Office of the Mayor, Plaintiff Salem exposed further unethical acts by County officials, which continue to serve the financial interests of private developers at the public's expense. Despite Plaintiff Salem's written notices, Mayor Victorino has refused to take any action to mitigate the newly discovered ongoing financial harm to local residents and the taxpayers of Maui County.

In fact, in retaliation to Plaintiff Salem's recent round of whistleblowing, Mayor Victorino engaged in acts of workplace intimidation and defamation, both directly and indirectly, which has amplified the ongoing distress placed upon Plaintiff Salem and his family, culminating in wrongful termination of Plaintiff on August 4, 2021.

Therefore, this First Amended Complaint seeks performance of the agreement and promises made by Mayor Victorino and damages for the continuing unfair treatment to Plaintiff Salem, which is documented in County Personnel records, witnessed, transcribed, and reaffirmed both verbally and in writing.

## **II. JURISDICTION AND VENUE**

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

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

### **III. PARTIES**

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

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

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

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

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

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

#### **IV. RELEVANT HISTORY**

##### **The Defendants' Pattern of Misconduct**

8. In 2001, through a neighborhood dispute with oceanfront Developer Lot 48A, LLC over their obligations to obtain an SMA Major Permit and complete the “deferred” subdivision roadway infrastructure improvements along the frontages of the underlying “3 Lot or Less” subdivision, Plaintiff Salem discovered that since 1974 County officials had failed to track or account for an unknown quantity of private developers “3 Lot or Less” subdivision infrastructure “deferral agreements”. The unaccounted for developer agreements were recorded by Corporation Counsel attorneys as liens on the real property titles.

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

10. Consequently, the developer’s financial obligations were shifted to the taxpayers. As such, the citizens of the County of Maui ended up paying for potentially hundreds of millions of dollars of developer’s “deferred” infrastructure obligations through public funds spent on County of Maui roadway Capital Improvement Projects (“CIP”).



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

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

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

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

### **The Settlement Agreement and the Promises**

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

16. As the evidence reveal, the resulting financial recovery for the County of Maui is a direct result of what Plaintiff Salem learned through the costly personal injuries maliciously caused by Director Arakawa's tampering with Developer Lot 48A, LLC's SMA Permit

government records and interrelated manipulation of the “3 Lots or Less” deferral agreement recorded on Plaintiff Salem’s property.

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

18. Defendant Victorino and Plaintiff Salem discussed, with the knowledge of Defendant Victorino, that Developer Lot 48A, LLC’s SMA Permit records were tampered with and concealed from Plaintiff Salem and the members of the Maui County Council since 2001.

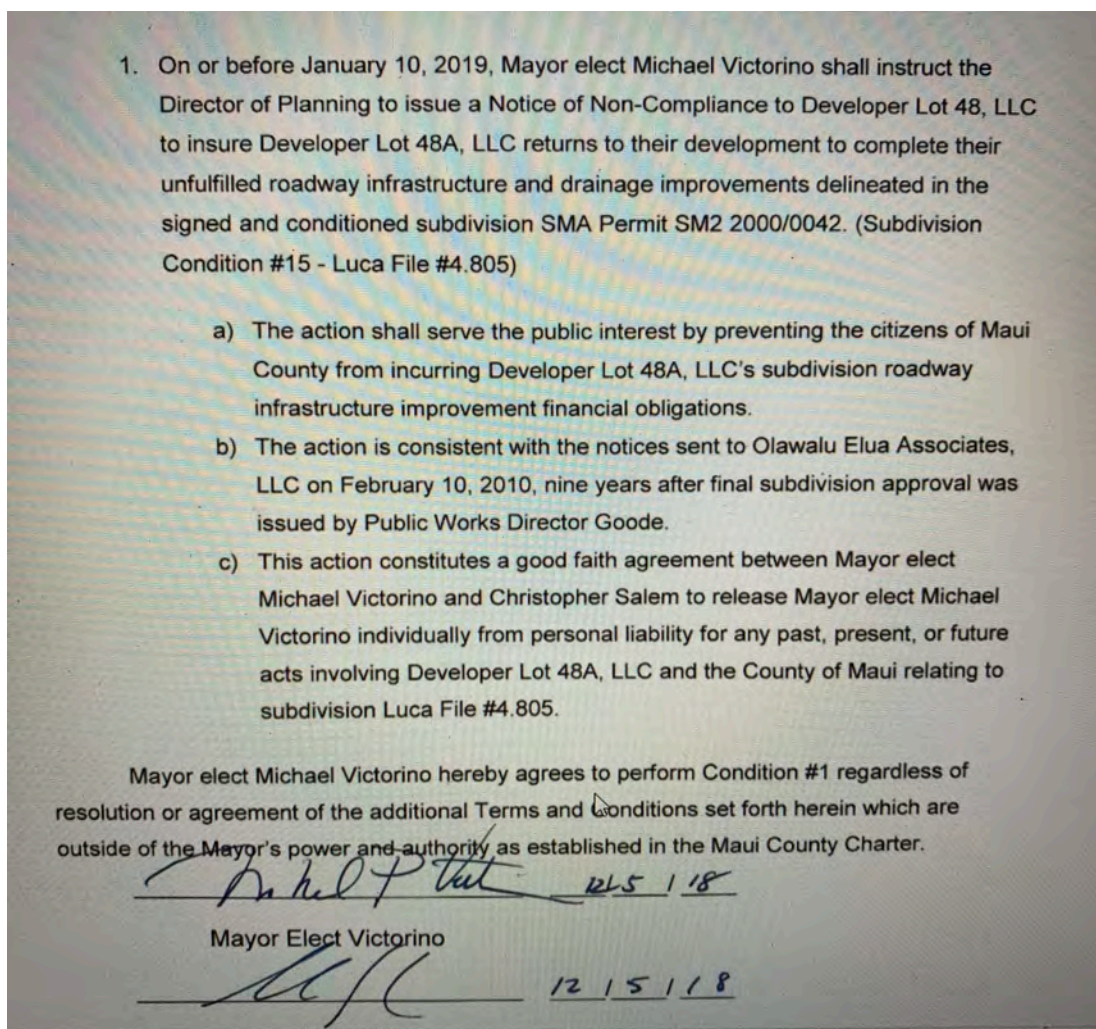
19. In open meetings, Defendant Victorino admitted that former Director Arakawa engaged in collusion with his former clients, Developer Lot 48A, LLC. Defendant Victorino stated that Director Arakawa should receive “far more than a slap on the hand” for his misconduct.

20. Defendant Victorino also repeatedly reaffirmed his commitments to put an end to the Department of Planning’s manipulation of the SMA permitting process. Defendant Victorino knew, or should have known, that it was illegal for former Director Arakawa to sign off on his private client Developer Lot 48A, LLC’s subdivision with an unfulfilled SMA Permit.

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

22. Defendant Victorino and Plaintiff Salem discussed and, upon Defendant Victorino promise to use the Mayor's power and authority to impose maximum fines upon Developer Lot 48A, LLC and their conspiring professional consultants, Mayor Victorino would hold Developer Lot 48A, LLC accountable for its unlawful conduct and resolve Plaintiff Salem's damages.

23. In exchange, Plaintiff Salem was to dismiss his pending litigation against the County of Maui, Mayor Arakawa, and the named County Defendants excluding Milton Arakawa. The substantive term of the agreement are presented below:



24. As part of the Agreement, the parties discussed Plaintiff Salem's employment as a legislative liaison of the Office of the Mayor to adopt a system of collection and assessment of

the millions of dollars of debts owed through the unaccounted for infrastructure “deferral agreements”.

25. With Plaintiff Salem’s agreed upon legislative assistance, Defendant Victorino promised to be the leader who would finally resolve through legislation the longstanding issues surrounding the developer “deferral agreements.

26. Defendant Victorino also repeatedly reaffirmed his commitments to put an end to the misconduct with the SMA permitting process.

27. From January 10, 2019 onward, Defendant Victorino continued to promise that he would direct the Planning Department to issue the Notice of Non-Compliance to Developer Lot 48A, LLC after Defendant Victorino’s choice for the Planning Director was approved by the members of the Maui County Council.

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

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

30. On July 1, 2019 Plaintiff Salem accepted a position as a legislative liaison to Office of the Mayor.

#### **Victorino’s Breach and Post Settlement Agreement Misconduct**

31. On March 8, 2019, Defendant Victorino scheduled a meeting with Plaintiff Salem, Corporation Counsel Director Patrick Wong, and Managing Director Sandy Baz. The

purpose of the meeting was to discuss the Corporation Counsel's facilitation of the settlement agreement and to address the unaccounted for developer "deferral agreements".

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

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

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

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

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

37. Deputy Corporation Counsel Bilberry presented an amendment to the Agreement prepared by the Department of the Corporation Counsel to Plaintiff Salem. The amendment mischaracterized the material terms of the Agreement and Plaintiff Salem refused to sign it.

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

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

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

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

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

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

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

**Defendant Victorino's duty and authority**

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

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

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

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

49. Under Director Lutey's legal conclusions of the Defendant Victorino's "superior" authority, the settlement agreement signed by Defendant Victorino legitimately settled a legal action with Plaintiff Salem which involved no monetary compensation.

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

### **Workplace Intimidation**

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

52. Defendant Victorino, in witnessed meetings, revealed he was also obstructed as a Council Member and intimidated by Corporation Counsel from taking action on Plaintiff Salem's discoveries. The records reveal, Defendant Victorino has now adjoined Corporation Counsel's unethical pattern of shielding private developers and their consultants from financial, professional, and legal liability for manipulating County officials and the adopted County laws and ordinances.

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

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



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

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

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

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

59. Being a direct witness to the discovered interrelationship between County official’s manipulation of the County subdivision ordinances and SMA application laws, Mayor Victorino has turned a blind eye towards his promises for accountability in County government.

60. Mayor Victorino failed to take actions against the private developers and their consultants for their financial, professional, and legal liability and manipulation of County officials and adopted County laws and ordinances.

61. Plaintiff Salem has been obstructed by Mayor Victorino and Corporation Counsel from performing the legislative duties under Plaintiff Salem's employment agreement in the Office of the Mayor.

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

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

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

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

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

67. On June 4, 2021, Plaintiff Salem presented his findings to Defendant Victorino, Chief of Staff Tyson Miyake, Managing Director Sandy Baz, Corporation Counsel Director

Moana Lutey, and Personnel Director David Underwood. With no response from Plaintiff Salem's employer Defendant Victorino, Chief of Staff Miyake acted with conflicted hostility by demanding Plaintiff Salem inform the members of the Napili community that the Brown Development was not within his area of responsibilities.

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

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

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

71. Following termination, Mr. Miyake and the Office of the Corporation Counsel refused to return Plaintiff's files, notebooks and belongings which consist of Plaintiff's personal

legislative work product from upwards to 20 years ago, including deferrals, CIP's, Parks, SMA. There are four (4) bins with 10000 pages of deferral agreements that were cataloged by district by Plaintiff and at his expense.

**COUNT I**  
**(Breach of Contract)**

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

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

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

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

**COUNT II**  
**(Specific Performance)**

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

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

78. Defendant Victorino failed to perform as required under the Agreement.

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

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

**COUNT III  
(Declaratory Relief)**

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

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

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

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

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

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

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

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

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

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

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

91. Defendant Victorino made promises to Plaintiff Salem that he would finally resolve through legislation the longstanding issues surrounding the developer “deferral agreements” and put an end to the Department of Planning’s manipulation of the SMA permitting process.

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

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

**COUNT V**  
**(Negligent and Intentional Infliction of Emotional Distress)**

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

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

96. The acts, conduct and/or omissions of the Defendants and/or their employees, agents and/or representatives, were (a) intentional and/or reckless and/or negligent and (b) outrageous.

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

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

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

**COUNT VI**  
**(Breach Of The Covenant Of Good Faith And Fair Dealing)**

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

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

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

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

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

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

**COUNT VII**  
**(Intentional And Negligent Misrepresentation)**

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

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

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

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



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

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

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

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

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

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

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

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

117. HRS §378-62 states as follows:

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

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

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

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

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

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

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

**COUNT IX**  
**UNLAWFUL TERMINATION IN CONTRAVENTION OF PUBLIC**  
**POLICY**

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

123. Employer's termination of Plaintiff as retaliation for Plaintiff reporting the Brown Development SMA Permit's misrepresentations and discovered violations of the law by the developer and by the Department of Planning, violated public policy to ensure transparency in government.

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

**RELIEF SOUGHT**

WHEREFORE, Plaintiff prays for a judgment and other relief in their favor and against Defendant as follows:

- A. For judgment in his favor on each and every count as alleged against the Defendants claimed herein, and presently unidentified Defendants, jointly and severally, in the type of relief or amount of damage set forth therein of for such amount as may be proven at trial;
- B. Declaratory/Injunctive relief, prohibiting Defendants from further discriminating against Plaintiff;
- C. An award of special, general , treble and punitive damages against Defendant in amounts to be proven at trial;
- D. An award of pre- and post-judgment interest;
- E. An award of Attorneys' fees and costs; and

F. For such other and further relief, including remedies available under HRS § 378,  
as this Court deems just and proper and as may be permitted by law.

DATED: Honolulu, Hawai'i, November 08, 2021.

*/s/ Terrance M. Revere*

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CHRISTOPHER SALEM