

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

October 5, 2012

Committee
Report No. _____

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

Chair and Members:

Your Policy Committee, having met on September 19, 2012, makes reference to County Communication 11-30, from Council Chair Danny A. Mateo, regarding litigation matters.

By correspondence dated September 6, 2012, the Department of the Corporation Counsel requested consideration of the possible settlement of Troy Mattos, et al. v. Darren Agarano, et al., Civil CV07-00220 DAE BMK. Attached to the request is a copy of the complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF TROY MATTOS AND JAYZEL MATTOS V. DARREN AGARANO, ET AL., CIVIL NO. CV07-00220 DAE BMK". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case under different terms than previously authorized.

Your Committee notes that the complaint alleges violations of the constitutional rights of Plaintiffs Troy Mattos and Jayzel Mattos, arising from their arrest on August 23, 2006. The Council previously authorized settlement of the case by Resolutions 08-29 and 12-13, but Plaintiffs rejected the authorized offers.

A Deputy Corporation Counsel provided a brief overview of the case, stating that it is the first case involving the use of tasers in the State. The Deputy Corporation Counsel requested the opportunity to discuss the matter in an executive meeting, closed to the public.

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

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the

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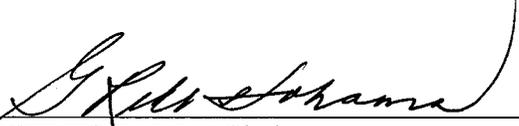
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Corporation Counsel, your Committee voted 7-0 to recommend adoption of the proposed resolution to authorize the settlement of the matter under the terms proposed in the executive meeting. Committee Chair Hokama, Vice-Chair Carroll, and members Baisa, Cochran, Pontanilla, Victorino, and White voted "aye". Committee members Couch and Mateo were excused.

Your Policy Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF TROY MATTOS AND JAYZEL MATTOS V. DARREN AGARANO, ET AL., CIVIL NO. CV07-00220 DAE BMK", be ADOPTED.

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



G. RIKI HOKAMA, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT OF TROY MATTOS
AND JAYZEL MATTOS V. DARREN AGARANO, ET AL.,
CIVIL NO. CV07-00220 DAE BMK

WHEREAS, Plaintiffs Troy Mattos and Jayzel Mattos filed a lawsuit in the United States District Court for the District of Hawaii on April 26, 2007, Civil No. CV07-00220 DAE BMK, against Police Officers Darren Agarano, Ryan Aikala, Stuart Kunioka, Halayudha MacKnight, and the County of Maui, claiming general, special, and punitive damages arising from Plaintiffs' arrest on August 23, 2006; and

WHEREAS, the Council previously authorized settlement in this matter pursuant to Resolution Nos. 08-29 and 12-13, which were rejected by Plaintiffs; and

WHEREAS, the County is the only remaining defendant in this litigation because all claims against Darren Agarano, Ryan Aikala, Stuart Kunioka and Halayudha MacKnight were dismissed pursuant to an order issued by the Ninth Circuit Court of Appeals on October 17, 2011; and

WHEREAS, the County filed a Petition for Writ of Certiorari with the United States Supreme Court to clarify the law in regard to Taser use but that Petition was denied on May 29, 2012; and

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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 for an additional amount to be disclosed in an executive meeting before the Policy Committee; and

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

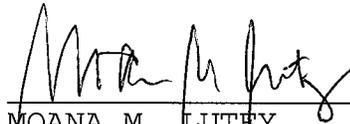
2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

Resolution No. _____

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, the Chief of Police, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui

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