

GOVERNMENT RELATIONS, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

M I N U T E S

May 31, 2022

Online Only via BlueJeans Link

CONVENE: 9:00 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair (In at 9:04 a.m.)
Councilmember Gabe Johnson, Member (Out at 12:00 p.m.)
Councilmember Tasha Kama, Member
Councilmember Kelly T. King, Member
Councilmember Alice L. Lee, Member
Councilmember Tamara Paltin, Member
Councilmember Shane M. Sinenci, Member
Councilmember Yuki Lei K. Sugimura, Member

STAFF: Kasie Apo Takayama, Legislative Analyst
James Forrest, Legislative Attorney
Brittney Sunderland, Legislative Analyst
Pauline Martins, Committee Secretary
Jocelyn Moniz, Committee Secretary
Lenora Dinneen, Council Services Assistant Clerk

Zhantell Lindo, Council Aide, Molokai Council Office
Denise Fernandez, Council Aide, Lanai Council Office
Mavis Oliveira-Medeiros, Council Aide, Hana Council Office
Anabelle Hernandez, Makawao-Haiku-Paia District Office

Angela Lucero, Executive Assistant to Councilmember Paltin
Christian Balagso, Executive Assistant to Councilmember Paltin
Axel Beers, Executive Assistant to Councilmember King
Daniel Kanahele, Executive Assistant to Councilmember King
Davideane Sickels, Executive Assistant to Councilmember Kama
Dawn Lono, Executive Assistant to Councilmember Sinenci
Ellen McKinley, Executive Assistant to Councilmember King
Evan Dust, Executive Assistant to Councilmember Kama
Gina Young, Executive Assistant to Councilmember Sinenci
Jordan Helle, Executive Assistant to Councilmember Sugimura
Kainoa Kaumeheiwa-Rego, Executive Assistant to Councilmember Rawlins-Fernandez
Kate Griffiths, Executive Assistant to Councilmember Johnson
Mahina M. Poepoe, Executive Assistant to Councilmember Rawlins-Fernandez

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Miki Yokouchi, Executive Assistant to Councilmember Sugimura
Sarah Sexton, Executive Assistant to Councilmember King
Sarah Pajimola, Executive Assistant to Councilmember
Rawlins-Fernandez
Ana Lillis, Executive Assistant to Councilmember Molina

ADMIN.: Moana M. Lutey, Deputy Corporation Counsel, Department of the
Corporation Counsel (GREAT-19, -11(20))
Mimi DesJardins, Deputy Corporation Counsel, Department of the
Corporation Counsel (GREAT-19)
Caleb Rowe, Deputy Corporation Counsel, Department of the
Corporation Counsel (GREAT-11(11), -11(13))
Kristin Tarnstrom, Deputy Corporation Counsel, Department of the
Corporation Counsel (GREAT-11(9))
Lisa Kahuhu, Administrative Assistant, Department of the
Corporation Counsel
Jordan Molina, Director, Department of Public Works (GREAT-11(11))
Guy Hironaka, Real Property Management Specialist, Department
of Finance
John Pelletier, Chief of Police, Department of Police
Reid Pursley, Assistant Chief of Police, Department of Police

OTHERS: Margery Bronster, Bronster Fujichaku Robbins, A Law Corporation
(GREAT-19)
Rex Fujichaku, Bronster Fujichaku Robbins, A Law Corporation
(GREAT-19)
Brandon Maka'awa'awa (GREAT-19)
Shay Chan Hodges (GREAT-19)
Barbara Barry (GREAT-19)
Bruce Jacobs (GREAT-19)
Faith Chase (GREAT-19)

PRESS: *Akaku Maui Community Television, Inc.*

CHAIR MOLINA: . . .*(gavel)*. . . The Government Relations, Ethics, and Transparency Committee for Tuesday, May 31st, 2022 will now come to order. The time is 9:00 a.m. I'm Mike Molina, your Committee Chair. And let's start first with Committee roll call. Let's check in first with our Council Chair from Wailuku, Alice Lee, who will also give us the greeting for the day. Aloha, Council Chair Lee.

COUNCILMEMBER LEE: Aloha, GREAT Chair, and aloha to all my colleagues and everyone watching. Today's greeting is from Greece, and it's kalimera to all of you. I'm here in my home space alone. I'll be moving in the next couple of days back to the office, so I can see all of your smiling faces in person. . . .*(laughing)*. . .

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CHAIR MOLINA: Nice to hear about that, Chair Lee. And our greeting is kalimera, not to be confused with calamari, right?

COUNCILMEMBER LEE: Yeah, right, kalimera.

CHAIR MOLINA: All right. And by the way for the record Members, I forgot to mention I'm transmitting from the Pā'ia District Office. I'm accompanied by Executive Assistant Ana Lillis and District Office Specialist Anabelle Hernandez. All right, let's do the go around now to see who else is joining us this morning. Let's go out to West Maui and check in with Council Member Paltin. Aloha and kalimera.

COUNCILMEMBER PALTIN: Kalimera and aloha kakahiaka kākou. I'm broadcasting live and direct from the Old Lāhainā Center here in Historic Lāhainā Town, and with me I have EA Angela Lucero, District Office Aide Christina Balagso, and two interns who just got out of their schooling requirements, Kalehua and Nāhiku Paltin-Vierra.

CHAIR MOLINA: Mahalo, Member Paltin. Okay, let's take a quick trip across the pond to Lāna'i and check in Councilmember Johnson. Aloha and kalimera.

COUNCILMEMBER JOHNSON: Good morning, Chair. Good morning, Councilmembers. Kalimera to all of you. I am home alone in my workspace on Lāna'i, and there are no testifiers at the Lāna'i District Office. Mahalo.

CHAIR MOLINA: Mahalo, Member Johnson. All right. Let's go now to South Maui and check in on Councilmember King. Aloha and kalimera.

COUNCILMEMBER KING: Aloha kakahiaka, kalimera not to be confused with Kalamata, which is the olive. Thank you for that greeting, Chair Lee. And I am in my home office. My husband is two rooms away in his office and...which also doubles as the kitchen, and there are no testifiers at the South Maui District Office. But I'm excited to see the testifiers this morning.

CHAIR MOLINA: All right. Sounds good, Member King. And yes, also too, we don't have any testifiers here at the Pā'ia District Office as well, as of the moment. All right, let's go in and check in on the neighborhood...how the neighborhood is doing out in Kahului, Maui. Aloha, Member Kama.

COUNCILMEMBER KAMA: Aloha kakahiaka, Chair, and kalimera to all my colleagues. I am here in the neighborhood in my workspace, and I am alone. Lena is gone for the day.

CHAIR MOLINA: Okay. Mahalo, Member King...Member Kama, sorry. Okay, let's go out to jacaranda country if she's there this morning, Councilmember Sugimura, aloha and kalimera.

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COUNCILMEMBER SUGIMURA: Morning everybody. Kalimera. I'm in the County Building waiting for Chair Lee to move in so we can have more company as we live our lives on the 8th Floor alone today. I have Jordan Helle and Miki Yokouchi in the office next door to me, and I look forward to an interesting meeting today. Thanks.

CHAIR MOLINA: And thank you, Member Sugimura. And let's go out to East Maui. Aloha and kalimera, Councilmember Sinenci.

COUNCILMEMBER SINENCI: Kalimera, Chair and fellow Councilmembers, aloha kakahiaka, mai Maui Hikina. [*Hawaiian spoken*]. We are here at the Hāna Cultural Center with my District Staff Mavis Medeiros and Dawn Lono. Currently we don't have any testifiers.

CHAIR MOLINA: Okay, mahalo, Member Sinenci. And Committee Vice-Chair Rawlins-Fernandez will be joining us soon in our proceedings for this morning, and once she joins us...oh, there she is. All right. Aloha and kalimera, Committee Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha kakahiaka mai Moloka'i Nui Ahina. I'm at the Moloka'i District Office alone on my side of the office, and I have Community Outreach Specialist back in the office on the other side, Zhantell Lindo, and my Legislative Analyst Mahina Poepoe. There are no testifiers here at the Moloka'i District Office. Mahalo, Chair.

CHAIR MOLINA: Mahalo, Committee Vice-Chair Rawlins-Fernandez. All right, let's find out who else will be joining us for our very ambitious agenda today. We have from Corporation Counsel Moana Lutey; Deputy Corporation Counsel Kristin Tarnstrom; also Deputy Corporation Counsel Caleb Rowe; as well as Deputy Corporation Counsel Glen Pascual; and Deputy Corporation Counsel Mimi DesJardins. So we got a lot of litigation matters on our docket today. From the Department of Finance, Director or a representative from that Department, I presume Mr. Teruya, otherwise, we'll have someone else to represent the Department, as well as the Public Works Department. We have Director Jordan Molina scheduled to come in and join us as well. And from the Department of Police, Chief John Pelletier or his designated representative. And for our first item today we have Margery Bronster from the firm of Bronster Fujichaku Robbins, a Law Corporation, which will...I guess her representation will be for GREAT Item 19. And of course our hard-working Committee Staff. We have Legislative Analyst Kasie Apo Takayama, Brittney Sunderland, and also Legislative Attorney James Forrest, and Committee Secretaries Pauline Martins and Jocelyn Moniz, and Council Services Assistant Clerk Lei Dinneen. And Members, of course we will, as always, take testimony prior to addressing any of our agenda items. And oral testimony via phone or video conference will be accepted, and please note that if you are signed in, you are on the list to testify, even if you did not request to testify, but please be sure to let Staff know in chat if you are signed on and do not intend to testify. And testifiers wanting to provide video testimony can join us via the BlueJeans meeting link at 175115369 as noted on the agenda today. And testifiers wanting to provide audio testimony can dial 1-408-915-

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6290 and enter the meeting code that I just mentioned to you. And the Committee intends to keep the same meeting link and phone number for future GREAT meetings this term for the ease and convenience of the Committee Members and the public. And as always, we accept written testimony as well, and instructions on how you can submit testimony via eComment can be found at mauicounty.us/ecomments. With regards to the rules for oral testimony, it's limited to three minutes per item. If you are still testifying beyond that time, I will kindly ask you to complete your testimony. And when testifying please state your first and last name. If you are testifying on behalf of an organization or if you are a paid lobbyist, please inform the Committee of that. And be mindful of the use of chat during the meeting, chat should not be used to provide testimony or chat with other testifiers. And while others are testifying, please be courteous by turning off your video and muting your microphone while waiting for your turn to testify. And for the rest of us...the rest of you who would like to just simply view the meeting, just put on your good 'ol television set and go on to *Akakū* Channel 53. So with that being said, Ms. Sunderland, please announce our first two testifiers. Go ahead.

MS. SUNDERLAND: Chair, we currently have seven testifiers signed up. Our first testifier is Brandon Maka'awa'awa, to be followed by Malia.

CHAIR MOLINA: Good morning, Mr. Maka'awa'awa.

. . . BEGIN PUBLIC TESTIMONY . . .

MR. MAKAWA'AWA: Aloha, good morning, Chair Molina, and thank you for letting me testify this morning. And, you know, I bring to you this testimony on actually the day of 28 years ago, a commitment was made by Bank of America to provide \$150 million in FHA 247 loans, because the bank was caught redlining against Hawaiians. That commitment has not been kept, and we have been fighting for 28 years to keep that commitment. And about four years ago we included the Maui County Council to help us with this fight because we are a nonprofit. Majority of my board are kupuna. We cannot go on fighting any longer about this. And we did great things together with the County Council. We've even passed, you know, a resolution to hire Special Counsel to actually take action against Bank of America. And even with this, we still have issues. We've had, you know, numerous issues for lack of communication with Special Counsel, with Corp. Counsel, it hasn't been a pleasant experience. And the reason why we brought the Council in is because we can't take on Bank of America alone. You know, this is one of the biggest banks in the world, we needed assistance in a very trying time. And so we...you know, we ask for assistance and, you know, although I objected a lot of times to who the counsel was that was picked and the reasons why, I did my best as Chair of Na Po'e Kokua to try and work with everyone involved. I have tried to communicate, and I have led most of the communications, nobody was communicating back to me and initiated any type of meeting to communicate. Last year we actually had to go into another hearing and pass another resolution because nobody was

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communicating with us, and to ask that the Corp. Counsel, and to ask that the Special Counsel work with us to file these lawsuits against Bank of America to hold them accountable. Because there is no way they can file a lawsuit without our assistance. We have all the evidence, you know. I don't want to see County funds wasted on these lawsuits when they can't bring the lawsuit together because they're not working with us. I think it's a waste. I think we've already wasted...you know, we've been doing this for four years now, you know. And although we got...I mean, we got one super majority that supported us and the Council, we have the Mayor supporting us, and yet we're still here stuck in this situation. And, you know, I'd like to inform everybody that just this morning, we had to file our own lawsuits. So we took the fight on. So our lawyers did the work that was asked by the Council to the Special Counsel and to the Corp. Counsel to bring charges against Bank of America, and we actually filed our lawsuit this morning. And it wasn't easy. Our lawyers are working pro bono. They have not been compensated for the work and, you know, if anything comes out of this Council, I would hope that our legal counsel can be compensated in some way . . . *(timer sounds)*. . . and help. You know, and if we have any more discussion with this, with your Special Counsel, I would ask that you guys not go into executive session because I'd like to hear the explanation as to why there was no communication, there was no, you know, partnership in working with this. Because this is not just the Council's issue, this is the community's issue that we brought to the Council, so they should have worked with us. Mahalo.

CHAIR MOLINA: Okay, mahalo, Mr. Maka'awa'awa. Before I turn matters over to the Committee for questions, so for the record, since our last meeting--and I believe the Council or the Committee encouraged our Special Counsel, as well as you, and I believe Mr. Jacobs to all huddle up and come to some proposal. So nothing has occurred then as far as any outreach between you, as well as Corp. Counsel; is that correct?

MR. MAKAWA'AWA: No communication. Nothing that I haven't initiated myself. I have been the initiator of all these types of communications, and I guess everybody is just too busy or they don't care, which both are wrong. And I think that that was the purpose of having that resolution pass last year about that and so...and it wasn't my intention to fight with any of these counsels. We get enough fights to go on, you know. I'm not trying to fight with anybody else's lawyers, but we should have been working together.

CHAIR MOLINA: Okay, and you've documented the amount of phone calls or emails you've...

MR. MAKAWA'AWA: Yes, emails and everything. Yes, we have that.

CHAIR MOLINA: Okay. Yeah, if you could please send that to the Committee as well, that could be helpful.

MR. MAKAWA'AWA: Okay. I will.

CHAIR MOLINA: Okay, we'll turn matters over to the rest of the Committee Members. I see...I

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believe Member King had a question for you as it relates to your testimony. Member King, go ahead.

COUNCILMEMBER KING: Thank you, Chair. Aloha, Brandon. Thanks so much for being here. I was hoping you would show up this morning. And I'm really sorry that our resolution seems to have packed no punch with Corp. Counsel but...or with our Special Counsel. But are you at liberty to disclose who your attorney is, who helped you file the lawsuit today?

MR. MAKAWA'AWA: Yes. We had a lawyer from Honolulu, his name is Fred Arensmeyer. And he did a pro hac vice to bring in Bruce Jacobs, and they have been working with us to file these lawsuits. And we can provide the link to the lawsuit. But, you know, everything that we wanted the...you know, the Special Counsel and the Corp. Counsel to help us work with, we've had to do on our own. And all our lawyers are...you know, they're running on fumes already. They've been working pro bono a lot for this, and so, you know, we...we'd like to get them some help. And, you know, also, you know, going in for like lawyer's fees from the lawsuit that Bank of America filed against Maui County, we could have helped with that as well. You know, we spent...you know, the County spent about 100,000 to defend itself against Bank of America, and they shouldn't have paid for anything. And that has not been reached yet, and we'd like to help with that too, if we can.

COUNCILMEMBER KING: Okay. And then the organization that's...you're suing on behalf of the organization, is that a recognized . . . *(inaudible)*. . .

MR. MAKAWA'AWA: Yes. So we're the plaintiff, Na Po'e Kokua, and I'm the Chair.

COUNCILMEMBER KING: And Na Po'e Kokua is a State organization, not just Maui County.

MR. MAKAWA'AWA: Yeah, it's a State nonprofit, and we've been the ones that have been recognized by the Governor, by all counties, by the Senate, as being the ones that have tried to hold Bank of America accountable all this time.

COUNCILMEMBER KING: Okay. Thank you for clarifying those points. Thank you for being here.

MR. MAKAWA'AWA: Thank you.

CHAIR MOLINA: Thank you very much, Member King. Members, any other questions for Mr. Makawa'awa as it relates to his testimony? Okay, let's go to Member Sugimura, followed by Committee Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER SUGIMURA: Thank you. Thank you very much for your diligence and perseverance, I guess, is probably the word. Actually you answered my one question, that you are suing Bank of America. Are you also suing the County of Maui?

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MR. MAKAWA'AWA: No, we are not suing the County of Maui. But...you know, the lawsuit names several people, but we're not suing Maui County, it's directly Bank of America. So...

COUNCILMEMBER SUGIMURA: None of our employees of the County of Maui then, it's just Bank of America.

MR. MAKAWA'AWA: No.

COUNCILMEMBER SUGIMURA: Okay, thank you.

MR. MAKAWA'AWA: Yeah. Yes.

CHAIR MOLINA: Thank you, Member Sugimura. Okay, Committee Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I don't have any clarifying questions right now, but I just wanted to see if there aren't any objections if we can request Mr. Maka'awa'awa as a resource person?

CHAIR MOLINA: Okay, Members, you heard the request. Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay. There is no objections. Mr. Maka'awa'awa, you can stay for the rest of the proceedings, no problems with your schedule?

MR. MAKAWA'AWA: Yeah, I cleared my schedule to be here.

CHAIR MOLINA: Okay, great. Thank you very much. All right. Members, with that being said, if you could withhold any questions for Mr. Maka'awa'awa until we get to that item, Chair would appreciate that so we can hear from our other testifiers this morning. All right. With that said, thank you, Mr. Maka'awa'awa. Let's go now to Ms. Sunderland to please announce our next testifiers.

MS. SUNDERLAND: Chair, the next testifier we have listed is Malia, to be followed by Ryan Scarborough.

CHAIR MOLINA: Okay. Good morning, Malia. Malia, if you are tuning in, this is your opportunity to testify on any of our agenda items this morning. Please proceed. I think quite possibly Malia may be having some technical difficulties, so we'll come back to Malia. Ms. Sunderland, announce our next testifier please.

MS. SUNDERLAND: Next testifier we have on the list is Ryan Scarborough, to be followed by

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Shay Chan Hodges.

CHAIR MOLINA: Aloha, Ryan.

MR. SCARBOROUGH: Aloha. I have no testimony.

CHAIR MOLINA: Okay, Ryan, so you're just observing.

MR. SCARBOROUGH: Yes.

CHAIR MOLINA: Great. All right, thank you. Okay, Ms. Sunderland, please go ahead and announce our next testifiers.

MS. SUNDERLAND: Chair, the next testifier we have listed is Shay Chan Hodges, to be followed by Barbara Berry.

CHAIR MOLINA: Good morning, Ms. Chan Hodges. Aloha.

MS. HODGES: Aloha. My name is Shay Chan Hodges, and I'm a member of the Hawai'i Fair Lending Coalition. I'd like to take a few minutes to remind you of some of the background of the Bronster Fujichaku Robbins contracts, and to provide information about the law firm's invoices. In early 2020, the County Council approved \$25,000 for a 30-day investigation into actionable claims for wrongful foreclosure and other bad acts or failures to act committed by the banking and mortgage industry. Bronster Fujichaku Robbins was chosen to conduct that investigation. Consequently, on July 10, 2020, the Council passed a resolution to retain Special Counsel to pursue legal claims against Bank of America and other mortgage lenders. The resolution did not name a specific attorney. On July 23rd, 2020, Council Services made a sole source request for the Bronster firm to be Special Counsel for Bank of America Corporation, et al. v. County of Maui, which Brandon Maka'awa'awa objected to in part because the contract was not for pursuing the claims as described in the resolution. However, Contract C7167 was executed for Bronster to respond to the frivolous lawsuit brought by BofA against the County. At the March 2nd, 2020, GREAT Committee meeting, Corp. Counsel requested increasing Bronster's contract, stating that \$89,000 had been paid to her firm to respond to BofA's lawsuit. The request for an increase was tabled. In response to a request by Councilmembers, Ms. Lutey stated that she would ask the Bronster firm to seek attorney's fees from Bank of America for the County. By August 2021, when no claims had been filed by Bronster's firm, and there had been virtually no communication with NPK and HFLC, the Council passed a resolution urging Corp. Counsel to work with Bronster and NPK's attorney Bruce Jacobs. In July 2021, a records request was made for all the Bronster invoices up to that date. We've received copies of two contracts and invoices from March 25th, 2020, to March 31, 2021, which were heavily redacted after November 2020. We identified several irregularities. About \$8,600 in billings for contract C7167 were for activities that took place prior to the resolution to obtain Special Counsel, and were related to the earlier \$25,000 investigation. A 4/21/20 balance

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statement and emails from Council Services show that Bronster overbilled the \$25,000 contract by about \$13,000, and was instructed to submit a new invoice without the overage. \$12,000 in billings took place after the Bank of America versus County of Maui lawsuit was dismissed and include \$2,755 for prep, watching, testifying at, and reviewing the March GREAT Committee and April Council hearings that were requested in order to increase the Bronster contract by \$89,000. Based on our analysis of almost \$98,000 in invoices, it would appear that less than \$80,000 was expended on the Bank of America lawsuit, and the remaining \$18,000 in expenses, less than half of the . . . (timer sounds). . . I'll finish up. Of the remaining \$18,000 in expenses, less than half was utilized to pursue legal claims against Bank of America for failure to fulfill loan commitments and for fraudulent foreclosures. So in conclusion we're concerned not only by the overall issue of a lack of performance by Special Counsel, but by the specifics of what was actually invoiced to the County of Maui. Thank you very much. Mahalo.

CHAIR MOLINA: Okay. Thank you very much, Ms. Shay Chan Hodges. Members, she's definitely tracked this matter very thoroughly. If there are no objections, I'd like to ask Ms. Chan Hodges to stay as a resource. Any objections, Members?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay, is there a pressing need to ask Ms. Chan Hodges a question right now? If there is, let me know. And Members, if you could keep it brief, because we've got other testifiers and we've got a big agenda. So...all right, Chair will recognize Member Paltin, with your request.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Chan Hodges for your testimony. My request would be if we could have those informations sent to the Committee in writing.

MS. HODGES: Absolutely.

CHAIR MOLINA: Great. Thank you very much for that. All right, Member King.

COUNCILMEMBER KING: Thank you, Chair. Just real quickly, Ms. Chan Hodges, thanks for being here, that's really interesting information you brought to us. But, you know, when you were saying we, can you just explain what the entity is?

MS. HODGES: It would be the Hawai'i Fair Lending Coalition.

COUNCILMEMBER KING: Okay, great. Thank you.

MS. HODGES: Thanks.

CHAIR MOLINA: Okay. Thank you, Member King. All right. With that said, Members, so again, you'll have ample opportunity to ask more questions of Ms. Chan Hodges, as well

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as Mr. Maka'awa'awa when we get to the item itself. All right, Ms. Sunderland, please continue with announcing our next testifiers.

MS. SUNDERLAND: Chair, the next testifier we have listed is Barbara Barry, to be followed by Bruce Jacobs.

CHAIR MOLINA: Okay. Good morning, Ms. Barry.

MS. BARRY: Good morning, Chair, and kalimera to all. I like that word, it's wonderful. I'm testifying this morning on the Bank of America loan problem that the Hawaiians have been having. I'm very concerned, especially after hearing testimony today, that perhaps the Committee Members should consider relieving Special Counsel of their responsibility to represent everyone that is involved with this issue to...and actual look into either supporting the attorneys that Brian Maka'awa'awa has hired this morning to file their lawsuit. I know they haven't been hired this morning, but look in supporting that lawsuit, or look into funding other Special Counsel that has the availability and the willingness to work on this issue, even if it means going offshore to find those attorneys. I'm just concerned this problem is not...the Hawaiians are not the only one that have experienced this kind of discrimination from the Bank of America, and perhaps there are other legal firms out there that have had actual experience with this, and are way ahead in the game as far as filing lawsuits against Bank of America for discrimination. That's it for me. Thank you.

CHAIR MOLINA: Okay, thank you very much for your testimony, Barbara. Members, any need to clarify Ms. Barry's testimony? Seeing none. Mahalo for your testimony.

MS. BARRY: Mahalo.

CHAIR MOLINA: Okay, Ms. Sunderland, please continue with announcing our next testifiers.

MS. SUNDERLAND: The next testifier we have up is Bruce Jacobs, to be followed by Makayla Wilks Kline.

CHAIR MOLINA: Okay, good morning, Mr. Jacobs.

MR. JACOBS: Good morning, Chair Molina. Nice to see everyone again. Thank you for having me back. So I just...I wanted to give testimony about where we are now. It's been a very, very long journey. We, this morning, filed a historic lawsuit on behalf of Na Po'e Kokua. We are going to hold Bank of America accountable for the \$150 million commitment, plus trouble damages under the Federal RICO statute. We're also suing under the Ku Klux Klan Act of 1871 because we believe that they have deprived the Native Hawaiians of their property rights, these...the commitment under color of law. It has been a pleasure and an honor to work with Ian Chan Hodges, and Shay Chan Hodges, and Brandon Maka'awa'awa, I'm very thankful they put their trust in us. I think we put together a massive lawsuit. This is the first of three of a series that we're

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going to be filing. We're also going to be bringing the Hawaiian commitment, the forms and foreclosures issues up. Everything that we needed to do has been done now, and I just want to make sure it's clear that what I think is the most amazing part of this new lawsuit now is that we have been able to identify a former Bank of America executive who came forward and gave us a sworn affidavit that said what we have always known, but now we have it in writing from the horse's mouth, that there was a commitment, and they didn't honor it. And she specifically talked about the lawsuit that was filed shortly after you voted to bring in Special Counsel. Her affidavit says that the lawsuit was laced with truth, but polluted with lies, and gives us ten pages of why that's so. So I just want to thank the Council for their support through all of this. You know, I will say that we tried many, many times to work with Corporation Counsel and Special Counsel, and we were never...that they never seemed to want to work with us. But we did the work. We got it filed. The fight is on, and we would certainly appreciate any assistance that the Council would like to bring. There's still plenty of fighting left to be done, and plenty of work that we could, you know, use support for.

CHAIR MOLINA: Okay. Thank you very much for your testimony, Mr. Jacobs. Members, questions for Mr. Jacobs? Seeing none. Thank you very much for your testimony, Mr. Jacobs.

MR. JACOBS: . . .*(inaudible)*. . .

CHAIR MOLINA: Ms. Sunderland, please continue with announcing our next testifiers.

MS. SUNDERLAND: Chair, the next testifier we have listed is Faith Chase, to be followed by Margery.

CHAIR MOLINA: Good morning, Ms. Chase.

MS. CHASE: Good morning, Chair Molina. Good morning, Committee Members. I just want to...I trust that you all understand that this Bank of America issue is a huge part of the housing crisis and the homeless problem that we have today. I don't recall where everybody's global positioning was, maybe some people weren't even on Maui that are now representing, you know, us on the Council. But just let me remind you what the early warriors had to do to push for this truth before smartphones. I don't know if they were under the names or the organizations that they've had to create today, but there was a bank board meeting on O'ahu, and it was a public meeting for shareholders, and they tried to lock them out. One of the warriors had to put his foot in the door to persist to see what was going on in that meeting, and somehow they were able to hustle the news. This was before smartphones and Instagram and instacrap [*sic*] and all that stuff. It was amazing that those forerunners did what they did to protect so many people. And while I appreciate Barbara Barry's testimony, it's not just Hawaiians we're talking about, it's Filipinos, it's all the marginalized, it's people of color, I am so embarrassed. I actually just came to scour the agenda, and I'm blown away that this is still...four years later, what's going on with Corporate [*sic*] Counsel? I'm just blown away. I'm so embarrassed.

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And to think that after all...sorry, obviously I'm not taking the calm stance as my previous testifiers, but all the issues we've had in Corporate [sic] Counsel, you would think that the attitudes would become more sustainable. I'm so blown away at this. I don't think that you need to keep them as resources. I don't think that this is interesting. I don't think that oh, we should keep track of this. You guys need to create a special task force and see this through. This is so shame and...what if nobody does anything in Maui County, and these two other organizations have to go global to go get assistance? That's just going to be so shame that we're not protecting our home turf. Anyway, I'm so sorry, I didn't expect this to be on the agenda. I appreciate the testifiers before me. I appreciate the work. I'm so sorry that the pro bono lawyers have to work so hard in...because the lack of performance on our part. Just please, do something creative. Can you guys create your own TIG? Can you guys be...create a task force? This is so old already. This is the early '90s we started this. I'm sorry. I don't know anything else that's on the agenda, I just got blown away by the testifiers before me. Thank you.

CHAIR MOLINA: Okay. Thank you very much for your testimony, Ms. Chase, and we appreciate your passion. Members, any need for clarification regarding Ms. Chase's testimony? Seeing none. Thank you. Mahalo, Faith. Okay, Ms. Sunderland, please continue with announcing our next testifiers.

MS. SUNDERLAND: Chair, the final testifier we have listed today is Margery, and we could return to Malia, who we had called earlier and is still on the line.

CHAIR MOLINA: Okay. Testifier Margery, if you are there, we'd like to hear from you now.

MS. BRONSTER: Hold on, I'm sorry. I was just trying to get my technical situation organized here.

CHAIR MOLINA: Okay. Ms. Bronster, would you like to wait until we get to the item and we can give you the old...a longer opportunity to...

MS. BRONSTER: Yes. Yes, that's what I would prefer. And as I've told you in the past, I'm concerned about attorney-client privilege, so I would think that going into executive session would be appropriate.

CHAIR MOLINA: Okay. All right. Thank you, Ms. Bronster. So, Members, once we get to the item, we'll give Ms. Bronster a longer opportunity to share her thoughts on this matter. Member King?

COUNCILMEMBER KING: Thank you, Chair. If there is no objections, could we also ask Attorney Bruce Jacobs to be a resource.

CHAIR MOLINA: Okay, Members any objections to having Mr. Jacobs as a resource?

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COUNCILMEMBER KAMA: No objections, Chair.

COUNCILMEMBER KING: If he's willing to stay.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay, so ordered. So Mr. Jacobs, if you're listening in, we'd like to have you sit in for the item, as well as be a resource for questions from the Members.

MR. JACOBS: Absolutely.

CHAIR MOLINA: Okay. All right. Thank you, Mr. Jacobs. Okay, so we'll move on from Ms. Bronster, and then we'll find out who our next testifier is, if we have any. Ms. Sunderland, please continue.

MS. SUNDERLAND: The last testifier we have listed is Malia, who we called earlier, we'll be returning to. We have no other testifiers listed after that.

CHAIR MOLINA: Okay. Malia, if you are there, please let us know if you would like to testify or not. I see you on the screen there, Malia. I know it can't be my daughter. I have a daughter named Malia, but she's in Colorado right now. So, Malia, going once, twice, three times. Okay. We shall move on from Malia. All right, Members we'll wait a few seconds to see if there is anyone else in the public who would like to testify. Ms. Sunderland, is there any indication of anyone out there in the public who would like to testify on our agenda items this morning?

MS. SUNDERLAND: Looks like we did have one testifier sign up, Lisa Kahuhu.

CHAIR MOLINA: Okay, Lisa Kahuhu, if you're there, this is your opportunity to testify. Lisa Kahuhu, if you're there this is your opportunity to testify.

COUNCILMEMBER PALTIN: The Department of Public Works, Chair.

CHAIR MOLINA: I'm sorry, Member Paltin?

COUNCILMEMBER PALTIN: I think she's with the Department of Public Works.

CHAIR MOLINA: If this is the same Lisa Kahuhu I know, I believe she is with Corporation Counsel's office.

COUNCILMEMBER PALTIN: Oh, Corp. Counsel, I mean. Sorry.

CHAIR MOLINA: Yeah, okay. I just saw she indicated to us that she will not be testifying on our agenda items. I saw that pop up in chat. So okay. Ms. Sunderland, anyone else has signed up for testimony this morning.

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MS. SUNDERLAND: Chair, no further testifiers signed up.

. . . END OF PUBLIC TESTIMONY . . .

CHAIR MOLINA: Okay. So, Members, if there are no objections, the Chair will close public testimony on our agenda items today, and we'll accept any written testimony. Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: All right. So ordered. Very good, Members.

**GREAT-19 BANK OF AMERICA'S COMMITMENT TO PROVIDE MORTGAGES FOR
NATIVE HAWAIIANS ON HAWAIIAN HOME LANDS (CC 19-107,
CC 19-108, CC 19-337, CC 19-338, CR 21-18)**

CHAIR MOLINA: Okay, let's get right down to business here and go to our first agenda item, which is GREAT-19, Bank of America's Commitment to Provide Mortgages for Native Hawaiians on Hawaiian Home Lands. Back on July 20th, 2020, the Council adopted Resolution 20-97, which authorized the employment of Special Counsel Bronster Fujichaku Robbins, a law corporation, to represent the County in litigation matters against Bank of America and other mortgage lenders for failure to fulfill loan commitments, fraudulent foreclosures and other similar unlawful conduct. On December 28, 2020, in the case of *Bank of America N.A. v. County of Maui, et al.*, Civil Case No. 1:20-CV-00310 filed in response to Resolution 20-97, the United States District Court for the District of Hawai'i dismissed Bank of America's lawsuit seeking to prevent the County from filing legal claims. After receiving an update on the case during a previous GREAT Committee meeting, it was explained that no legal claims had been filed on the County's behalf under Resolution 20-97. So on August 24th, 2021, the Council adopted Resolution 21-133, entitled "URGING THE DEPARTMENT OF THE CORPORATION COUNSEL TO WORK WITH SPECIAL COUNSEL TO FILE LEGAL CLAIMS ON THE COUNTY'S BEHALF UNDER RESOLUTION 20-97." Today we'll receive an update from the Department of Corporation Counsel and Special Counsel Bronster Fujichaku Robbins. Let's start first with Corporation Counsel.

MS. LUTEY: Thank you, Chair. After seeing Mr. Maka'awa'awa's testimony, I have forwarded you some of the correspondence I have had with him, so that all of the Members can see publicly that I have been in correspondence with him. But in terms of updates on this litigation matter, I'm going have to defer to Ms. Bronster.

CHAIR MOLINA: So, Ms. Lutey, I know you just forwarded the...I guess the communications. Can you give us...summarize that, dates of when these correspondences were made with

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Mr. Maka'awa'awa, or . . . *(inaudible)*. . .

MS. LUTEY: We have had a number of...I'm sorry. I'm sorry, Chair, if I cut you off. We've had a number of emails over time, and when he has emailed me, I have responded. That is my typical way of handling matters like this. It's not to ignore people, but instead, to respond. And for the most part, he was asking for updates and so forth where this litigation was. And when I would receive an email from him, I would contact the Bronster firm, and then get back to him. Our last correspondence that I located while you were speaking--and it's not an extensive search, I just did a quick one--was in February, just letting him know that the Bronster's firm was working on the complaint, and that I would get back to him. At some point during this, I also had an exchange with Mr. Jacobs. I'm not sure if it's on that list of emails that I sent you, but if it is not, I will provide it. Members of OCS were also copied on those correspondence. I'm not sure if the Councilmembers were as well, but to make sure that you see that they were not ignored, I will provide what I have.

CHAIR MOLINA: Okay. Thank you very much, Ms. Lutey. All right, Members, the floor is open for...well, Members, let's do this. Let's hear from Ms. Bronster, and then I'll open the floor up for questions for either Ms. Lutey or Ms. Bronster. So, good morning, Ms. Bronster, please go ahead and provide us the update as it relates to this matter.

MS. BRONSTER: Good morning, Chair and Councilmembers. It has been a while since we've last spoken, I understand that. One of the things that we were doing was we were reaching out to a number of different interested parties, or interested groups, that we thought might assist in the...in making the potential lawsuit more fruitful. Unfortunately, as a lot of people know, the State had determined not to participate, and that was something that we were working on, trying to figure out whether there was an appropriate member of the...of Government, other than the County, that might work with us. And the reason for that was that there are different types of claims that might be available to different entities. Unfortunately, the Attorney General changed, and the new Attorney General was someone who we tried to reach out to. In addition, we decided to try and get facts about specific information as to whether or not the problems of fraudulent foreclosures or specific applicants who might have been turned down for loans, and we have reached out to a number of different entities, including some of the testifiers and people...including some of the testifiers today to determine whether or not they were aware of any specific instances that have occurred in the recent years, not dating back to the 28 years ago, or decades ago when these problems arose. And as a result of our updates and research, we have some thoughts on what potential steps there are to go forward, but at this point, we have not completed a complaint, and it is something that I would like to discuss in executive session. And I also wanted to...there are two other things that I would like to say publicly. Number one, I believe that the Corp. Counsel has been extremely diligent in following up on this. I believe that the County Council has put faith in us for doing the legwork, which we have attempted to do. I believe that Moana Lutey and her people should not be blamed for any delays in all of this. I think that she has really pushed us, and I think that she is really interested

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in trying to get justice, as I think all of us are. We have been the lead in trying to determine the potential avenues for seeking that justice, and we do have some thoughts and issues that we have found, but I would certainly not put at place any blame on Moana Lutey or her office. Further, I believe that it is appropriate to say that, as requested by the Council, we have worked with Mr. Maka'awa'awa and his group, and he is correct that he has reached out to us, but when he has reached out to us, we have responded. And we did ask for significant information when we spoke to Brian Jacobs. He told us that he had a lot of information. We asked for that information. And after the last County Council request to us to work with them, we said we'd like the information. We did do some research on some of the legal issues that we had discussed with him. And as I said, factually, we asked for information, and we did not receive it. I think it's really wonderful that...what he shared about getting the Bank of America executive to come forward. We had not been informed of that, and...nor were we informed of the complaint that he had filed. The first I learned that there might be the filing of a complaint is when I got an inquiry from the press in the last couple of days.

CHAIR MOLINA: Okay. Thank you very much for your opening statements, Ms. Bronster. We have a question for you from Member Kama.

COUNCILMEMBER KAMA: Thank you, Chair.

CHAIR MOLINA: Or Corporation Counsel...whomever, yeah. And also by the way, Members, we do have our resource personnel as well, Mr. Jacobs and Ms. Chan Hodges for your perusal. Go ahead, Member Kama.

COUNCILMEMBER KAMA: Thank you, Chair.

CHAIR MOLINA: And my apologies, Members, I'm going to have put everybody on a clock here with Q and A because we do have some other litigation matters to deal with. So Members, two minutes, and if you need a follow up, once everybody has had a chance, Chair will give you an opportunity. Go ahead, Ms. Kama.

COUNCILMEMBER KAMA: Okay. Thank you, Chair. So my question is for Ms. Bronster. But I do want to thank both Ms. Lutey and Ms. Bronster for the work that they've put in. But my question...to me, it seems like after listening to the testifiers this morning, and listening to what Ms. Lutey and Ms. Bronster has said, Ms. Bronster, it seems like the issue that...in my mind that I'm trying to ascertain is that we have this huge issue before us, and the issue of you all not communicating and not getting the information, not...and in my mind, you all got to sit down together...and maybe it's one of us Councilmembers needs to sit with you just to help you all figure out. Because in my head, it's very clear to me, all the information that is needful for you to know. So I know that what is in my head is what in Brandon's head, and I'm not sure if you've got that all, but I also think that from a perspective, from a Native Hawaiian, that you all need to kind of like pity yourselves closer to each other. So why hasn't...Ms. Bronster, why haven't you all been able to sit down together and just hash out everything that needs

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to be hashed out so that we don't need to be here today? Why hasn't that happened? And that's my question. Thank you, Chair.

MS. BRONSTER: I think normally, whenever you're talking about communications, communications are a two-way street. I know that I have been busy, and I will admit that. We have tried to be accommodating within the levels that we could based on what we believe to be very serious attorney-client privilege issues, and I thought actually that we were waiting on certain information. I should have been more forthcoming in reaching out to try and follow up on that information, and...but I think, again, this is a two-way street. I certainly am not saying that it was only, you know, coming from one direction...one fault. The other entities, the State entities that I had referred to briefly earlier, I think, have been somewhat hesitant to participate. I think that part of that may be a political issue, and I'm not going to comment further on some of those things. But I think that it sounds like Bruce Jacobs has filed something. I haven't seen it. So again, it would be an interesting issue to have seen it so that we could inform the County as to whether or not some of those claims are claims that the County would be involved with. Because, as you know, each party may have different standing issues, and I do not know what Mr. Jacobs has done in his complaint with respect to those.

CHAIR MOLINA: Okay. Thank you, Ms. Bronster, I think you answered Member Kama's question quite well. Before I move on to the next Member, can you provide us, I guess, copies of the communication exchanges that you had with either Mr. Jacobs and also Mr. Maka'awa'awa. The same request that I made of Corporation Counsel, they've transmitted their, I guess, evidence of attempts to communicate to the Committee. So if we could ask the same from you, we would appreciate that.

MS. BRONSTER: Certainly, certainly.

CHAIR MOLINA: Okay. All right, thank you Ms. Bronster. Okay, I see...was it Member King, followed by Member Paltin.

COUNCILMEMBER KING: Thank you, Chair. I was just looking at the Resolution 21-133, we did ask Ms. Bronster to communicate with Mr. Jacobs, and I'm disappointed that that was a one-way street, that it was only in response on part of Corp. Counsel and Special Counsel, and there was no reaching out. I don't see in the Resolution any request or mandate for Special Counsel to reach out to the State, so I'm wondering why you spent time, Ms. Bronster, reaching out to the State of Hawai'i, and not reaching out to Mr. Bruce Jacobs, who is actually named in this Resolution. If you could just give me a brief answer and...

MS. BRONSTER: Sure.

COUNCILMEMBER KING: Go ahead.

MS. BRONSTER: I'm sorry. As I mentioned, when we did talk to Mr. Jacobs and

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Mr. Maka'awa'awa...

COUNCILMEMBER KING: Ms. Bronster, I don't have much time, so I just want to clarify. I'm just asking you, I know that you were reached by them, but why did you not reach out immediately after this Resolution was passed?

MS. BRONSTER: I believe that they reached out, and we immediately did have a conference call--I believe it was by Zoom--where we did talk about some action items, and we did follow up on those action items, so...and we were waiting for additional ones. With respect to reaching out to the State, I believe that we discussed some of those issues in executive session in a previous time, and I would be happy to elaborate on a confidential basis.

COUNCILMEMBER KING: Okay, I don't...I recall that the State had said that they wouldn't join the lawsuit, so I thought that had been settled. But I'd like to...Chair, if I could hear from Mr. Maka'awa'awa and Mr. Jacobs, if there's time, in response to, you know, whether they reached out and whether they had those meetings.

CHAIR MOLINA: Okay, Member King, what we'll do, we'll come back to them and so that way they can, you know, be prepared with their responses. In the meantime, I'd like to recognize one of your other colleagues for questions at the moment. Member Paltin, and after Member Paltin is done, then we'll go back to Mr. Jacobs and Mr. Maka'awa'awa to provide their thoughts.

COUNCILMEMBER KING: So that's my two minutes?

CHAIR MOLINA: Yeah, I know it seems like a pretty long two minutes. So we're not hearing that bell. So, Staff, if you could put up the volume on the bell. Is that the bell? Oh, my goodness, it sounds like a ship's...cruise ship coming into Maui. I don't know.

COUNCILMEMBER KING: Sorry, that was a motorcycle going by my house.

CHAIR MOLINA: Oh, okay. I thought that was our warning bell, my goodness. Okay, let's go to Member Paltin. Go ahead.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Bronster and Ms. Lutey. I have the same question for both of you, and I'd like to ask it in open session, regardless of Na Po'e Kokua's lawsuit. Do you recommend the County of Maui filing a lawsuit on this matter because of the broken promise? Yes or no answer, because I've got two minutes.

MS. BRONSTER: Well, as I think I've mentioned, I think there are some issues relating to that, and our current recommendation, based on what we currently have, is not to do so at this time. And I would be happy to elaborate, but I have been instructed by Corp. Counsel and by my own beliefs that I should not share more information about that in

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public session.

COUNCILMEMBER PALTIN: So basically a no at this time is the yes if no answer?

MS. BRONSTER: Yes.

COUNCILMEMBER PALTIN: And Ms. Lutey, same question?

MS. LUTEY: Thank you, Member Paltin. My response is also no.

COUNCILMEMBER PALTIN: Okay. All right. Thank you. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Paltin. Okay, let's go back to Mr. Jacobs and Mr. Maka'awa'awa to provide a brief response to Ms. Bronster's responses as it relates to communication. And right after their responses, we'll go back to the Members. We'll go to Vice-Chair Rawlins-Fernandez upon the completion of their responses. We'll start first with Mr. Maka'awa'awa.

MR. MAKAWA'AWA: Aloha. I recall a Zoom meeting with Ms. Bronster, but that was before the hearing. There was no Zoom meeting after the hearing, and there was no communication after. That, again, I didn't initiate myself, and that, to me, seems like a one-way street if it doesn't seem like it to you folks. I am asking for assistance. I am asking for collaboration. And the response that I got was just, you know, basically checking that they responded to me, which Moana Lutey has been doing. And I can kind of see and understand her point of view and so, you know, I'm not necessarily blaming anybody, I just...you know, when you try and work with somebody, it's like...it has to be collaborative. Like you can't just ask for all of our work that we've compiled together because like you guys, you know, there's a attorney-private, you know, privilege. The information we do have is very sensitive. If Bank of America would have heard of any of this stuff, you know, from anybody...you know, we're still trying to figure out if we can work together. That hasn't been established yet because there's no trust there. Because we've been the one initiating the conversations, and we've been the one initiating...and trying to help, and we have been very helpful. And, you know, it didn't seem like that from our point of view. So that's all I have to say about that.

CHAIR MOLINA: Okay. Thank you, Mr. Maka'awa'awa. Okay, let's go to Mr. Jacobs, if you could provide a response to Member King's question.

MR. JACOBS: Sure. So, what I'll say is this. Back in March of 2021, we were trying to work with them and help them. And we were told there's an attorney-client privilege issue, we're not going to help, we're not going to work with you. So then in August of 2021, when the Resolution passed, we called and we had the same discussion. How is there still a privilege issue if the Council voted that we should work together? There should be no privilege issue. And if you have no privilege issue, go without it. Because I was offering, if you look at the records, you'll see I was offering to, you know, look at their

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draft complaint, to analyze the issues, there's nobody besides Ian Chan Hodges, Brandon, and I that have spent more time plotting and scheming about how to take on Bank of America, and welcomed anything that they could offer. And they wouldn't share anything. And then for anyone to tell me, oh, give over all of the work that you've been working on for all these years, without any guarantee that we're even on the same team, was just something I...you know, when they were done with their attorney-client privilege issues, we were ready to work with them, but I think that was always just a pretext to make it so that they wouldn't help us. Because they...fighting Bank of America is not something that you can do with a weak stomach. You have to be committed to this fight. You know, you're taking on the biggest, most powerful in the nation, for sure. And it just seemed to me like there was never a moment where anyone that we were speaking to from Corporation Counsel or from Ms. Bronster's office had any real intention of sitting down with us, going through the evidence we had, and developing the strategies we need to do it, which is why we just did it on our own. And we did not inform Ms. Bronster about anything that we were doing because we did not believe that she was on our team. And that was based on the reactions we got from our repeated requests to work with her and bring her into our team. Because we were supposed to work together to hold Bank of America accountable for suing the County of Maui in a frivolous lawsuit . . . *(timer sounds)*. . . and for doing everything else that they've done.

CHAIR MOLINA: Okay. Thank you very much for your responses, Mr. Jacobs. Okay, let's go now to Vice-Chair Rawlins-Fernandez, followed by Councilmember Sinenci for questions related to...questions for our resource personnel. Go ahead, Vice-Chair.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Bronster. So the Council approved the contract to hire you as Special Counsel because after the first contract of determining whether the County should file a lawsuit or not, you came to the Council saying...recommending that we do. And so in saving time and money on the research that you already did, and in that determination of us moving forward, we approved the contract. In your response to Member Paltin's question of whether we should file a lawsuit, your response is no, not at this time. At what point did you make that determination of no, which is different than the recommendation that you gave this Council?

MS. BRONSTER: I think that is a good question. And what I will tell you is that when we first gave you the recommendation, there was a lot of...more discussion that we had...that we had in executive session as to some of the issues and concerns and opportunities that we did not want to share with Bank of America at that time. Subsequently, as you know, the County got sued by Bank of America. In the lawsuit that they filed, they outlined many reasons why they believed that they should not...many reasons that they believed that the lawsuit was not tenable. And we looked into a lot of those issues, and we realized that they were wrong...Bank of America was wrong on many of them. But it did lead us to do additional research, where we found that there were . . . *(timer sounds)*. . . some factual issues that we were looking for, which I've alluding to earlier,

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and I'd be happy to share more in executive session.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I wanted to ask Ms. Lutey the same question about at what point did she come to that decision of...determination that we should not move forward with this lawsuit. Aloha, Ms. Lutey.

CHAIR MOLINA: Ms. Lutey, go ahead if you could give a brief explanation, and then we'll go to Member Sinenci for Q and A. Go ahead, Ms. Lutey.

MS. LUTEY: Thank you, Chair. I don't know the exact date, but there was...and I'm concerned getting into an attorney-client privilege here, but we did advise this body of our concerns over litigation back before this all started.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Lutey. And at what point would it have been appropriate to inform the Council of this decision to not move forward with the lawsuit? Either you or Ms. Bronster...

MS. LUTEY: I'm sorry, I didn't mean to cut you off.

VICE-CHAIR RAWLINS-FERNANDEZ: It's okay.

MS. LUTEY: That was our advice before any of this ever began. And so, you know, there was an attorney-client communication provided to this body...if this started in 2020, then it would have been before the start of that. I can find it and circulate that again for Members.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Lutey. I'll yield. Mahalo for that flexibility, Chair. But I'll follow up with Ms. Bronster on that same question. Mahalo, Chair.

CHAIR MOLINA: Okay. Mahalo, Vice-Chair. Let's go to Mr. Sinenci, questions for our resource personnel. Go ahead.

COUNCILMEMBER SINENCI: Mahalo, Chair, and mahalo, Mr. Maka'awa'awa, for joining us this morning. And understand that the...I guess a collective litigation against Bank of America would seem more...I guess, more substantial. But I just...you know, with all of this back and forth between our lawyers and the hired...our hired lawyers, I mean, do you guys feel that Na Po'e Kokua should just...should go on its own, or would you want to continue trying to work with us? You know, and I get it that we, as a Council, had opened it up to include you guys. What are your thoughts as far as moving forward successfully?

MR. MAKAWA'AWA: As far as moving forward, we have moved forward, right, and we filed the lawsuits that was supposed to be filed by Special Counsel. And, you know, I believe that there's a partnership to be made between us and the Council that is still there. I think we might have an issue with the Special Counsel that...you know, that I don't

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know if we can sort that out. But we're ready to move forward if you guys are also in line with that, you know. And what we really need right now is support, you know, we need like full-on support because we just put ourselves out there on the line. And you guys seen what happened when the Resolution was just passed to hire Special Counsel. Bank of America turned around and sued the County. And now the County can defend themselves, but we're a nonprofit, and all of us are fighting pro bono and, you know, we're...but we're in this until the end, and I believe there's a place . . . *(timer sounds)*. . . for some sort of partnership there, because you all believed in us. So I'm open to that. Mahalo.

COUNCILMEMBER SINENCI: Okay. Thank you for that. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Sinenci. Members, any other questions for Ms. Bronster, Corporation Counsel, Mr. Maka'awa'awa, or Mr. Jacobs? Okay, Chair just got...has...okay, Member Sugimura, continuing on for this first opportunity. Go ahead, Member Sugimura.

COUNCILMEMBER SUGIMURA: Yeah, I believe when this first started, there was the Filipino community also involved. And I wonder what happened to them in this discussion, as it seems like we forgot about the Filipinos, and we are focusing on the Hawaiian aspect of it. And I wonder if Moana Lutey or Ms. Bronster, Mr. Maka'awa'awa, can tell us because I think that we're thinking about a portion of the entire story. Thank you.

MS. BRONSTER: Is that to me? Okay, basically our original charge was to look more broadly than Hawaiians. And what we have found is that, you know, some of the concerns that started and caused the initial commitment to be made was broader than simply Native Hawaiians. So when we started doing research on both sets of claims, as well as the factual inquiries, we were looking at a broader issue. Because when you look at the homelessness, when you look at the people who cannot afford to buy and who are not able to get mortgage approvals, it is, sadly, a broad-based problem. So our researchers were broader than just Native Hawaiians.

COUNCILMEMBER SUGIMURA: And have we then dropped off the Filipino community at this point...is that what...I just want to...that's my question. But I do want to say I would like us to go into executive session because I think we're like talking around many issues. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Sugimura.

MS. BRONSTER: And I appreciate that.

MR. MAKAWA'AWA: I can answer this.

CHAIR MOLINA: Go ahead, Mr. Maka'awa'awa.

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MR. MAKAWA'AWA: The Filipino community has been compensated in the '90s. That commitment was fulfilled by Bank of America. That is why we're concentrating on the Hawaiians today because that fulfillment did not happen yet, you know. And I understand the redlining is affecting everyone here, but this issue is for the commitment that hasn't been fulfilled. The Filipino commitment was fulfilled. The Hawaiian commitment hasn't been fulfilled, and that's why we focused on the Hawaiian commitment.

CHAIR MOLINA: Okay. Thank you Mr. Makawa'awa. Member Kama, I believe you went earlier, yeah, for your first turn...after Ms. Bronster's opening statements?

COUNCILMEMBER KAMA: Yes, I did, Chair. Yes, I did.

CHAIR MOLINA: I'll give you an opportunity the second round. In the meantime, just to recognize any Members who have not had a chance to ask questions in the first round. So with that said, I see Member Johnson, you have a question, go ahead.

COUNCILMEMBER KAMA: Thank you, Chair.

COUNCILMEMBER JOHNSON: Thank you, Chair. So this question is for Ms. Bronster. Why didn't you immediately tell the Council, as your clients, that your recommendation is to not sue Bank of Hawai'i [sic].

MS. BRONSTER: I apologize. I just got lost for about two minutes. So if there is a question pending to me, I apologize, I did not hear it.

COUNCILMEMBER JOHNSON: Okay, let me restate it, Ms. Bronster, I apologize. Why didn't you immediately inform the Council, who is your client, that you didn't want to sue Bank of America?

MS. BRONSTER: As I mentioned previously, there was certain information that we were still hoping to obtain. And so that's when I said no at this point, there were still certain things that I was trying to get a handle on before I made a final, final determination.

COUNCILMEMBER JOHNSON: So you...wouldn't that be like...wouldn't we be a part of that decision making, or you were just waiting...I mean you already told us no, right, I just...

MS. BRONSTER: I said no, not at this time, because there was certain information that I was still seeking. So...and I apologize, this is something that I was planning on getting to sit down with the Corp. Counsel to explain the impediments that we've had in getting that additional information to make a final decision. And one of the issues that I think is really important is that I have taken on a lot of different entities, people, and I'm certainly not afraid of a fight. There was always a concern about the cost of the fight, and the potential recovery, and that's something that is . . . (timer sounds). . . an issue to be discussed with the client.

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COUNCILMEMBER JOHNSON: Did you make that decision today? When did you make the decision?

MS. BRONSTER: No, no. As I said, it's ongoing and, you know, to say...when I said no, not at this point, it was not the final, final concern, it was something...

COUNCILMEMBER JOHNSON: Okay. Thank you, my time is up. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Johnson. All right. Anyone else who has not asked a question for this first round? Okay, seeing no other request to us...or no other request from other Members who have not asked a question yet. Let's go to, I guess for a follow-up question, Vice-Chair Rawlins-Fernandez, followed by Councilmember Kama. Go ahead, Vice-Chair.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I want to help refocus us on what the County's claim for relief is, which is the reduction of property taxes that we didn't get because of Bank of America's failure to fulfill its order to Native Hawaiians after illegally redlining. So I just want to refocus us because that impacts all of the County, not any specific ethnic groups. So I just...that's our claim for relief. The reason that we urged our Special Counsel to work with No Po'e Kokua is because our lawsuit is contingent upon the same question as Na Po'e Kokua's lawsuit, which is whether that letter from Mr. Henderson, as the Deputy Chair of DHHL, was sufficient in releasing Bank of America from its commitment to Native Hawaiians. So that is the lawsuit, and that is why we urge Ms. Bronster to work with Mr. Jacobs. So one, why didn't you work with Mr. Jacobs in contracting him as an attorney, that attorney-client privilege could extend as a subcontractor to you folks, Ms. Bronster?

MS. BRONSTER: The answer to that question is something that I would...I believe is appropriate to discuss in executive session.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. And my next question is, the last time we met, I asked if you would file for frivolous claims or frivolous lawsuit under the Rules of Civil Procedure, and the answer that I received was yes. Why was that not filed?

MS. BRONSTER: Again, I would prefer to defer this to executive session.

VICE-CHAIR RAWLINS-FERNANDEZ: I asked you in open session, and you responded yes in open session.

MS. BRONSTER: I understand that. And as you know, we did not do so, and the reason for that is something I would like to discuss in executive session. I'm afraid I'm not authorized to waive the attorney-client privilege, and I have been warned repeatedly not to do so inadvertently . . . *(timer sounds)*. . . and I'd be happy to answer the question in executive session.

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Mahalo, Vice-Chair. Let's go to Member Kama for a second round of questioning. Go ahead.

COUNCILMEMBER KAMA: Thank you, Chair. I just wanted to ask this question of Mr. Maka'awa'awa. So in coming to us today, what is your recommendation?

MR. MAKAWA'AWA: My recommendation is that we dismiss Special Counsel, and help our lawyers that have brought this forward already, and have gotten into the fight already, to support them financially, you know. And I think that's it. Because right now, we're wasting time that we don't have. My board is average age 60, you know. I want to see something happen while they're still alive. They was young and spry when we all started this and, you know, unfortunately, we live in worse conditions today because of this failed commitment. And I'd just like to address Councilmember Yuki, you know, we did not forget about the Filipino community, even though the commitment that they had was fulfilled through Bank of America. We are filing lawsuits to also help the Filipino community and all communities of Hawai'i. So this is not just a Hawaiian issue, this is for the entire State and everybody was affected by this injustice. Mahalo.

COUNCILMEMBER KAMA: Thank you. Thank you, Chair.

CHAIR MOLINA: Thank you very much, Member Kama. Second round request. Member King, followed by Member Sugimura.

COUNCILMEMBER KING: Thank you, Chair. Can I ask a question of our OCS attorneys?

CHAIR MOLINA: Proceed.

COUNCILMEMBER KING: Mr. Raatz, if you're on, you know, we just heard that we couldn't get an answer to our Committee Vice-Chair's question because of attorney-client privileges, but aren't we the client? And if we're asking for an answer in open session, shouldn't that require a response in open session? It looks like Mr. Forrest is on.

CHAIR MOLINA: Mr. Forrest, go ahead.

COUNCILMEMBER KING: Oh, we can't hear you.

CHAIR MOLINA: Mr. Forrest, it sounds like you have some audio issues there. If you don't mind, maybe turning off your video might help.

MR. FORREST: Can you hear me?

COUNCILMEMBER KING: Okay. Yeah, now we can hear you.

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MR. FORREST: Okay. I would have to defer to Corporation Counsel Lutey since it's a litigation case. I think the answer is that the client is the County of Maui. But I would like you to ask that question to Ms. Lutey.

COUNCILMEMBER KING: Okay. Ms. Lutey, are we the client? I mean we were the ones that authorized the lawsuit and (*audio interference*). So is the Council (*audio interference*)

MS. LUTEY: I'm sorry, Member King. I didn't hear all of your question, but if the question is whether you're the client, the answer is yes. But an individual Member can't, by him or herself, waive that privilege. I believe the appropriate process would be to vote on whether or not you're willing to waive it. And before you get there, you may want to consider what the ramifications of that may be.

COUNCILMEMBER KING: Of having a response in open session?

MS. LUTEY: Right. You have seen how aggressive Bank of America has been just after Council passed its Resolution. So if you are going to be having these discussions in open session, really what you're doing is providing them an opportunity to see what it is that the strategy may be here, and in addition, Ms. Bronster's thoughts on that, which could give them a leg up on future litigation.

COUNCILMEMBER KING: Okay. I appreciate that response, Moana. Okay, thank you, Chair. You know, I kind of feel like we're asking, in open session, why our mandate was not being followed, you know, when we put it into resolution. And the whole background, I thought, was a very good point that Vice-Chair Rawlins-Fernandez made, that the reason we went ahead with this was because we were told that there was grounds for a lawsuit. And so, I'm willing to wait until executive session, but I also want to call for having, you know, Attorney Bruce Jacobs there, because I'd like to be able to get the whole picture in executive session, and not just kind of one side of the story that we seem to be getting. And I thank you for that.

CHAIR MOLINA: Okay, thank you, Member King. Member Kama.

COUNCILMEMBER KAMA: I just want to be clear, Chair, that what I understood the conversation between Ms. Lutey and Member King was that if we decide that we want to hear the responses in open session, that we might have to consider that, and might have to go and talk to our attorneys about what that impact might be, that meant...so did that mean that we might have to go into closed session just to talk...or executive session, just to talk about whether or not we want to have them respond in open session? That's what I'm trying to figure out, Chair.

CHAIR MOLINA: Well, you know, it's up to this body if we want to go into executive session. Six Members have to approve this. Now, of course, another option is you can, on your own, contact Corporation Counsel to find out why there's hesitancy with regards to

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pursuing a lawsuit. And quite frankly, on a personal side, I'm really disturbed by what seems to be some communication issue, you know. I think a testifier made a great point that, you know, the housing crisis is number one right now.

COUNCILMEMBER KAMA: Yes.

CHAIR MOLINA: Think of how many people could have been in homes if we had resolved this sooner, but it is what it is. And Member Kama, I know you were part of the movement back in the '90s to address this situation, so I know you're especially passionate about this, and I appreciate that. But, you know, we have some options to consider. I don't know, Members, if you do want to pursue executive session today, but I do have some other litigation matters to consider. But I'm just...it boggles the mind as to why we've come to this point. It seemed like we had an opportunity, but for whatever reason now, you know, the answer seems to be no, and not pursue litigation. I'm just hoping that, you know, this Administration is committed to helping our people of color and take on this giant, Bank of America. I mean, it's...to be honest, I'm quite embarrassed that the other folks have taken the initiative to push forward. I think we, as Government, need to step in and do our part. But anyway...sorry, Member Kama, for my lamenting on this. Do you have anything else you'd like to say?

COUNCILMEMBER KAMA: No, Chair. Thank you so much.

CHAIR MOLINA: Before I ask the rest of the Members what we'd like to do here today. Okay. All right, Members, you've heard the Chair's comments as it relates to this matter. Now...okay, I'm sorry. Member Sinenci, go ahead.

COUNCILMEMBER SINENCI: Thank you, Chair. Just a quick question. It looks like we're slated for no legislative action for today's meeting, but is there...I guess my question is there...can we act on anything today?

CHAIR MOLINA: Well, we could consider...you know, a suggestion was made about should we retain our present Special Counsel or not. I mean, that's something that could be discussed, or redirect what we want our Special Counsel to do. I mean there's a number of options that we could consider.

COUNCILMEMBER SINENCI: All right. Thank you, Chair.

CHAIR MOLINA: All right. Okay, Members, with that said, what is the pleasure of this body? Is there a need to go into executive session to get a straight answer from both Ms. Bronster and Corporation Counsel? If we do consider executive session, I want to keep it very brief. Members, any comments? Member Sugimura.

COUNCILMEMBER SUGIMURA: I think I said earlier that I would like to hear, you know, the full story in executive session so that we can move forward and make a decision in the future. Thank you.

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CHAIR MOLINA: Okay. Thank you, Member Sugimura. Chair Lee.

COUNCILMEMBER LEE: Thank you, Chair. I, too, would prefer executive session, as we are simply getting all of this...all of the information piecemeal. So to get to the bottom of it, I would suggest executive session. Thank you.

CHAIR MOLINA: Okay. Thank you, Chair Lee. Member King.

COUNCILMEMBER KING: Thank you, Chair. As I said earlier, I would go into executive session, but I would insist that we bring in Mr. Jacobs with us and/or Mr. Maka'awa'awa because, you know, we passed a resolution requiring our Special Counsel to work with Mr. Jacobs because we trusted him, and we knew that he had more information. And I just feel that it would be...that it would be a one-sided conversation if we didn't allow him into the session. And I don't particularly really want to go into executive session if we don't have it...if we don't have him as a resource to ask for responses.

CHAIR MOLINA: Thank you, Member King. Anyone else? Thoughts and comments before I recognize Corporation Counsel. All right, Ms. Lutey. Oh, I'm sorry. Member Kama, then Ms. Lutey. Go ahead.

COUNCILMEMBER KAMA: Thank you, Chair. You know, I agree with Member King that if we're going to be open and honest, and we all have to be honest, and we all have to learn to trust each other. Because if we don't, then we might as well call it quits right now. But I'm open to going into an exec session if we are allowed to bring Mr. Maka'awa'awa and Mr. Jacobs. And therefore, if we needed a motion, Chair, I would certainly want to make that. Thank you.

CHAIR MOLINA: Okay. Thank you very much, Member Kama. All right, Members. Well, here's what the Chair is going to propose. Oh, I'm sorry...Ms. Lutey, before the Chair makes its proposal. Go ahead, Ms. Lutey.

MS. LUTEY: Thank you, Chair. I appreciate just a moment to comment quickly. An executive session is really for an opportunity for your legal counsel to provide information to the client. The client is this body. So if you were to bring in Mr. Maka'awa'awa or Bruce Jacobs, really, in essence, that's a waiver, and the body has not voted on that. So I just wanted to point that out to you.

CHAIR MOLINA: Okay. Thank you very much, Ms. Lutey. All right. Members, this is the Chair's recommendation. It seems like a good majority of you want executive session, and the Chair will respect that. But look at your calendars. I got some time-sensitive legal matters on the docket here today, and we do have a 1:30 APT meeting. Look at your calendars. I'd like to come back and...well, we'll deal first with Bank of America and we'll see how far we get. If we are not able to address the rest of our agenda today,

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I'd like you guys to all come back for quorum after the conclusion of Mr. Sinenci's APT meeting. The Chair is proposing 5:00 p.m. today to continue this agenda so that way we can avoid having to come back tomorrow. I know this is your off week, and you've got some other matters to deal with. And this Council has shown in the past that we will work through the night, like we did last Thursday night for our Council meeting. So that's your proposal...my proposal. We'll deal with Bank of America, consider executive session, and get...and do as much as we can with the rest of our agenda. If we are not finished, I'd like us all to come back at 5:00 p.m. Mr. Sinenci, do you have...do you anticipate a very long APT meeting that will take you at least three hours, 4:30...or do you anticipate possibly ending sooner?

COUNCILMEMBER SINENCI: Thank you, Chair. Yeah, it was just a continuation of our Water Authority Board for the Charter amendment. We will be hearing that in your June 7th GREAT meeting.

CHAIR MOLINA: Okay. All right, Members. Everybody agreeable to coming back at 5:00 p.m. for a recess meeting to continue our agenda? Okay, Member King.

COUNCILMEMBER KING: Chair, yeah, I'm just wondering if Mr. Sinenci might be able to commit to ending the APT meeting by 4:00, and then we can come back at 4:30?

CHAIR MOLINA: Mr. Sinenci?

COUNCILMEMBER SINENCI: If I can get your support on June 7th, yeah. I do have some resources at the beginning of the meeting, and so...and I know that they are from Eastern time.

COUNCILMEMBER KING: Okay. I just thought if you planned it...no, I'm fine. If you were going to end earlier, I thought we, you know we might be able to...

COUNCILMEMBER SINENCI: I was going to use this time just to, you know, answer...you guys had a lot of questions at the last APT meeting, and I want to make sure that I get all of your questions answered prior to that GREAT Committee meeting, that's all.

COUNCILMEMBER KING: Okay. So I think the answer is you can't predict because this is a very inquisitive Council. So...yeah, I can come back at 5:00, Chair.

CHAIR MOLINA: All right. Thank you, Member King. All right, Members. With that said then, the Chair will then entertain a motion to convene...what we'll do, the Chair will make a motion to go into executive session. We can also take our morning recess, and come back at a specified time in executive session. Any objections to that...proceeding in that fashion, Members?

COUNCILMEMBERS VOICED NO OBJECTIONS.

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CHAIR MOLINA: All right, Members. Chair will entertain a motion to convene in executive session meeting in accordance with Section 92-5(a)(4) of Hawai'i Revised Statutes to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities as it relates to GREAT Item 19. That is the motion on the floor for executive session. Is there a motion?

COUNCILMEMBER KAMA: So moved.

CHAIR MOLINA: Okay, made by Member Kama. Is there a second to the motion?

COUNCILMEMBER LEE: Second.

CHAIR MOLINA: Second made by Committee...excuse me, Council Chair Lee. Members, just for your information, we do need six members to approve to go into executive session. Any discussion? Okay, Member King, followed by Member Paltin.

COUNCILMEMBER KING: Thank you, Chair. I would like to move to waive whatever rules we have to waive to allow Mr. Bruce Jacobs and Mr. Maka'awa'awa into executive session.

COUNCILMEMBER PALTIN: Second.

CHAIR MOLINA: Okay, Members you've heard the proposal from Member King to allow for Mr. Jacobs and Mr. Maka'awa'awa to be part of our executive session meeting. I believe there was a second. I'll give the second to...is that Member Paltin? Okay, Members, any discussion on the proposed amendment to the motion? Chair Lee.

COUNCILMEMBER LEE: Yeah, I understand what Member King is asking, to get both sides, but I believe that at this point in time, these people are extraneous in a sense to our relationship with Special Counsel and, of course, Corp. Counsel. You know, I think they may be future partners, but for now, they're not. So I am going to vote no. Thank you.

CHAIR MOLINA: Okay. Thank you, Chair Lee. Members, any other comments as it relates to the motion on the floor to allow Mr. Maka'awa'awa and Mr. Jacobs into executive session? Member Sugimura.

COUNCILMEMBER SUGIMURA: I concur with Chair Lee, because just by listening to the discussion today, and it seems like there's, you know, like this mutual level that everything is being communicated with for whatever reason. So until we get all the facts, I would like to get it all in executive session, and then we'll be able to decide are we proceeding with this or not? And then the next discussion is, you know, how do we include, or can they be included in the future discussions? So I support what Chair Lee is saying.

CHAIR MOLINA: Okay. Thank you, Member Sugimura. Member Paltin.

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COUNCILMEMBER PALTIN: Thank you, Chair. To me, it's kind of critical to have Mr. Maka'awa'awa and Mr. Jacobs in the executive session, because otherwise we won't be accomplishing much. Because we'll have information, but we're not allowed to share it at all to anybody. And then it'll be, like, so what did you learn? And they're, like, sorry, can't tell you. And then it's like...I mean, it...just then what, you know. And then it's like we're right back where we started. So if we're not going to include them, who wouldn't, I believe, sabotage the case because they're relying on the case, then I don't see the point of going into executive session because we're not able to say anything that happened in executive session; isn't that correct? So then we'd know this information, and then whatever we choose to do with it, everyone's like why did you do that? And we're like can't tell you.

CHAIR MOLINA: Okay. Thank you for that, Member Paltin. Let me ask Corporation Counsel. As far as I've been on the Council, I don't ever recall allowing non-County personnel into executive session. It's something that maybe it has happened, but it's...certainly it's not something that happens very often. Ms. Lutey, any thoughts?

MS. LUTEY: Thank you, Chair. Yeah, thank you, Chair. I think your recollection is accurate. If this is a Sunshine meeting, an exception to go into executive is for you to obtain legal advice, which would mean that it's the client and the legal counsel advising. If we're going to start allowing in nonrepresentatives of this legal counsel, in other words, Ms. Bronster and myself and only this body, then really what you're doing is, in fact, making this a waiver.

COUNCILMEMBER PALTIN: . . .*(inaudible)*. . . that...like...

CHAIR MOLINA: Sorry, Member Paltin--if you could turn off your mic, Member Paltin. Thank you. Go ahead, Ms. Lutey. Please continue.

MS. LUTEY: It would really be like a waiver. And if that's the case, then we should just have this in open session. I would not be able to go into this body with executive with Mr. Maka'awa'awa and Bruce Jacobs present because it's not then an executive session for legal matters.

CHAIR MOLINA: So in essence, you would refuse to go into executive session if we permit Mr. Jacobs and Mr. Maka'awa'awa in executive session. Is that the short answer?

MS. LUTEY: We'd be violating the law. So, yes.

CHAIR MOLINA: Okay, thank you. Mr. Forrest.

MR. FORREST: Thank you, Chair. I think there are couple of alternatives. *(Audio interference)*.

CHAIR MOLINA: Mr. Forrest, I'm sorry. If you could turn your video off, then I think your

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audio might come out better.

MR. FORREST: Okay, sorry.

CHAIR MOLINA: Okay, go ahead.

MR. FORREST: I guess I'd...starting out by saying I think we can all agree that we do not want to harm the plaintiffs that have recently filed a case. One way to do this is to...you can include outsiders in an executive session, that's your right. But usually you're going to only include them to the extent necessary. There are really two questions that you're looking for. One is related to communication between the attorneys. I frankly don't think that that needs to be discussed in executive session. The real thing that needs to be discussed is why the Bronster firm has come to a decision that litigation was not warranted at this time. So if we do invite outsiders to executive session, it would limit their participation to the topic of why the attorneys aren't participating, and then we would segregate that and drop them from the call, and then talk about attorney-client privilege information. I would welcome Ms. Lutey's opinion on that.

CHAIR MOLINA: Okay. Thank you, Mr. Forrest. Ms. Lutey, any thoughts to the proposal from Mr. Forrest?

MS. LUTEY: Yes, I disagree with him. In the past, there was investigation that was done by outside counsel, and that case, we brought them in. But there was a contract between us for them to handle this. And so therefore, we weren't violating UIPA or any other laws. But in this situation, there is no privity between us...there's no reason for them to be in with us...and Ms. DesJardins is available also. She's handled UIPA matters for years, if you'd like further comment.

CHAIR MOLINA: Okay. Thank you, Ms. Lutey. Chair Lee, followed by Member King, second time speaking to the motion to include Mr. Maka'awa'awa and Mr. Jacobs into executive session. Go ahead, Chair Lee. Chair, if you could unmute.

COUNCILMEMBER LEE: Again, I have serious concerns about inviting others into executive session for a couple of reasons, in addition to what I've already stated. There seems to be an adversarial relationship between the people who...well, Brandon and Mr. Jacobs...because they disagree with the position of our Special Counsel, that is a concern of mine. Secondly, they seem to also want to have the Council hire them instead. So even...I see a potential...a serious potential conflict here. Let's communicate in public with regard to things that are acceptable, and those that are legally sensitive and concern client...of the client privilege matter should be done in executive session. Thank you.

CHAIR MOLINA: Okay. Thank you, Chair Lee. And we have Member King, followed by Member Paltin.

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COUNCILMEMBER KING: Thank you, Chair, for my second and final. Exactly for those reasons that Chair Lee expressed, you know, there is a difference of opinion. That's why I requested Mr. Maka'awa'awa and Mr. Jacobs be in executive session, so we can hear the whole story on both sides. Because we go into executive session, we only hear one side. We should be...we should be in close working relationship with Mr. Jacobs. That's what that Resolution was about. And the fact that we're not is because Special Counsel refused to contact them...reach out to them and bring them on board. It was a one-way situation of asking for information, but giving none themselves is what we're hearing today. And if they had followed our Resolution, we would all be working together. And that's why I want these two in the executive session, because this is what was supposed to have happened. This was the will of the Council, which is the client of Special Counsel and of Corp. Counsel. So that's...my position on is that yeah, we all should have been working together. That was what we wanted, and that was what, you know, Na Po'e Kokua asked for. Anyway, that's my position, so I guess we're on the waiver now.

CHAIR MOLINA: Okay, all right. Thank you, Member King. Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I had a question for Ms. Lutey based on Chair Lee's comments.

CHAIR MOLINA: Ms. Lutey, go ahead. And also we have Ms. DesJardins as well as...who can also provide additional clarification if you need that, Member Paltin. Go ahead, Member Paltin, your question for Ms. Lutey.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Lutey. My question was, I think some of my colleagues were saying for us to get the information in private. After we get that information in private, can we take a vote to waive what we heard in executive session?

MS. LUTEY: Thank you, Member Paltin. The body can vote on whether to waive the privilege...attorney-client privilege. I don't think you need to do it beforehand, you could do it after, I suppose.

COUNCILMEMBER PALTIN: Okay.

MS. LUTEY: But the body would need to make that decision.

COUNCILMEMBER PALTIN: And the purpose of that is for us to first find out the information, and then see if it's like some crazy killer secret or not, and then decide whether it is or isn't. And then say like, you know, we heard what it was, it wasn't a big secret, let's vote to waive executive session after we hear it?

MS. LUTEY: Actually, I'm going to ask Ms. DesJardins to weigh in on this. Because I'm wondering, then, if there is Sunshine Law issue. The privilege issue, I'm clear on. I'm not quite sure how that folds in with UIPA.

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CHAIR MOLINA: Ms. DesJardins.

MS. DESJARDINS: Thank you, Chair. The Hawai'i Revised Statute 92-5 provides that you can go into executive session, one of the exceptions being to consult with the Board's attorney on questions and issues pertaining to Board's powers, duties, privileges, et cetera. Another exception to the Sunshine Law allows you to go into executive session to consider the higher evaluation to dismiss or discipline of an employee. And I believe that's what happened in the example that Mr. Forrest was raising, and that's why you were allowed to bring in . . . *(inaudible)*. . . I do not know whether or not you can vote later to release executive information. I don't think there's a bar to that because I know that minutes of executive meetings can be disclosed later. I would have to look into that for you, but I would caution you just to limit the Board's attorney in the executive session when dealing with legal duties/responsibilities. I just want to point out that just because a reso includes the names of nonlawyers does not mean that you can get around the Sunshine Law by allowing them into a meeting. Because the resolution has nothing to do with the Sunshine Law and you have to follow the Sunshine Law. Thank you.

CHAIR MOLINA: Okay. Well, thank you very much, Member Paltin, for that. So, I guess, let me very point blank about this to Corporation Counsel. If this Council decides to waive the rules of the Council to allow for Mr. Jacobs and Mr. Maka'awa'awa, will you participate? And if you don't...let me say we cannot force you, is my question.

MS. DESJARDINS: You're not . . . *(inaudible)*. . . rules of Council. You're dealing with the Hawai'i Revised Statute. The rules under the law are that you can only go into executive session under limited circumstances, and one of those being to discuss legal duties with your attorney. Now, bringing in third parties waives that privilege. You cannot bring people in to an attorney discussion, and continue to have an attorney-client relationship. So if you bring them in, you are not having an executive session. You may as well do this in public, and then it's up to Ms. Lutey and Ms. Bronster whether they want to *(audio interference)* in an open meeting or not.

CHAIR MOLINA: So by this doing this, we violate Sunshine Law right off the bat?

MS. DESJARDINS: Yes, because it's not an executive session per se under the rules. You are no longer just conferring with your attorney. You're bringing in people that are not your lawyers and asking them questions, that's an open session.

CHAIR MOLINA: Okay. Thank you, Ms. DesJardins. All right. Mr. Forrest, we'll give you one last say, and then the Chair is going to call for the vote on this matter. Mr. Forrest.

MR. FORREST: Okay. I agree with what Corp. Counsel has been saying. There is, however, a Council rule which is Rule *(audio interference)* that would also need to *(audio interference)*. But Sunshine Law . . . *(inaudible)*. . . I agree with.

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CHAIR MOLINA: Okay.

MR. FORREST: I personally would recommend going into executive session with only County Staff at this time, and if we want to have others join later, we can. But get the information you need now . . . *(inaudible)*. . . not to hurt their case.

CHAIR MOLINA: All right. Thank you, Mr. Forrest. Okay, Members, you've heard comments on both sides of this issue. At this point, Member King, I really want to...I'd like to take the vote. Is this...

COUNCILMEMBER KING: *(Audio interference)*. I was just...based on what Mr. Forrest said, I was going to withdraw my motion for the waiver, and then...but just, you know, I won't be supporting going into executive session because I think we should be discussing this in open session.

CHAIR MOLINA: Okay. Thank you. All right. And then I guess Member Paltin made the second. You will withdraw the second as well, Member Paltin?

COUNCILMEMBER PALTIN: Yes.

CHAIR MOLINA: Okay, good. All right, Members, what's on the floor is a motion to go into executive session for GREAT Item 19. Chair, will call for the vote. Do we need to...we'll do an individual voice vote, yeah. So I guess, Ms. Sunderland, if you could announce the Committee Members and then they will express their support or nonsupport for executive session. Please proceed with announcing the Committee Members' names.

MS. APO TAKAYAMA: This is Kasie, I can take the roll call vote.

CHAIR MOLINA: Okay, Ms. Apo Takayama, go ahead.

MS. APO TAKAYAMA: Councilmember Gabe Johnson.

COUNCILMEMBER JOHNSON: Aye.

MS. APO TAKAYAMA: Councilmember Tasha Kama?

COUNCILMEMBER KAMA: No.

MS. APO TAKAYAMA: Councilmember Kelly Takaya King?

COUNCILMEMBER KING: No.

MS. APO TAKAYAMA: Councilmember...Council Chair Alice L. Lee?

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COUNCILMEMBER LEE: Aye.

MS. APO TAKAYAMA: Councilmember Tamara Paltin?

COUNCILMEMBER PALTIN: Nalua.

MS. APO TAKAYAMA: Councilmember Shane...

CHAIR MOLINA: I'm sorry, Member Paltin, could you clarify? That means you're going to pass, and then we'll come back to you? Okay. All right. Thank you for the clarification. I'm sorry. Ms. Apo Takayama, please continue with announcing the next Member.

MS. APO TAKAYAMA: Councilmember Shane Sinenci?

COUNCILMEMBER SINENCI: Aye.

MS. APO TAKAYAMA: Councilmember Yuki Lei Sugimura?

COUNCILMEMBER SUGIMURA: Yes.

MS. APO TAKAYAMA: Councilmember Tamara Paltin?

COUNCILMEMBER PALTIN: Aye.

MS. APO TAKAYAMA: Committee Vice-Chair Keani Rawlins-Fernandez?

CHAIR MOLINA: Excused.

MS. APO TAKAYAMA: Committee Chair Mike Molina?

CHAIR MOLINA: Aye.

MS. APO TAKAYAMA: That's six "ayes," two "noes," one excused. Motion carries.

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CHAIR MOLINA: Yes, Ms. Bronster.

MS. BRONSTER: Excuse me. Yes, my partner, Rex Fujichaku, is in my office with me, and I would like permission for him to join me in executive session.

CHAIR MOLINA: Okay. Members, any objections to allowing Mr. Fujichaku into executive session?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay, very good. So noted. All right, Staff, I believe this is all we're required to announce prior to going into executive session. So with that said, Members, Mr. Forrest will be sending everyone involved a link for executive session. And while we're doing all of this, we'll take our morning recess. So, Members, let's come back into executive session for GREAT Item 19...is 11:00 a.m. a good time for everybody to get recharged? Okay, so noted. All right. So for the record the GREAT Committee meeting for May 31st, 2022, when we...will be convening in executive session, effective at 11:00 a.m. as it relates to Item GREAT-19. Meeting in recess, and then we will enter executive session. . . .*(gavel)*. . .

RECESS: 10:47 a.m.

RECONVENE: 11:57 a.m.

CHAIR MOLINA: . . .*(gavel)*. . . The GREAT Committee meeting for Tuesday, May 31st, 2022, is now back in session. The time is 11:57 a.m. Members, we have just come out of executive session asking questions and having a very interesting discussion on GREAT Item 19. Chair would like to hear any thoughts before the Chair makes a recommendation. Well, the Chair's recommendation would be to defer, and I'll just state that, you know, based on the reasons given in executive session, I would like to continue this matter. I don't think we should let go of it. It's something that I believe we need to pursue on behalf of our citizens of color, who I feel that, for various reasons there has been some injustices, but that's my opinion. So I still think we need to look at other ways we can pursue this matter and get something done, and we shouldn't let go of it. And this Council has shown some political will, and I hope our State shows the same political will, and other interested parties. And of course, the other individuals who have decided to pursue this on their own, Mr. Jacobs and Mr. Maka'awa'awa, I commend them for their spirit and fight, so I'll leave it at that. Members, any comments? All right, if no one else has anything else to say, then if there are no objections, we will defer Item GREAT-19, and hopefully the Chair will try to bring this back in the near future to get some updates for all of you and the members of the public. So any objections to deferral, GREAT Item 19?

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COUNCILMEMBERS VOICED NO OBJECTIONS.

ACTION: DEFER.

CHAIR MOLINA: All right, Members, the Chair is aware of the time, and again, I presume everybody is okay to come back at 5:00 for a recess to address our last four items on the agenda, which all are litigation matters? Okay. So if there are no objections, we will recess this Government, Ethics, Relations...Government Relations, Ethics and Transparency Committee Meeting for May 31st, 2022. We will recess this meeting until 5:00 p.m. today. Any final comments? Okay, Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I just was wondering an indicator if you were expecting to go into executive session for any of the other four?

CHAIR MOLINA: Very good question. I've been informed initially one of the items may not need executive session, but the other three, it's been...I've been told by Corporation Counsel that they would recommend executive session for those other three items.

COUNCILMEMBER PALTIN: Okay, thanks for the heads up. So I know how to configure my situation in that case.

CHAIR MOLINA: Okay. Thank you very much, Members, for being very accommodating with the Chair. Of course, we have...in this Committee, it's always the possibility we have some things that can turn out very unpredictable, and we have some time-sensitive matters that we have to deal with. But that's what makes this Committee great. It's makes all of you great and everyone else involved, including our resource personnel and Administration. So with that said, it is 12:00 noon, this meeting is in recess until 5:00 p.m. today, May 31st, 2022. GREAT meeting in recess. . . .(gavel). . .

RECESS: 12:00 p.m.

RECONVENE: 5:01 p.m.

CHAIR MOLINA: . . .(gavel). . . The GREAT Committee meeting for Tuesday, March [sic] 31st, 2022 is now back in session. This is a recessed meeting which we first began at 9:00 a.m. this morning. Thank you, Members, for making yourselves available for our evening session. We have four more agenda items, all litigation matters that we need to address, these are time-sensitive items. And for the record, let's do another roll call. I'm your Committee Chair, Mike Molina, and I'm transmitting from my residence here in Makawao. And to my knowledge, no one at the District Office--as a matter of fact we did close public testimony, so what am I talking about--no public testimony. So I'm here at my residence in Makawao. And let's go down the line for Committee roll call. Council Chair Alice Lee, aloha and kalimera.

COUNCILMEMBER LEE: Aloha and good afternoon, looking forward to a quick GREAT

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meeting.

COUNCILMEMBER SUGIMURA: Mike, can you hear me?

CHAIR MOLINA: Yeah, we can hear you, Member Sugimura.

COUNCILMEMBER SUGIMURA: You can? I can't hear you guys.

COUNCILMEMBER LEE: I'm not done yet. I'm home alone in my workspace.

COUNCILMEMBER KING: Are you at home, Yuki Lei? Did you go back home?

CHAIR MOLINA: Okay, Members...Member King, I'll recognize you first, and then we'll deal with Member Sugimura's audio issues at a later point.

COUNCILMEMBER KING: I just was going to tell her if she was in the Chambers, she probably turned her volume off so now she needs to turn it back on if she's out of the Chambers.

CHAIR MOLINA: Okay. And for the record, Member King you're transmitting to us from your office residence?

COUNCILMEMBER KING: My home office.

CHAIR MOLINA: Your home office. Okay. Thank you. All right, let's go to Member Kama. Aloha and good evening.

COUNCILMEMBER KAMA: Aloha ahiahi, Chair. I am in my home in my workspace, and I am alone.

CHAIR MOLINA: Okay, thank you. And let's go to Member Paltin out in West Maui. Aloha.

COUNCILMEMBER PALTIN: Aloha ahiahi. I'm broadcasting live and direct from the West Maui District Office here in the Old Lāhainā Center in Historic Lāhainā Town, and I have been left alone in the office. They locked me in, so nobody can come and proceed and hear this hearings, unless they are listening on television. So alone, solo, flying solo alone.

CHAIR MOLINA: Thank you for being so brave, Member Paltin. Nice musical interlude you had there too. All right, so out to East Maui, and check in on Member Sinenci, aloha.

COUNCILMEMBER SINENCI: Aloha and kalimera, Chair and Members. Yeah, we're still here at the Hāna Cultural Center, and mahalo for this morning and afternoon's meetings.

CHAIR MOLINA: Okay. Thank you, Mr. Sinenci. And we have Member Sugimura, who is on video right now, apparently experiencing some technical difficulties. So thank you,

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Member Sugimura, and hopefully we can get your audio difficulties rectified so you can further participate. And I believe we're still awaiting Vice-Chair Rawlins-Fernandez, I don't know if she's on the line yet. Hopefully she'll be joining us. And earlier, I was informed that Councilmember Johnson (*audio interference*) this evening and will not be seeing us. Okay, Member Sugimura, we can hear you loud and clear. Are you on? Maybe not. All right, I'm giving you sign language to maybe, you know, mute or something...so, anyway. All right, Members, we're going to do our best to improvise and deal with any technical difficulties here. So like I stated earlier, we've got four litigation items to address this evening.

GREAT-11(9) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: GULSONS, LLC CLAIM) (CC 21-46)

CHAIR MOLINA: So I'd like to recognize...we're moving on to, I guess, GREAT Item 11(9). And I would like to ask Corporation Counsel to give us opening comments on that, I guess that's Ms. Tarnstrom, and if you could just briefly go over that. And Members, I'll tell you what I'm going to do, I'm going to have all of our items addressed in open session first, and then we'll make a determination as to which of these items will require executive session. And we'll do that in one big motion to incorporate however number of litigation matters that need executive session. So I'm going to ask Corporation Counsel to touch upon each item, and then right after that, if you have any questions in open session, ask them. And then at some point we'll go into executive session and deal with any legal matter that does not require executive session. Okay. All right, Ms. Tarnstrom, thank you for being patient. You have the floor.

MS. TARNSTROM: Thank you, Chair. Can you guys all hear me?

CHAIR MOLINA: Loud and clear.

MS. TARNSTROM: Yeah, okay, great. And I'm Kristi Tarnstrom, Deputy Corporation Counsel over here to seek settlement authorization on this case *Gulsons, LLC v. the County of Maui*. In 2008, the County started leasing offices at 35 Lunalino in Wailuku and it housed the Department of Housing and Human Concerns offices. In approximately 2016 we started to receive complaints from employees and people within the building of mold exposure potentially, and smells related to mildew. The County looked into that issue and tried to work with the landlord on several complaints that we had, both from members of the public and our employees. And we were unable to resolve those issues related to mold and employee health issues, as well as several other issues with the building. So the County ended up terminating the lease early, and the landlord has now sued us for breach of contract. So we have identified a number of cross claims against the landlord also. So right now, we're just seeking settlement authority in the early days of this suit. We've already gone through mediation and so we kind of wanted to bring the status to the Council to see if we can resolve it early.

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CHAIR MOLINA: Okay. Thank you very much, Ms. Tarnstrom. At this point are you going to be recommending executive session for this item?

MS. TARNSTROM: Yes, Chair. Thank you for bringing that up. We would recommend executive session.

CHAIR MOLINA: Okay, so noted. All right, Members, we'll come back at a later point if you have questions in open session for Ms. Tarnstrom or for any of our resource personnel.

GREAT-11(11) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: 21st CENTURY INSURANCE COMPANY ON BEHALF OF ITS INSURED ABDEN AND DELIA CORPUZ; CLAIM 4067839 (MOTOR VEHICLE ACCIDENT)) (CC 21-46)

CHAIR MOLINA: I'd like to move on to the next GREAT Item, which is GREAT Item 11(13), and I believe we have Mr. Rowe from Corporation Counsel that can give us an overview on this matter. Mr. Rowe?

MR. ROWE: Thank you, sorry...which matter is this?

CHAIR MOLINA: I know you listed for both 11(11) and 11(13), take your pick?

MR. ROWE: Okay. Sorry, I don't know the numbers of the...the specific numbers off the top of my head. But I'll move forward first with the one that I don't believe is going to require executive session, and that is the claim of Corpuz...the Corpuz claim. Okay, so this claim is a property damage claim for damage to the claimant's 2019 Mercedes Benz, a Class A-220. On October 1st...or October 21st, 2020, at approximately 10:00 a.m. in the Home Depot parking lot, a County employee with Public Works was driving a dump truck, and had actually reversed into a parking space. When he was getting ready to exit the parking lot, he did not see the claimant's vehicle to the side of him. And as he was pulling out of it, he did end up hitting the claimant's vehicle on the right side, and hit the rear of the claimant's vehicle, which was parked in normally...it hadn't been reversed in. There was a claim submitted on behalf of the Corpuz's by their insurance company, 21st Century Insurance. It included money for both...it included both repair work, as well as rental expenses that were paid out, and the insurance company did provide them with the extent of their coverage for rental on account of how long it took for the damage to be resolved. So in total, the vehicle damage amounted to \$10,778.23, and rental expenses were paid out in the amount of \$898.43. So the entire amount of the claim is \$11,676.66. In this case, we do find that the County is likely liable, and we have entered into an agreement with the claimant's insurance company to settle for that amount.

CHAIR MOLINA: Okay. Thank you, Mr. Rowe. So you're not recommending executive session. So, Members, let me propose this to you. Do you want just take care of this item right now in open session, and then we can move forward with the other matters? All right.

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So, Members, in open session any questions for Mr. Rowe? And by the way, we have Director Molina, Jordan Molina, standing by as well to answer any questions related to this matter. So the floor is open. Let's go to Member Paltin, questions for Mr. Rowe or Director Molina.

COUNCILMEMBER PALTIN: Thank you, Chair. I guess my first question, for whoever can answer it, would be was this County business that the employee was in the Home Depot parking lot? And if so, then why take a dump truck and why not just a regular vehicle? And if not, is it still us that is responsible if it's not County business, and a County vehicle was being used for non-County business?

MR. ROWE: Aloha. Thank you for that question. In the documentation that I provided, there is a vehicle accident report in which he said that he was on his lunch break and he was grabbing lunch. I don't personally know what the Department's policies are regarding the types of vehicles that are used to go and get lunch by employees. However, as a general rule, because we are the owner of the vehicle, we would be liable for the loss.

COUNCILMEMBER PALTIN: Okay. So he was in Home Depot on a lunch break because they have food trucks or something?

MR. ROWE: Yes. Yes, exactly.

COUNCILMEMBER PALTIN: Okay. All right.

CHAIR MOLINA: Thank you very much, Member Paltin. Members, any other questions in open session for Mr. Rowe or Director Molina as it relates to GREAT Item 11(11)? Okay, seeing none. Well, then I'll go ahead and recommend to approve the settlement request for the total of \$11,676.66 as it relates to GREAT Item 11(11). Is there a motion?

COUNCILMEMBER PALTIN: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Okay, motion made by Member Paltin, and seconded by...okay, it sounds like Member Kama.

COUNCILMEMBER KAMA: Yes. Thank you, Chair.

CHAIR MOLINA: Any discussion? Okay, Member Paltin?

COUNCILMEMBER PALTIN: Sorry, Chair. I'm not sure if I should have done this in the other portion of it. But just wondering what is being done so that this doesn't occur in the future, if there is anything that's been done to prevent this from occurring again.

CHAIR MOLINA: Mr. Rowe, are you able to respond to Member Paltin's question?

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MR. ROWE: I would defer that question to the Director.

CHAIR MOLINA: Okay, Director Molina, if you're with us right now, if you could provide a response to Member Paltin's question as far as what type of precautionary measures from the Department will take place so we don't have an incident like this occurring in the future. Is the Director on board with us right now?

MS. APO TAKAYAMA: Chair, I believe he disconnected from the call. Staff is trying to reach him. Thank you.

CHAIR MOLINA: Okay. In the meantime, while we're await the Director coming back to us, Members, any other questions for Mr. Rowe at this time? Okay. Member Paltin, if the Director is not back...well, I guess...Members, we can always come back to this while we address the other matters on our agenda if that's something you would prefer. Or, Member Paltin, we can take action and then the Committee can, I guess, submit a letter to the Director to provide a written response to your question, if you'd prefer it that way.

COUNCILMEMBER PALTIN: Okay, sure. And I didn't...I mean, I'm not sure the...I see the statement from somebody else saying that they were having lunch at the food trailer. When I went through it the first time I didn't see that it said that he was having lunch. Was that confirmed by somebody?

CHAIR MOLINA: Mr. Rowe.

COUNCILMEMBER PALTIN: The vehicle accident report says just that he was parked and he didn't see the red car. The statement report of the nonwitness said that...having lunch at food trailer. So I interpreted that as the person who made the statement was having lunch, not necessarily...if Mr. Rowe can point us to specifically where it said that the Public Works employee was having lunch, or how we can verify that information, that it...

CHAIR MOLINA: Mr. Rowe.

MR. ROWE: Yes, thank you. So you are correct that there was an additional witness statement that was submitted on it, but if you . . . (silence). . . I believe you're right, it does look like that was submitted by the witness, and that was not part of the statement that was put in by the person who was operating the vehicle.

COUNCILMEMBER PALTIN: So not necessarily he was having lunch?

MR. ROWE: I believe that that was the case. My guess is that, you know, it was a statement witness report, so it was someone who was either in the vehicle with him, or it was someone who was getting lunch with him. That's how I interpreted it, and that's what we...I guess we did assume that.

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COUNCILMEMBER PALTIN: And they're getting lunch at 9:30 in the morning because they start really early?

MR. ROWE: That would be my guess, yes.

COUNCILMEMBER PALTIN: Okay. All right.

CHAIR MOLINA: Okay. Thank you very much, Member Paltin. So Members, we have a motion on the floor to approve the settlement authorization for the number that I had mentioned to you earlier. Member Paltin, so in the event we don't get the Public Works Director back on time, are you okay with the Committee Staff drafting a letter with your question, and getting a written response from the Director prior to this matter going forward to Council?

COUNCILMEMBER PALTIN: Yeah, yeah, just what are we doing to prevent this type of thing from happening in the future? Because the dump truck specs are not changing, so is there like a procedure or policy so that, you know, if there's two guys in the dump truck, maybe one guy can look out the window and make sure that we're not clipping another vehicle.

CHAIR MOLINA: Yeah, yeah, good point to bring up, you know, the old buddy system, always have a spotter, yeah, especially when you're driving a big vehicle. Okay, Committee Staff will make note of that, and we'll...hopefully the Department can get your response to you prior to this matter going for final decision making at the Council level. Any other discussion on GREAT Item 11(11)? Okay, seeing none. Do we need a voice vote on this, or Members, are you okay with...we don't need a separate vote? All right, Chair will call it then. All right, all those in favor of approving this settlement authorization, signify by raising your hand and saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: Okay, thank you. Any objections? Seeing none, Chair will mark it seven "ayes," with two excusals, Committee Vice-Chair Rawlins-Fernandez and Committee Member Johnson.

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VOTE: **AYES:** **Chair Molina, and Councilmembers Kama, King, Lee, Paltin, Sinenci, and Sugimura.**

ABSTAIN: None.

EXC.: Vice-Chair Rawlins-Fernandez and Councilmember Johnson.

ACTION: Recommending ADOPTION of revised resolution by C.R.

GREAT-11(13) LITIGATION MATTERS (RESOLUTION 22-52, RELATING TO SETTLEMENT AUTHORIZATION: TYRON DELLA; CLAIM 4064548 (MOTOR VEHICLE ACCIDENT))

MR. ROWE: Thank you, Chair. This is actually very similar to a claim that has already been brought before this Committee. It was actually part of a four-person car...or four-vehicle car accident which occurred on February 25th, 2020. A police officer, his cell phone had dropped from--I guess it was attached to his visor--had fallen down, and he went down to go to the floor of his car and went to go pick it up. In doing so, he did not see that there was...there were several cars that were stopped at a stop light at the...at an intersection. It's the one by...it's the...it was Kaahumanu and Papa, but on the other side of Papa, it turns into...I think it's called Wahinapio Street. So in this case, the police officer hit another vehicle, the force of that hit then caused that vehicle to hit the car in front of it; and then that car, the force of that impact also caused them to hit the car in front of it. We have already settled the claims of the first person who was hit for their property damage claim. Mr. Della also submitted a property damage claim, and we did authorize settlement on that because that fell within our authority. However, he subsequently also filed a personal injury action through his attorney, and I believe that the demand letter was sent to you guys as part of the package that was sent to you. The third vehicle has not submitted a claim, and it is coming up on the statute of limitations on that...or actually, the statute of limitations on that has passed. So at this point we

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are not anticipating that the third person will be filing a claim. However, this one, the person who was in the second...or I guess the third vehicle out of the four did also submit a personal injury claim, and that's what this remainder is about. Because it involves settlement discussions as well as personal injury, I would like to ask that any...that further discussion be held in executive session, but I'm happy to answer additional questions in open session as well.

CHAIR MOLINA: Okay. Thank you very much, Mr. Rowe. Members, any pressing need for questions in open session, as you heard the recommendation from Mr. Rowe that we consider execution session? Any questions in open session? Okay, Member Paltin.

COUNCILMEMBER PALTIN: Sorry, I think I'm on the wrong item. I don't have a question, I see the motor vehicle accident report.

CHAIR MOLINA: Okay, no problem. All right. Seeing no other hands going up for questions in open session for this item, Members, we will...when the time comes, we will consider this matter for executive session.

**GREAT-11(20) LITIGATION MATTERS (RESOLUTION 22-102, RELATING TO
SETTLEMENT AUTHORIZATION: ROBERT TURNER V. WAIIAHIWI GULCH
LAND COMPANY LLC, ET AL., CIVIL 18-1-0244(1))**

CHAIR MOLINA: All right, let's go to our last item scheduled for hearing today, that is GREAT Item 11(20), Settlement Authorization matter related to *Robert Turner v. Waiahiwi Gulch Land Company LLC, et al.*, Civil Case 18-1-0244(1). And we...initially we had...I believe Ms. Corporation Counsel Lutey is going to give us an overview of this matter. Mr. Pascual, I've been told, who was handling this case, is not available today. So we have Ms. Lutey, please go ahead.

MS. LUTEY: Thank you, Chair. On April 30th, 2017, plaintiff was driving on Piipholo Road near Lots 23 and 24 of the Piipholo South Subdivision when an eucalyptus tree fell on his car, causing his air bags to deploy and injuring him. Initially plaintiff's lawsuit was solely against Waiahiwi Gulch Land Company, but on May 5th, 2020, Waiahiwi Gulch Land Company filed a third-party complaint against the County of Maui, alleging that we were negligent in maintaining Piipholo Road and cutting trees down near the one that fell, which compromised the stability of that fallen tree, which is a eucalyptus. The County had previously cut trees along Piipholo Road in September of 2013, following complaints from the public about fallen trees and broken branches that were in the crowns of the trees on Piipholo Road as a result of Tropical Storm Flossie. There was another project involving the County removing unstable eucalyptus trees upslope of the area where this particular tree fell in November 2015. Because there is active litigation, the parties did agree to mediate with retired Judge August. In the Resolution, you will see that Plaintiff made a firm demand of \$380,000 to settle his claims. Judge August has recommended that the Defendants split the liability of 50 percent per party, and

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pay \$190,000 each. Because we would need to discuss the medical damages related to the plaintiff and some of the liability issues surrounding this matter, I am requesting executive session.

CHAIR MOLINA: Thank you very much, Ms. Lutey. Members, any need to ask Ms. Lutey a question in open session as it relates to this matter? Okay, Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I just was wondering, in the course of the mediation with the retired judge, was an arborist consulted with at any point?

MS. LUTEY: Thank you. Yes, there was an arborist, including a former one from the County. But in terms of the statements made by the former County employee that were in email, I would like to discuss that in executive session because that goes directly to the liability issues.

COUNCILMEMBER PALTIN: Okay. And I guess the other question, the reason that the Waiahiwi Gulch Land Company LLC, et al., is in it is because the tree that fell was on their property, and that's why the County didn't go in and cut down that tree when they did their other tree actions?

MS. LUTEY: Chair. Thank you for the question, Member Paltin. There is a dispute as to ownership of this particular area, but part of the allegations here is that the County has maintained a portion of these trees, and that Waiahiwi Gulch is basically claiming that we owed some duty in regards to the removal of these trees, or notice that there were a problem here.

COUNCILMEMBER PALTIN: So to clarify that last answer, you're saying that they are claiming they don't own that land that that tree that fell is on? Or that we need to maintain it because it's like an easement?

MS. LUTEY: Their allegation is, is that because we have previously gone in there and removed trees and so forth, that we caused that area to become unstable in that particular, and that, in part, gives us a duty. There is allegations of an easement and so forth, but I think this is better explained probably in executive session. It's just they are claiming that we caused these damages.

COUNCILMEMBER PALTIN: Okay, thank you. I'll yield to my colleagues.

CHAIR MOLINA: Thank you very much, Member Paltin. Members, any other request for question in open session as it relates to GREAT Item 11(20). Okay, seeing none. All right. Members, bear with the Chair, this is going to be a little bit of a juggling act here. As I mentioned earlier this morning, there has been some new requirements to announce attendance for executive session in open session, so bear with me as we deal with these new procedures from OIP. And again, we're going to have take attendance once we get into executive session as well. So the Chair's intent is to entertain one

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blanket motion for executive session for the following items; GREAT Item 11(9), 11(13), and 11(20). So again, the Chair is going to entertain a motion to go into executive session based on HRS 92-5(a), to consult with counsel to discuss any matters related to strategy and so forth. All right, so with that said...

COUNCILMEMBER KING: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Okay, that's a motion made by Member King, and a second by Member Kama. And Members, of course, we need at least six approvals to go into executive session. Any discussion? Seeing none. All those in favor, signify by saying "aye" -- and I see Vice-Chair Rawlins-Fernandez has just entered the meeting. We're taking a vote --

UNIDENTIFIED SPEAKER: Aye.

CHAIR MOLINA: -- on executive session, Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER KING: Aye.

COUNCILMEMBER SUGIMURA: Aye.

CHAIR MOLINA: Aye. Please raise your hand and significant by saying "aye" if you would like to go into executive session.

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: Okay. I see everybody's hand except Vice-Chair Rawlins-Fernandez. Are you able to hear us? Okay, maybe not. All right. Members, the Chair will then mark it down for the record as seven "ayes," with two excusals, Vice-Chair Rawlins-Fernandez and Member Johnson, to go into executive session.

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VOTE: **AYES:** **Chair Molina, and Councilmembers Kama, King, Lee, Paltin, Sinenci, and Sugimura.**

NOES: **None.**

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Rawlins-Fernandez and Councilmember Johnson.

MOTION CARRIED.

ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.

CHAIR MOLINA: Okay. All right. And I just got a message from Vice-Chair Rawlins-Fernandez she's going to be restarting her computer, she's experiencing some technical difficulties. Okay, Members, here we go. Bear with the Chair...okay, for 11(9), the personnel will be at least eight of the Members that are here today that will go into executive session for 11(9), as well as Corporation Counsel Tarnstrom, and Director Teruya or his representative from the Finance Department, as well as Secretary Ms. Pauline Martins and Mr. Forrest for that particular item. And once we're done with that item, we will excuse Ms. Tarnstrom from Corporation Counsel. 11(13), Corporation Counsel, Mr. Rowe, will be handling that matter. And then we will have Chief Pelletier or his representative as a resource for that item in executive session, along with Ms. Martins, and Mr. Forrest, and of course, all of us here, Members, for that matter in executive session. And when that is done, we will excuse Corporation Counsel Rowe, and he will be replaced by Ms. Lutey to discuss 11(20), along with Director Molina from Public Works or his representative, as well as Ms. Martins and Mr. Forrest. Staff, does the Chair complete the requirements that I've just announced?

UNIDENTIFIED SPEAKER: Yes, Chair, that is...

CHAIR MOLINA: Okay, now I've just been informed...okay, Ms. Lutey go ahead.

MS. LUTEY: Thank you, Chair. I will be attending also in the Gulsons matter, which is 11(9).

CHAIR MOLINA: Okay. Members, any objections to having Ms. Lutey attend 11(9)?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay. Members, you know what? I've just been informed we are not...I guess

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we're going to be doing three separate executive sessions; am I correct? We have three separate executive session links per the new rules. So, Staff, please clarify that for me.

MS. APO TAKAYAMA: Yes, Chair. So before each executive session, Legislative Attorney Forrest will send a link. So for this first one, he will send a link for 11(9), and then before you go into executive session for the second and third item, he'll send the respective links for those as well. And that's to ensure that we have all the correct personnel in each meeting, and no additional personnel that was not announced. Thank you.

CHAIR MOLINA: Okay. And no requirement to adjourn after each item, right, we can just end the discussion on, say 11(9), and just move forward to 11(13), everybody click on the new executive session link?

MS. APO TAKAYAMA: Chair, you will adjourn between each meeting as well for each item.

CHAIR MOLINA: Okay, so I will have to adjourn after each discussion, and then we go into a new executive...

MS. APO TAKAYAMA: Yes, thank you.

CHAIR MOLINA: Okay, okay. Thank you for assisting the Chair on that. Member King.

COUNCILMEMBER KING: Yeah, we got three links and they're all the exactly same for each of the sessions.

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: Maybe Ms. Apo could explain what she's telling us. You know, there's, you know, it says here are the links to executive session for--and then GREAT 11(9), GREAT 11(13), GREAT 11(20), but the links are all the same.

CHAIR MOLINA: Okay. Ms. Apo Takayama, can you provide clarification--or Mr. Forrest, as well?

MR. FORREST: Yeah, I need to look into that. Let me get right back to you.

CHAIR MOLINA: Okay, we'll deal with it as . . . *(inaudible)*. . . And I see we have our Vice-Chair online with us. Can you hear us?

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha, Chair, I can hear you now. Can you hear me?

CHAIR MOLINA: We can hear you fine, and we can see you too. Okay, great. Thank you for making yourself available to be part of the proceedings. So, all right. Members, any other questions before we take a brief recess to go into executive session? Everybody

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understand what we're doing? Member Paltin.

COUNCILMEMBER PALTIN: I just wasn't clear. When we go out of executive session, do we need to come back to this meeting room, or do we go on to another executive session? We go executive session to executive session, or do we go executive session to GREAT, executive session to GREAT. I wasn't clear on that.

CHAIR MOLINA: Okay. Yeah, good question. Good question. Staff, do we have to come out...back into open session to go back into executive session. Good question. Mr. Forrest, or Ms. Apo Takayama, can you provide some guidance for the Committee?

MS. APO TAKAYAMA: Chair, no. You do not need to return back to open session. You just need to adjourn the previous executive session. Thank you.

CHAIR MOLINA: Okay, and then we can just go on to the next item for executive session and click on the link.

COUNCILMEMBER PALTIN: Thank you.

CHAIR MOLINA: Okay, is that as clear as mud to everybody? I can see through it...I can see through it. Okay, Members, so it is 5:34 p.m. Let us...we're going to take a recess to go into executive session. Is 5:40 okay for everyone? About five minutes or so? Okay. So with that said, Members, we're going to recess this GREAT Committee meeting for Tuesday, May 31st, 2022, and we shall go into executive session effective at 5:40 p.m. Meeting in recess. . . .(gavel). . .

RECESS: 5:34 p.m.

RECONVENE: 6:33 p.m.

CHAIR MOLINA: . . .(gavel). . . The GREAT Committee meeting for Tuesday, May 31st, 2022, is now back in open session. Time is 6:33 p.m. Members, we've concluded executive session discussions on GREAT Items 11(9), 11(13) and 11(20).

GREAT-11(9) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: GULSONS, LLC CLAIM) (CC 21-46)

CHAIR MOLINA: First, we'll take up 11(9). Chair's recommendation is to approve the settlement as recommended...settlement amount as recommended in executive session. So the Chair will entertain a motion to approve.

COUNCILMEMBER LEE: So moved.

COUNCILMEMBER KAMA: Second.

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CHAIR MOLINA: Okay, moved by Chair Lee, seconded by Member Kama. Members, any discussion? Okay, seeing no discussion, let's take a vote. All those Members in favor of, please signify by raising your hand and saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: Okay, any opposed? Okay, thank you. The Chair will mark it eight "ayes," with one excusal, Member Johnson. Thank you very much, Members.

VOTE: AYES: Chair Molina, Vice-Chair Rawlins-Fernandez, and Councilmembers Kama, King, Lee, Paltin, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution by C.R.

GREAT-11(13) LITIGATION MATTERS (RESOLUTION 22-52, RELATING TO SETTLEMENT AUTHORIZATION: TYRON DELLA; CLAIM 4064548 (MOTOR VEHICLE ACCIDENT))

CHAIR MOLINA: All right. The next item is 11(13), and as suggested in executive session, with regards to the settlement amount proposal, the Chair will ask for a motion to approve.

COUNCILMEMBER LEE: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Moved by Chair Lee, seconded by Member Kama. Any discussion? Seeing none. All those in favor signify by saying "aye," and raising your hand.

COUNCILMEMBERS VOICED AYE.

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CHAIR MOLINA: Okay. Any opposed? Thank you. The Chair will mark it eight “ayes,” with one excusal, Member Johnson.

VOTE: AYES: Chair Molina, Vice-Chair Rawlins-Fernandez, and Councilmembers Kama, King, Lee, Paltin, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson.

MOTION CARRIED.

ACTION: Recommending ADOPTION of Resolution 22-52 by C.R.

GREAT-11(20) LITIGATION MATTERS (RESOLUTION 22-102, RELATING TO SETTLEMENT AUTHORIZATION: ROBERT TURNER V. WAI-AHIWI GULCH LAND COMPANY LLC, ET AL., CIVIL 18-1-0244(1))

CHAIR MOLINA: And our final item for decision making is GREAT Item 11(20). As suggested in executive session, the settlement amount proposed, the Chair will recommend approval, and will entertain a motion to approve.

COUNCILMEMBER LEE: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Moved by Chair Lee, seconded by Member Kama. Any discussion? Seeing no discussion, all those in favor, signify by saying “aye,” and raising your hand.

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: Okay, any opposition? Seeing none. The Chair will mark it eight “ayes,” with one excusal, Member Johnson.

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VOTE: **AYES:** **Chair Molina, Vice-Chair Rawlins-Fernandez, and
Councilmembers Kama, King, Lee, Paltin, Sinenci,
and Sugimura.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmember Johnson.**

MOTION CARRIED.

ACTION: **Recommending ADOPTION of Resolution 22-102 by C.R.**

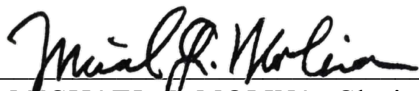
CHAIR MOLINA: Well, that was quick, Members. Thank you very much for your hard work. The time is 6:35 p.m. Before we close, Staff, is there anything the Chair needs to be made aware of before we adjourn?

MS. APO TAKAYAMA: Chair, there is no further business before the Committee. Thank you.

CHAIR MOLINA: Okay. Thank you very much, Ms. Apo Takayama. So with that said, thank you very much, Members, for your hard work and the extra time that you've had to put in. Hope all of you have a wonderful dinner and evening. And thank you again for your hard work, Committee Staff, as well as Administration, and everyone else who participated in our proceedings today. So with that said, the GREAT Committee meeting for Tuesday, May 31st, 2022, is now adjourned. The time is 6:35 p.m. . . .(gavel). . .

ADJOURN: 6:35 p.m.

APPROVED BY:



MICHAEL J. MOLINA, Chair
Government Relations, Ethics, and
Transparency Committee

great:min:220531:ta

Transcribed by: Terianne Arreola

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CERTIFICATION

I, Terianne Arreola, hereby certify that pages 1 through 57 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 13th day of July 2022, in Wailuku, Hawai'i

A handwritten signature in black ink, appearing to read 'Terianne Arreola', written over a horizontal line.

Terianne Arreola