

COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

February 19, 2010

**Committee  
Report No.** \_\_\_\_\_

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

Chair and Members:

Your Committee of the Whole, having met on January 14, 2010, and February 4, 2010, makes reference to County Communication No. 09-14, from Michael J. Molina, Chair of your Committee, regarding litigation matters submitted by the Department of the Corporation Counsel.

By correspondence dated December 9, 2009, the Department of the Corporation Counsel requested consideration of the possible settlement of Veranio S. Tongson, et al. v. County of Maui, et al., Civil No. 08-1-0267(3). Attached to the request is a copy of the complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF VERANIO S. TONGSON, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. 08-1-0267(3)". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes that the complaint alleges intentional infliction of emotional distress and violations of the Hawaii Whistleblowers' Protection Act while the plaintiffs were employed with the Department of Housing and Human Concerns.

The Deputy Corporation Counsel informed your Committee that the plaintiffs first filed their claims against the County and individually named County employees in Federal court. The Federal court dismissed all claims against the County employees who had been sued personally, and all but one claim against the County itself. The remaining claim alleges violations of the Hawaii Whistleblowers' Protection Act, a State law. Because the only remaining claim involves a State law, the Federal court declined to retain jurisdiction. The plaintiffs subsequently filed this lawsuit in State court.

The Deputy Corporation Counsel indicated that the County has filed motions asking the State court for rulings in favor of the County. She requested that your Committee convene an executive meeting, closed to the public, in order to discuss settlement options. Your Committee voted to convene an executive meeting for the purpose of consulting with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

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Following the executive meeting, your Committee reconvened in regular session. A motion to recommend adoption of the proposed resolution failed with your Committee voting 4-2. Committee Chair Molina and members Baisa, Medeiros, and Victorino voted "aye". Committee members Kaho`ohalahala and Nishiki voted "no". Committee Vice-Chair Mateo and Committee members Johnson and Pontanilla were excused.

Subsequently, your Committee met again. The Deputy Corporation Counsel informed your Committee that two plaintiffs are willing to settle the case based on the terms previously discussed in the executive meeting. There is no indication that the third plaintiff is willing to settle the case. She advised that it is important that any offer to settle the case be proposed to all three plaintiffs to ensure that, in the event the County receives a favorable judgment after a trial, the County can recover its costs and fees associated with the litigation.

Your Committee voted 5-1 to recommend adoption of the proposed resolution. Vice-Chair Mateo, and members Baisa, Medeiros, Pontanilla, and Victorino voted "aye". Committee member Kaho`ohalahala voted "no". Committee Chair Molina and Committee members Johnson and Nishiki were excused.

Your Committee of the Whole RECOMMENDS that Resolution No. \_\_\_\_\_, attached hereto, entitled "AUTHORIZING SETTLEMENT OF VERANIO S. TONGSON, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. 08-1-0267(3)", be ADOPTED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.

  
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MICHAEL J. MOLINA, Chair

# Resolution

No. \_\_\_\_\_

AUTHORIZING SETTLEMENT OF  
VERANIO S. TONGSON, ET AL. VS. COUNTY OF MAUI, ET AL.,  
CIVIL NO. 08-1-0267(3)

WHEREAS, Plaintiffs Veranio S. Tongson, Jeffrey Javier, and Kim S. Nemoto (hereinafter "Plaintiffs") filed a lawsuit in the Second Circuit Court on May 20, 2008, Civil No. 08-1-0267(3), against the County of Maui claiming general and special damages as the result of retaliation because of their whistleblowing; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

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

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

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


1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Committee of the Whole; and

2. That it hereby authorizes the Director of Finance to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, and the Corporation Counsel.

APPROVED AS TO FORM  
AND LEGALITY:

  
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CHERYL TIPTON  
Deputy Corporation Counsel  
County of Maui