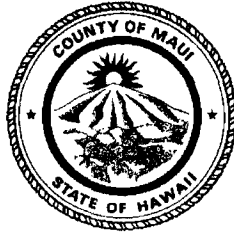


ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

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

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

OFFICE OF THE
COUNTY COUNCIL
APR 29 2016 9:13

RECEIVED

April 29, 2016

MEMO TO: Donald Guzman, Chair
Committee of the Whole

FROM: Kristin K. Tarnstrom, Deputy Corporation Counsel

SUBJECT: LITIGATION MATTERS - Settlement of Claims and Lawsuits
COW-1) AUTHORIZING SETTLEMENT OF COUNTY OF MAUI V. LANAI
WASTE REMOVAL, INC., ET. AL.; CIVIL NO. 15-1-0476(2)

Our Department respectfully requests the opportunity to present information to the Committee of the Whole and to discuss settlement options with regard to the above-referenced lawsuit.

Copies of the Resolution authorizing settlement and the Complaint are attached.

Because the proposed settlement is the product of confidential communications, 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.

We request that a representative from Department Environmental Management be in attendance during discussion of this matter. Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your anticipated assistance in this matter.

cc: Stewart Stant, Director, Environmental Management

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
COUNTY OF MAUI V. LANAI WASTE REMOVAL, INC., ET AL.,
CIVIL NO. 15-1-0476(2)

WHEREAS, Plaintiff County of Maui ("County") filed a Complaint against Lanai Waste Removal, Inc.; Lanai Trucking, Inc.; Charlene Amoral; and Manuel Amoral, Jr. ("Defendants") in the Circuit Court of the Second Circuit, State of Hawaii, on September 3, 2015, which has been designated as Civil No. 15-1-0476(2); and

WHEREAS, Defendant Charlene Amoral has been dismissed from this action; and

WHEREAS, remaining Defendants have, as of the date of the filing of the Complaint, accumulated \$321,019.22 in past-due tipping fees owed to the County; and

WHEREAS, remaining Defendants previously entered into a Repayment Agreement with the County and eventually fully abandoned their payment obligations; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of all previous attempts to reach a resolution of this case by way of a negotiated settlement, the Council wishes to authorize the settlement; now, therefore,

Resolution No. _____

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


1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Committee of the Whole; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County of Maui in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to accept payment of said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

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

APPROVED AS TO FORM AND LEGALITY:



KRISTIN K. TARNSTROM
Deputy Corporation Counsel
County of Maui

DEPARTMENT OF THE CORPORATION COUNSEL 205

FILED

PATRICK K. WONG 5878
Corporation Counsel
KRISTIN K. TARNSTROM 9934
Deputy Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793
Telephone No.: (808) 270-7740
Email: kristin.tarnstrom@co.maui.hi.us

2015 SEP -3 PM 2: 50

K. MAEDA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

Attorneys for
COUNTY OF MAUI

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

LANAI WASTE REMOVAL, INC.;
LANAI TRUCKING, INC.; CHARLENE
AMORAL; MANUEL AMORAL, JR.;
DOE DEFENDANTS 1-10;

Defendants.

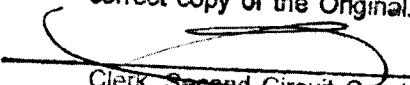
Civil No. 15-1-0476 (2)
(Other Civil Action)

COMPLAINT; EXHIBIT "A"; SUMMONS

COMPLAINT

COMES NOW, Plaintiff, the County of Maui, by and through its attorneys, PATRICK K. WONG, Corporation Counsel, and KRISTIN K. TARNSTROM, Deputy Corporation Counsel, and for claims for relief against Defendants, LANAI WASTE REMOVAL, INC.; LANAI TRUCKING, INC.; CHARLENE AMORAL; and MANUEL AMORAL, JR. (collectively "Defendants") alleges and avers as follows:

I hereby certify that this is a full, true and
correct copy of the Original.


Clerk, Second Circuit Court

PARTIES

1. Plaintiff COUNTY OF MAUI (hereinafter “**County**”) is a political subdivision of the State of Hawaii, doing business in the County of Maui, State of Hawaii.

2. The Department of Environmental Management is a lawful department of the County pursuant to Chapter 15 of the Maui County Charter. Under Chapter 15, the Department is tasked with supervising waste management, planning, designing, building, operating, and maintaining solid waste collection, processing and disposal systems for the County of Maui.

3. Defendant LANAI WASTE REMOVAL, INC. (“**Lanai Waste**”), is a Domestic For-Profit Corporation, created pursuant to the laws of the State of Hawaii, with its principal place of business in the County of Maui, State of Hawaii.

4. Defendant LANAI TRUCKING, INC. (“**Lanai Trucking**”), is a Domestic For-Profit Corporation, created pursuant to the laws of the State of Hawaii, with its principal place of business in the County of Maui, State of Hawaii.

5. Defendant MANUEL AMORAL, JR., is a resident of the Island of Lanai, in the County of Maui, State of Hawaii, and is the sole owner of Lanai Trucking and Lanai Waste.

6. Defendant CHARLENE AMORAL, is a resident of the Island of Lanai, in the County of Maui, State of Hawaii, and has acted as an agent on behalf of Lanai Trucking and Lanai Waste.

7. That DOE DEFENDANTS 1-10 (“**DOE Defendants**”) are unidentified persons or entities who have an involvement, are connected in some manner with named Defendants, and are agents, servants, employees, employers, representatives, partners, co-venturers, associates, parent companies, successors in interest or independent contractors of named Defendants and/or were in some manner presently unknown to County engaged in the activities alleged herein and/or were in

some manner responsible for the damages to County and that their true names, identities, capacities, activities, and/or responsibilities are presently unknown to and whose true names, identities, and interests are presently unknown to Plaintiff's counsel. County has diligently and in good faith attempted to ascertain the names and identities of DOE Defendants whose identities are presently unknown to County. Such attempts include reviewing relevant records. Despite the foregoing, the identity of other defendants whose conduct may have been a legal cause of County's damages remains unknown to County.

JURISDICTION AND VENUE

8. All relevant facts contained herein occurred within the County of Maui, State of Hawaii.

9. This Court has jurisdiction over the parties and subject matter pursuant to Hawaii Revised Statutes §§ 603-21.5, 603-21.9, and 603.23.

10. This venue is appropriate under HRS §603-36, as Defendants are domiciled in, and the claim for relief arose in, the Second Circuit of the State of Hawaii.

STATEMENT OF FACTS

11. The County of Maui, through its Department of Environmental Management ("DEM"), Solid Waste Division, operates the Lanai Landfill, located at Kaunalapau Highway, 4 miles west of Lanai City on the Island of Lanai, in the County of Maui.

12. Pursuant to Maui County Code ("MCC"), Title 8, all businesses who wish to dispose of solid waste at a County of Maui disposal facility, must first obtain a disposal permit issued by the Solid Waste Management Division of the DEM.

13. Also pursuant to MCC Title 8, all businesses who hold a permit to dispose of solid waste at County facilities are billed for the initial application and issuance fee, as well as the

monthly accrued billings for each load of waste disposed of by a given permit holder. The initial fee, and the per-load fees, are billed pursuant to the rate schedule set forth in the County of Maui Annual Budget.

14. Chapter 15-108 of the Department of Public Works and Waste Management, County of Maui, Rules for Maui County Landfills provides that all disposal charges shall be collected in accordance with the rates set forth in the annual budget ordinance, and that all disposal charges paid when due.

A. Defendant Lanai Waste's Delinquency and Repayment Agreement

15. From 1988 to 2013, Defendant Lanai Waste operated a solid waste collection and disposal service on Lanai. Lanai Waste first obtained a dumping permit and opened a landfill account on or around November 5, 1988 (Account No. 83500).

16. Over time, Lanai Waste became seriously delinquent on its landfill fees from use at the Lanai Landfill. By 2009, Lanai Waste had failed to pay on its account (83500) in the sum of two-hundred and eighty-nine thousand, three hundred seventy-six dollars, and fourteen cents (\$289,376.14).

17. Upon identifying the delinquency, the DEM Solid Waste Division contacted Lanai Waste, and began discussions with its agent, Defendant Manuel Amoral, Jr. on bringing the account current. As part of these discussions, the County discovered it still owed Lanai Waste for previous services Lanai Waste had rendered to the County.

18. Between 2009 to 2011, the DEM Solid Waste Division and Defendant Lanai Waste worked to resolve the amount the County owed to Lanai Waste, and began negotiating a structured payment schedule to pay back the County the delinquent amount owing on Account 83500.

19. On or around June 28, 2011, the County DEM and Lanai Waste, through its agent Manuel Amoral, Jr., entered into a "Repayment Agreement." A true and correct copy of the repayment agreement is attached hereto as Exhibit A. The agreement provided, in relevant part:

The following payment plan will be effective July 1, 2011:

- 1. Pay \$9,000 per month for past due invoices. Payment shall be due no later than the first of every month and beginning August 1, 2011.*
- 2. Pay current monthly charges in full beginning with the month of June 2011...*
- 3. Outstanding purchase orders due to Lanai Waste Removal will be paid by the County after verification has been done with the various County Departments... This payment to Lanai Waste Removal will be signed back to the County to offset your current delinquent account.*
- 4. All payments would be made in full by the due dates stated above. Failure to make any payment in full will result in the cancellation of this agreement and the closure of the landfill account for Lanai Waste Removal.*

20. In order to organize the two billing structures, referenced above, the County agreed to suspend any new charges (except interest) on the 83500 account so that the \$9,000 per month payment would, with monthly payments, eventually reach a zero balance.

21. For new fee accruals from ongoing use of the Lanai Landfill, the County agreed to open a new account for Lanai Waste (Account No. 95180) with a zero balance. The 95180 account was opened in the name of Defendant Lanai Waste, Inc. on or around July 1, 2011.

B. Breach of Repayment Agreement, Promises to Repay, and Continuing Delinquency of Account No. 83500.

22. Lanai Waste made two timely nine thousand dollar (\$9,000) re-payments on Account 83500 in July and August of 2011.

23. Thereafter, Lanai Waste's payments became erratic and DEM would often only receive payment after threatening to suspend Lanai Waste's landfill privileges.

24. After Lanai Waste's initial, and continuing, defaults on the agreement, DEM made reasonable attempts to accommodate Lanai Waste with a flexible payment schedule.

25. Lanai Waste, through both Manuel Amoral Jr. and Charlene Amoral, made multiple representations to DEM Solid Waste Division that it would make repayment on account 83500.

26. Every time the DEM has made an accommodation to assist Lanai Waste, Lanai Waste failed to honor that agreement, and continued not to pay on the 83500 account.

27. Lanai Waste stopped making the full \$9,000 per month repayment in November 2013.

28. Lanai Waste stopped making any payments entirely as of December 2013.

29. As of the date of filing this Complaint, the amount owing on Account 83500 totals three hundred and twenty-one thousand and nineteen dollars, and twenty-two cents (\$321,019.22).

30. Account 83500 continues to accrue interest charges.

C. Lanai Waste and Lanai Trucking are Alter Ego Corporations to Each Other and to Manuel Amoral, Jr.

31. According to public filings, Defendant Manuel Amoral, Jr. is, and has been, the sole owner, officer, director, and/or shareholder of both Defendants Lanai Trucking and Lanai Waste Removal.

32. According to its Articles of Incorporation, and on-going annual filings from at least 2003 through 2013, Manuel Amoral, Jr. is listed as the President, Vice-President, Secretary, and Treasurer, as well as the sole Director of Lanai Waste.

33. According to its Articles of Incorporation, and on-going annual filings from at least 2003 through 2013, Manuel Amoral, Jr. is listed as the President, Vice-President, Secretary, and Treasurer, as well as the sole Director of Lanai Trucking.

34. Since at least 2003, and up through the companies' 2013 annual corporate filings, Defendants Lanai Trucking and Lanai Waste's principal place of business office addresses were the same. They were both at P.O. Box 630263, Lanai, Hawaii 96763.

35. Since at least 2003, and up through the companies' 2013 annual corporate filings, Defendants Lanai Trucking and Lanai Waste's mailing addresses were the same. They were both at P.O. Box 630263, Lanai, Hawaii 96763.

36. Since both companies were started in 1995, Defendants Lanai Trucking and Lanai Waste have had the same agent listed for service of process: Manuel Amoral, Jr. at P.O. Box 630263, Lanai City, Hawaii.

37. According to the Better Business Bureau website (www.bbb.org) both Defendants Lanai Waste and Lanai Trucking have the same physical address on Lanai. They are located at 1 Kaumalapau, Lanai City, HI 96763.

D. Transfer of Lanai Waste's Disposal Business to Lanai Trucking to Avoid Payment and Repercussions of Non-Payment to Plaintiff County.

38. On or around February 25, 2013, Lanai Trucking obtained a dumping permit and opened a landfill account (Account No. 110258). Prior to this time, Lanai Trucking had never held a dumping permit with the County of Maui.

39. On or around April 11, 2013, Lanai Trucking paid its first bill for actual use of the Lanai Landfill.

40. On or around May 23, 2013, Lanai Waste received its final bill for actual use of the Lanai Landfill on its active 95180 account. Lanai Waste closed this account in June 2013.

41. Upon information and belief, Lanai Trucking took over Lanai Waste's business of solid waste disposal on the Island of Lanai.

42. After Lanai Waste closed its active account, and Lanai Trucking opened its account, Lanai Waste stopped making payments on the delinquent 83500 account.

43. When Lanai Waste refused to pay on Account 83500 after June 2014, the DEM Solid Waste Division attempted to enforce Lanai Waste's delinquency, failure to pay, and breach of contract against Manny Amoral, Jr. and Lanai Trucking.

44. Defendant Lanai Trucking refused to acknowledge the debts of Lanai Waste.

45. Defendant Manuel Amoral, Jr. refused to acknowledge the debts of Lanai Waste.

46. Upon information and belief, Lanai Trucking's solid waste disposal business was created and/or initiated solely to take over the Lanai Waste business and to avoid payment on account 83500.

47. Upon information and belief, Defendants Amoral and/or Lanai Waste and/or their agents have used or fashioned Lanai Trucking's solid waste disposal business, to avoid paying the past-due amount on Account 83500 and to avoid repercussions of non-payment.

48. These actions defeat the rightful claim of the County in collecting upon all amounts owing on Account 83500.

49. Defendants, either through their owners and/or operators and/or shell corporations and/or alter ego corporations, have refused to pay the balance on Account 83500.

/

/

COUNT I
Violation of Maui County Code Title 8:
Failure to Pay Monthly Collection Charges

50. The County incorporates by reference each of the above paragraphs and allegations.

51. Defendants, either through their owners and/or operators and/or shell corporations and/or alter ego corporations, failed to pay all fees applicable to Account No. 83500 pursuant to MCC Title 8.

52. Plaintiff is entitled to all applicable fees, interest, and penalties.

COUNT II
Breach of Repayment Agreement

53. The County incorporates by reference each of the above paragraphs and allegations.

54. Defendants, either through their owners and/or operators and/or shell corporations and/or alter ego corporations breached their agreements and promises by agreeing, and failing, to pay all amounts due to the County promptly and as they accrued.

55. Defendants, either through their owners and/or operators and/or shell corporations and/or alter ego corporations, breached the repayment agreement they entered by failing to comply with its terms.

56. As a result of these breaches and failures, the County has suffered damages and seeks recovery of all amounts owing.

COUNT III
Promissory Estoppel

57. The County incorporates by reference each of the above paragraphs and allegations.

58. Defendants, either through their owners and/or operators and/or shell corporations and/or alter ego corporations, repeatedly promised to pay the accrued landfill fees.

59. Defendants knew or should have known their representations would induce the reliance and/or forbearance of the DEM Solid Waste Division.

60. The DEM Solid Waste Division and the County relied upon these promises to pay to its detriment by foregoing legal action or a collection effort, and permitted Defendants continued landfill privileges which resulted in additional damages.

61. As a result of this conduct, the County has suffered damages and seeks recovery of all amounts owing.

WHEREFORE, the County prays for relief as follows:

62. As to all Causes of Action, that the Court enter judgment in favor of Plaintiff County of Maui and against Defendants Lanai Waste Removal, Inc.; Lanai Trucking, Inc.; Manuel Amoral, Jr.; and Charlene Amoral.

63. As to all Causes of Action, that the Court determine the amount of damages and/or other monetary penalties owed to the County of Maui by Defendants pursuant to law, including any interests that may have accrued on said amounts owed.

64. That the County be awarded all its court costs and reasonable attorneys' fees and any costs that may be incurred by the County.

65. That the County be awarded such other relief the Court deems appropriate, including injunctive relief, prior to final judgment.

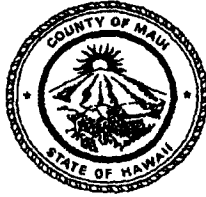
DATED: Wailuku, Maui, Hawaii, September 2, 2015.

PATRICK K. WONG
Corporation Counsel
Attorney for Plaintiff COUNTY OF MAUI

By:


KRISTIN K. TARNSTROM
Deputy Corporation Counsel

ALAN M. ARAKAWA
Mayor
KYLE K. GINOZA, P.E.
Director
MICHAEL M. MIYAMOTO
Deputy Director



TRACY TAKAMINE, P.E.
Solid Waste Division
ERIC NAKAGAWA, P.E.
Wastewater Reclamation Division

**COUNTY OF MAUI
DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**
2200 MAIN STREET, SUITE 100
WAILUKU, MAUI, HAWAII 96793

June 28, 2011

Mr. Manuel Amoral, Jr.
Lanai Waste Removal
762 Lower Main St.
Wailuku, HI 96793

Dear Mr. Amoral:

**SUBJECT: DELINQUENT ACCOUNT NOTIFICATION
LANAI WASTE REMOVAL, ACCOUNT #83500**

We received your letter dated June 22, 2011 stating Lanai Waste Removal's intent to make firm monthly payments and reduce the delinquent account status. Based on your letter and our meeting held on June 20, 2011 the following payment plan will be effective July 1, 2011:

1. Pay \$9,000 per month for past due invoices. Payment shall be due no later than the first of every month beginning August 1, 2011.
2. Pay current monthly charges in full beginning with the month of June 2011. For the month of June 2011, As of June 28, 2011, Lanai Waste has made three payments totaling \$3740.00.
3. Outstanding purchase orders due to Lanai Waste Removal will be paid by the County after verification has been done with the various County Departments. As requested in our June 15, 2011 letter, please provide the County with a summary of what is owed to Lanai Waste Removal. This payment to Lanai Waste Removal will be signed back to the County to offset your current delinquent account.
4. All payments will be made in full by the due dates stated above. Failure to make any payment in full will result in the cancellation of this agreement and the closure of the landfill account for Lanai Waste Removal.

It is your responsibility to insure that all payments are made in a timely manner. We look forward to working with Lanai Waste Removal to settle this account. Please sign below confirming your understanding of this payment plan and return the original to this office.

EXHIBIT " A "

FROM

(10E) NOV 1 2011 22:11/31.22.11/NO.001004028 P 1

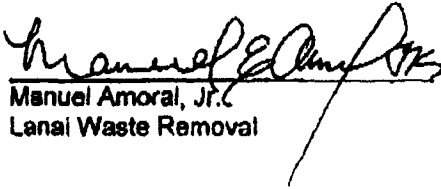
If you have any questions, please call Tracy Takamine at 270-7881.

Sincerely,



Kyle K. Ginoza, P.E.
Director of Environmental Management

I read the terms of this payment plan and agree to the terms:


Manuel Amoral, Jr.
Lanai Waste Removal

TT(11033.SWB)

cc. Landfill
SWD Accounts
Keith Regan, Managing Director

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

COUNTY OF MAUI,

Plaintiff,

vs.

LANAI WASTE REMOVAL, INC.;
LANAI TRUCKING, INC.; CHARLENE
AMORAL; MANUEL AMORAL, JR.;
DOE DEFENDANTS 1-10;

Defendants.

Civil No. _____
(Other Civil Action)

SUMMONS

SUMMONS

To: ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to file with the Court and serve upon PATRICK K. WONG, Corporation Counsel, and KRISTIN K. TARNSTROM, Deputy Corporation Counsel, attorneys for Plaintiff COUNTY OF MAUI, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793, an answer to this Complaint which is herewith served upon you. This action must be taken within twenty (20) days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty-day time limit, judgment by default will be taken against you for the relief demanded in the Complaint.

If you fail to obey this summons, this may result in an entry of default and default judgment.

Pursuant to Rule 4(b) of the Hawaii Rules of Civil Procedure, this summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of

the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.

DATED: Wailuku, Maui, Hawaii, SEP - 3 2015.

/sgd/ K. MAEDA (seal)

CLERK OF THE ABOVE-ENTITLED COURT