

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

July 26, 2007

**Committee
Report No.**

07-70

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

Chair and Members:

Your Policy Committee, having met on July 10, 2007, makes reference to County Communication No. 07-11, from the Council Chair, regarding the settlement of claims and lawsuits.

Your Committee is in receipt of correspondence dated June 18, 2007, from the Department of the Corporation Counsel, requesting consideration of a proposed settlement of Michael Gaines, et al. vs. County of Maui, et al., Civil No. 04-1-0290(3). Attached to the request is a copy of the complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF MICHAEL GAINES, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. 04-1-0290(3)". The purpose of the proposed resolution is to authorize settlement of the case.

Your Committee notes that the complaint alleges general, special, and punitive damages arising from a traffic stop.

At its meeting, your Committee met with the Deputy Chief, Department of Police; and two Deputy Corporation Counsel.

There was no public testimony.

A Deputy Corporation Counsel provided a brief overview of the case and requested the opportunity to discuss the matter in an executive meeting. She noted that the police officers involved in this case were following standard procedures for a traffic stop on a vehicle involved in a felony.

She also noted that the bench warrant that was the basis for the arrest of Mr. Gaines was issued by the State courts and the court staff failed to notify the Department of Police that the warrant was withdrawn. A motion for summary judgment has been filed with the District Court on this point.

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Your Committee voted to convene an executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Sections 92-5(a)(4) and 92-5(a)(8), Hawaii Revised Statutes.

At its executive meeting, your Committee met with the Deputy Chief, Department of Police; and two Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted to recommend adoption of the proposed resolution to authorize the settlement of the matter.

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF MICHAEL GAINES, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. 04-1-0290(3)" be ADOPTED.

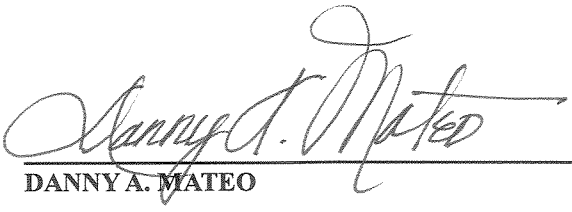
Adoption of this report is respectfully requested.

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF
MICHAEL GAINES, ET AL. VS. COUNTY OF MAUI, ET AL.,
CIVIL NO. 04-1-0290(3)

WHEREAS, Plaintiffs Michael Gaines and Dana Adams (hereinafter "Plaintiffs") filed a lawsuit in the Second Circuit Court on July 15, 2004, Civil No. 04-1-0290(3), against the County of Maui claiming general, special, and punitive damages arising from a traffic stop involving both plaintiffs, and the arrest of Plaintiff Gaines, which occurred on or about April 29, 2004, in Lahaina, Maui, Hawaii; and

WHEREAS, Plaintiffs filed a Second Amended Complaint on June 27, 2006, to name Donald Simpson, Joshua Haglan and Ryan Pursley as co-defendants; 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 for an amount not to exceed the range of authority granted by the Council on this case; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach

Resolution No. _____

resolution of this case by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel; now, therefore,

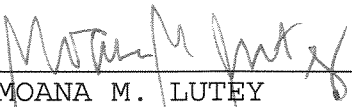
BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby authorizes the Department of the Corporation Counsel to negotiate settlement of this case and, if appropriate, to serve an Offer of Judgment in an amount not to exceed the range of authority granted by the Council on this case; and

2. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case in Civil No. 04-1-0290(3), under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. 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:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui