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

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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

December 3, 2018

MEMO TO: Donald Guzman, Chair Parks, Recreation, Energy, and Legal Affairs Committee

FROM: Shinken Naitoh, Deputy Corporation Counsel

SUBJECT: LITIGATION MATTERS – Settlement of Claims and Lawsuits (PRL-1) AUTHORIZING SETTLEMENT OF COUNTY OF MAUI vs. PEDRO TOLENTINO, JR., ET AL., CIVIL NO. 18-1-0124(1)

Our Department respectfully requests the opportunity to present information to the Parks, Recreation, Energy, and Legal Affairs Committee and to discuss settlement options with regard to the above-referenced lawsuit. This matter is time sensitive and wish to be heard at the next Committee meeting.

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

This matter is in active litigation and will involve discussion of confidential communications and attorney work product information. As such, 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 the Department of Planning 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: Michele McLean, Planning Director

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF COUNTY OF MAUI vs. PEDRO TOLENTINO, JR., ET AL., CIVIL NO. 18-1-0124(1)

WHEREAS, Plaintiff County of Maui and Department of Planning filed a Complaint in the Circuit Court of the Second Circuit, State of Hawaii, on March 15, 2018, Civil No. 18-1-0124(1), against Defendants Pedro Tolentino, Jr., and Eddie Braceros Tolentino, to obtain an injunction to enforce compliance with the Maui County Code provisions which the Defendants Tolentinos were violating, and to enforce payment of the civil fines for said County Code violations;

WHEREAS, Defendants filed their Answers on May 14, 2018; 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 by way of a negotiated settlement and stipulated dismissal; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle and stipulate to dismiss this case under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs Committee; and

Resolution No.

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised by the Department of the Corporation Counsel, the Council wishes to authorize the settlement and stipulated dismissal; now, therefore,

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

1. That it approves settlement and stipulated dismissal of this case under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs Committee; and

2. That it further authorizes the Mayor to execute a Stipulation for Dismissal 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 as necessary said stipulated dismissal 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 Planning Director, and the Corporation Counsel. APPROVED AS TO FORM

AND LEGALITY:

SHINKEN NAITOH Deputy Corporation Counsel County of Maui

DEPARTMENT OF THE CORPORATION COUNSE

PATRICK K. WONG 5878 Corporation Counsel SHINKEN NAITOH 6071 BRIAN A. BILBERRY 7260 Deputies Corporation Counsel County of Maui 200 South High Street Wailuku, Hawaii 96793 Telephone No.: (808) 270-7740 Facsimile No.: (808) 270-7152 Email: shinken.naitoh@co.maui.hi.us

Attorneys for Plaintiff COUNTY OF MAUI

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

2018 MAR 15 PM 2: 33

D. PELLAZAR, CLERK SECOND CIRCUIT COURT

STATE OF HAWAII

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

VS.

PEDRO TOLENTINO, JR.; EDDIE BRACEROS TOLENTINO; JOHN DOES 1-10; JANE DOES 1-10; and DOE ENTITIES 1-10,

Defendants.

CIVIL NO. **18-1-0124** (Other Civil Action)

PLAINTIFF COUNTY OF MAUI'S VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES; DECLARATION OF MERLE TASHIRO; DECLARATION OF GAIL DAVIS; DECLARATION OF RYAN K. RODRIGUES; DECLARATION OF CHALSEY KWON; DECLARATION OF SHINKEN NAITOH; EXHIBITS "A" – "I"; SUMMONS

PLAINTIFF COUNTY OF MAUI'S VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

COMES NOW, Plaintiff COUNTY OF MAUI (hereinafter "COUNTY"), by and

through its attorneys, PATRICK K. WONG, Corporation Counsel, and SHINKEN NAITOH

and BRIAN BILBERRY, Deputies Corporation Counsel, and for claims for relief against

Defendants, alleges as follows:

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Court

PARTIES, PROPERTIES, AND JURISDICTION

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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. Defendants PEDRO TOLENTINO, JR., and EDDIE BRACEROS TOLENTINO (hereinafter "Defendants") are residents of the County of Maui, State of Hawaii.

3. JOHN DOES 1-10; JANE DOES 1-10 and DOE ENTITIES 1-10 ("DOE Defendants") are unidentified persons or entities whose conduct have been a legal cause of the County's damages. County has reviewed relevant records and has diligently and in good faith attempted to ascertain the names and identities of those possible defendants, but their identities presently remain unknown to County.

4. Defendants are the owners of record of real property identified as Tax Map Key (2) 4-9-005:045-0000, located at 1017 Houston Street, Lanai City, Hawaii (hereinafter referred to as "the Houston Street Property").

5. Defendant PEDRO TOLENTINO, JR., is an owner of record of real property identified as Tax Map Key (2) 4-9-008:028-0000, located at 260 Ilima Place, Lanai City, Hawaii (hereinafter referred to as "the Ilima Place Property").

6. County brings this action for relief pursuant to Hawaii Revised Statutes § 46-1.5. This Court has jurisdiction over the parties and subject matter pursuant to Hawaii Revised Statutes § 603-21.5 and § 603-23, and Chapter 19 of the Maui County Code.

COUNT I: DAMAGES/FINE FOR HOUSTON STREET PROPERTY

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7. County realleges and incorporates herein by reference all the allegations set forth in Paragraphs 1-6 above, as though fully set forth and alleged herein.

8. On or about September 30, 2014, a Zoning Inspector of the Department of Planning, County of Maui, based on information obtained with respect to the Houston Street Property, noted that commercial auto repair was being performed at the Houston Street Property located within the County's Residential District, in violation of Section 19.08.020 of the Maui County Code (hereinafter, the "Houston Street Violation").

9. On or about October 16, 2014, a NOTICE OF WARNING AND REQUEST TO CORRECT APPARENT VIOLATION(S) ("Houston Street Warning Letter") was sent to Defendants via certified mail, return receipt requested, noting the Houston Street Violation and informing them that they have until October 30, 2014, to correct the violation; that if the violation continues upon further investigation, they will be subject to civil and possible criminal enforcement action; and that the civil fines for continued violation are an initial fine of \$1,000 and a daily fine of \$1,000 for each day the violation continues. A copy of the Houston Street Warning Letter and a copy of the signed and dated return receipt as proof of service by certified mail, are attached hereto as Exhibit "A."

10. Defendants did not correct the violation; and the Houston Street Violation continued past October 30, 2014.

11. On or about February 6, 2015, a Notice of Violation and Order # 2015/0001 (hereinafter "Houston Street NOV and Order") was sent to Defendants by certified mail, return receipt requested, but no signed return receipt therefor was

returned to County it was returned to County, and the mailing itself was also never returned to County. See Declaration of Merle Tashiro. A copy of the February 6, 2015 Houston Street NOV and Order is attached hereto as Exhibit "B."

12. The Houston Street NOV and Order was re-issued on or about June 28, 2016, and this time, it was caused to be hand-delivered to Defendants and in the event hand-delivery fails, to be posted in a conspicuous place on the Houston Street Property; hand-delivery failed, and the Houston Street NOV and Order was posted on the Houston Street Property. Copies of the re-issued and posted Houston Street NOV and Order and a photograph of the posting of same are attached hereto as Exhibit "C."

13. The Houston Street NOV and Order stated the Houston Street Violation, that commercial auto repair is not permitted in the County's Residential District under Section 19.08.020 of the Maui County Code.

14. Defendants were ordered in the Houston Street NOV and Order to cease and desist immediately from the violation; Defendants were further ordered to correct the violation at their own expense by July 12, 2016, by ceasing all auto repairs and removing all vehicles not registered under the names of Defendants; and to pay an initial civil fine in the amount of \$1,000 by July 12, 2016, and a daily civil fine of \$1,000 per day if the violation is not corrected as described above by July 12, 2016.

15. Defendants moved or caused to be moved some, but not all, of the vehicles not registered to Defendants from the Houston Street Property to the Ilima Place Property; and Defendants continued to perform commercial automobile repair services on the Houston Street Property past July 12, 2016; See Declaration of Ryan K. Rodrigues.

16. Defendants therefore did not comply with the Houston Street NOV and Order, and continued to be in violation past July 12, 2016.

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17. Defendants did not appeal the Houston Street NOV and Order and the fine imposed thereunder with the Board of Variances and Appeals, County of Maui, *see* Declaration of Chalsey Kwon, and therefore pursuant to M.C.C. § 19.530.030(C), the Houston Street NOV and Order is final.

18. On or about April 20, 2017, County of Maui Corporation Counsel sent a demand letter via certified mail, return receipt requested, informing Defendants that the outstanding civil fines Defendants owe to the County total \$790,000.00 as of that date, that the daily fines continue to accrue, and that if Defendants do not contact the County Corporation Counsel by May 4, 2017, that the County may, among other remedies it may seek, commence a lawsuit against Defendants to collect the unpaid fines. The demand letter was returned undelivered. See Declaration of Shinken Naitoh. Copies of the demand letter mailed on or about April 20, 2017, the unsigned return receipt for that mailing, and the envelope for same marked "RETURN TO SENDER, UNCLAIMED, UNABLE TO FORWARD," are attached hereto as Exhibit "D".

19. As of the date of the filing of this Complaint for Injunctive Relief and Damages, Defendants have not paid any of the civil fines imposed upon Defendants under the Houston Street NOV and Order.

20. Pursuant to Maui County Code § 19.530.030, Defendants are obligated to pay civil penalties and fines in the amount to be shown at the time of trial.

COUNT II: INJUNCTIVE RELIEF FOR HOUSTON STREET PROPERTY

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21. County realleges and incorporates herein by reference all the allegations set forth in Paragraphs 1-20 above, as though fully set forth and alleged herein.

22. As of the date of the filing of this Verified Complaint for Injunctive Relief and Damages, Defendants have not corrected the Houston Street Violation and have not brought the Houston Place Property into compliance with the Maui County Code.

23. County will suffer irreparable harm and injury by virtue of Defendants' continuing violation and is without an adequate remedy at law if Defendants are not compelled to correct the violations of Chapter 19 of the Maui County Code (Zoning) at the Houston Street Property.

24. If County does not simultaneously address the violations at the Houston Street Property and the Ilima Place Property, Defendants may continue to attempt to circumvent code compliance by moving the vehicles back and forth from one property to the other.

COUNT III: DAMAGES/FINE FOR ILIMA PLACE PROPERTY

25. County realleges and incorporates herein by reference all the allegations set forth in Paragraphs 1-24 above, as though fully set forth and alleged herein.

26. On or about January 4, 2017, a Zoning Inspector of the Department of Planning, County of Maui, based on information obtained with respect to the Ilima Place Property, noted that the Ilima Place Property was being used as a salvage yard or for vehicle storage (or both), neither of which is a permitted use within the County's Residential District, and thus in violation of Section 19.08.020 of the Maui County Code (hereinafter, the "Ilima Place Violation").

27. On or about January 5, 2017, a NOTICE OF WARNING AND REQUEST TO CORRECT APPARENT VIOLATION(S) ("Ilima Place Warning Letter") was sent to Defendant PEDRO TOLENTINO, JR. ("Defendant") and other owners of record of the Ilima Place Property via certified mail, return receipt requested, but it was returned to County undelivered. Copies of the Ilima Place Warning letter mailed on or about January 5, 2017, an unsigned return receipt for the mailing, and an envelope for same marked "RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD," is attached hereto as Exhibit "E."

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28. The Ilima Place Warning Letter was re-issued on or about February 28, 2017. This time, the warning letter was caused to be posted in a conspicuous place on the Ilima Place Property. See Declaration of Ryan K. Rodrigues. Copies of the February 28, 2017, Ilima Place Warning Letter and a photograph of the posting of same are attached hereto as Exhibit "F." The Ilima Place Warning Letter informed Defendant of the Ilima Place Violation, and that Defendant has until March 13, 2017, to correct the violation; that if the violation continues upon further investigation, Defendant will be subject to civil and possible criminal enforcement action; and that the civil fines for continued violation are an initial fine of \$1,000 and a daily fine of \$1,000 for each day the violation continues.

29. Defendant did not correct the violation; and the Ilima Place Violation continued past March 13, 2017.

30. On or about March 21, 2017, a Notice of Violation and Order # 2017/0017 (hereinafter "Ilima Place NOV and Order") was mailed via certified mail, return receipt requested, but it was returned to County undelivered. Copies of the Ilima Place NOV

and Order mailed on or about March 21, 2017, and an envelope for that certified mailing marked "RETURN TO SENDER, UNCLAIMED, UNABLE TO FORWARD," are attached hereto as Exhibit "G."

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31. The Ilima Place NOV and Order was re-issued on or about April 27, 2017, and this time, it was caused to be posted in a conspicuous place on the Ilima Place Property, *see* Declaration of Ryan K. Rodrigues. Copies of the re-issued Ilima Place NOV and Order and a photograph of the posting of same are attached hereto as Exhibit "H."

32. The Ilima Place NOV and Order stated the Ilima Place Violation, that the use of Ilima Place Property located in the County's Residential District as salvage yards and/or vehicle storage is not permitted under Section 19.08.020 of the Maui County Code.

33. Defendant was ordered in the Ilima Place NOV and Order to cease and desist immediately from the violation; Defendant was further ordered to correct the violation at his own expense by May 4, 2017, by removing all vehicles not registered under the name of Defendant; and to pay an initial civil fine in the amount of \$1,000 by May 27, 2017, and a daily civil fine of \$1,000 per day if the Ilima Place Violation is not corrected as described above by May 4, 2017

34. Defendant moved or caused to be moved some of the vehicles back to the Houston Street Property, but otherwise, Defendant continued to use the Ilima Place Property as a salvage yard or vehicle storage. *See* Declaration of Ryan K. Rodrigues.

35. Defendant therefore did not comply with the Ilima Place NOV and Order; and continued to be in violation past May 4, 2017.

36. Defendant did not appeal the Ilima Place NOV and Order and the fine imposed thereunder with the Board of Variances and Appeals, County of Maui, see Declaration of Chalsey Kwon, and therefore pursuant to M.C.C. § 19.530.030(C), the Ilima Place NOV and Order is final.

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37. On October 3, 2017, County of Maui Corporation Counsel sent a demand letter via certified mail, return receipt requested, informing Defendant that the outstanding civil fines Defendants owe to the County total \$153,000.00 as of that date, that the daily fines continue to accrue, and that if Defendant does not contact the County Corporation Counsel by October 13, 2017, that the County may, among other remedies it may seek, commence a lawsuit against Defendant to collect the unpaid fines. The demand letter was returned undelivered. See Declaration of Shinken Naitoh. Copies of the demand letter mailed on or about October 3, 2017, the unsigned return receipt for that mailing, and the envelope for same marked "RETURN TO SENDER, ATTEMPTED - NOT KNOWN, UNABLE TO FORWARD," are attached hereto as Exhibit "I".

38. As of the date of the filing of this Complaint for Injunctive Relief and Damages, Defendant has not paid any of the civil fines imposed upon Defendant under the Ilima Place NOV and Order.

39. Pursuant to Maui County Code § 19.530.030, Defendant is obligated to pay civil penalties and fines in the amount to be shown at the time of trial.

COUNT IV: INJUNCTIVE RELIEF FOR ILIMA PLACE PROPERTY

40. County realleges and incorporates herein by reference all the allegations set forth in Paragraphs 1-39 above, as though fully set forth and alleged herein.

41. As of the date of the filing of this Verified Complaint for Injunctive Relief and Damages, Defendant has not corrected the Ilima Place Violation and has not brought the Ilima Place Property into compliance with the Maui County Code.

42. Abandoned vehicles on the Ilima Place Property have caught on fire while Defendant performed repair work on those vehicles, at least in one instance causing fire on the property that not only burned down the entire home located thereon, but also resulted in damage to the neighboring property; for that reason, allowing the Ilima Place Violation and the Houston Street Violation poses a significant risk of physical harm and injury not only to Defendants, but also to those people residing close to them. See Declaration of Ryan K. Rodrigues.

43. County will suffer irreparable harm and injury by virtue of Defendant's continuing violation and is without an adequate remedy at law if Defendant is not compelled to correct the violations of Chapter 19 of the Maui County Code (Zoning) at the Ilima Place Property.

44. If County does not simultaneously address the violations at the Ilima Place Property and the Houston Street Property, Defendants may continue to attempt to circumvent code compliance by moving vehicles back and forth from one property to the

WHEREFORE, the County prays as follows:

other.

A. That the Court issue a judgment that Defendants are in violation of the Maui County Code.

B. That Defendants be ordered to pay County the applicable fines for Defendants' violations of the Maui County Code.

C. That an Injunction be issued pursuant to Maui County Code § 19.530 and Hawaii Rules of Civil Procedure Rule 65 enjoining Defendants to correct both the Houston Street Violation and the Ilima Place Violation by ceasing all auto repairs on and removing all vehicles not owned by Defendants from the Houston Street Property and the Ilima Place Property.

D. That the County be awarded all of its court costs and reasonable attorney's fees and any costs that may be incurred by the County in eliminating the violation on Defendants' property.

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

DATED: Wailuku, Maui, Hawaii,

MAR 1 5 2018

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

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SHINKEN NAITOH Deputy Corporation Counsel

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

PEDRO TOLENTINO, JR., EDDIE BRACEROS TOLENTINO; JOHN DOES 1-10; JANE DOES 1-10; and DOE ENTITIES 1-10, CIVIL NO. (Other Civil Action)

DECLARATION OF MERLE TASHIRO

Defendants.

DECLARATION OF MERLE TASHIRO

MERLE TASHIRO hereby declares as follows:

1. I am the Zoning Inspector for the Zoning Administration and Enforcement

Division of the Department of Planning, County of Maui, and I am a custodian of records for

Plaintiff in the above-entitled action.

2. I make this declaration in support of Plaintiff's Verified Complaint for Injunctive Relief and Damages.

3. I am competent to make this declaration based on personal knowledge.

4. I have read the foregoing Verified Complaint for Injunctive Relief and Damages.

I know the contents thereof as they relate to real property identified as Tax Map Key (2) 4-9-

005:045-0000, located at 1017 Houston Street, Lanai City, Hawaii (hereinafter referred to as "the

Houston Street Property"), and the same are true and correct.

5. Attached as Exhibit "A" to the Verified Complaint for Injunctive Relief and Damages are true and correct copies of the warning letter, mailed on or about October 16, 2014, from County to Defendants, relating to the Maui County Zoning Code violation pertaining to Houston Street Property ("Houston Street Violation"), and the signed and dated return receipt as proof of service by certified mail.

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Notice of Violation and Order #2015/0001 relating to the Houston Street 6. Violations ("Houston Street NOV and Order") was mailed from County to Defendants on or about February 6, 2015, by certified mail, return receipt requested. No signed return receipt for that mailing was returned to County; and the mailing itself was never returned to County. Attached as Exhibit "B" to the Verified Complaint for Injunctive Relief and Damages is a true and correct copy of the Houston Street NOV and Order mailed to Defendants on or about February 6, 2015, relating to Houston Street Violations.

On or about June 28, 2016, because service by certified mailing of the Houston 7. Street NOV and Order failed, I caused the re-issued Houston Street NOV and Order to be handdelivered to Defendants by Lieutenant Ryan K. Rodrigues of the Maui Police Department, and in the event hand-delivery fails, to have the re-issued Houston Street NOV and Order posted in a conspicuous place on the Houston Street Property in compliance with the RULES FOR ADMINISTRATIVE PROCEDURES AND CIVIL FINES FOR VIOLATIONS OF CHAPTER 16.13 AND TITLE 19 OF THE MAUI COUNTY CODE, Section 12-103-6 on "Service of notice of violation and order." Attached as Exhibit "C" to the Verified Complaint for Injunctive Relief and Damages are true and correct copies of the Houston Street NOV and Order that was re-issued on or about June 28, 2016, and a photograph of the posting of same received from Lieutenant Ryan K. Rodrigues.

I, Merle Tashiro, declare under penalty of law that the foregoing is true and correct DATED: Wailuku, Maui, Hawaii, <u>February 28, 2018</u> Thirle Am

MERLE TASHIRO

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

PEDRO TOLENTINO, JR., EDDIE BRACEROS TOLENTINO; JOHN DOES 1-10; JANE DOES 1-10; and DOE ENTITIES 1-10,

Defendants.

DECLARATION OF GAIL DAVIS

GAIL DAVIS hereby declares as follows:

1. I am the Zoning Inspector for the Zoning Administration and Enforcement

Division of the Department of Planning, County of Maui, and I am a custodian of records for Plaintiff in the above-entitled action.

2. I make this declaration in support of Plaintiff's Verified Complaint for Injunctive

Relief and Damages.

3. I am competent to make this declaration based on personal knowledge.

4. I have read the foregoing Verified Complaint for Injunctive Relief and Damages.

I know the contents thereof as they relate to real property identified as Tax Map Key (2) 4-9-008:028-0000, located at 260 Ilima Place, Lanai City, Hawaii (hereinafter referred to as "the Ilima Place Property"), and the same are true and correct.

5. The first NOTICE OF WARNING AND REQUEST TO CORRECT APPARENT VIOLATION(S) ("Ilima Place Warning Letter") relating to the Maui County Zoning Code violation pertaining to the Ilima Place Property ("Ilima Place Violation") was mailed to Defendant Pedro Tolentino, Jr. ("Defendant") and other owners of record of the Ilima Place

(Other Civil Action)

CIVIL NO.

DECLARATION OF GAIL DAVIS

Property on or about January 5, 2017, via certified mail, return receipt requested. The Ilima Place Warning Letter mailed on or about January 5, 2017, was returned to County undelivered.

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6. Attached as Exhibit "E" to the Verified Complaint for Injunctive Relief and Damages are true and correct copies of the Ilima Place Warning letter mailed to Defendant on or about January 5, 2017; the unsigned return receipt for the mailing; and the envelope for same marked "RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD."

7. Attached as Exhibit "F" to the Verified Complaint for Injunctive Relief and Damages is a true and correct copy of the Ilima Place Warning Letter re-issued on or about February 28, 2017. Because the Ilima Place Warning letter mailed on or about February 28, 2017, was returned to County undelivered, I caused the re-issued Ilima Place Warning Letter to be posted in a conspicuous place on the Ilima Place Property by Lieutenant Ryan K. Rodrigues of the Maui Police Department.

Notice of Violation and Order #2017/0017 relating to the Ilima Place Violation
("Ilima Place NOV and Order") was mailed from County to Defendant on or about March 21,
2017, by certified mail, return receipt requested. The Ilima Place NOV and Order mailed on or about March 21, 2017, was returned to County undelivered.

9. Attached as Exhibit "G" to the Verified Complaint for Injunctive Relief and Damages are true and correct copies of the Ilima Place NOV and Order mailed to Defendant on or about March 21, 2017, relating to the Ilima Place Violation, and the envelope for same marked "RETURN TO SENDER, UNCLAIMED, UNABLE TO FORWARD."

10. Attached as Exhibit "H" to the Verified Complaint for Injunctive Relief and Damages are true and correct copies of the Ilima Place NOV and Order that was re-issued on or about April 27, 2017, and a photograph of the posting of same. Because the Ilima Place NOV and Order mailed to Defendant on or about March 21, 2017, was returned to County undelivered, I caused the re-issued Ilima Place NOV and Order to be posted in a conspicuous place on the Ilima Place Property by Lieutenant Ryan K. Rodrigues of the Maui Police Department, in compliance with the RULES FOR ADMINISTRATIVE PROCEDURES AND CIVIL FINES FOR VIOLATIONS OF CHAPTER 16.13 AND TITLE 19 OF THE MAUI COUNTY CODE, Section 12-103-6 on "Service of notice of violation and order."

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I, Gail Davis, declare under penalty of law that the foregoing is true and correct I, Gail Davis, declare under penany or DATED: Wailuku, Maui, Hawaii, <u>3/13/18</u> Mail Davis

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

PEDRO TOLENTINO, JR., EDDIE BRACEROS TOLENTINO; JOHN DOES 1-10; JANE DOES 1-10; and DOE ENTITIES 1-10, CIVIL NO. (Other Civil Action)

DECLARATION OF RYAN K. RODRIGUES

Defendants.

DECLARATION OF RYAN K. RODRIGUES

RYAN K. RODRIGUES hereby declares as follows:

1. I am a Lieutenant Commander of the Lanai District of the Maui Police

Department, and at all times relevant in this matter, served on the island of Lanai, County of

Maui.

2. I make this declaration in support of Plaintiff's Verified Complaint for Injunctive Relief and Damages.

3. I am competent to make this declaration based on personal knowledge.

4. I have read the foregoing Verified Complaint for Injunctive Relief and Damages. I know the contents thereof as they relate to the use and condition of, and incidents such as fire relating to, the real property identified as Tax Map Key (2) 4-9-005:045-0000, located at 1017 Houston Street, Lanai City, Hawaii (hereinafter referred to as "the Houston Street Property"), and the real property identified as Tax Map Key (2) 4-9-008:028-0000, located at 260 Ilima Place, Lanai City, Hawaii (hereinafter referred to as "the Ilima Place Property"), and also as they relate to my role in law enforcement pertaining to those real properties, and the same are true and correct.

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> 5. Attached as Exhibit "C" to the Verified Complaint for Injunctive Relief and Damages is a true and correct copy of the Notice of Violation and Order dated June 28, 2016 (NOV #2015/0001), which, upon request from Merle Tashiro, Zoning Inspector of the County of Maui Planning Department, on or about June 28, 2016, I attempted to hand deliver to Pedro Tolentino, Jr., and upon failure to locate him at the Houston Street Property, posted same in a conspicuous place thereon, in compliance with the RULES FOR ADMINISTRATIVE PROCEDURES AND CIVIL FINES FOR VIOLATIONS OF CHAPTER 16.13 AND TITLE 19 OF THE MAUI COUNTY CODE, Section 12-103-6 on "Service of notice of violation and order;" and also, on June 30, 2016, I further handed said Notice and Order to Pedro Tolentino, Jr., in person at his place of residence. Also attached as Exhibit "C" is a true and correct copy of a photograph of the posted notice taken by me on June 28, 2016.

6. Pedro Tolentino, Jr. moved some, but not all, of the vehicles not registered to him that were parked on the Houston Street Property to the Ilima Place Property.

7. Attached as Exhibit "F" to the Verified Complaint for Injunctive Relief and Damages is a true and correct copy of the NOTICE OF WARNING AND REQUEST TO CORRECT APPARENT VIOLATION(S) with respect to the Ilima Place Property dated February 28, 2017, which, upon request from Gail Davis, Zoning Inspector of the County of Maui Planning Department, I posted on or about February 28, 2017, in a conspicuous place on the Ilima Place Property, consistent with the procedure set forth in the RULES FOR ADMINISTRATIVE PROCEDURES AND CIVIL FINES FOR VIOLATIONS OF CHAPTER 16.13 AND TITLE 19 OF THE MAUI COUNTY CODE, Section 12-103-6 on "Service of notice of violation and order." Also attached as Exhibit "F" is a true and correct copy of a photograph of the posted warning taken by me.

8. Attached as Exhibit "H" to the Verified Complaint for Injunctive Relief and Damages is a true and correct copy of the Notice of Violation and Order dated April 27, 2017 (NOV #2017/0017), which, upon request from Gail Davis, Zoning Inspector of the County of Maui Planning Department, I posted in a conspicuous place on the Ilima Place Property, in compliance with the RULES FOR ADMINISTRATIVE PROCEDURES AND CIVIL FINES FOR VIOLATIONS OF CHAPTER 16.13 AND TITLE 19 OF THE MAUI COUNTY CODE, Section 12-103-6 on "Service of notice of violation and order." Also attached as Exhibit "H" is a true and correct copy of a photograph of the posted notice taken by me.

9. Pedro Tolentino, Jr. moved some, but not all, of the vehicles not registered to him that were parked on the Ilima Place Property back to the Houston Place Property, but otherwise continued to use the Ilima Place Property as salvage yard or for vehicle storage.

10. Abandoned vehicles on the Ilima Place Property have caught on fire while Pedro Tolentino, Jr. performed repair work on those vehicles, at least in one instance causing fire on the property that not only burned down the entire home located thereon, but also resulted in damage to the neighboring property; for that reason, allowing abandoned vehicles to be stored and to be worked on by Pedro Tolentino, Jr. both at the Ilima Place Property and the Houston Street Property, pose a significant risk of physical harm and injury not only to the owners of those properties, but also to those people residing close to them.

I, Ryan K. Rodrigues, declare under penalty of law that the foregoing is true and correct

DATED: Wailuku, Maui, Hawaii, 3/2/18

RYAN H. RODRIGUES

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

PEDRO TOLENTINO, JR., EDDIE BRACEROS TOLENTINO; JOHN DOES 1-10; JANE DOES 1-10; and DOE ENTITIES 1-10, CIVIL NO. (Other Civil Action)

DECLARATION OF CHALSEY KWON

Defendants.

DECLARATION OF CHALSEY KWON

I, Chalsey Kwon, hereby declare as follows:

1. I am the Secretary to Boards and Commissions who primarily staffs the Board of

Variances and Appeals (BVA), Department of Planning, County of Maui, and am one of the

custodians of records. All BVA documents are received and kept in accordance with its regular

practice and are maintained in the regular course of its business. At the request of the

Department of Planning, I conducted a search of all BVA records for the following:

a. any and all requests for a hearing or other notices of appeal regarding

Notice of Violation No. 2015/0001; and

b. any and all requests for a hearing or other notices of appeal regarding

Notice of Violation No. 2017/0017; and

c. any and all correspondence to the Board from Pedro Tolentino, Jr. or Eddie Tolentino, or both, from February 6, 2015 to present; and

d. any and all correspondence, requests or other documents relating to either 1017 Houston Street, Lanai City, Hawaii or Tax Map Key (2) 4-9-005:045-0000; and

any and all correspondence, requests or other documents relating to either e. 260 Ilima Place, Lanai City, Hawaii or Tax Map Key (2) 4-9-008:028-0000.

2. No documents were located.

To the best of my knowledge, no requests for appeal or hearing were made 3. regarding these Notices of Violation or these properties.

I, Chalsey Kwon, declare under penalty of the law that the foregoing is true and correct.

DATED: Wailuku, Maui, Hawaii, <u>Februar</u> 27, 2018. <u>Chaluy Kwan</u> CHALSEY KWON

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

PEDRO TOLENTINO, JR., EDDIE BRACEROS TOLENTINO; JOHN DOES 1-10; JANE DOES 1-10; and DOE ENTITIES 1-10, CIVIL NO. (Other Civil Action)

DECLARATION OF SHINKEN NAITOH

Defendants.

DECLARATION OF SHINKEN NAITOH

SHINKEN NAITOH does hereby declare:

1. I am a duly appointed Deputy Corporation Counsel and am one of the attorneys representing Plaintiff County of Maui.

2. I make this declaration upon personal knowledge and am competent to testify as to the matters stated herein.

3. Attached as Exhibit "D" to the Verified Complaint for Injunctive Relief and Damages are true and correct copies of the demand letter pertaining to Maui County Code violations at real property identified as Tax Map Key (2) 4-9-005:045-0000, located at 1017 Houston Street, Lanai City, Hawaii, mailed on or about April 20, 2017, to Defendants Pedro Tolentino, Jr., and Eddie Braceros Tolentino, the unsigned return receipt for that mailing, and the envelope for same marked "RETURN TO SENDER, UNCLAIMED, UNABLE TO FORWARD."

4. Attached as Exhibit "I" to the Verified Complaint for Injunctive Relief and Damages are true and correct copies of the demand letter pertaining to Maui County Code violations at real property identified as Tax Map Key (2) 4-9-008:028-0000, located at 260 Ilima Place, Lanai City, Hawaii mailed on or about October 3, 2017, to Defendant Pedro Tolentino, Jr., the unsigned return receipt for that mailing, and the envelope for same marked "RETURN TO SENDER, ATTEMPTED - NOT KNOWN, UNABLE TO FORWARD."

I declare under penalty of perjury under the laws of the State of Hawaii that the above is true and correct.

DATED: Wailuku, Maui, Hawaii, _____ MAR 1 5 2018

÷.

SHINKEN NAITOH

ALAN M. ARAKAWA Mayor

WILLIAM R. SPENCE Director

MICHELE CHOUTEAU MoLEAN Deputy Director



COUNTY OF MAUL DEPARTMENT OF PLANNING

October 16, 2014

Certified Receipt No. (7013 2630 0001 5132 5085) Pedro Tolentino Eddie Tolentino P.O. Box 630308 Lanai City, Hawaii 96763

Dear Mr. Tolentino Tolentino:

RE: NOTICE OF WARNING AND REQUEST TO CORRECT APPARENT VIOLATION(S) TMK: (2) 4-9-005:045-0000 RFS No.: 14-0001350 Description: For commercial auto repair located at 1017 Houston Street, Lanai City, Hawaii, on the island of Lanai

Based on information obtained, we have reason to believe that on your property, on or before September 30, 2014, there were one or more violations. Commercial auto repair is not permitted within the County's Residential District pursuant to Maui County Code, including but not limited to Chapters/Sections 19.08.020.

The information obtained includes: MPD officer statement.

You must correct any violation(s) by October 30, 2014. We will investigate further, and if we find any of the above-described apparent violations, you will be subject to civil and possible. criminal enforcement action.

Civil Fines for the violation will be 1) an initial fine of \$1,000; and 2) a daily fine of \$1,000 for each day the violation continues.

This request is only for violations of regulations that are enforced by the Department of Planning. There may be additional violations of regulations that are enforced by other County, State, or Federal agencies. If you have any questions about this request, please contact me at Conklin.Wright@co.maui.hi.us or (808) 270-8255; and please refer to RFS 14-0001350.

nce Conklin Wright Zoning Inspector

xc: Jay Arakawa, Supervising Zoning Inspector (PDF) Conklin Wright, Zoning Inspector (PDF) 14-0001350 (KIVA; RFS File) JSR:JAA:CW:smb S:\ZONING\RFS\2014\1350_Tolentino_use\NOWNOW1_use.wpd ONE MAIN PLAZA BUILDING / 2200 MAIN STREET, SUITE 315 / WAILUKU, MAUI, HAWAII 96793 MAIN LINE (808) 270-7735 / FACSIMILE (808) 270-7634 CURRENT DIVISION (808) 270-8205 / LONG RANGE DIVISION (808) 270-7214 / ZONING DIVISION (808) 270-7253

EXHIBIT

SENDER: COMPLEXE MISS ACCIDEN Complete fame 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
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/** gpermits. 6. Des 10 11 debtery address deben 4 rom kem 17. □ Nes If VES, antis (debtery address bolow; □ NS n.A Pedro Tolentino or **Eddie Tolentino** P.O. Box 630308 Lanai City HI 96763 Express Mall
Annum Receipt for M
G.O.D. RESTRICTED DELIVERY **m** 17 4. Restricted Delivery? Extra Rue ETN 2. Article Number (Transfer from the 7013 2630 0001 5132 5085 PS Form 3811, February 2004 Domestic Paturn Receipt 102005-02-14-1540





TO

COUNTY OF MAU DEPARTMENT OF PLANNING ZONING ADMINISTRATION AND **ENFORCEMENT DIVISION** 2200 MainStreet, Suite 315 WAILUKU, MAUI, HAWAII 96793 Telephone: (808) 270-7253 Facsimile: (808) 270-7634 E-mail: planning@maulcounty.gov Website: www.maulcounty.gov

FILE NO NOV 20150001	
RESINO 14-0001350	
TEO, NOTICE February 8, 2015	
OF VICE ATION September 30, 2014	- - -
NG VIOLATION [X]YES []NO	ભગોષ
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NOTACTO TAYOULAND NO DANA COLANDA COLA

Pedro Tolentino Eddie Tolentino P.O. Box 630308

Lanai City, Hawali 96763

(2) 4-9-005:045-0000 RE: THK ADDRESS 1017 Houston Street, Lanai City, Hawaii

PERMIT NO none

I have inspected the above described structure and/or premises and have found the following violation(s) of the County of Maui's Code(s) and/or Ordinance(s) governing same, as amended:

CODE(8); ORDINANCE(8); SECTION(8)

Maui County Code ("MCC"),§19.08.020

Commercial auto repair is not permitted within the County's Residential District. Evidence of the aforementioned violation(a) include(s): MPD officer statement and photographic evidence

NATURE AND EVIDENCE OF THE VIOLATION(S)

Pursuant to MCC §19.530.030(B), and Chapter 12-103, Rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code ("Administrative Rules"), as amended, you are hereby ordered as follows:

Cease and desist all activity immediately. X

X	Correct the violation(s) at your own expense by:	February 20, 2015	By taking the following corrective action(s): Cease all auto repairs and remove all vehicles not owned by the owners of the property.	
X	Pay an initial civil fine in the amount of:	\$1,000	To the Department of Planning ("Planning") by:	February 20, 2015
X	Pay a daily civil fine in the amount of:	\$1,000	Per day to Planning if the corrective action described above is not completed by:	February 20, 2015

Pursuant to MCC, §19.530.030(B)(2) and (C) and §12-103-5(a)(6), Administrative Rules, as amended, this notice of violation and order shall become final thirty (30) days after the date of this notice, unless an appeal is properly filed with the Board of Variances and Appeals ("BVA"). The appropriate form may be found online at www.co.maul.hi.us/documents/Planning/Forms/AppealApp_Online.PDF or at the Department of Planning, One Main Plaza,2200Main Street #315, Walluku, Maui, Hawall 96793. An appeal to the BVA shall not stay any provision of this order. Pursuant to §12-103-12(b), Administrative Rules, as amended, the initial fine shall be payable whether the violation is corrected before or after the order becomes final.

Pursuant to §91-9(b)(5), Hawall Revised Statutes, you may retain counsel or appear on your own behalf. Pursuant to §12-103-12(d), Administrative Rules, as amended, in the case of a continuing violation, the daily fine shall be doubled on the first 1st) day of each thirty (30) day period after the end of the time to take corrective action, up to a maximum amount of one thousand dollars (\$1,000.00) per day.

A second se		
	FORTH	EPLANNING DIRECTOR
Print Administrator's Name	John Rapacz	Administrator's Signature
Print Supervisor's Name	Jay Arakawa	Supervisor's Signature
Print Inspector's Name	Conklin Wright	Inspector's Signature

EXHIBIT" \mathcal{B} "

S:ZONING/RFS/2014/1350_Tolentino_use/NOV/NOV_20150001_use.wpd (Rev. 01.10)

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đ	COUNTY OF MAU			FILEN	O NOV 20	15/0001			
		DEPARTMENT OF PLANNING ZONING ADMINISTRATION AND		RFS N	RFS NO 14-0001350				
]]]		ENFORCEMENT DIVISION 2200 MainStreet, Suite 315		DATE OF NOTIC	E June 28	, 2016			
AN CONTRACT	AT OF MENT	WAILUKU, MAUI, HAWAII 96793 Telephone: (808) 270-7253	DATE OF VIOLATION September 30, 2014						
		Facsimile: (808) 27	0-7634	CONTINUING VIOLATIC	Sector 1	S []NO			
		E-mail: planning@r Website: www.mau		COLLECTED FIN	en alter a	NONE			
				CERTIFIED RECEIPT N	lo Hand d	elivered			
	MAU	II COUNTY CODE	NOTICE OF , TITLE 19 - COM	VIOLATION PREHENSIVE ZONING C	RDINANC	ES .			
TO:	TO: Pedro Tolentino Eddie Tolentino P.O. Box 630308 Lanai City, Hawaii 96763								
RE:	TMK (2) 4-9-(005:045	-	PERMIT NO None					
1.7 7.152	ADDRESS 10)17 Houston Street,	Lanai City, Hawaii						
l ha Cod	I have inspected the above described structure and/or premises and have found the following violation(s) of the County of Maui's Code(s) and/or Ordinance(s) governing same, as amended:								
	CODE(S); OR	DINANCE(S); SECT	rion(s)	NATURE AND EVID	ENCE OF T	HE VIOLATION(S)			
					the aforementioned				
-1			ORD	ER					
Pun Chạ	suant to MCC § 19.53 pter 16.13 and Title 1	30.030(B), and Cha 9 of the MCC ("Adm	pter 12-103, Rules inistrative Rules"), a	for Administrative Procedure s amended, you are hereby	es and Civil ordered as f	Fines for Violations of ollows:			
X	Cease and desist all	activity immediately	•						
X	Correct the violation expense by:	n(s) at your own	July 12, 2016	By taking the following repairs and remove all with the property.	corrective a rehicles not o	ction(s): Cease all auto owned by the owners of			
x	Pay an initial civil find	e in the amount of:	\$1,000.00	To the Department of ("Planning") by:	Planning	July 12, 2016			
X	Pay a daily civil fine	in the amount of:	\$1,000.00	Per day to Plannin corrective action descri is not completed by:	g if the bed above	July 12, 2016			
Pursuant to MCC, § 19.530.030(B)(2) and (C) and § 12-103-5(a)(6), Administrative Rules, as amended, this Notice of Violation and Order shall become final thirty (30) days after the date of this notice, unless an appeal is properly filed with the Board of Variances and Appeals ("BVA"). The appropriate form may be found online at www.co.maul.hi.us/documents/Planning/Forms/AppealApp_Online.PDF or at the Department of Planning, One Main Plaza, 2200Main Street #315, Wailuku, Maui, Hawaii 96793. An appeal to the BVA shall not stay any provision of this order. Pursuant to § 12-103-12(b), Administrative Rules, as amended, the initial fine shall be payable whether the violation is corrected before or after the of becomes final. Pursuant to § 91-9(b)(5), Hawaii Revised Statutes, you may retain counsel or appear on your own behalf. Pursuant to § 12-103-12(d), Administrative Rules, as amended, in the case of a continuing violation, the daily fine shall be doubled on the first (1st) day of each thirty (30) day period after the end of the time to take corrective action, up to a maximum amount of one thousand dollars (\$1,000.00) per day.									
Prir	nt Inspector's Name	Merle Tashiro		Inspector's Signature	" June	and the			

SIZONINGIRFSIZ0141350_TOLENTINO_USEINOVINOV1_COMMERCIAL.DOCX (Rev. 01.10) EXHIBIT "______"



ALAN M. ARAKAWA Mayor



PATRICK K. WONG Corporation Counsel

EDWARD S. KUSHI First Deputy

LYDIA A. TODA R1sk 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

April 20, 2017

Certified Mail No. 7009 0960 0000 5324 0975 Return Receipt Requested

Pedro Tolentino Eddie Tolentino P. O. Box 630308 Lanai City, Hawaii 96763

> Re: Request for Service #14-0001350 Notice of Violation #V2015/0001 For commercial auto repair located at 1017 Houston Street, Lanai City, Hawaii

Dear Mr. Tolentino:

I represent the Maui County Department of Planning regarding the above matter. On or about September 30, 2014, a County inspector noted the following violation under the Maui County Code Section 19.08.020:

Commercial auto repair is not permitted within the County's Residential District.

A Notice of Warning was sent on October 16, 2014 concerning this violation and on February 6, 2015 and June 28, 2016 you were issued Notice of Violation and Order (collectively attached as Exhibit "A" - V2015/0001). You had thirty (30) days to appeal the Order to the Board of Variances and Appeals, but you have chosen not to contest the Notice of Violation issued to you by the Maui County Department of Planning. Pedro Tolentino Eddie Tolentino April 20, 2017 Page 2

2

Fines began accruing on February 20, 2015, up to and including April 20, 2017. The outstanding fines currently owed to the County of Maui amount to \$790,000.00. Daily fines will continue to accrue at the rate of \$1,000.00 per day per violation, until such time as you comply with the corrective action(s) as described in the Notices of Violation and Order.

Furthermore, the County may also commence a lawsuit against you to collect the unpaid fines in addition to any remedies the County may seek. Unless you contact the undersigned regarding this matter by May 4, 2017, we will presume that you have no interest in resolving the situation and will act accordingly.

Very truly yours,

MICHAEL J. HOPPER Deputy Corporation Counsel

MJH:maa Enclosures Cc: Merle Tashiro, Zoning Inspector Jay Arakawa, Supervising Zoning Inspector John Rapacz, Planning Program Administrator, ZAED 2015-3573

EXHIBIT " A "

ALAN M. ARAKAWA Mayor

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WILLIAM R. SPENCE Director

MICHELE CHOUTEAU McLEAN Deputy Director



COUNTY OF MAUL

October 16, 2014

Certified Receipt No. (7013 2630 0001 5132 5085) Pedro Tolentino Eddie Tolentino P.O. Box 630308 Lanai City, Hawaii 96763

Dear Mr. Tolentino Tolentino:

RE: NOTICE OF WARNING AND REQUEST TO CORRECT APPARENT VIOLATION(S) TMK: (2) 4-9-005:045-0000 RFS No.: 14-0001350 Description: For commercial auto repair located at 1017 Houston Street, Lanai City, Hawaii, on the island of Lanai

Based on information obtained, we have reason to believe that on your property, on or before September 30, 2014, there were one or more violations. Commercial auto repair is not permitted within the County's Residential District pursuant to Maui County Code, including but not limited to Chapters/Sections 19.08.020.

The information obtained includes: MPD officer statement.

You must correct any violation(s) by October 30, 2014. We will investigate further, and if we find any of the above-described apparent violations, you will be subject to civil and possible criminal enforcement action.

Civil Fines for the violation will be 1) an initial fine of \$1,000; and 2) a daily fine of \$1,000 for each day the violation continues.

This request is only for violations of regulations that are enforced by the Department of Planning. There may be additional violations of regulations that are enforced by other County, State, or Federal agencies. If you have any questions about this request, please contact me at Conklin.Wright@co.maui.hi.us or (808) 270-8255; and please refer to RFS 14-0001350.

Since **Conklin Wright** Zoning Inspector

xc: Jay Arakawa, Supervising Zoning Inspector (PDF) Conklin Wright, Zoning Inspector (PDF) 14-0001350 (KIVA; RFS File) JSR:JAA:CW:smb S:IZONINGWFSI2014\1350_Totentine_useWOWNOW1_use.wpd ONE MAIN PLAZA BUILDING / 2200 MAIN STREET, SUITE 315 / WAILUKU, MAUI, HAWAII 96793 MAIN LINE (808) 270-7735 / FACSIMILE (808) 270-7634 CURRENT DIVISION (808) 270-8205 / LONG RANGE DIVISION (808) 270-7214 / ZONING DIVISION (808) 270-7253
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ļ First-Class Mail Postage & Fees Paid USPS Permit No. G-10 UNITED STATES POSTAL SERVICE į • Sender: Please print your name, address, and ZIP+4 in this box • COUNTY OF MAUL Department of Planning 2200 Main Street, Suite 315 DEPT. OF PLANNING, HI 98793 CW/C COUNTY OF MAUI OCT 2 1 2014 . 1

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COUNTY OF MAUI DEPARTMENT OF PLANNING ZONING ADMINISTRATION AND ENFORCEMENT DIVISION 2200 MainStreet, Suite 315 WAILUKU, MAUI, HAWAII 96793 Telephone: (808) 270-7534 Facsimile: (808) 270-7634 E-mail: planning@maulcounty.gov Website: www.maulcounty.gov

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Print Inspector's Name Conklin Wright Inspector's Signatu S:ZONINGURFS/2014/1350_Tolentino_use/NOV/NOV_20150001_use.wpd (Rev. 01.10)

			DEPA ZONII ENFO 2200 I WAIL Telep Facsir E-mai	UNTY OF MAUI PARTMENT OF PLANNING NING ADMINISTRATION AND FORCEMENT DIVISION 0 MainStreet, Suite 315 NILUKU, MAUI, HAWAII 96793 ephone: (808) 270-7253 csimile: (808) 270-7634 mail: planning@mauicounty.gov bsite: www.mauicounty.gov			DATE DATE DATE DATE DATE DATE DATE DATE	CALIFIC INC ALLERNO OFNOTICE VIOLATION MOLATION CALIFIC	14-0001350 June 28, 2016 September 30, 2014 [X]YES []NO		
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Pib Fi P t P t C	X Pay a daily civil fine in the amount of: \$1,000.00 is not completed by: out ru, zero Pursuant to MCC, § 19.530.030(B)(2) and (C) and § 12-103-5(a)(6), Administrative Rules, as amended, this Notice of Violation and Order shall become final thirty (30) days after the date of this notice, unless an appeal is properly filed with the Board of Variances and Appeals ("BVA"). The appropriate form may be found online at www.co.maui.hi.us/documents/Planning/Forms/AppealApp_Online.PDF or at the Department of Planning, One Main Plaza, 2200Main Street #315, Wailuku, Maui, Hawaii 96793. An appeal to the BVA shall not stay any provision of this order. Pursuant to § 12-103-12(b), Administrative Rules, as amended, the initial fine shall be payable whether the violation is corrected before or after the order becomes final. Pursuant to § 91-9(b)(5), Hawaii Revised Statutes, you may retain counsel or appear on your own behalf. Pursuant to § 12-103-12(d), Administrative Rules, as amended, in the case of a continuing violation, the daily fine shall be doubled on the first (1st) day of each thirty (30) day period after the end of the time to take corrective action, up to a maximum amount of one thousand dollars (\$1,000.00) per day.										
-	Print	Adminis	trator's Name	John Rapacz		A	dministrator's	s Signature	Hole	2 glly	<u> </u>
-			sor's Name	Jay Arakawa		S	upervisor's S	Signature (MY/M	M	()
-			or's Name	Merle Tashiro)	In	spector's Sig	gnature	Kar	water	<u> </u>

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DEPARTMENT OF THE CORPORATION COL COUNTY OF MAUI WAILUKU, MAUI, HAWAII 96793		Ϋ́Υ.

ALAN M. ARAKAWA Mayor

WILLIAM R. SPENCE Director

MICHELE CHOUTEAU MCLEAN Deputy Director



COUNTY OF MAUL

January 5, 2017

Certified Receipt No. 7016 1370 0001 2713 8016

Pedro Costales Tolentino Estelita Carmelita Hamilton Aldegunda Imilda Tolentino Pedro Tolentino Jr. PO Box 630846 Lanai City, Lanai, Hawaii 96763

Ladies and Gentlemen:

RE: NOTICE OF WARNING AND REQUEST TO CORRECT APPARENT

TMK:	(2) 4-9-008:028-0000
RFS No.:	16-0001463
Description:	For salvage yard and/or vehicle storage lot located at 260
	Ilima Place, Lanai City, Hawaii, on the island of Lanai

Based on information obtained, we have reason to believe that on your property, on or before January 4, 2017, there were one or more violations. Salvage yards and/or vehicle storage lots are not permitted uses within the County's R-1 Residential District and are in violation of Maui County Code including, but not limited to, Chapters/Sections 19.08.020.

The information obtained includes: Photos submitted by requestor.

You must correct any violations by January 19, 2017. We will investigate further, and if we find any of the above-described apparent violations, you will be subject to civil and possible criminal enforcement action.

Civil Fines for the violation will be 1) an initial fine of \$1,000; and 2) a daily fine of \$1,000 for each day each violation continues.

This request is only for violations of regulations that are enforced by the Department of Planning. There may be additional violations of regulations that are enforced by other County, State, or Federal agencies. If you have any questions about this request, please contact me at gail.davis@co.maui.hi.us or (808) 270-8244; and please refer to RFS 16-0001463.

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793 MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634 CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

EXHIBIT" E "

Tolentino Hamilton 1/5/17 page 2

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Sincerely,

Gail Davis

Gail Davis Zoning Inspector

xc: Jay Arakawa, Supervising Zoning Inspector (PDF) Gall Davis, Zoning Inspector (PDF) 16-0001463 (KIVA; RFS File) JSR:JAA: GMD:gmd

S:Zoning/RFS/2016_1463_Illima,Lanai_use.wpd (rev. 11.13)



Back gide of return receipt

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G. Davis



		REC Herritric G-10
9590 9402 180? (United States Postal Service AMD 16-1460 NOW [USC (a) 4-9-008:028 (a) 4-9-008:028	Sender: Please print your name, a	COUNTY OF MAUI OF MILEO OF PLANNING of Planning eet, Suite 315

ALAN M. ARAKAWA Mayor WILLIAM R. SPENCE Director

MICHELE CHOUTEAU McLEAN Deputy Director



COUNTY OF MAUL

February 28, 2017

POSTED ON PROPERTY

Pedro Costales Tolentino Estelita Carmelita Hamilton Aldegunda Imilda Tolentino Pedro Tolentino Jr. PO Box 630846 Lanai City, Lanai, Hawaii 96763

Ladies and Gentlemen:

RE: NOTICE OF WARNING AND REQUEST TO CORRECT APPARENT VIOLATION(S)

TMK:	(2) 4-9-008:028-0000
RFS No.:	16-0001463
Description:	For salvage yard and/or vehicle storage lot located at 260
•	Ilima Place, Lanai City, Hawaii, on the island of Lanai

Based on information obtained, we have reason to believe that on your property, on or before January 4, 2017, there were one or more violations. Salvage yards and/or vehicle storage lots are not permitted uses within the County's R-1 Residential District and are in violation of Maui County Code including, but not limited to, Chapters/Sections 19.08.020.

The information obtained includes: Photos submitted by requestor.

You must correct any violations by March 13, 2017. We will investigate further, and if we find any of the above-described apparent violations, you will be subject to civil and possible criminal enforcement action.

Civil Fines for the violation will be 1) an initial fine of \$1,000; and 2) a daily fine of \$1,000 for each day each violation continues.

This request is only for violations of regulations that are enforced by the Department of Planning. There may be additional violations of regulations that are enforced by other County, State, or Federal agencies. If you have any questions about this request, please contact me at gail.davis@co.maui.hi.us or (808) 270-8244; and please refer to RFS 16-0001463.

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793 MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634 CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

EXHIBIT" F "

Tolentino Hamilton 2/28/17 page 2

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Sincerely,

Sail Davis

Gail Davis Zoning Inspector

xc: Jay Anakawa, Supervising Zoning Inspector (PDF) Gail Davis, Zoning Inspector (PDF) 16-0001463 (KIVA; RFS File) JSR:JAA: GMD:gmd

S:Zoning/RFS/2016_1463_lilms,Lanai_use.posted.wpd (rev. 11.13)

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COUNTY OF MAUI DEPARTMENT OF P ZONING ADMINISTR ENFORCEMENT DIV 2200 Main Street, Su WAILUKU, MAUI, HA Telephons: (808) 270- E-mail: planning@ma Website: www.maulc	ATTON AND ISTON Ite 315 WAII 96793 -7253 7634 Aukcounty.gov ounty.gov	TOLING 27.[[].[].[]. 27.[]].[].[]. 27.[]]. 27.	EILEING NOV 2017 EILEING 16-000146 OP(NOTICE March 21, VIOLATION January 4, VIOLATION [] YES EcitED/FINE 7016 0910	3 2017 , 2017 [X] NO NONE 0 0002 3138 7183
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FO: Pedro Tolentino, Jr. P.O. Box 630846 Lanal City, Lanai, Hawaii 96763				
RE: TMK (2) 4-9-008:028		PERMIT NO	NONE	
In Place Lanai	City, Hawaii 96763			
have inspected the above described structure Code(s) and/or Ordinance(s) governing same, a	and/or premises an	d have found t		
CODE(S); ORDINANCE(S); SECTI	ION(8)	and the second sec	AND EVIDENCE OF TH	
		within the Cou	and/or vehicle storage i inty's R-1 Residential Dist	
Maui County Code (MCC) § 19.0	8.020	Evidence of Photos submi	the aforementioned v tted by requestor, Maui Po	iolation(s) include(s): olice Department.
Pursuant to MCC § 19.530.030(B), and Chapter 16.13 and Title 19 of the MCC (Admin	ORD pter 12-103, Rules histrative Rules), as		ve Procedures and Civil are hereby ordered as fol	Fines for Violations of lows:
X Cease and desist all activity immediately	1.			
Correct the violation(s) at your own expense by:	March 28, 2017	cars not r	the following corrective ogistered under your name	action(s): remove all e.
X Pay an initial civil fine in the amount of:	\$1,000.00	(Planning		April 20, 2017
X Pay a daily civil fine in the amount of:	\$1,000.00	corrective	to Planning if the action described above npleted by:	March 28, 2017
Pursuant to MCC § 19.530.030(B)(2) and (C) Order shall become final thirty (30) days after and Appeals (BVA). The appropriate form Department of Planning, One Main Plaza, 22 stay any provision of this Order. Pursuant to § 12-103-12(b), Administrative for before or after the Order becomes final. Pursuant to § 91-9(b)(5), Hawaii Revised Sta	n may be found or 200 Main Street #31 Rules, as amended,	tine at http://c 5, Wailuku, Ma the initial fine	shall be payable whether	the violation is corrected
	FXHIBIT"			

Pursuant to § 12-103-12(d), Administrative Rules, as amended, in the case of a continuing violation, the daily fine shall be doubled on the first (1st) day of each thirty (30) day period after the end of the time to take corrective action, up to a maximum amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) per day.

	FOR THE	PLANNING DIRECTOR
Print Administrator's Name	JOHNS. RAPACZ	Administrator's Signature
Print Supervisor's Name	JAY ARAKAWA	Supervisor's Signature
Print Inspector's Name	GAIL DAVIS	Inspector's Signature Kull Device

Jay Arakawa, Zoning Inspector Supervisor (pdf) Gall Davis, Zoning Inspector (pdf) RFS File (KIVA) General File XC:

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Eacair Facair	mile: (808) 270-7 il: planning@mai	7634			A CONTRACTOR	NONE
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Pedro Tolentino, Jr. PO Box 630846 Lanai City, Lanai, HI 9676						
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Appress 280 Ilima P	Place, Lanai City.	Hawaii 96763			an a star and a star	<u>a sel e de come en com</u>
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EXHIBIT"	H	. "
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260 Ilina Avenue, Lanai City, Lanai RE: Tokentino



NOV pasted by MPD

FROM:

ALAN M. ARAKAWA Mayor



PATRICK K. WONG Corporation Counsel

EDWARD S. KUSHI First Deputy

LYDIA A. TODA R1sk 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

October 3, 2017

Certified Mail No. 7016 0910 0002 3143 4610 Return Receipt Requested

Pedro Costales Tolentino Estelita Carmelita Hamilton Aldegunda Imilda Tolentino Pedro Tolentino Jr. P O Box 630846 Lanai City, Lanai, Hawaii 96763

> Re: Request for Service #16-0001463 Notice of Violation #V2017/0017 For salvage yard and/or vehicle storage lot located at 260 Ilima Place, Lanai City, Hawaii

Ladies and Gentlemen:

I represent the Maui County Department of Planning regarding the above matter. On or about January 4, 2017, a County inspector noted the following violation under the Maui County Code Section 19.08.020:

Salvage yards and/or vehicle storage is not a permitted use within the County's R-1 Residential District.

A Notice of Warning was posted on property on February 28, 2017 concerning this violation and on April 27, 2017 you were issued Notice of Violation and Order on May 3, 2017 by posting on the property (collectively attached as Exhibit "A" - V2017/0017). You had thirty (30) days to appeal the Order to the Board of Variances and Appeals, but you have chosen not to contest the

EXHIBIT" I "

Pedro Costales Tolentino Estelita Carmelita Hamilton Aldegunda Imilda Tolentino Pedro Tolentino Jr. September 20, 2017 Page 2

<u>)</u> []] []] []]

Notice of Violation issued to you by the Maui County Department of Planning.

Fines began accruing on May 4, 2017, up to and including October 3, 2017. The outstanding fines currently owed to the County of Maui amount to \$153,000.00. Daily fines will continue to accrue at the rate of \$1,000.00 per day per violation, until such time as you comply with the corrective action(s) as described in the Notices of Violation and Order.

Furthermore, the County may also commence a lawsuit against you to collect the unpaid fines in addition to any remedies the County may seek. Unless you contact the undersigned regarding this matter by October 13, 2017, we will presume that you have no interest in resolving the situation and will act accordingly.

Very truly yours,

MICHAEL J. HOPPER

Deputy Corporation Counsel

MJH:maa Enclosures

Cc: Gail Davis, Zoning Inspector Jay Arakawa, Supervising Zoning Inspector John Rapacz, Planning Program Administrator, ZAED 2017-1081 ALAN M ARAKAWA Mayor

WILLIAM R. SPENCE Director

MICHELE CHOUTEAU McLEAN Deputy Director



COUNTY OF MAUL DEPARTMENT OF PLANNING

February 28, 2017

POSTED ON PROPERTY

Pedro Costales Tolentino Estelita Carmelita Hamilton Aldegunda Imilda Tolentino Pedro Tolentino Jr. PO Box 630846 Lanai City, Lanai, Hawaii 96763

Ladies and Gentlemen:

RE: NOTICE OF WARNING AND REQUEST TO CORRECT APPARENT VIOLATION(S)

RFS No.:	(2) 4-9-008:028-0000 16-0001463 For salvage yard and/or vehicle storage lot located at 260 Ilima Place, Lanai City, Hawaii, on the island of Lanai
	lima Place, Lanar City, Hawaii, on the terrar

Based on information obtained, we have reason to believe that on your property, on or before January 4, 2017, there were one or more violations. Salvage yards and/or vehicle storage lots are not permitted uses within the County's R-1 Residential District and are in violation of Maui County Code including, but not limited to, Chapters/Sections 19.08.020.

The information obtained includes: Photos submitted by requestor.

You must correct any violations by March 13, 2017. We will investigate further, and if we find any of the above-described apparent violations, you will be subject to civil and possible criminal enforcement action.

Civil Fines for the violation will be 1) an initial fine of \$1,000; and 2) a daily fine of \$1,000 for each day each violation continues.

This request is only for violations of regulations that are enforced by the Department of Planning. There may be additional violations of regulations that are enforced by other County, State, or Federal agencies. If you have any questions about this request, please contact me at gail.davis@co.maui.hi.us or (808) 270-8244; and please refer to **RFS 16-0001463**.

EXHIBIT" A

Tolentino Hamilton 2/28/17 page 2

x : \ '• '

Sincerely,

Hail Davis

Gail Davis Zoning Inspector

xc Jay Arakawa, Supervising Zoning Inspector (PDF) Gail Davis, Zoning Inspector (PDF) 16-0001463 (KIVA; RFS File) JSR:JAA: GMD gmd

S.Zoning/RFS/2016_1463_Ilima,Lanai_use.posted.wpd (rev. 11.13)



County OF ALLS	COUNTY OF MAUI DEPARTMENT OF PLANNING				NOV 2017	/0017	
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	Facsimile: (808) 270-7 E-mail: planning@ma	7634 uicounty.gov				NON	E
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FROM:



7 16 . B

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

VS.

PEDRO TOLENTINO, JR.; EDDIE BRACEROS TOLENTINO; JOHN DOES 1-10; JANE DOES 1-10; and DOE ENTITIES 1-10,

Defendants.

CIVIL NO. (Other Civil Action)

SUMMONS

<u>SUMMONS</u>

TO: The Above-Named Defendants

You are hereby summoned and required to file with the Court and serve upon PATRICK K. WONG, Corporation Counsel, and SHINKEN NAITOH, Deputy Corporation Counsel, attorneys for Plaintiff COUNTY OF MAUI, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793, an answer to the Verified Complaint which is attached. 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 Verified 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, _____ MAR 1 5 2018

/sgd/ D. PELLAZAR (seal)

CLERK OF THE ABOVE-ENTITLED COURT