

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

March 18, 2016

**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 November 6, 2015, February 5, 2016, and March 4, 2016, makes reference to the following:

1. County Communication 15-219, from Council Chair Mike White, transmitting the following:
 - a. A proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL." The purpose of the proposed resolution is to authorize the employment of special counsel to represent Defendant County of Maui and, to the extent consistent with the Hawaii Rules of Professional Conduct, other Defendants in Christopher Salem v. County of Maui, et al., for a total compensation not to exceed \$75,000.
 - b. A proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FOR PATRICK WONG, IN HIS INDIVIDUAL CAPACITY, IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL." The purpose of the proposed resolution is to authorize the employment of special counsel to represent Defendant Patrick Wong in his individual capacity in Christopher Salem v. County of Maui, et al., for a total compensation not to exceed \$75,000.
2. County Communication 15-257, from the Department of the Corporation Counsel, transmitting a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

Page 2

Committee
Report No. _____

COUNSEL IN CHRISTOPHER SALEM V. ALAN ARAKAWA, ET AL., CIVIL No. 15-00384 LEK-KSC.” The purpose of the proposed resolution is to authorize the employment of special counsel to represent Defendants Alan Arakawa, Patrick Wong, Keith Regan, David Goode, Milton Arakawa, William Spence, John Min, and Jeffrey Hunt, who have been identified as Defendants in their individual capacities, in Christopher Salem v. Alan Arakawa, et al., Civil 15-00384 LEK-KSC, for a total compensation not to exceed \$75,000.

Your Committee notes the Complaint alleges Christopher Salem owned Lot 48C of the Mailepai Hui Partition Subdivision along Lower Honoapiilani Road and Hui Road E, Lahaina, Maui, Hawaii, until the property was auctioned for sale on January 20, 2015. The Complaint alleges damages arising from the actions and omissions of Defendants, including a failure to administer and enforce conditions imposed on developers through subdivision agreements for subdivisions involving three lots or less.

In his Complaint, Mr. Salem alleges breach of fiduciary duty; gross negligence; fraud; negligent hiring and retention; civil conspiracy; civil rights violations; breach of public trust; perjury; obstruction of justice; violations of the bankruptcy law; breaches of the Revised Charter of the County of Maui (1983), as amended, and Maui County Code; and other violations of State and Federal law.

Your Committee notes Charter Section 3-6(6) authorizes the Council to retain or employ, by a vote of two-thirds of its entire membership, special counsel for any special matter presenting a real necessity for such employment. Charter Section 3-6(6) further requires that any such employment specify the compensation, if any, to be paid for the services.

Your Committee previously reported on this matter by Committee of the Whole Committee Report 15-146. On October 16, 2015, the Council adopted Resolution 15-135, authorizing the employment of special counsel Kobayashi Sugita & Goda to represent the individual

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

Page 3

Committee
Report No. _____

Defendants in Christopher Salem v. Alan Arakawa, et al., Civil 15-00384 LEK-KSC, for a total compensation not to exceed \$50,000.

By correspondence dated January 26, 2016, the Department of the Corporation Counsel, transmitted a proposed resolution entitled "AUTHORIZING AN INCREASE IN COMPENSATION RELATED TO THE EMPLOYMENT OF SPECIAL COUNSEL KOBAYASHI SUGITA & GODA, LLP, IN CHRISTOPHER SALEM V. ALAN ARAKAWA, ET AL., CIVIL NO. CV 15-00384 LEK-KSC, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII." The purpose of the proposed resolution is to authorize \$75,000 in additional compensation for Kobayashi Sugita & Goda, LLP as special counsel for the individual Defendants in the case, for a total compensation not to exceed \$125,000. According to the proposed resolution, the additional compensation is for discovery, depositions, and pretrial motions.

Your Committee notes the County has removed the case to Federal court. Initial pleadings have been filed in the case, with motions pending before Judge Leslie Kobayashi. Special counsel has filed a motion to dismiss most claims against the individual Defendants, except the claim alleging civil rights violations under Section 1983, Title 42, United States Code. The County has filed a claim alleging abuse of process.

Because the case involves ongoing litigation, a Deputy Corporation Counsel requested the opportunity to convene an executive meeting.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 8-0 to recommend adoption of the proposed resolution and filing of County Communications 15-219 and 15-257. Committee Chair Guzman,

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

Page 4

Committee
Report No. _____

Vice-Chair Crivello, and members Baisa, Carroll, Cochran, Couch, Hokama, and Victorino voted "aye." Committee member White was excused.

Your Committee of the Whole RECOMMENDS the following:

1. That Resolution _____, attached hereto, entitled "AUTHORIZING AN INCREASE IN COMPENSATION RELATED TO THE EMPLOYMENT OF SPECIAL COUNSEL KOBAYASHI SUGITA & GODA, LLP, IN CHRISTOPHER SALEM V. ALAN ARAKAWA, ET AL., CIVIL NO. CV 15-00384 LEK-KSC, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII," be ADOPTED;
2. That County Communication 15-219 be FILED; and
3. That County Communication 15-257 be FILED.

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



DON S. GUZMAN, Chair

cow:cr:16005ab:cmn

Resolution

No. _____

AUTHORIZING AN INCREASE IN COMPENSATION RELATED TO
THE EMPLOYMENT OF SPECIAL COUNSEL KOBAYASHI SUGITA & GODA,
LLP, IN CHRISTOPHER SALEM V. ALAN ARAKAWA, ET AL., CIVIL NO. CV 15-
00384 LEK-KSC, UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF HAWAII

WHEREAS, by Resolution No. 15-135, the Council authorized the employment of special counsel KOBAYASHI SUGITA & GODA, LLP ("special counsel") to represent Alan Arakawa, Pat Wong, Keith Regan, David Goode, Milton Arakawa, John Min, William Spence, and Jeffrey Hunt as sued "individually" in *Christopher Salem v. Alan Arakawa, et al.*; and


WHEREAS, the Department of the Corporation Counsel has requested authorization to raise the compensation limit for the employment of special counsel by an additional \$75,000, for discovery, depositions, and pretrial motions in this case, for a total compensation not exceeding \$125,000; now, therefore,

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

1. That the Council hereby approves and authorizes an increase in compensation for the employment of special counsel Kobayashi Sugita & Goda, LLP to represent the "individually" named Defendants in this case by \$75,000, for a total compensation not exceeding \$125,000; and

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

APPROVED AS TO FORM
AND LEGALITY:



BRIAN A. BILBERRY
Deputy Corporation Counsel
County of Maui