

COUNCIL OF THE COUNTY OF MAUI
GOVERNANCE, ETHICS, AND
TRANSPARENCY COMMITTEE

August 9, 2019

Committee
Report No. _____

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

Chair and Members:

Your Governance, Ethics, and Transparency Committee, having met on March 12, 2019, and July 23, 2019, makes reference to County Communication 19-29, from Council Chair Kelly T. King, relating to litigation matters.

By correspondence dated February 25, 2019, the Department of the Corporation Counsel requested consideration of the possible settlement of Jacob Firth and Elva Marie Espinosa Brumblay v. County of Maui, et al., Civil 18-1-0234(2). Attached to the request is a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF JACOB FIRTH AND ELVA MARIE ESPINOSA BRUMBLAY v. COUNTY OF MAUI, ET AL., CIVIL NO. 18-1-0234(2)," along with a copy of the complaint. The purpose of the proposed resolution is to authorize the Department to settle the case.

Your Committee notes the complaint alleges negligence by the County and the State of Hawaii while Plaintiff Jacob Firth was in their custody February 21-22, 2018, resulting in injuries and damages to Mr. Firth, as well as loss of companionship for Jacob Firth's mother, Plaintiff Elva Marie Espinosa Brumblay.

By correspondence dated June 27, 2019, the Department requested the opportunity to provide a pretrial status report and transmitted a revised proposed resolution incorporating nonsubstantive revisions.

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

Your Committee further notes the Council's Parks, Recreation, Energy, and Legal Affairs Committee (2017-2019 Council term) previously reported on this matter through Committee Report 18-245, which recommended that the correspondence dated November 15, 2018, transmitting a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF JACOB FIRTH AND ELVA MARIE ESPINOSA BRUMBLAY v. COUNTY OF MAUI, ET AL., CIVIL NO. 18-1-0234(2)," be filed. At its meeting of December 21, 2018, the Council adopted the Committee's recommendation.

A Deputy Corporation Counsel provided a brief overview of the case. The Deputy said the case involves injuries Mr. Firth allegedly sustained while in the custody of State deputy sheriffs at the Wailuku courthouse, when Mr. Firth collapsed and hit his head, resulting in a skull fracture and residual cognitive brain injuries. The Deputy said the Plaintiffs allege the Department of Police should have recognized Mr. Firth was going through alcohol withdrawal and provided him medical care that would have prevented his collapse.

The Deputy said the parties have agreed to mediate the case on August 19, 2019. The Deputy said the Plaintiffs are alleging damages of \$11 million, saying Mr. Firth will need to be housed in an in-patient facility for the rest of his life. The Deputy also said he had received a settlement demand from the Plaintiffs.

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

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

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department at your Committee's meeting of July 23, 2019, your Committee voted 8-1 to recommend adoption of the revised proposed resolution. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye." Committee member Hokama voted "no."

Your Governance, Ethics, and Transparency Committee **RECOMMENDS** that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF JACOB FIRTH AND ELVA MARIE ESPINOSA BRUMBLAY v. COUNTY OF MAUI, ET AL., CIVIL NO. 18-1-0234(2)," be **ADOPTED**.

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



MICHAEL J. MOLINA, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT OF JACOB FIRTH
AND ELVA MARIE ESPINOSA BRUMBLAY v.
COUNTY OF MAUI, ET AL., CIVIL NO. 18-1-0234(2)

WHEREAS, Plaintiffs Jacob Firth and Elva Marie Espinosa Brumblay filed a lawsuit against the County of Maui and the State of Hawaii in the Circuit Court of the Second Circuit, State of Hawaii, on May 29, 2018, Civil No. 18-1-0234(2), alleging negligence and emotional distress; and

WHEREAS, the County of Maui filed its Answer to the Complaint on June 19, 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 or Offer of Judgment; and

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

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a

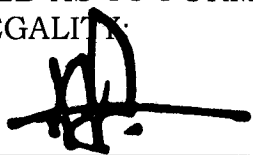
Resolution No. _____

negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

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

1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and
2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case; and
3. That it hereby authorizes the Director of Finance to satisfy said settlement of this case; and
4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Chief of Police, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:

A handwritten signature in black ink, appearing to read 'B. Bilberry', is written over a horizontal line.

BRIAN A. BILBERRY
Deputy Corporation Counsel
County of Maui