

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 21, 2016

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on October 7, 2016, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated August 29, 2016, the Department of the Corporation Counsel requested consideration of the possible settlement of April Freeland, et al. v. County of Maui, et al., Civil 11-00617 ACK-KSC; Ninth Circuit U.S. Court of Appeals 14-15014. Attached to the request is a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF APRIL FREELAND, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. 11-00617 ACK-KSC; NINTH CIRCUIT U.S. COURT OF APPEALS NO. 14-15014," and a copy of the Second Amended Complaint filed on January 25, 2013. The purpose of the proposed resolution is to authorize the Department to settle the case and related appeal.

Your Committee notes Plaintiffs April Freeland and Norman Freeland allege unlawful seizure, unlawful arrest, unlawful search, inadequate supervision and training, false arrest, assault, battery, false imprisonment, negligent infliction of emotional distress, and intentional infliction of emotional distress, arising from an incident on April 15, 2011, involving Defendants Jerald Perkett, Jeffrey Calibuso, Keoki Santos, Richard Dods, Christopher Gantala, Kenneth Carroll, Clifford Dagulo, Jamie Wright, Matthew Brown, Eduardo Bayle, Christopher Kealoha, Clifton Perreira, Gregg Okamoto, Matthew Bigoss, and Gary Yabuta as Chief of Police.

Your Committee notes Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement in excess of \$7,500.

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Your Committee further notes the Council previously authorized indemnification of the individual Defendants by Resolution 13-41.

According to the proposed settlement resolution, the Court granted in part and denied in part the County's Motion for Summary Judgment. The Court declined to grant qualified immunity to the individual Defendants. The County has appealed the Court's partial denial of summary judgment to the Ninth Circuit Court of Appeals.

The proposed resolution also states that, on January 6, 2014, Plaintiffs stipulated to the dismissal of Defendants Calibuso, Dods, Gantala, Carroll, Dagulo, Wright, Brown, Bayle, Kealoha, Perreira, and Okamoto. The remaining individual Defendants in the case are Defendants Yabuta, Perkett, Santos, and Bigoss.

A Deputy Corporation Counsel provided a brief overview of the case. She said the case stems from a search warrant executed on April 5, 2011, at the Freelands' residence. The officers had a search warrant, but executed it at the wrong home. Plaintiffs' attorney has provided a settlement demand.

Because the case involves ongoing litigation and confidential information, the Deputy requested the opportunity to convene an executive meeting.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes; and Section 92-5(a)(8), Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

Following the executive meeting, your Committee reconvened in regular session. Your Committee noted a need to revise the proposed resolution to reflect the only two remaining individual Defendants in the case are Defendants Perkett and Bigoss.

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Based on the information received and the recommendation of the Department, your Committee voted 6-1 to recommend adoption of the proposed resolution, as revised, to authorize settlement of the case and related appeal under the terms discussed in the executive meeting. Committee Chair Guzman and members Baisa, Carroll, Cochran, Hokama, and White voted "aye." Committee member Couch voted "no." Committee Vice-Chair Crivello and member Victorino were excused.

Your Committee is in receipt of a revised proposed resolution incorporating your Committee's revisions.

Your Committee of the Whole RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF APRIL FREELAND, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. 11-00617 ACK-KSC; NINTH CIRCUIT U.S. COURT OF APPEALS NO. 14-15014," be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



DON S. GUZMAN, Chair

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF
APRIL FREELAND, ET AL. VS. COUNTY OF MAUI, ET AL.,
CIVIL NO. 11-00617 ACK-KSC;
NINTH CIRCUIT U.S. COURT OF APPEALS NO. 14-15014

WHEREAS, Plaintiffs April Freeland and Norman Freeland filed a lawsuit in the United States District Court for the District of Hawaii on October 14, 2011, Civil No. 11-00617 ACK-KSC, against the County of Maui, Gary Yabuta, Jerald Perkett, Jeffrey Calibuso, Keoki Santos, Richard Dods, Christopher Gantala, Kenneth Carroll, Clifford Dagulo, Jamie Wright, Matthew Brown, Eduardo Bayle, Christopher Kealoha, Clifton Perreira, Gregg Okamoto, and Matthew Bigoss, claiming unlawful seizure, unlawful arrest, unlawful search, inadequate supervision and training, false arrest, assault, battery, false imprisonment, negligent infliction of emotional distress, and intentional infliction of emotional distress due to an incident on April 15, 2011; and

WHEREAS, Plaintiffs filed a First Amended Complaint on April 27, 2012, to provide more factual details in support of their claims; and

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WHEREAS, Plaintiffs filed a Second Amended Complaint on January 25, 2013, to further clarify the factual basis in support of their claims against the Defendants; and

WHEREAS, on December 11, 2013, the Court granted the County's Motion for Summary Judgment in part and denied it in part, failing to grant qualified immunity to Defendants Jerald Perkett and Matthew Bigoss and dismissing all remaining individual Defendants without prejudice; and

WHEREAS, on January 3, 2014, the County appealed the Court's partial denial of summary judgment to the Ninth Circuit Court of Appeals on behalf of Jerald Perkett and Matthew Bigoss; and

WHEREAS, on January 6, 2014, Plaintiffs stipulated to the dismissal, with prejudice, of Defendants Jeffrey Calibuso, Richard Dods, Christopher Gantala, Kenneth Carroll, Clifford Dagulo, Jamie Wright, Matthew Brown, Eduardo Bayle, Christopher Kealoha, Clifton Perreira, and Gregg Okamoto; and

WHEREAS, the only remaining individual Defendants are Jerald Perkett and Matthew Bigoss; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case and the related appeal by way of a negotiated settlement or Offer of Judgment on behalf of the County and the remaining individual Defendants; and

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WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case and the related appeal under the terms set forth in an executive meeting before the Committee of the Whole; and

WHEREAS, on April 5, 2013, the Council adopted Resolution 13-41, indemnifying the individual Defendants in the case; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case and the related appeal by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

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

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

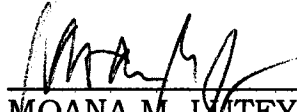
2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

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

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

APPROVED AS TO FORM
AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui