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August 22, 2016

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

FROM: Brian A. Bilberry
Deputy Corporation Counsel

SUBJECT: Litigation Matter – Reviewing claims in the matters of
Ocean Resort Villas, et al. v. County of Maui, et al.
Second Circuit Court Civil No. 13-1-0848(2)
and
Ocean Resort Villas, et al. v. County of Maui, et al.
Second Circuit Court Civil No. 15-1-0435(1)

Our Department respectfully requests the opportunity to review the claims in the above matters with the Committee of the Whole. A copy of the Second Amended Complaint, filed August 12, 2016 in Civil No. 13-1-0848(2), and a copy of the First Amended Complaint, filed July 18, 2016 Civil No. 15-1-0435(1), are attached hereto.

We would like to request that these matters be taken up at the next Committee of the Whole meeting on September 13, 2016 or as soon as possible as this matter is time sensitive.

It is anticipated that an executive session will 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.

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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 HAWAI'I

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,	CIVIL NO. 13-1-0848(2) (Other Civil Action) **SECOND AMENDED** COMPLAINT; CERTIFICATE OF SERVICE
Plaintiffs,	Judge: The Honorable Peter T. Cahill
vs.	TRIAL DATE: September 12, 2016
COUNTY OF MAUI; MAUI COUNTY COUNCIL; 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.	

SECOND AMENDED 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:

1. This action challenges the constitutionality of (a) Maui County's real property tax classification and tax rate on timeshare properties, and (b) amended assessments issued by Maui County in May 2016 for tax years 2006, 2007 and 2008 for property Maui County already taxed and for which it received payment in full, and seeks to void the 2014 and 2015 tax rates on timeshare properties as adopted in violation of Hawaii's Sunshine Law.

PARTIES

2. 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.

3. 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. Westin Ka'anapali Ocean Resort North Villas is located in the County of Maui, State of Hawai'i.

4. 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.

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

6. Plaintiff PETER A. BAGATELOS ("Bagatelos") is and at all times relevant to this Complaint was a citizen and resident of the State of California. At all times relevant to this Complaint, Plaintiff Bagatelos has owned a timeshare in the Westin Ka'anapali Ocean Resort Villas North. Plaintiff Henry and Plaintiff Bagatelos are collectively referred to as "Individual Timeshare Plaintiffs."

7. 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.

8. 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.

9. 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

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

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

BACKGROUND

A. "Timeshare" Classification.

12. In November 2004, Maui County Mayor Alan Arakawa and the Council adopted Bill 76, which was enacted as Ordinance No. 3227. Ordinance No. 3227 amended Maui County Code section 3.48.305 to create a new and separate real property tax classification for timeshares.

13. Upon information and belief, from November 2004 until August 7, 2013, Maui County was the only local government in the United States with a separate real property tax classification for timeshares. On August 7, 2013, the City and County of Honolulu created a

separate real property tax classification for timeshares. However, the City and County of Honolulu has yet to set a tax rate.

B. Setting the Timeshare Real Property Tax Rate.

14. Upon information and belief, the Council began discussing the initial real property tax rate on timeshares at its annual Budget and Finance ("B&F") session in early 2005. The prior fiscal year, timeshares in Maui County were included in the "Hotel & Resort" real property tax classification, and were taxed at the rate of $8.30 per $1,000 of the assessed value.

15. At a March 2005 B&F Committee meeting, the Director for Maui County's Department of Finance ("Finance Director") presented the administration's proposed tax rates for all real property categories for the 2006 fiscal year. The administration's proposed tax rate for timeshares was $16.00 per $1,000 of the assessed value—nearly double what timeshares had been taxed for the 2005 fiscal year, when timeshares were included in the Hotel and Resort classification. The Finance Director explained that the proposed $16.00 per $1,000 tax rate was "philosophical" and not based on any clear cut or focused analysis.

16. At that same meeting, the Finance Director also presented the results of his informal "study" that suggested that a tax rate of $21.25 per $1,000 on timeshares was necessary to make up for losses in transient accommodations tax ("TAT") revenue. The TAT is a tax imposed by the State of Hawai'i on transient accommodations. Revenues from it are typically shared with the counties, with Maui County receiving approximately 10% of the total TAT revenue. The State has the power to reduce or repeal the distribution of TAT to the counties.

17. At an April 2005 B&F Committee meeting, the Finance Director clarified that the $21.25 per $1,000 tax rate reflected the rate necessary to make up for the total decrease in TAT

revenue on a State-wide level, rather than the loss to Maui County specifically, which would be "around . . . [$]9.30 to 10.50" per $1,000.

18. During the same meeting, B&F Committee Chairman Dain Kane ("Chairman Kane") acknowledged that the Council did not "have anything in writing telling us what the overall impacts [of timeshares] are." Due to the lack of information, Chairman Kane advised that he would "have a problem with supporting the $16" proposed tax rate "because, just in philosophy . . . 100 percent increase on anybody without having any type of rational nexus to justify that type of increase . . . is difficult for your Chair." (Emphasis added.)

19. Former Councilmember Charmaine Tavares agreed with Chairman Kane, stating: "[W]e do need to have . . . a study on the impacts . . . so that we know fully what those" impacts are. "[M]aybe we are totally underestimating what the impacts are and maybe we are overestimating them."

20. The Council ultimately set the initial tax rate for the "Timeshare" classification at $14.00 per $1,000 of value, resulting in both the highest tax rate classification in Maui County as well as the highest tax rate on timeshares in the United States.

21. At the same time it decided the initial timeshare tax rate, the Council recognized that it did not have a formal means of justifying the high tax rate on timeshares.

22. The Council paid Hospitality Advisors, LLC, a Honolulu-based tourism consultancy, $75,000 to prepare a report reviewing the impact of timeshare conversions on Maui County.

23. In June 2006, Hospitality Advisors LLC and the University of Hawai'i School of Travel Industry released their study to Maui County ("Hospitality Advisors study") analyzing "economic and social impact . . . due to timeshare conversions on the County of Maui."

24. The Hospitality Advisors study did not find "any major social or economic impact on the County of Maui resulting from conversions of hotel to timeshare product," because the timeshare industry was "small compared to the islands' more developed hotel and condo-hotel market." In contrast to the Council's concern that the timeshare conversions were not generating enough TAT revenue, the Hospitality Advisors study concluded that the loss of TAT revenue for Maui County was "fairly modest." Overall, timeshare conversions had "little impact" on Maui County.

25. Upon information and belief, Defendants have not commissioned any additional studies on the impact of timeshares, and otherwise do not have any reports concluding that timeshare owners impose a greater burden than hotel and resort visitors on Maui County's infrastructure or resources.

26. For tax years 2006, 2007 and 2008, the Maui County Department of Finance's Real Property Assessment Division ("the Assessment Division") sent to ORV a single real property notice of assessment for TMK parcel 4-4-014-003-0000 ("Parcel 3-0000").

27. Parcel 3-0000 contains all the land and buildings within the ORV project, which is subject to a condominium property regime.

28. For tax year 2008, the Assessment Division sent to ORV North a single real property notice of assessment for TMK parcel 4-4-014-004-0000 ("Parcel 4-0000").

29. Parcel 4-0000 contains all the land and buildings within the ORV North project, also subject to a condominium property regime.

30. ORV and ORV North timely paid all the associated taxes related to those assessments.

31. On December 7, 2009, the Mayor signed into law Ordinance No. 3703 (2009).

32. In pertinent part, Ordinance No. 3703 amended Maui County Code section 3.48.305 to add a requirement that "[w]hen property is subdivided into condominium units, each unit . . . and its appertaining common interest shall be: . . . [d]eemed a parcel and assessed separately from other units."

33. Ordinance No. 3703 was explicitly retroactive only to July 1, 2009.

34. Accordingly, for tax year 2009, the Assessment Division began assessing the larger ORV and ORV North parcels as individual condominium units.

35. ORV and ORV North appealed Maui County's real property tax assessments for tax years 2009 and 2010, and the parties resolved the appeals through settlement.

36. No later than 2009, and likely earlier, Maui County was aware that for previous years it had assessed Parcel 3-0000 and Parcel 4-0000, and not the individual condominium units comprising them.

37. Between fiscal year 2006 and fiscal year 2014, the tax rate applied to timeshare owners exceeded the tax rate applied to the other classifications as follows:

a. 167% - 169% higher than Hotel & Resort;

b. 250% - 308% higher than Apartment;

c. 270% - 289% higher than Residential;

d. 344% - 357% higher than Commercialized Residential; and

e. 400% - 700% higher than Homeowner.

C. Comments by Councilmembers.

38. The disparity in the tax rates arises from the Council's animus against timeshare owners and the timeshare community.

a. When considering the initial timeshare tax rate in 2005, current Councilmember G. Riki Hokama ("Councilmember Hokama") stated: "I will tell you now, I will not view time-share as residential property and give them any type of residential consideration." In 2006, a Hawai'i news publication quoted Councilmember Hokama as stating, "I don't see it being a need in our county to have time share. That's not the visitor that I want here."

b. During discussions in 2005 about the initial timeshare tax rate, former Councilmember Michelle Anderson ("Councilmember Anderson") stated that she did not want to "just turn over the development of our tourist industry to corporate entities who have no vested interest in Maui County." Councilmember Anderson also stated that a higher tax rate "might send a message to the [timeshare] industry that Maui doesn't want timeshare," and that she was "not interested in providing a convenience for the visitor. I'm interested in spending taxpayer dollars to help the taxpayers of Maui . . . the tourist industry should be footing the bill, not the taxpayers."

c. Concerning the initial timeshare tax rate, former Councilmember Joseph Pontanilla stated that, "as far as curbing . . . hotels converting to timeshares, I would like to see a gradual increase as far as the timeshares' rate, maybe in two years' time, you know, reach the magic number of [$]21.25" per $1,000.

d. In 2009, although not a member of the Council at the time, Councilmember Hokama presented testimony on the budget proposal and stated: "[H]ow are you going to get the tax revenues from a visitor who may never come? You might as well tax hotel resorts and time shares more because you know you're going to guarantee get that revenue from the real property."

39. Upon information and belief, the Council continues to rely on the Finance Director's informal "study" to justify continuing to tax timeshares at a rate higher than the Hotel and Resort classification.

40. For example, during the 2011 B&F session, Councilmember Hokama and Councilmember Donald G. Couch, Jr. ("Councilmember Couch") both referred to the Finance Director's $21.25 calculation to justify raising the timeshare tax rate for the 2012 fiscal year.

a. Councilmember Hokama stated that it was "interesting that [testifiers] were complaining about [$]14 to [$]19" per $1,000 in proposed increased tax rate "when in 2005 there was a recommendation. $21."

b. Councilmember Couch asked a person who testified against a proposed increase in the timeshare tax rate if he was "aware that the [proposed tax rate] is much lower than a study that started this whole thing off suggest[ing] that [the rate] be $21.00 a thousand as opposed to the original [$]14 . . . That was a study that was done to see how much in revenue the timeshares would bring into Maui compared to a hotel room. The study said it should be $21.00 and it only went to [$]14."

D. 2014 Fiscal Year Real Property Tax Rates in Maui County.

41. On May 22, 2013, the Council voted and adopted Resolution No. 13-60, setting the real property tax rates for the 2014 fiscal year.

42. Upon information and belief, prior to the final vote on May 22, 2013, Councilmembers circulated memoranda amongst themselves that provided substantive explanations or justifications in support of proposed tax rates for the Timeshare classification.

43. Upon further information and belief, through memoranda or other communications, Councilmembers sought to secure other Councilmembers' commitment to vote on the timeshare tax rate.

44. Upon information and belief, prior to the final vote on May 22, 2013, Councilmembers used electronic communications or engaged in interactions in violation of the spirit and requirements of HRS chapter 92 ("Sunshine Law"), for the purpose of reaching a decision on the real property tax rate to be imposed on Timeshares.

45. For the 2014 fiscal year, timeshares were taxed at the increased rate of $15.55 per $1,000 of assessed value—once again bearing the highest real property tax rate. The real property tax rates for Maui County's 2014 fiscal year are set forth as follows:

2014 Fiscal Year Real Property Tax Rates For Maui County	
Classification	**Tax Rate**
Residential	$5.75
Apartment	$6.40
Commercial	$7.05
Industrial	$7.30
Agriculture	$6.05
Conservation	$6.25
Hotel & Resort	$9.40
Timeshare	**$15.55**
Homeowner	$2.87
Commercialized Residential	$4.60

46. Comparatively, the timeshare tax rate for fiscal year 2014 was: 165% higher than Hotels & Resorts; 243% higher than Apartments; 270% higher than Residential; 338% higher than Commercialized Residential; and 542% higher than Homeowners. In June 2013, Individual Timeshare Plaintiffs received their real property tax bills for the 2014 fiscal year. On August 13, 2013, Plaintiff Associations transmitted a full payment of $3.9 million to Maui County, but noted that they were paying under protest.

E. 2015 Fiscal Year Real Property Tax Rates in Maui County.

47. The real property tax rates for Maui County's 2015 fiscal year were:

2015 Fiscal Year Real Property Tax Rates For Maui County	
Classification	**Tax Rate**
Residential	$5.57
Apartment	$6.20
Commercial	$6.83
Industrial	$7.07
Agriculture	$5.86
Conservation	$6.06
Hotel & Resort	$9.11
Timeshare	**$15.07**
Homeowner	$2.78
Commercialized Residential	$4.46

48. The timeshare tax rate for fiscal year 2015 was: 165% higher than Hotels & Resorts; 243% higher than Apartments; 270% higher than Residential; 338% higher than Commercialized Residential; and 542% higher than Homeowners.

F. 2016 Fiscal Year Real Property Tax Rates in Maui County.

49. The real property tax rates for Maui County's 2016 fiscal year were:

2016 Fiscal Year Real Property Tax Rates For Maui County	
Classification	**Tax Rate**
Residential	$5.30
Apartment	$6.00
Commercial	$6.60
Industrial	$6.69
Agriculture	$5.66
Conservation	$5.80
Hotel & Resort	$8.71
Timeshare	**$14.31**
Homeowner	$2.70
Commercialized Residential	$4.35

50. The timeshare tax rate for fiscal year 2016 was: 164% higher than Hotels & Resorts; 239% higher than Apartments; 270% higher than Residential; 329% higher than Commercialized Residential; and 530% higher than Homeowners.

51. Because the overwhelming majority of timeshare owners in the County of Maui are nonresidents, the timeshare tax classification and tax rate were designed so that the real property tax falls disproportionately on nonresidents who cannot vote in Maui County elections in order to rectify the disparate taxation.

52. As Defendants' own study by Hospitality Advisors, LLC demonstrates, timeshare use is no different than hotel and resort use. Accordingly, timeshares should not be taxed separately and should be taxed in the Hotel & Resort real property tax classification.

G. The Amended Assessments.

53. On or about May 24, 2016, the Assessment Division sent to ORV amended real property assessments for tax years 2006, 2007 and 2008 for Parcel 3-0000 and for Parcels 3-0001 through 3-0283.

54. The amended assessments for Parcel 3-0000 showed the original, and substantial, valuations for land and buildings, and showed the original, and substantial, total of taxes assessed. The amended assessments also showed the new, amended valuation for land and buildings as zero, and the amended taxes owed as zero.

55. Conversely, the amended assessments for Parcels 3-0001 through 3-0283 (the smaller condominium unit parcels subsumed within Parcel 3-0000) all showed an original valuation and tax of zero, but substantial amended valuations and taxes.

56. Also on or about May 24, 2016, the Assessment Division sent to ORV North amended assessments for tax year 2008.

57. The amended assessment for Parcel 4-0000 showed the original, and substantial, valuation for land and buildings, and showed the original, and substantial, total of taxes assessed. The amended assessment for Parcel 4-0000 also showed the new, amended valuation for land and buildings as zero, and the amended taxes owed as zero.

58. Conversely, the amended assessments for Parcels 4-0001 through 4-0133 and 4-0147 through 4-0275 (the smaller condominium unit parcels subsumed within Parcel 4-0000) all showed an original valuation and tax of zero, but substantial amended valuations and taxes.

59. The amended assessments were accompanied by tax bills in the amount of $6,879,447.79 for ORV and in the amount of $3,849,070.70 for ORV North, for a total of over $10,000,000, due no later than June 23, 2016.

60. The letters transmitting the amended assessments were unsigned and gave no explanation for their issuance.

61. The Maui County Code prohibits Maui County from amending real property tax assessments retroactively when all the land and buildings in the assessment have previously been included in an assessment on the assessment list.

62. Solely for purposes of reserving Plaintiffs' rights and precluding any claimed delinquency or other related adverse action by the Assessment Division, Plaintiffs paid the taxes at issue under protest, and appealed the amended assessments to the Real Property Tax Review Board. For each of the 1,115 appeals, Plaintiffs paid a $75 filing fee, for a total of $83,625.

COUNT I

(Violation of Equal Protection Clauses of U.S. Constitution and Hawai'i Constitutions)

63. Plaintiffs repeat, re-allege, and incorporate by reference the allegations contained in paragraphs 1 through 62 above as though fully set forth herein.

64. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits a state or any political subdivision from denying "to any person within its jurisdiction the equal protection of the laws."

65. The equal protection clause of the Hawai'i Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws . . . ." Haw. Const. art. I, § 5.

66. The Timeshare classification adopted, implemented, and enforced by Defendants denies Plaintiffs the equal protection of the laws because the Timeshare classification draws an arbitrary and irrational distinction between timeshare properties and hotel and resort properties.

67. Additionally, despite the fact that timeshare owners use their units much like transient hotel guests, Maui County's tax rate on timeshares has been between 165% and 169% higher than the tax rate on hotels and resorts.

68. Maui County also knowingly and intentionally designed the timeshare classification so that the highest tax burden would fall on nonresidents, who comprise the overwhelming majority of timeshare owners. Accordingly, the timeshare classification violates the Equal Protection Clause because it taxes nonresident timeshare owners at an unjustifiably higher tax rate than similarly-situated residents.

69. Plaintiffs are entitled to a declaration that Maui County's timeshare classification and timeshare tax rate violate the equal protection clause of the U.S. and Hawai'i Constitutions by intentionally and arbitrarily categorizing and treating Plaintiffs differently compared with others similarly situated and without a rational basis for the difference in treatment.

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

70. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 69 above as if set forth in full herein.

71. 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.

72. 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.

73. Upon information and belief, Defendants violated the Sunshine Law while the real property tax rates for the 2014 and 2015 fiscal years were being considered by the Council when Councilmembers circulated memoranda or engaged in other improper interactions or discussions, thereby circumventing the spirit or requirements of the Sunshine Law.

74. Upon information and belief, 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.

75. 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.

COUNT III

(Violation of Sunshine Law—FY 2014 Budget and Finance Session)

76. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 75 above as if set forth in full herein.

77. Under HRS section 92-1, 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."

78. 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."

79. As the Hawai'i Supreme Court held in Kanahele v. Maui County Council, Civ. No. 08-1-0115(3); SCWC-29649 (Haw. Aug. 8, 2013), the circulation of memoranda amongst Councilmembers that provide substantive explanations or justifications in support of pending legislation are a violation of the Sunshine Law.

80. Upon information and belief, while the real property tax rates for the 2014 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.

81. Upon information and belief, 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.

82. 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. 13-60 is void.

COUNT IV
(Violation of Sunshine Law—FY 2015 Budget and Finance Session)

83. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 82 above as if set forth in full herein.

84. Upon information and belief, while the real property tax rates for the 2015 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.

85. Upon information and belief, 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.

86. 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. 14-54 is void.

COUNT V
(Declaratory Judgment as to Illegality of Amended Assessments)

87. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 86 above as if set forth in full herein.

88. The Maui County Code prohibits Maui County from issuing the amended assessments for tax years 2006, 2007 and 2008 for the ORV and ORV North parcels because all the land and buildings within those parcels were previously assessed for those years.

89. Plaintiffs are entitled to a declaration that Maui County was without authority to issue the amended assessments for tax years 2006, 2007 and 2008 for the ORV and ORV North parcels, that the amended assessments are invalid, and that Plaintiffs are entitled to a refund of the associated taxes paid and the filing fees for the appeals to the Real Property Tax Review Board.

COUNT VI
(Violation of First Amendment to the U.S. Constitution and Article I, Section 4 of the Hawai'i Constitution—Amended Assessments)

90. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 89 above as if set forth in full herein.

91. The First Amendment to the U.S. Constitution and Article I, Section 4 of the Hawai'i Constitution protect Plaintiffs' right to petition the government for redress of grievances, including through access to the courts, and to publicly criticize government actions.

92. Maui County issued the 2006, 2007 and 2008 amended assessments for the ORV and ORV North properties in retaliation for ORV and ORV North's initiation of the instant suit, and for the purpose of chilling their speech criticizing Maui County's actions.

93. Maui County's issuance of the amended assessments thus violates ORV and ORV North's constitutionally-protected rights of free speech and to petition the government for redress of grievances.

94. Plaintiffs are entitled to a declaration that the 2006, 2007 and 2008 amended assessments violate Plaintiffs' constitutional rights of free speech and to petition for redress of grievances and are thus invalid as a matter of law, and Plaintiffs are entitled to a refund of the associated taxes paid and the filing fees for the appeals to the Real Property Tax Review Board.

COUNT VII

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

95. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 94 above as if set forth in full herein.

96. The Fourteenth Amendment to the U.S. Constitution and Article I, Section 5 of the Hawai'i Constitution prohibit state action depriving any person of life, liberty, or property without due process of law.

97. Constitutional due process includes a procedural component that guarantees notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest.

98. Constitutional due process also includes a substantive component that prohibits arbitrary and capricious government action.

99. Maui County issued the 2006, 2007 and 2008 amended assessments for the ORV and ORV North properties in retaliation for ORV and ORV North's filing of this lawsuit against

Maui County and in a way that deprived ORV and ORV North of a significant property interest (money paid for additional and illegal taxes and appeal fees) prior to any meaningful hearing, violating ORV and ORV North's rights to procedural due process.

100. Maui County's issuance of the 2006, 2007 and 2008 amended assessments for the ORV and ORV North properties eight to ten years after the original assessments was arbitrary, capricious and retaliatory, violating ORV and ORV North's rights to substantive due process.

101. Plaintiffs are entitled to a declaration that the 2006, 2007 and 2008 amended assessments violate Plaintiffs' constitutional rights of due process and are thus invalid as a matter of law, and Plaintiffs are entitled to a refund of the associated taxes paid and the filing fees for the appeals to the Real Property Tax Review Board.

COUNT VIII

(Violations of the U.S. Constitution Actionable Under 42 U.S.C. § 1983—Amended Assessments)

102. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 101 above as if set forth in full herein.

103. 42 U.S.C. § 1983 provides that a person who, under color of law, deprives a party of any rights, privileges, or immunities secured by the Constitution is liable to the injured party in an action at law.

104. Maui County is a "person" for purposes of 42 U.S.C. § 1983.

105. Maui County issued the 2006, 2007 and 2008 amended assessments in furtherance of Maui County's official policy and practice of impermissibly discriminating against Plaintiffs in violation of Plaintiffs' rights to equal protection.

106. Maui County issued the 2006, 2007 and 2008 amended assessments in furtherance of Maui County's official policy and practice of retaliation against Plaintiffs for their criticism of

Maui County's real property tax scheme, itself in violation of Plaintiffs' rights to equal protection, and for Plaintiffs' pursuit of redress in the courts by filing the instant lawsuit.

107. Maui County also deprived Plaintiffs of procedural and substantive due process as alleged herein, also in furtherance of the same official policy.

108. Because Maui County has deprived Plaintiffs of rights secured by the U.S. Constitution, Plaintiffs are entitled to damages in the amount to be proven at trial, along with attorneys' fees and costs as permitted by 42 U.S.C. § 1983.

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) Ordinance No. 3227, creating a real property tax classification for timeshares separate from Hotel & Resort, is unconstitutional as a violation of the U.S. and Hawai'i Constitutions;

(ii) Maui County's real property tax rate for timeshares is unconstitutional as a violation of the U.S. and Hawai'i Constitutions;

(iii) The portions of Maui County Resolution No. 13-60 that apply to timeshare real property taxes are void as a violation of the Sunshine Law;

(iv) The portions of Maui County Resolution No. 14-54 that apply to timeshare real property taxes are void as a violation of the Sunshine Law;

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

(vi) Maui County issued the amended assessments for tax years 2006, 2007 and 2008 for the ORV and ORV North parcels in violation of the Maui County Code, and the amended assessments are invalid and unenforceable as a matter of law;

(vii) The 2006, 2007 and 2008 amended assessments for the ORV and ORV North properties violate Plaintiffs' constitutional rights of free speech and to petition for redress of grievances and are thus invalid and unenforceable as a matter of law;

(viii) The 2006, 2007 and 2008 amended assessments for the ORV and ORV North properties violate Plaintiffs' constitutional rights to procedural and substantive due process and are thus invalid and unenforceable as a matter of law; and

(ix) Because the amended assessments are invalid and unenforceable as a matter of law, Plaintiffs are entitled to a refund of associated real property taxes and appeal fees.

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, August 12, 2016.

ROBERT G. KLEIN
LISA W. CATALDO
MARGUERITE S. N. FUJIE

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 FIRST CIRCUIT

STATE OF HAWAI'I

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; MAUI COUNTY COUNCIL; 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. 13-1-0848 (2) (Other Civil Action CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on this date, a true and correct copy of the foregoing document was duly served upon the following individuals via U.S. mail, first-class postage pre-paid (M) and/or hand-delivery (HD), addressed as set forth below:

PATRICK K. WONG, ESQ. (M)
Corporation Counsel
BRIAN A. BILBERRY, ESQ.
KRISTIN TARNSTROM, ESQ.
Deputies Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Attorneys for Defendants
COUNTY OF MAUI and
MAUI COUNTY COUNCIL

DATED: Honolulu, Hawai'i, August 12, 2016.

ROBERT G. KLEIN
LISA W. CATALDO
MARGUERITE S. N. FUJIE

Attorneys for Plaintiffs
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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

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) FIRST AMENDED COMPLAINT; SUMMONS

FIRST AMENDED 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:

2016 Fiscal Year Real Property Tax Rates For Maui County	
Classification	**Tax Rate**
Residential	$5.40
Apartment	$6.00
Commercial	$6.60
Industrial	$6.85
Agriculture	$5.75
Conservation	$5.90
Hotel & Resort	$8.85
Timeshare	**$14.55**
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.

13. On May 13, 2016, the Council voted and adopted Resolution No. 16-71, setting the real property tax rates for the 2017 fiscal year as follows:

2017 Fiscal Year Real Property Tax Rates For Maui County

Classification	Tax Rate
Residential	$5.30
Apartment	$6.00
Commercial	$6.60
Industrial	$6.69
Agriculture	$5.66
Conservation	$5.80
Hotel & Resort	$8.71
Timeshare	**$14.31**
Homeowner	$2.70
Commercialized Residential	$4.35

14. The timeshare tax rate for fiscal year 2017 is 164% higher than Hotels & Resorts; 239% higher than Apartments; 270% higher than Residential; 329% higher than Commercialized Residential; and 530% higher than Homeowners.

COUNT I

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

15. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 14 above as if set forth in full herein.

16. 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."

17. 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."

18. 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.

19. 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.

20. 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.

21. 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 Sunshine Law—FY 2017 Budget and Finance Session)

22. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 21 above as if set forth in full herein.

23. Upon information and belief, while the real property tax rates for the 2017 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.

24. Upon information and belief, 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.

25. 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. 16-71 is void.

COUNT III

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

26. Plaintiffs re-allege and hereby incorporate by reference paragraphs 1 through 25 above as if set forth in full herein.

27. 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.

28. 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.

29. 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 and 2017 fiscal years were being considered by the Council.

30. 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.

31. 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 Nos. 15-52 and 16-71 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, JUL - 7 2016.

ROBERT G. KLEIN
LISA W. CATALDO
MARGUERITE S. NOZAKI

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 HAWAI'I

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) 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, JUL - 7 2016.

ROBERT G. KLEIN
LISA W. CATALDO
MARGUERITE S. NOZAKI

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 HAWAI'I

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) SUMMONS

SUMMONS

STATE OF HAWAII

To the above-named Defendant(s):

YOU are hereby summoned and required to file with the court and serve upon McCorriston 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, JUL 18 2016.

JUL 18 2016

/sgd/ D. PELLAZAR (seal)

CLERK OF THE ABOVE-ENTITLED COURT

342640.1