

ROY T. HIRAGA  
County Clerk



JEFFREY T. KUWADA  
Deputy County Clerk

## OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, HAWAII 96793

COPY

October 10, 2008

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Lance D. Collins  
Law Office of Lance D. Collins  
2070 W. Vineyard Street, Suite 5  
Wailuku, Hawaii 96793

Dear Mr. Collins:

**SUBJECT: RULING ON CHALLENGE BY VOTER REGARDING  
THE VOTER REGISTRATION STATUS OF  
SOLOMON P. KAHO'OHALAHALA**

### BACKGROUND/CHALLENGE

Beginning on or about September 23, 2008 and ending on or about October 2, 2008, the Office of the County Clerk received twelve (12) letters ("Complaint Letters") from registered voters residing in the Lanai residency area. Copies of the Complaint Letters are marked Exhibit "A-1" through "A-12" and enclosed for your reference,

Generally, the writers of the Complaint Letters allege that candidate Sol P. Kaho'ohalahala does not reside in the Lanai residency area.

### SERVICE OF NOTICE OF CHALLENGE

I served notice of the challenge on Mr. Kaho'ohalahala by letter dated September 24, 2008 a copy of which is marked Exhibit "B" and enclosed for your reference.

### EVIDENCE SUBMITTED BY THE COMPLAINANTS

Except for the allegations contained in the Complaint Letters, the writers have submitted no additional substantiating evidence.

Mr. Lance D. Collins  
Page 2  
October 10, 2008

### EVIDENCE SUBMITTED BY MR. KAHO'OHALAHALA

I confirm that I have received your "Summary of Submissions" and "Complaints Regarding Residency of Mr. Sol Kaho'ohalahala" letters, both dated October 3, 2008, and the affidavits of Gaylien K. Kaho'ohalahala and Solomon Kaho'ohalahala. Copies of all of the aforementioned letters and affidavits are marked Exhibits "C" through "F", respectively, and enclosed for your reference.

### DISCUSSION

The Complaint Letters challenge Mr. Kaho'ohalahala's residency based upon two separate statutory grounds, namely, section 12-8, Hawaii Revised Statutes ("HRS") and section 11-25, HRS.

Section 12-8, HRS, states in pertinent part:

(a) All nomination papers filed in conformity with section 12-3 shall be deemed valid unless objection is made thereto by a registered voter, an officer of a political party whose name is on file with the chief election officer, the chief election officer, or the county clerk in the case of a county office. All objections shall be filed in writing not later than 4:30 p.m. on the thirtieth day or the next earliest working day prior to the primary or special election.

To the extent that the Complaint Letters constitute a challenge to Mr. Kaho'ohalahala's candidacy pursuant to the provisions of section 12-8, HRS, the challenge is untimely. Section 12-8 clearly provides that "All objections shall be filed in writing not later than 4:30 p.m. on the thirtieth day or the next earliest working day prior to the primary or special election." The earliest date of receipt of a Challenge Letter by the Clerk's Office was Monday, September 23, 2008, two days after the Primary Election was conducted on Saturday, September 20, 2008.

Section 11-25, HRS, states in pertinent part:

(a) Challenging prior to election day. Any registered voter may challenge the right of a person to be or to remain registered as a voter in any precinct for any cause not previously decided by the board of registration or the supreme court in respect to the same person; provided that in an election of members of the board of trustees of the office of Hawaiian affairs the voter making the challenge must be registered to vote in that election. The challenge shall be in writing, setting forth the grounds upon which it is based, and be signed by the person making the challenge. The challenge shall be delivered to the clerk who

shall forthwith serve notice thereof on the person challenged. The clerk shall, as soon as possible, investigate and rule on the challenge.

Section 11-13, HRS, sets forth rules for determining residency for election purposes. Section 11-13, HRS, states as follows:

For the purpose of this title, there can be only one residence for an individual, but in determining residency, a person may treat oneself separate from the person's spouse. The following rules shall determine residency for election purposes only:

(1) The residence of a person is that place in which the persons habitation is fixed, and to which, whenever the person is absent, the person has the **intention** to return;

(2) A person does not gain residence in any precinct into which the person comes without the **present intention** of establishing the person's permanent dwelling place within such precinct;

(3) If a person resides with the person's family in one place, and does business in another, the former is the person's place of residence; but any person having a family, who establishes the person's dwelling place other than with the person's family, with the intention of remaining there shall be considered a resident where the person has established such dwelling place;

(4) The mere intention to acquire a new residence without physical presence at such place, does not establish residency, neither does mere physical presence without the concurrent **present intention** to establish such place as the person's residence;

(5) A person does not gain or lose a residence solely by reason of the person's presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison;

(6) No member of the armed forces of the United States, the member's spouse or the member's dependent is a resident of this State solely by reason of being stationed in the State;

(7) A person loses the person's residence in this State if the person votes in an election held in another state by absentee ballot or in person. In case of question, final determination of residence shall be made by the clerk, subject to appeal to the board of registration under part III of this chapter.

(Emphasis added.)

Eight<sup>1</sup> of the twelve Complaint Letters state, ". . . it is widely believed that [Mr. Kaho'ohalahala] actually resides with his wife on Maui." Assuming, for the purpose of argument, that this widely held belief is true, section 11-13, HRS, contemplates that a person may have a residence separate and apart from his or her spouse when it states as follows: "For the purpose of this title, there can be only one residence for an individual, but in determining residency, a person may treat oneself separate from the person's spouse."

Mr. Kaho'ohalahala admits that he resided on Maui when he was director of the Kahoolawe Island Reserve Commission.<sup>2</sup> However, section 11-13(5), HRS, states as follows: "(5) A person does not gain or lose a residence solely by reason of the person's presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison[.]" Therefore, Mr. Kaho'ohalahala did not lose his residency due to his absence from Lanai while he was employed in service of the State.<sup>3</sup>

One Complaint Letter<sup>4</sup> alleges that "The 444 Fraser Ave. address is the home of his father. His siblings, I believe, are listed on the deed of the home. His residence for approximately the last 10 years has been 124A Fleming Road, Lahaina, HI."

The language of Hawaii Revised Statutes, section 11-13, paragraphs (1), (2), and (4), makes it abundantly clear that physical presence or absence from a particular place is not the deciding factor in determining the residence of an individual. "Under section 11-13, one's **state of mind** determines one's place of residence." Atty. Gen. Op. 86-10. (Emphasis added.)

---

<sup>1</sup> See, Exhibits "A-1" through "A-4", "A-6", "A-7", "A-9", and "A-10".

<sup>2</sup> You state in your written response on behalf of Mr. Kaho'ohalahala, "Mr. Kaho'ohalahala does not dispute that he resided on Maui when he was director of the Kahoolawe Island Reserve Commission. This commission is a state commission created pursuant to Chapter 6K, Haw. Rev. Stat."

<sup>3</sup> Exhibit "A-8"

<sup>4</sup> See Exhibit "A-5".

Mr. Lance D. Collins  
Page 5  
October 10, 2008

The key to deciphering Mr. Kaho'ohalahala's state of mind is found in his sworn affidavit. In it, he states:

- ...
2. My residence is fixed at 444 Fraser Avenue, Lana'i City, and whenever I am absent from the island of Lana'i, **I intend to return.**
  3. I was born and raised on the island of Lana'i and retained my residence on Lana'i except for a brief period in which I was in the service of the State of Hawai'i with the Kaho'olawe Island Reserve Commission.
  4. At the time of fixing my residence in Lana'i City, **it was with the intention of making it my permanent dwelling place.**

...  
(Emphasis added.)


It is clear from the quoted portions of his sworn affidavit that Mr. Kaho'ohalahala intends to reside on the island of Lana'i.

The Office of the County Clerk, County of Maui, has conducted an examination of Mr. Kaho'ohalahala's voter registration history and confirms that, with the exception of the period from July 2006 to July 2008, Mr. Kaho'ohalahala's residence address of record has always been on Lanai.

#### RULING

Pursuant to section 11-25, HRS, section 11-13, HRS, and based upon the foregoing discussion, to the extent that the Complaint Letters constitute a challenge to Mr. Kaho'ohalahala's right to remain a registered voter in (Lanai) District/Precinct 13/07, the challenge is not sustained.

Very truly yours,

  
ROY T. HIRAGA  
County Clerk

Occ:leg:correspondence:081010kahooalahalachallengeruling  
Enclosure

cc: Kevin Cronin, Chief Election Officer, State of Hawaii  
Brian Moto, Corporation Counsel  
✓Solomon P. Kaho'ohalahala

Roy T. Hiraga  
COUNTY CLERK OF MAUI  
County of Maui  
200 South High Street, Room 708  
Wailuku, Hawaii 96793-2155

RECEIVED  
2008 SEP 23 PM 2:39  
OFFICE OF THE  
COUNTY CLERK

Dear Mr. Hiraga,

It is my understanding that you are responsible for investigating complaints made regarding elections in Maui County, Hawaii. In the 2008 primary election for the Maui County Council Sol P. Kaho'ohalahala represented himself as a resident of Lana'i. Although his father resides here and he established a Post Office Box in order to receive mail, it is widely believed that he actually resides with his wife on Maui.

Would you please investigate his claim to residency here? Many residents of this island would like to know what the criteria is for establishing residency. I would like to know how to proceed to file a claim that Mr. Kaho'ohalahala falsified documents filed with his signature to run for the office of Maui County Council, Lana'i Seat.

Mahalo and best regards,

Bruce Jarvey  
P.O. BOX 630788  
LANAI CITY, HI 96763

D.S. In the nine yrs. I've lived here  
I have never seen Sol at the gas station,  
stores, Bank or Post Office! This is  
a small island! Where is he?

Exhibit "A-1"

Roy T. Hiraga  
COUNTY CLERK OF MAUI  
County of Maui  
200 South High Street, Room 708  
Wailuku, Hawaii 96793-2155

RECEIVED  
2008 SEP 23 PM 2: 48  
OFFICE OF THE  
COUNTY CLERK

Dear Mr. Hiraga,



It is my understanding that you are responsible for investigating complaints made regarding elections in Maui County, Hawaii. In the 2008 primary election for the Maui County Council Sol P. Kaho'ohalahala represented himself as a resident of Lana'i. Although his father resides here and he established a Post Office Box in order to receive mail, it is widely believed that he actually resides with his wife on Maui.

Would you please investigate his claim to residency here? Many residents of this island would like to know what the criteria is for establishing residency. I would like to know how to proceed to file a claim that Mr. Kaho'ohalahala falsified documents filed with his signature to run for the office of Maui County Council, Lana'i Seat.

Mahalo and best regards,

*Sherril A. Inara*

*registered voter*

  
  
P.O. BOX 631651  
Honolulu City, HI 96763

*Exhibit "A-2"*

Roy T. Hiraga  
COUNTY CLERK OF MAUI  
County of Maui  
200 South High Street, Room 708  
Wailuku, Hawaii 96793-2155

RECEIVED  
2008 SEP 24 PM 2:52  
OFFICE OF THE  
COUNTY CLERK

Dear Mr. Hiraga,

It is my understanding that you are responsible for investigating complaints made regarding elections in Maui County, Hawaii. In the 2008 primary election for the Maui County Council Sol P. Kaho'ohalahala represented himself as a resident of Lana'i. Although his father resides here and he established a Post Office Box in order to receive mail, it is widely believed that he actually resides with his wife on Maui.

Would you please investigate his claim to residency here? Many residents of this island would like to know what the criteria is for establishing residency. I would like to know how to proceed to file a claim that Mr. Kaho'ohalahala falsified documents filed with his signature to run for the office of Maui County Council, Lana'i Seat.

Mahalo and best regards,

*Amberly Dupree*  
[REDACTED]

P.O. BOX 630665  
[REDACTED]

Lāna'i City, HI 96763-0665

Exhibit "A-3"

September 25, 2008

RECEIVED

2008 SEP 29 PM 3: 27

OFFICE OF THE  
COUNTY CLERK

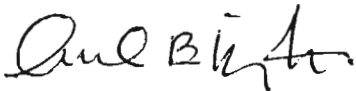
Roy T. Hiraga  
COUNTY CLERK OF MAUI  
County of Maui  
200 South High Street, Room 708  
Wailuku, HI 96793-2155

Dear Mr. Hiraga,

It is my understanding that you are responsible for investigating complaints made regarding elections in Maui County, Hawaii. In the 2008 primary election for the Maui County Council Sol P. Kaho`ohalahala represented himself as a resident of Lana`i. Although his father resides here and he established a Post Office Box in order to receive mail, it is widely believed that he actually resides with his wife on Maui.

Would you please investigate his claim to residency here on Lana`i? Many residents of this island would like to know what the criteria are for establishing residency. I would like to know how to proceed to file a claim that Mr. Kaho`ohalahala falsified documents filed with his signature to run for the office of Maui County Council, Lana`I Seat.

Sincerely,



Samuel B. Dimaya Jr.  
P.O. Box 630479  
[REDACTED]  
Lanai City, H i 96763  
[REDACTED]

Exhibit "A-4"

Reynold M. Gima  
POB 630400  
Lanai City, HI 96763-0400  
565-6396

RECEIVED  
2008 SEP 30 AM 11:50  
OFFICE OF THE  
COUNTY CLERK

September 29, 2008

Roy T. Hiraga, County Clerk  
County of Maui – Office of the County Clerk  
200 S. High St., Rm. 708  
Wailuku, HI 96793

Dear Mr. Hiraga,

I am a registered voter on Lanai and recently voted in the Primary Election. I am writing to request that Solomon Kaho'ohalahala results from the Primary Election are disqualified and exclude him from the General Election based on the following:

1. According to the Maui County Charter he does meet the following criteria:

**Section 3-1. Composition.** There shall be a council composed of nine members who shall be elected-at large. Of the nine members elected to the council, one shall be a resident of the Island of Lāna'i,.....

**Section 3-3. Qualifications.** To be eligible for election or appointment to the council, a person must be a citizen of the United States, a voter in the county, a resident of the county for a period of ninety (90) days next preceding the filing of nomination papers and at the time of filing of nomination papers a resident in the area from which the person seeks to be elected..... (Amended 1992)

2. He has, based on his filing papers, provided false information as to his residence. The 444 Fraser Avc. address is the home of his father. His siblings, I believe, are listed on the deed of the home. His residence for approximately the last 10 years has been 124A Fleming Road, Lahaina, HI.
3. Sol is not a resident of Lanai. He has not lived nor worked here for at least six years and has not demonstrated that he has expenses commonly associated with those of residents (utility costs, property tax payments, home, rental and/or auto insurance payments, and bank activity).

In anticipation of his exclusion from the General Election, please restore Alberta de Jetley's eligibility in the General Election.

I recognize there have been several other challenges to Sol's candidacy and look forward to your office's disposition of these requests.

Thank you for considering my request. Please let me know if you need a hard copy of this letter.

Sincerely,

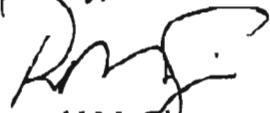
  
Reynold M. Gima

Exhibit "A-5"

September 25, 2008

RECEIVED

2008 SEP 30 PM 3: 23

OFFICE OF THE  
COUNTY CLERK

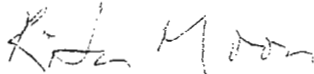
Roy T. Hiraga  
COUNTY CLERK OF MAUI  
County of Maui  
200 South High Street, Room 708  
Wailuku, HI 96793-2155

Dear Mr. Hiraga,

It is my understanding that you are responsible for investigating complaints made regarding elections in Maui County, Hawaii. In the 2008 primary election for the Maui County Council Sol P. Kaho`ohalahala represented himself as a resident of Lana`i. Although his father resides here and he established a Post Office Box in order to receive mail, it is widely believed that he actually resides with his wife on Maui.

Would you please investigate his claim to residency here on Lana`i? Many residents of this island would like to know what the criteria are for establishing residency. I would like to know how to proceed to file a claim that Mr. Kaho`ohalahala falsified documents filed with his signature to run for the office of Maui County Council, Lana`i Seat.

Sincerely,  
Rita Moon



Name: Rita Moon  
P.O. Box 630309

[REDACTED]  
City, State Zip Lana`I City Hawai`I 96763  
[REDACTED]

*Exhibit "A-6"*

September 25, 2008

RECEIVED  
2008 SEP 30 PM 3: 23  
OFFICE OF THE  
COUNTY CLERK

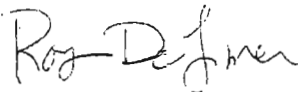
Roy T. Hiraga  
COUNTY CLERK OF MAUI  
County of Maui  
200 South High Street, Room 708  
Wailuku, HI 96793-2155

Dear Mr. Hiraga,

It is my understanding that you are responsible for investigating complaints made regarding elections in Maui County, Hawaii. In the 2008 primary election for the Maui County Council Sol P. Kaho`ohalahala represented himself as a resident of Lana`i. Although his father resides here and he established a Post Office Box in order to receive mail, it is widely believed that he actually resides with his wife on Maui.

Would you please investigate his claim to residency here on Lana`i? Many residents of this island would like to know what the criteria are for establishing residency. I would like to know how to proceed to file a claim that Mr. Kaho`ohalahala falsified documents filed with his signature to run for the office of Maui County Council, Lana`I Seat.

Sincerely,



Roy DeLima  
P.O. Box 631198 (mailing address)

[REDACTED]  
Lanai City, Hi. 96763  
[REDACTED]

*Exhibit "A-1"*

September 27, 2009

Alberta de Jetley  
P. O. Box 630601  
Lanai, HI 96763

County Clerk  
Office of Elections  
County of Maui  
Wailuku, HI 96793

RECEIVED  
2008 SEP 30 PM 3: 22  
OFFICE OF THE  
COUNTY CLERK

---

I would like to file an official complaint regarding Sol Kahoolalahala's residency for the Lanai District Seat of the Maui County Council.

His statement to the *Maui News* about maintaining his residency on Lanai while he was working for the Kahoolawe Commission is false. He has not lived on this island for years!

I hope you will investigate this matter so we, the registered voters of Lanai, can move on and elect someone who is truly a resident of this island to represent us.

Sincerely,


  
Alberta de Jetley

Exhibit "A-8"

September 25, 2008

RECEIVED

2008 OCT -2 PM 3: 42

OFFICE OF THE  
COUNTY CLERK

Roy T. Hiraga  
COUNTY CLERK OF MAUI  
County of Maui  
200 South High Street, Room 708  
Wailuku, HI 96793-2155

Dear Mr. Hiraga,

It is my understanding that you are responsible for investigating complaints made regarding elections in Maui County, Hawaii. In the 2008 primary election for the Maui County Council Sol P. Kaho`ohalahala represented himself as a resident of Lana`i. Although his father resides here and he established a Post Office Box in order to receive mail, it is widely believed that he actually resides with his wife on Maui.

Would you please investigate his claim to residency here on Lana`i? Many residents of this island would like to know what the criteria are for establishing residency. I would like to know how to proceed to file a claim that Mr. Kaho`ohalahala falsified documents filed with his signature to run for the office of Maui County Council, Lana`i Seat.

Sincerely,



Name JEFF MENCE  
P.O. Box 630491

City, State Zip LANAI CITY HI 96763  
Phone # [REDACTED]

NEW INFORMATION

1. SOL'S FATHER DIED A YEAR AGO,  
THE HOUSE IS SOLD,
2. SOL'S BROTHER IS ALLOWING  
HIM TO CLAIM RESIDENCE AT HIS HOUSE  
ON FRAIZER AVE,

Exhibit "A-9"

September 25, 2008

RECEIVED

2008 OCT -2 PM 3:42

OFFICE OF THE  
COUNTY CLERK

Roy T. Hiraga  
COUNTY CLERK OF MAUI  
County of Maui  
200 South High Street, Room 708  
Wailuku, HI 96793-2155

Dear Mr. Hiraga,

It is my understanding that you are responsible for investigating complaints made regarding elections in Maui County, Hawaii. In the 2008 primary election for the Maui County Council Sol P. Kaho`ohalahala represented himself as a resident of Lana`i. Although his father resides here and he established a Post Office Box in order to receive mail, it is widely believed that he actually resides with his wife on Maui.

Would you please investigate his claim to residency here on Lana`i? Many residents of this island would like to know what the criteria are for establishing residency. I would like to know how to proceed to file a claim that Mr. Kaho`ohalahala falsified documents filed with his signature to run for the office of Maui County Council, Lana`i Seat.

Sincerely,



Name *SHERRY MANZA*  
P.O. Box *630491*  
*[REDACTED]*  
City, State Zip *LANAI CITY HI 96763*  
Phone # *[REDACTED]*

*Exhibit "A-10"*

To Roy T. Hiraga:

RECEIVED

2008 SEP 29 PM 3:27

Our overall goal: good, direct, representative democracy on the Maui County Council for the residents of Lanai. Our Contention: Political rules that allow an individual to run in a district that he does not reside in, work in, own a home in, or actively campaign in, are not beneficial to achieving the goal of direct democracy and good representation.

With all due respect to Mr. Sol Kahoo'alahala:

Sol is from Lanai and has family here but he doesn't live here. He doesn't own a home here. He doesn't own or manage a business, or work for a business on Lanai. He doesn't farm on Lanai. He hasn't campaigned on Lanai. He hasn't held a rally here on Lanai. He hasn't campaigned door to door. This is a small town and he is a prominent individual. If he lived here we would see him shopping here, going to the post office, filling up his tank, commuting down to catch Expeditions, and we don't see him doing that. He placed fourth out of five candidates in the voting returns for Lanai residents.

With no disrespect to him, if off island voting patterns in the primary remain the same during the general election, he will be Lanai's representative, and we need him now more than ever to do an effective job of doing that.

For Lanai voters, in their choice for the chair that represents their district, Matt Mano, Alberta deJetley, and John Ornellas placed first, second and third respectively. Those candidates are all local residents, and they are in touch with the pulse of Lanai, in this serious economic time when we need our voice heard and our will expressed. They work for, or own, a Lanai business, they own homes here on Lanai, they breathe the same air as everyone on Lanai, they pay the same gas prices (\$5.57 a gallon), and the highest electric cost in the state.

In a democracy we should respect the right of each island to govern itself as much as possible. Since we don't have a mayor on this island, our **only** direct voice on this council and in local government is this chair. Don't you think it should be required that this chair be held only by a true Lanai resident in the future, if there is a worthy candidate, and this election there are.

*Exhibit "A-11"*

I am originally from Denver, Colorado but I have lived on Lanai for seventeen years. I tell people I am from Colorado, but I don't tell them I live in Colorado. That would be a lie, and that is what he is doing.

We would ask that off-islanders give us the right and opportunity to govern ourselves - majority rules - here on Lanai. As Mahatma Ghandi once said, "there is no people who would not prefer their own bad government to the good government of an alien power."

Sol is a fine candidate. But why doesn't he run in the district that he currently resides in and give a current Lanai resident the opportunity to represent their home island which they love equally as well as he.

Phoenix Dupree

General Manager, Blue Ginger Café

808-563-1649

*Phoenix M Dupree*

SANDI MASSE  
P. O. Box 631112  
Lanai City, HI 96763  
Tel: (808) 563-0341

RECEIVED  
2008 OCT -1 PM 2:45  
OFFICE OF THE  
COUNTY CLERK

September 27, 2008

County Clerk  
200 S. High St., 7<sup>th</sup> Flr.  
Wailuku, HI 96793

Re: **Sol Kaho'ohalahala**

TO WHOM IT MAY CONCERN:

I am challenging Sol Kaho'ohalahala running for County Council on behalf of the island of Lanai, or being voted into that office in the general election on November 4, 2008, based on the question of Mr. Kaho'ohalahala's permanent/legal residency on Lanai.

Please refer to the 2003 Edition of the Charter of the County of Maui:

Article 3-1. Composition. "... Of the nine members elected to the council, one shall be a **resident of the island of Lanai, ...**". (Emphasis added).

In addition please refer to:

Section 3-3. Qualifications. "To be eligible for election or appointment to the council, a person must be a citizen of the United States, a voter in the county, a resident of the county for a period of ninety (90) days next preceding the filing of nomination papers and at **the time of filing of nomination papers a resident in the area from which the person seeks to be elected.** If a council member ceases to be resident of the county, **or cease to be a resident of the council member's area during the council member's residency area during the council member's term of office, ... the council member shall immediately forfeit office and the seat shall thereupon become vacant.** (Amended 1992)." (Emphasis added).

It is requested that the County Clerk define "reside", "residency", and "resident", according to the laws of the State of Hawaii, the County of Maui Codes, and the 2003 Edition of the County of Maui Charter.

*Exhibit "A-12"*

Mr. Kaho'ohalahala stated in the Maui News that:

- (1) His "... family goes back seven generations on Lanai." Which doesn't have anything to do with the current question of his Lanai residency.
- (2) "... he has [does] live[d] in Lahaina, ... with his wife."
- (3) "... he maintains his residency at his father's home on the Pineapple Isle [Lanai] , ..."
- (4) He states he: "... stays in Lahaina to save on travel expenses." If this is the case what kind of representation can Lanai expect with this statement, and, additionally, if he stays in Lahaina, how can he claim residency in Lanai?
- (5) Finally he stated: "... It's all legal and sensible ...".

How does he qualify his "residency" in Lanai? His father's address, a P. O. Box number, or a warm body? If a warm body, how many days a week does he stay at his father's residence and how often is he actually at said residence?

Since he allegedly claims to maintain residency in Lanai, does he:

- (1) Pay any rent or mortgage payments in Lanai?
- (2) Are any utility bills in his name in Lanai?
- (3) Does he pay property taxes in Lanai?

In addition to the above:

- (1) What address did Mr. Kaho'ohalahala use on his Voter's Registration form; and, where is his polling address?
- (2) Where did Mr. Kaho'ohalahala vote on September 20, 2008 in the primary? Lahaina or Lanai?

County Clerk  
September 27, 2008  
Page 3


It is respectfully requested that the County Clerk investigate Mr. Kaho'ohalahala's right to file nomination papers to run for County Council to represent the island of Lanai, based on his questionable residency in Lanai, based on the rules and regulations of the 2003 Edition of the County of Maui Charter, etc.

If it is found that Mr. Kaho'ohalahala is in violation of the above rules and regulations, it is requested that the County Clerk take immediate and appropriate action to remove Mr. Kaho'ohalahala's name from the November 4, 2008 general election ballot; or, if the ballots have already been printed, then any votes he may receive **NOT** be allowed to be counted.

Last, the above opinions and comments are my own and does not reflect the opinions and/or comments of any family member, other than myself.

Thank you for considering my request to challenge Mr. Kaho'ohalahala's running for County Council on behalf of Lanai, based on the alleged residency issue and his honesty when filing for the position of County Council.

Very truly yours,



SANDI MASSE

ROY T. HIRAGA  
County Clerk



JEFFREY T. KUWADA  
Deputy County Clerk

**OFFICE OF THE COUNTY CLERK**

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, HAWAII 96793

September 24, 2008

Mr. Sol P. Kaho`ohalahala  
P.O. Box 630044  
Lanai City, Hawaii 96763

Dear Mr. Kaho`ohalahala:

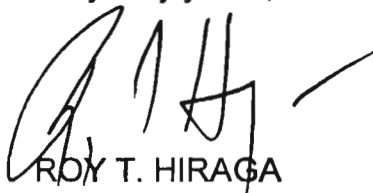
**SUBJECT: CHALLENGE BY VOTER**

The Office of the County Clerk, County of Maui, has received two written challenges to your voter registration, pursuant to Section 11-25, Hawaii Revised Statutes. The challenge alleges that you do not reside on the Island of Lanai.

You are hereby informed that our Office will conduct an investigation as soon as possible and will subsequently issue a ruling on the challenge. As part of our investigation, we request that you respond to the challenge allegation, i.e., that you do not reside at 444 Fraser Avenue. Please send your response to our Office no later than October 3, 2008.

We have also enclosed for your review and reference a copy of Section 11-13, Hawaii Revised Statutes, relating to the rules for determining residency.

Very truly yours,

  
ROY T. HIRAGA  
County Clerk

Enclosure

Occ:elec:correspondence:080924kahoohalahalachallenge

*Exhibit "B"*

### **§ 11-13. Rules for determining residency.**

For the purpose of this title, there can be only one residence for an individual, but in determining residency, a person may treat oneself separate from the person's spouse. The following rules shall determine residency for election purposes only:

(1) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return;

(2) A person does not gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct;

(3) If a person resides with the person's family in one place, and does business in another, the former is the person's place of residence; but any person having a family, who establishes the person's dwelling place other than with the person's family, with the intention of remaining there shall be considered a resident where the person has established such dwelling place;

(4) The mere intention to acquire a new residence without physical presence at such place, does not establish residency, neither does mere physical presence without the concurrent present intention to establish such place as the person's residence;

(5) A person does not gain or lose a residence solely by reason of the person's presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison;

(6) No member of the armed forces of the United States, the member's spouse or the member's dependent is a resident of this State solely by reason of being stationed in the State;

(7) A person loses the person's residence in this State if the person votes in an election held in another state by absentee ballot or in person. In case of question, final determination of residence shall be made by the clerk, subject to appeal to the board of registration under part III of this chapter.

**History.** L 1970, c 26, pt of § 2; am L 1975, c 36, § 1(1); am L 1977, c 189, § 1(1); am imp L 1984, c 90, § 1

**Cross references.** As to residence, see Haw. Const., Art. II, § 3.

LAW OFFICE OF  
**LANCE D COLLINS**

A LAW CORPORATION

2070 W Vineyard Street Suite 5, Wailuku, Hawaii 96793  
[w] 808.243.9292 • [f] 808.242.1412 • lawyer@maui.net

October 3, 2008

Mr. Roy Hiraga  
County Clerk  
County of Maui  
200 S. High Street  
Wailuku, HI 96793

OFFICE OF THE  
COUNTY CLERK

2008 OCT -3 PM 12:16

RECEIVED

Re: Summary of Submissions

Dear Mr. Hiraga,

I represent Mr. Solomon Kaho'ohalahala regarding your investigation of inquiries, correspondences and complaints regarding his legal residency as stated to him by letter dated September 24, 2008. The main arguments of Mr. Kaho'ohalahala are as follows:

- Inadequate Notice and Lack of Meaningful Opportunity to Respond
- Challenge Is A Challenge to Nomination Papers, Not Voter Registration
- Statutory Construction Requires All Election Laws Be Construed Together
- Burden of Proof on Complainants, Complaints Lack Any Credible Evidence
- Domicile and Legal Residence Indisputably Established
- Complaints Tantamount to Election Challenge, Improper Forum
- Doctrine of Laches & Acquiescence, Prohibition Against Gambling With Election

In conjunction with the letter regarding Mr. Kaho'ohalahala's position, there are two affidavits that support factual claims made in that letter. These affidavits supplement other documents within the possession of your office. Please contact me if you have any questions

Very truly yours,  
LAW OFFICE OF LANCE D COLLINS



LANCE D COLLINS  
Attorney for Solomon Kaho'ohalahala

*Exhibit "C"*

October 3, 2008

Mr. Roy Hiraga  
County Clerk  
County of Maui  
200 S. High Street  
Wailuku, HI 96793

OFFICE OF THE  
COUNTY CLERK

2008 OCT -3 PM 12: 17

RECEIVED

Re: Complaints Regarding Residency of Mr. Sol Kaho'ohalahala

Dear Mr. Hiraga,

Please allow this to serve as Mr. Sol Kaho'ohalahala's response to complaints regarding his legal residency within the island of Lana'i and your investigation of his qualifications to vote on the island of Lana'i and to stand for the office of member of the Maui County Council with residency within the island of Lana'i. It is our understanding that your investigation is made pursuant to Haw. Rev. Stat 11-25(a), which states, in part: "The challenge shall be in writing, setting forth the grounds upon which it is based, and be signed by the person making the challenge. The challenge shall be delivered to the clerk who shall forthwith serve notice thereof on the person challenged."

It is clear from the written complaints, in all cases, that these complaints are objections to his nomination papers and challenges to the election results and are underhanded attempt to circumvent the legal requirements for proper objections to nomination papers and challenges to election results. Additionally, none of the complaints provide any proof as to their statements or personal adoption.

I. Inadequate Notice and Lack of Meaningful Opportunity to Respond

"[T]he basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner." Casumpang v. ILWU Local 142, 108

Haw. 411, 425 (2005) “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonable to convey the required information.” Application of Herrick, 82 Haw. 329, 343 (1996)

Mr. Kaho'ohalahala contends, *infra*, that these challenges are in fact nomination paper objections and election contests and, *inter alia*, the notice is wholly inadequate and the procedure upon which these investigations are being made is improper.

## II. Challenge Is A Challenge to Nomination Papers, Not Voter Registration

Contrary to your letter to Mr. Kaho'ohalahala, dated September 24, 2008, stating “has received two written challenges to your voter registration, pursuant to Section 11-25, Hawaii Revised Statutes,” Mr. Harvey's letter and Ms. Mora's letter do not challenge Mr. Kaho'ohalahala's voter registration. Haw. Rev. Stat. 11-25(a) states in part: “Any registered voter may challenge the right of a person to be or to remain registered as a voter in any precinct for any cause not previously decided by the board of registration or the supreme court in respect to the same person.”

However, in each of the complaints that have been filed (each appear to be the same letter signed by different individuals), there is no mention of a challenge at all and where there is a dispute it is with the validity of his candidacy and his nomination papers: “In the 2008 primary election for the Maui County Council Sol. P. Kaho'ohalahala represented himself as a resident of Lana'i.” “Would you please investigate his claim to residency here?” “Many residents of this island would like to know what the criteria is for establishing residency?” “I would like to know how to proceed to file a claim that Mr. Kaho'ohalahala falsified documents filed with his signature to run for the office of Maui County Council, Lana'i seat.”

There is nothing in any of these letters which states that the writer is challenging Mr. Kaho'ohalahala's voter registration. The writers are clearly challenging the validity of his nomination papers and the challenge is, therefore being brought under Section 12-8, Haw. Rev. Stat. However, as you are aware, the time to challenge the validity of nomination papers terminates 30 days before the primary or special election. Additionally, there is a request to "investigate" and there is an inquiry regarding proper procedure on "how to proceed to file a claim that Mr. Kaho'ohalahala falsified documents filed with his signature to run for the office of Maui County Council, Lana'i seat." There is no language that indicates that any of the complainants are challenging anything.

These correspondences should be answered that the Office of the County Clerk does not investigate a candidate's claim of residency when it has been sworn to unless by the challenge of a registered voter within thirty days before the primary election as provided by statute.

### III. Statutory Construction Requires All Election Laws Be Construed Together

"Granting that the legislature will not be presumed to require the doing of a "vain thing," the presumption is still stronger that the legislature intends every clause of a statute to have some effect; and that the construction of such statute, if possible, must be such that the whole will stand." Cooper v. Island Realty Co., 16 Haw. 92, 97 (1904)

"The general rule is that when a plainly irreconcilable conflict arises between a general and specific statute covering the same subject matter, the general statute must yield. However, where the statutes simply overlap in their application, effect will be given to both if possible, as repeal by implication is disfavored." Ohana Pale Ke Ao v. Board of Agriculture, State of Haw., 118 Haw. 247, 255 (2008)

Haw. Rev. Stat. 12-8 indicates that conforming nomination papers are valid unless objected to in writing within thirty days or the next earliest working day prior to the primary or special

election. In this case, the nomination papers were found valid as no written objections were filed or sustained within the time frame. Mr. Kaho'ohalahala and the Office of the County Clerk are entitled to the presumption of validity of his nomination papers – which are premised upon his legal residency and registered voter status. The complainants have a heavy burden of proving otherwise. To permit a unsupportable challenge of this nature would render Haw. Rev. Stat. 12-8 meaningless and superfluous and statutes may not be construed to render one or another meaningless when a reading may be deployed in which both are valid.

Additionally, if a challenge to Mr. Kaho'ohalahala's legal residency were to be permitted indirectly through Haw. Rev. Stat. 11-25, it would be impossible for any challenge to controvert Haw. Rev. Stat. 12-8 “All nomination papers filed in conformity with section 12-3 shall be deemed valid[.]” After the statute of repose expires, the conforming nomination papers are deemed valid. All registered voters lose their ability to contest these papers and they may not do so indirectly by attempting to challenge the voter registration unless they can prove that between the time of filing of the nomination papers and present, they have some evidence or facts that demonstrate that the candidate has changed his legal residency. Absent any actual evidence or facts to support such a claim, the challenge must be dismissed outright.

Haw. Rev. Stat. 12-8 is more specific to registered voters who are candidates where as Haw. Rev. Stat. 11-25 is a more general statute referring to all registered voters. To allow persons to challenge candidate's candidacy after the expiration of the thirty days before the primary election and in this case after the election, would invalidate the statutory requirement that objections to candidacy be brought within a particular time frame and invalidate the entire statute. However, a construction of Haw. Rev. Stat. 11-25 that limits its applicability to candidates during the time frame contemplated in Haw. Rev. Stat. 12-8 does not invalidate the Haw. Rev. Stat. 11-25 statute but requires that registered voters to be diligent to serve the policy objectives of orderly and timely

election processes.

#### IV. Burden of Proof on Complainants, Complaints Lack Any Credible Evidence

As noted in Mitchell v. United States, 88 U.S. (21 Wall.) 350, 353 (1874), “Where a change of domicile is alleged the burden of proving it rests upon the person making the allegation.” Haw. Rev. Stat. 11-25 also requires: “The challenge shall be in writing, setting forth the grounds upon which it is based, and be signed by the person making the challenge.”

In the typed portions of all of the complaints and your letter stating that the allegation is: “that you do not reside at 444 Fraser Avenue”, Mr. Kaho'ohalahala can only assume the allegation derives from the sentence “Although his father resides here and he established a Post Office Box in order to receive mail, it is widely believed that he actually resides with his wife on Maui.” Mr. Harvey's complaint includes a handwritten postscript: “In the nine years I've lived here I have never seen Sol at the gas station, stores, Bank or Post Office! This is a small island; where is he?”

Mr. Kaho'ohalahala maintained his legal residency continuously on Lana'i since he first registered to vote in 1969. In elective office, he served as a member of the Council of the County of Maui from 1995 – 1999 with a durable requirement that his legal residence be within the island of Lana'i. He also served in the House of Representatives of the State of Hawai'i from 1998 – 2000 and from 2002 – 2005 with a similar durable requirement of legal residency. The County Clerk and the Chief Elections Officer confirmed that his nomination papers were conforming to be eligible and elected to those two offices. The County Council and the House of Representatives also were under a continuing obligation to ensure Mr. Kaho'ohalahala remained qualified.

There is no dispute and was no dispute regarding his legal residency within the island of Lana'i through that period he last served in elected public office and his elections demonstrate that Mr. Harvey's recollection of the past nine years is not highly credible or competent evidence to

suggest Mr. Kaho'ohalahala has not maintained his legal residency on Lana'i.

Mr. Kaho'ohalahala does not dispute that he resided on Maui when he was director of the Kaho'olawe Island Reserve Commission. This commission is a state commission created pursuant to Chapter 6K, Haw. Rev. Stat. and Mr. Kaho'ohalahala's employment in the service of the State during that period may not be used against him to prove or disprove legal residency. Haw. Rev. Stat. 11-13(5).

As noted supra, Mr. Kaho'ohalahala uses his "deemed valid" (Haw. Rev. Stat. 12-8) conforming nomination papers to support his position that he legally resides within the island of Lana'i. Unless these complaints refer to a recent intention and overt act of Mr. Kaho'ohalahala to change his legal residence, a contrary finding would invalidate his nomination papers and be contrary to the requirements of Haw. Rev. Stat. 12-8 that all objections be made thirty days prior to the primary election.

The complainants have not proven anything except restated rumor and have not provided any evidentiary support, even circumstantial, to prove the rumors. The complainants are not even claiming that they believe that Mr. Kaho'ohalahala "resides with his wife on Maui" or that they have personal knowledge of such. Instead, the complainants use language consistent with gossip and rumors: "It is widely believed..." Allowing rumor or gossip assertions of nameless other individuals may not be permitted as admissible evidence to support any contentions because it would undermine the requirement that a registered voter challenge another's right to vote that it be reduced to writing and be signed. It also lacks any reasonable level of credibility and would impermissibly shift the burden of challenging Mr. Kaho'ohalahala's residency to a burden on Mr. Kaho'ohalahala of disproving allegations against him.

Finally, there seems to be a notion in each of the complaints that "actual residency" is a determination for "legal residency." This is not found in Haw. Rev. Stat. 11-13 and is also contrary to

the holding in In re Lee Yit Kyau Pang, 32 Haw. 699, 702 (1933) where the Supreme Court held: "As contradistinguished from a person's 'legal residence,' he may have an 'actual residence' in another state or country. He may abide in one country, without surrendering his legal residence in another, if he so intends." Therefore, whether Mr. Harvey has seen Mr. Kaho'ohalahala at the gas station is irrelevant and whether he spends time with his wife or other family elsewhere in the state is also irrelevant to statutory bases for challenging residency.

V. Domicile and Legal Residence Indisputably Established

The elements of legal residency or domicile (throughout the U.S. and most of the world) is (1) intent to permanently reside somewhere and (2) some affirmative act furthering that intention. Legal residency/domicile remains until there is a new (1) and (2). Mitchell v. United States, 88 U.S. (21 Wall.) 350, 353 (1874).

The Hawai'i Supreme Court has discussed what exactly constitutes legal residence in a number of cases which have been adopted by Haw. Rev. Stat. 11-13 in determining residence. In Hurley v. Knudsen, 30 Haw. 887, 891 (1929), the Supreme Court held: "In the absence of any avowed intention, and of acts which indicate a contrary intention, a long-continued residence is regarded as a controlling circumstance in determining the question of domicile."

In re Estate of Grant, 34 Haw. 559, 562 (1938), the Supreme Court held, "A domicile is that place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning." (see Haw. Rev. Stat. 11-13(1))

Finally, in Appeal of Irving, 13 Haw. 22, 25 (1900), the Supreme Court held: "Every man has had a residence at some period of his life. That place remains his legal residence until he has acquired another." (see Haw. Rev. Stat. 11-13(3))

In interpreting Haw. Rev. Stat. 11-13, the Attorney General has opined:

Paragraphs (1), (2) and (4) are particularly instructive for resolving the question posed. Each points out that physical presence or absence from the particular places which one regards as his residence is not material. What must be ascertained instead is where "his habitation is fixed," where he always intends to return, and where his present "permanent dwelling place" is. Under section 11-13, one's state of mind determines one's place of residence. \*\*\*

Acquisition of the new domicile must have been completed and the animus to remain in the new location fixed, before the former domicile can be considered lost. Atty Gen. Op. 86-10 pp 1-2

Mr. Kaho'ohalahala relies upon his birth and long physical residence within the island of Lana'i coupled with his definitive acts of registering to vote, voting, seeking elected office with residency requirements of legally residing on Lana'i and holding elected office with residency requirements of legally residing on Lana'i as his basis for legal domicile and residency within the island.

"[A] presumption of validity is accorded to decisions of administrative bodies acting within their sphere of expertise, and one seeking to upset the decision bears the heavy burden of making a convincing showing that it is invalid." Costa v. Sunn, 5 Haw.App. 419, 429 (1985). "Public policy demands that election results have stability and finality." Dale v. Greater Anchorage Area Borough, 439 P.2d 790, 792 (Alaska 1968)

Mr. Kaho'ohalahala's permanent residence is 444 Fraser Ave, Lana'i City, Hawai'i. He has filed an affidavit of voter registration attesting to this and was not demanded to furnish further evidence. (Haw. Rev. Stat. 11-15) At the close of the county register, the County Clerk listed him as a registered voter. (Haw. Rev. Stat. 11-24) He has filed conforming nomination papers which, by law, have been deemed valid as a matter of law. (Haw. Rev. Stat. 12-8) He voted in the primary election. (Haw. Rev. Stat. 11-96) He has won a primary election which, by law, is deemed valid and incontestable since no contests were filed within the period prescribed by law. (Haw. Rev. Stat. 11-173.5) Mr. Kaho'ohalahala seeks to rely upon all of these documents within the knowledge and possession of the County Clerk together with the attached affidavits as the evidentiary support regarding his legal residency.

VI. Complaints Tantamount to Election Contest, Improper Forum

In Dehoff v. Attorney General, State of Tennessee, 564 S.W.2d 361, 362 (Tenn.1978), the complainant sought a declaratory judgment that a referendum election was void because the ballot question had not adequately explained the effects of the act to be approved. The court broadly interpreted the term “election contest” to include any action that “seeks a judicial determination that an election is invalid, whatever the cause of invalidity.” Id. at 363-64. The court in that case looked past the form of the complaint to its ultimate effect of invalidating the election and recognized that it was an attempt by the complainant to indirectly engage in an election contest without complying with the requirements thereof.

State ex rel. Byrd v. Board of Elections of Summit County, 417 N.E.2d 1375 (Ohio 1981), is similar to Dehoff. Complainant sought to invalidate an election by means of a writ of mandamus and by an action in quo warranto. Id. at 1377. The court concluded that these actions were unavailable -- the complainant was required to follow the statutory procedures for an election contest.

In Dinwiddie v. Board of County Commissioners of Lea County, 708 P.2d 1043, 1045 (N.M. 1985), plaintiffs challenged both the validity of the election and its result. Dinwiddie stands for the unremarkable proposition that, because a challenge to either the validity of the election or a challenge to the result “seek[s] to alter the certified result of the election,” such a challenge is an election contest. Id. at 1045-46.

“It is a maxim that equity regards the substance rather than the form. The parties are not to be sacrificed to the mere letter but the intent or spirit of the transaction will, at least in equity, be the paramount consideration. Equity goes behind the form of a transaction in order to give effect to the intention of the parties and to impose a liability as against an evasion by a formal concealment of its

true character.” Lord v. Lord, 35 Haw. 26, 32 (1939)

These cases are consistent with the statutory language of Haw. Rev. Stat. 11-172: “The complaint shall set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause a difference in the election results.” These complainants, based upon your letter, alleged a cause to suggest a difference in the election result of the primary election. The substance of this is to contest and invalidate the election results of the primary election/first special election and as such must be rejected because it is with the Supreme Court of Hawai'i and not the Office of the County Clerk of Maui that election contests must be brought.

VII. Doctrine of Laches & Acquiescence, Prohibition Against Gambling With Election

Mr. Kaho'ohalahala affirmatively asserts the defense of laches. Unless the complainants are suggesting evidence that Mr. Kaho'ohalahala has changed his legal residence between the primary election and the date of the complaint, there is a very strong presumption that the aforementioned government executive and legislative entities have not erred in the past 26 years regarding Mr. Kaho'ohalahala's legal residency.

Similarly, “[E]fficient use of public resources demand that we not allow persons to gamble on the outcome of the election contest then challenge it when dissatisfied with the results, especially when the same challenge could have been made before the public is put through the time and expense of the entire election process.” Lewis v. Cayetano, 72 Haw. 499, 503 (1992) See also Thirty Voters of Kauai County v. Doj, 61 Haw. 179 (1979).

If the arguments and facts complainants bring could have been brought before the election but waited to gamble on the results, the complaints must be dismissed on equitable grounds. Their opportunity to challenge Mr. Kaho'ohalahala's election ended on September 20, 2008 when the polls closed and he was declared the highest vote getter in the Lana'i residency area seat of the Maui

County Council.

“A court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands where the party has slept upon his rights or acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith and reasonable diligence. Where these are wanting, the court is passive and does nothing; laches and neglect are always discountenanced.” Ishida v. Naumu, 34 Haw. 363, 368 (1937)

VIII. Conclusion

Based upon the foregoing, Mr. Kaho'ohalahala requests that these complaints be dismissed for failure to meet statutory deadline to object to conforming nomination papers, lack of jurisdiction to hear election contest, failure to state a claim upon which relief may be granted, failure of proper notice, acquiescence and laches, failure to present any admissible evidence to support the allegations and failure to meet burden of proof.

Very truly yours,  
LAW OFFICE OF LANCE D COLLINS



LANCE D COLLINS  
Attorney for Solomon Kaho'ohalahala

enclosures

cc: client





**NOTARY CERTIFICATION**

Document Date: 10/02/2008 No. of Pages: 2

Notary Public's Name: Lori Lamug

Hawaii Judicial Circuit: First Circuit - Oahu

Document Description: Affidavit of Solomon Kaho'ohalahala

Notary's Signature: *Lori Lamug*

Date Acknowledged: 10/02/2008

(Stamp or Seal)

