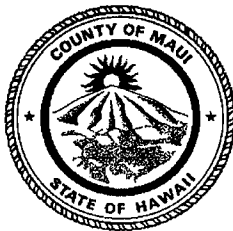


ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

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DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI

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2015 OCT 22 PM 2:46  
OFFICE OF THE  
COUNTY COUNCIL

RECEIVED

October 22, 2015

MEMO TO: Donald S. Guzman, Chair  
Committee of the Whole

FROM: Brian A. Bilberry   
Deputy Corporation Counsel

SUBJECT: Litigation Matter – Status Update on Pending Litigation COW-1(2)  
*Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al.*,  
Civil No. 13-1-0848(2)

Our Department respectfully requests the opportunity to discuss with the Committee the litigation of the above-referenced case, and update on the status of interrogatory and document discovery, the status of any evidence identified by Plaintiffs as to liability, and consolidation of separate civil lawsuits filed by Plaintiffs in this case. We would like this matter heard at the next available committee meeting, and in any event prior to November 13, 2015, the response date for certain discovery subpoenas served by Plaintiffs on third-parties. Trial of the case is currently set to commence September 12, 2016.

A copy of the second Complaint filed as separate Civil No. 15-1-0435(1) is attached hereto.

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 me. Thank you for your anticipated assistance in this matter.

Attachment

Served on MML 9/1/15 2:45pm

FILED

2015 AUG 12 PM 2:28

McCORRISTON MILLER MUKAI MacKINNON LLP

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[sue-ako@m4law.com](mailto:sue-ako@m4law.com)

D. PELLAZAR, CLERK  
SECOND CIRCUIT COURT  
STATE OF HAWAII

Attorneys for Plaintiffs  
OCEAN RESORT VILLAS VACATION OWNERS  
ASSOCIATION; OCEAN RESORT VILLAS  
NORTH VACATION OWNERS ASSOCIATION;  
VIC H. HENRY; and PETER A. BAGATELOS

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

OCEAN RESORT VILLAS VACATION  
OWNERS ASSOCIATION, a domestic  
nonprofit corporation; OCEAN RESORT  
VILLAS NORTH VACATION OWNERS  
ASSOCIATION, a domestic nonprofit  
corporation; VIC H. HENRY; and PETER A.  
BAGATELOS,

Plaintiffs,

vs.

COUNTY OF MAUI; JOHN DOES 1-10;  
JANE DOES 1-10; DOE PARTNERSHIPS 1-  
10; DOE CORPORATIONS 1-10; DOE  
GOVERNMENTAL ENTITIES 1-10; and  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. 15-1-0435 (1)  
(Other Civil Action)  
COMPLAINT; DEMAND FOR JURY  
TRIAL; SUMMONS

RECEIVED  
CORPORATION COUNSEL  
2015 SEP -1 PM 2:45

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

Clerk, Second Circuit Court

## COMPLAINT

Plaintiffs OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, a domestic nonprofit corporation; OCEAN RESORT VILLAS NORTH VACATION OWNERS ASSOCIATION, a domestic nonprofit corporation; VIC H. HENRY; and PETER A. BAGATELOS (collectively, "Plaintiffs"), by and through their attorneys, McCorriston Miller Mukai MacKinnon LLP, allege and aver a complaint against Defendants County of Maui ("Maui County") and the Maui County Council ("Council") (collectively, "Defendants") as follows:

### PARTIES

1. Plaintiff OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION ("Plaintiff ORV") is and was at all relevant times, a domestic nonprofit corporation registered under the laws of the State of Hawai'i. Plaintiff ORV is comprised of a community of timeshare owners at the Westin Ka'anapali Ocean Resort Villas, acting by and through its board of directors. The Westin Ka'anapali Ocean Resort Villas is located in the County of Maui, State of Hawai'i.

2. Plaintiff OCEAN RESORT VILLAS NORTH VACATION OWNERS ASSOCIATION ("Plaintiff ORV North") is, and was at all relevant times, a domestic nonprofit corporation registered under the laws of the State of Hawai'i. Plaintiff ORV North is comprised of a community of timeshare owners at the Westin Ka'anapali Ocean Resort North Villas, acting by and through its board of directors. The Westin Ka'anapali Ocean Resort North Villas is located in the County of Maui, State of Hawai'i.

3. Plaintiff ORV and Plaintiff ORV North (collectively, "Plaintiff Associations") collect annual membership assessments from their timeshare owners, which include, as a component, real property taxes. Plaintiff Associations then transfer the real property taxes

collected to Maui County. When a timeshare owner is delinquent on his or her assessment, Plaintiff Associations pay the real property tax on behalf of the delinquent owner to prevent a foreclosure of the entire timeshare unit.

4. Plaintiff VIC H. HENRY (“Henry”) is and was at all times relevant to this Complaint, a citizen and resident of the State of Texas. At all times relevant to this Complaint, Plaintiff Henry owned a timeshare in the Westin Ka’anapali Ocean Resort Villas.

5. Plaintiff PETER A. BAGATELOS (“Bagatelos”) is and was at all times relevant to this Complaint, a citizen and resident of the State of California. At all times relevant to this Complaint, Plaintiff Bagatelos owned a timeshare in the Westin Ka’anapali Ocean Resort Villas North.

6. Defendant MAUI COUNTY is a municipal corporation of the State of Hawai‘i. Maui County has waived its sovereign immunity with respect to the claims raised in this Complaint.

7. Defendant COUNCIL is the legislative body of Maui County. The Council’s powers include the ability to legislate taxes, including taxes on real property in the County of Maui.

8. Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, DOE GOVERNMENTAL ENTITIES 1-10, AND DOE ENTITIES 1-10 (collectively, “Doe Defendants”) are persons, partnerships, corporations, associations, governmental entities and/or unincorporated associations whose names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiffs or their attorneys. Despite having made a good faith effort, Plaintiffs have not been able to determine those Doe Defendants’ identities, except that those Doe Defendants are persons, partnerships, corporations,

associations, governmental entities and/or unincorporated associations that were or are in some way responsible for Plaintiffs' damages.

### JURISDICTION AND VENUE

9. Jurisdiction in this Court is proper pursuant to Hawai'i Revised Statutes ("HRS") section 632-1.

10. Venue for this Complaint is proper pursuant to HRS section 603-36, as the claim arose in the Second Circuit.

### ALLEGATIONS

11. On May 15, 2015, the Council voted and adopted Resolution No. 15-52, setting the real property tax rates for the 2016 fiscal year as follows:

<b>2016 Fiscal Year Real Property Tax Rates For Maui County</b>	
<b>Classification</b>	<b>Tax Rate</b>
Residential	\$5.40
Apartment	\$6.00
Commercial	\$6.60
Industrial	\$6.85
Agriculture	\$5.75
Conservation	\$5.90
Hotel & Resort	\$8.85
<b>Timeshare</b>	<b>\$14.55</b>
Homeowner	\$2.75
Commercialized Residential	\$4.35

12. The timeshare tax rate for fiscal year 2016 is 164% higher than Hotels & Resorts; 242% higher than Apartments; 269% higher than Residential; 334% higher than Commercialized Residential; and 529% higher than Homeowner.

### COUNT I

(Violation of Sunshine Law—FY 2016 Budget and Finance Session)

13. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 12 above as if set forth in full herein.

14. Under HRS section 92-1, known as the Sunshine Law, it is the policy of the State of Hawai'i that "the formation and conduct of public policy—the discussions, deliberations, decisions, and action of governmental agencies—shall be conducted as openly as possible."

15. Under HRS section 92-11, "[a]ny final action taken in violation of [HRS] sections 92-3 and 92-7 may be voidable upon proof of violation."

16. As the Hawai'i Supreme Court held in Kanahele v. Maui County Council, 130 Hawai'i 228, 307 P.3d 1174 (2013), the circulation of memoranda amongst Councilmembers that provide substantive explanations or justifications in support of pending legislation is a violation of the Sunshine Law.

17. Plaintiffs are informed and believe that after a reasonable opportunity for further investigation and discovery, there is evidentiary support that while the real property tax rates for the 2016 fiscal year were being considered by the Council, Councilmembers circulated memoranda or engaged in other improper interactions or discussions, thereby circumventing the spirit or requirements of the Sunshine Law.

18. Plaintiffs are informed and believe that after a reasonable opportunity for further investigation and discovery, there is evidentiary support that these memoranda and improper interactions or discussions by Councilmembers undermined Plaintiffs' ability to witness and participate in the democratic process of setting the tax rate for the timeshare classification.

19. As a result of Defendants' violations of the Sunshine Law, Plaintiffs are entitled to a declaration that the timeshare tax rate set forth in Resolution No. 15-52 is void.

## COUNT II

(Violation of Due Process Clauses of U.S. and Hawai'i Constitutions)

20. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 19 above as if set forth in full herein.

21. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution prohibits a state or any political subdivision from depriving “any person of life, liberty, or property, without due process of law[.]” U.S. Const. Amend. 14, § 1.

22. The equal protection clause of the Hawai‘i Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law[.]” Haw. Const. art. I, § 5.

23. Plaintiffs are informed and believe that after a reasonable opportunity for further investigation and discovery, there is evidentiary support that Defendants violated the Sunshine Law while the real property tax rates for the 2016 fiscal year was being considered by the Council.

24. Violations of the Sunshine Law undermined Plaintiffs’ ability to witness and participate in the democratic process of setting the tax rate for the Timeshare classification.

25. As a result of Defendants’ violations of the Sunshine Law, Plaintiffs are entitled to a declaration that Defendants violated the Due Process Clause of the U.S. and Hawai‘i Constitutions by depriving Plaintiffs of life, liberty or property without due process of law.

WHEREFORE, Plaintiffs pray that judgment be entered as follows:

A. That judgment be entered in favor of Plaintiffs and against Defendants as set forth in the foregoing Counts;

B. For a binding declaration by this Court that:

(i) The portions of Maui County Resolution No. 15-52 that apply to timeshare real property taxes are void as violations of the Sunshine Law; and


(ii) Defendants violated the Due Process Clause of the U.S. and Hawai‘i Constitutions when violations of the Sunshine Law occurred;

C. That the Court award Plaintiffs damages in an amount to be proven at trial;

D. That the Court award Plaintiffs their attorneys' fees and costs and prejudgment and post-judgment interest as allowed by law; and

E. That the Court award Plaintiffs such further and other equitable legal relief as it deems just and proper.

DATED: Honolulu, Hawai'i, AUG 10 2015.

  
ROBERT G. KLEIN  
JORDON J. KIMURA  
COURTNEY K. SUE-AKO

Attorneys for Plaintiffs  
OCEAN RESORT VILLAS VACATION  
OWNERS ASSOCIATION, OCEAN  
RESORT VILLAS NORTH VACATION  
OWNERS ASSOCIATION, VIC H.  
HENRY, AND PETER A. BAGATELOS



IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

## STATE OF HAWAII

OCEAN RESORT VILLAS VACATION  
OWNERS ASSOCIATION, a domestic  
nonprofit corporation; OCEAN RESORT  
VILLAS NORTH VACATION OWNERS  
ASSOCIATION, a domestic nonprofit  
corporation; VIC H. HENRY; and PETER A.  
BAGATELOS,

Plaintiffs,

vs.

COUNTY OF MAUI; JOHN DOES 1-10;  
JANE DOES 1-10; DOE PARTNERSHIPS 1-  
10; DOE CORPORATIONS 1-10; DOE  
GOVERNMENTAL ENTITIES 1-10; and  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. \_\_\_\_\_  
(Other Civil Action)

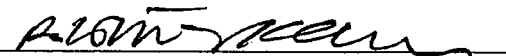
DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiffs OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, a domestic nonprofit corporation; OCEAN RESORT VILLAS NORTH VACATION OWNERS ASSOCIATION, a domestic nonprofit corporation; VIC H. HENRY; and PETER A.

BAGATELOS, by and through their attorneys, McCorriston Miller Mukai MacKinnon LLP,  
hereby demand a trial by jury on all issues triable herein.

DATED: Honolulu, Hawai'i, AUG 10 2015.

  
ROBERT G. KLEIN  
JORDON J. KIMURA  
COURTNEY K. SUE-AKO

Attorneys for Plaintiffs OCEAN RESORT  
VILLAS VACATION OWNERS  
ASSOCIATION, OCEAN RESORT  
VILLAS NORTH VACATION OWNERS  
ASSOCIATION, VIC H. HENRY, AND  
PETER A. BAGATELOS

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

OCEAN RESORT VILLAS VACATION	)	CIVIL NO. _____
OWNERS ASSOCIATION, a domestic	)	(Other Civil Action)
nonprofit corporation; OCEAN RESORT	)	
VILLAS NORTH VACATION OWNERS	)	SUMMONS
ASSOCIATION, a domestic nonprofit	)	
corporation; VIC H. HENRY; and PETER A.	)	
BAGATELOS,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
COUNTY OF MAUI; JOHN DOES 1-10;	)	
JANE DOES 1-10; DOE PARTNERSHIPS 1-	)	
10; DOE CORPORATIONS 1-10; DOE	)	
GOVERNMENTAL ENTITIES 1-10; and	)	
DOE ENTITIES 1-10,	)	
	)	
Defendants.	)	
_____	)	

SUMMONS

STATE OF HAWAII

To the above-named Defendant(s):

YOU are hereby summoned and required to file with the court and serve upon McCorrison Miller Mukai MacKinnon LLP, Plaintiffs' attorney, whose address is Five Waterfront Plaza, 4th Floor, 500 Ala Moana Boulevard, 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 day 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, AUG 12 2013.

/sgd/ D. PELLAZAR (seal)

CLERK OF THE ABOVE-ENTITLED COURT