

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

June 3, 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 May 17, 2016, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated May 6, 2016, the Department of the Corporation Counsel requested consideration of a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF NADJA VITAVEC NKA NADJA NEIDHART V. COUNTY OF MAUI, ET AL. CIVIL NO. 15-1-0181(1)," and transmitted a copy of the First Amended Complaint. The Complaint alleges Nadja Vitavec suffered personal injuries on or about May 8, 2013, when a large tree branch fell on her at Puamana Beach Park in Lahaina, Maui, Hawaii. The purpose of the proposed resolution is to authorize settlement of the case.

Your Committee notes it previously reported on this matter through Committee Report 16-70, which recommended a proposed resolution authorizing settlement of the case be adopted. At its meeting of April 15, 2016, the Council adopted Resolution 16-64.

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

A Deputy Corporation Counsel provided a brief overview of the case. He said since he last presented the case to your Committee, the parties had proceeded with mediation before Judge Joel August. Ms. Vitavec issued a new settlement demand, and the Deputy received a written recommendation from the mediator which he wished to present in an executive meeting.

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Because the case involves ongoing litigation, the Deputy 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 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 6-0 to recommend adoption of the proposed resolution. Committee Chair Guzman, Vice-Chair Crivello, and members Carroll, Cochran, Couch, and Hokama voted "aye." Committee members Baisa, Victorino, and White were excused.

Your Committee of the Whole RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF NADJA VITAVEC NKA NADJA NEIDHART V. COUNTY OF MAUI, ET AL. CIVIL NO. 15-1-0181(1)," be ADOPTED.

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



DON S. GUZMAN, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT OF NADJA VITAVEC
NKA NADJA NEIDHART V. COUNTY OF MAUI, ET AL.
CIVIL NO. 15-1-0181(1)

WHEREAS, Plaintiff Nadja Vitavec nka Nadja Neidhart filed a lawsuit in the Second Circuit Court of the State of Hawai'i, against the County of Maui on July 10, 2015, seeking damages for personal injury related to an incident occurring at Puamana Beach Park on May 8, 2013; and

WHEREAS, by Resolution 16-64, the Council previously authorized settlement of the case; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, seeks 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 terms set forth and discussed 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

Resolution No. _____

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

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

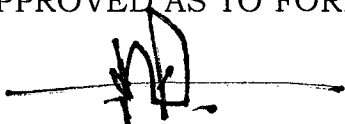
1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Committee of the Whole; and

2. That it hereby authorizes the 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

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 Director of Parks and Recreation, and the Department of the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



BRIAN A. BILBERRY
Deputy Corporation Counsel
County of Maui