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CIRCUIT  
11th CIRCUIT COURT  
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

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CIRCUIT COURT  
THE STATE OF HAWAII

**STATE OF HAWAII**

COUNTY OF HAWAII, a municipal corporation, ) CIVIL NO. 00-1-0181K  
Plaintiff, ) CIVIL NO. 05-1-015K  
vs. ) (Kona) (Condemnation)(Consolidated)  
ROBERT NIGEL RICHARDS, ) SUPPLEMENTAL FINDINGS OF FACT  
TRUSTEE UNDER THE MARILYN SUE ) AND CONCLUSIONS OF LAW AND  
WILSON TRUST; C&J COUPÉ FAMILY ) ORDER TO FIRST AMENDED  
LIMITED PARTNERSHIP; MILES ) FINDINGS OF FACT, CONCLUSIONS  
HUGH WILSON, *et al.* ) OF LAW, AND ORDER FILED  
Defendants. ) SEPTEMBER 27, 2007 REGARDING  
 ) MOTION OF DEFENDANT C&J  
 ) COUPÉ FAMILY LIMITED  
 ) PARTNERSHIP FOR STATUTORY  
 ) DAMAGES PURSUANT TO HAW. REV.  
 ) STAT. § 101-27, filed October 11, 2007  
 )  
 ) TRIAL: July 9, 2007  
 ) JUDGE: The Honorable Ronald Ibarra

**SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER  
TO FIRST AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
FILED SEPTEMBER 27, 2007 REGARDING MOTION OF DEFENDANT C&J COUPE  
FAMILY LIMITED PARTNERSHIP FOR STATUTORY DAMAGES PURSUANT TO  
HAW. REV. STAT. § 101-27, filed October 11, 2007**

A non-jury trial on this consolidated action was held before the Honorable Ronald Ibarra on July 9-12, 16-20, 23, 25-27, and July 30-August 2, 2007. Plaintiff County of Hawaii (hereinafter "County") was represented by Joseph K. Kamelamela, Esq. and Michael J. Udovic, Esq., Defendant C&J Coupé Family Limited Partnership (hereinafter "Coupé Family") was represented by Kenneth R. Kupchak, Esq., Robert H. Thomas, Esq.,

and Mark M. Murakami, Esq., and Third-Party Defendant 1250 Oceanside Partners (hereinafter "Oceanside") was represented by William Meheula, Esq., and Derek T. Mayeshiro, Esq..

The Coupé Family filed its "Motion of Defendant C&J Coupé Family Limited Partnership for Statutory Damages Pursuant to Haw. Rev. Stat. § 101-27" ("Motion") on October 11, 2007. An errata with a corrected motion was filed on October 12, 2007. The County filed its Memorandum in Opposition on October 31, 2007. Oceanside filed its joinder in the County's Memorandum on October 31, 2007. The Coupé Family filed its Reply Memorandum on November 5, 2007. The Motion came for hearing before the Honorable Ronald Ibarra on November 8, 2007. At the Court's request, the Coupé Family filed a supplemental memorandum in support on December 6, 2007. County and Oceanside filed their supplemental pleadings on December 14, 2007, and the Coupé Family filed its supplemental reply on December 19, 2007.

The Motion was deemed denied by operation of Haw. R. App. P. 4 on January 15, 2008. Defendant C&J Coupé Family Limited Partnership timely appealed and the automatic denial was unanimously vacated by the Hawaii Supreme Court on December 24, 2008. The Supreme Court determined that the Coupé Family "is entitled to costs and attorneys' fees, as well as any expenses that may have been incurred by reason of [the County] taking possession of the property." *County of Hawaii v. C&J Coupe Family Ltd. P'ship*, 119 Hawaii 352, 368, 198 P.3d 615, 631 (Haw. 2008). This Court was instructed to "determine whether the fees claimed by [the Coupé Family] are related to Condemnation 1 and are reasonable under relevant standards." *Id.*

The Court, having received testimonial and documentary evidence, having heard arguments of counsel,<sup>1</sup> being otherwise fully advised in the premises, having reviewed the Proposed Findings of Fact and Conclusions of Law submitted by all appearing parties on March 20, 2009, hereby makes and enters the following Findings of Fact and Conclusions of Law:

**SUPPLEMENTAL FINDINGS OF FACT**

If any of these supplemental findings are deemed conclusions of law they shall be construed as such:

1. Defendant C&J Coupé Family Limited Partnership prevailed at trial, and Civ. No. 00-1-0181K was dismissed with prejudice on September 27, 2007. *See* First Amended Findings of Fact, Conclusions of Law, and Order (filed Sept. 27, 2007) and First Amended Final Judgment (filed Sept. 27, 2007).
2. Civ. No. 00-1-0181K was not appealed by Plaintiff County of Hawaii and is a final judgment. *See County of Hawaii v. C&J Coupe Family Ltd. P'ship*, 119 Haw. 352, 198 P.3d 615 (Haw. 2008).
3. The Coupé Family has requested damages, in the form of attorneys' fees, costs, and other expenses, and has submitted invoices supporting its claim. It is the Coupé Family's position all of the damages incurred as reflected on said invoices were necessary to litigate Condemnation 1 to its successful dismissal.
4. The Coupé Family has explicitly not requested damages for issues that were strictly litigated in Civ. No. 05-1-015K, i.e. valuation, motion to dismiss.

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<sup>1</sup> No other arguments or evidence were allowed after December 19, 2007.

5. The Hawaii Supreme Court also stated that the Coupé Family was "entitled to costs and attorneys' fees, as well as any expenses that may have been incurred by reason of [County] taking possession of the property." *Id.* at 368.<sup>2</sup>

6. This Court was instructed to "determine whether the fees claimed by [the Coupé Family] are related to Condemnation 1 and are reasonable under relevant standards." *Id.*

#### **Damages Request-Professional Billing Rates**

7. Post-trial, the Coupé Family sought section 101-27 damages, including attorneys' fees, costs, prejudgment interest, and general excise tax related to Condemnation 1.

8. The rates charged by the Coupé Family attorneys were: \$260-325 per hour for Kenneth R. Kupchak, \$250-320 per hour for Michael A. Yoshida, \$200-300 per hour for Robert H. Thomas, \$195-220 per hour for Gregory W. Kugle, \$115-185 per hour for Jamesner A. Dumiao, \$200-220 for Mark M. Murakami, \$180 per hour for Todd Y. Hirai, \$130-170 per hour for Sat K. Freedman, \$260 per hour for Tred R. Eyerly, \$110-150 per hour Tricia K. F. Lee, \$130-150 per hour for Trisha M. Barbosa, \$190 per hour for Courtney S. Kajikawa, \$115-130 per hour for Noelle B. Catalan, \$150 per hour for Caprice R. Itagaki, \$130 per hour for Natasha Dexter, \$85-115 per hour for Eugnie M. Kincaid, \$85-115 per hour for Bonnie B. Sin, \$110 per hour for Darin R. Leong, \$110 per hour for Marion Reyes-Burke, \$95 per hour for Diana Young, \$145 per hour for Aaron I. Karlen, and \$145 per hour for Matt T. Evans.

9. Kenneth R. Kupchak has been practicing law for over thirty-five years. He states he: has successfully litigated significant state supreme court decisions invalidating initiatives as

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<sup>2</sup> As possession only recently reverted back to the Coupé Family as a result of the vacation of the judgment in Civ. No. 05-1-015K, expenses incurred by reason of County taking possession of the property are not presently available. The Coupé Family is entitled, upon further motion, to establish such expenses under section 101-27, if any, within 30 days following the final conclusion of all other matters pending in this case.

a land use tool and clarifying due process rights with respect to environmental interests; has an "AV" rating in Martindale Hubbell; is a Fellow in the American College of Construction Lawyers and has served on the governing committee of the American Bar Association's Forum on the Construction Industry; is listed in "Best Lawyers in America" in three classifications; and has served as an advocate, mediator and arbitrator, as well as a negotiator, of complex dispute resolution clause. Mr. Kupchak spent numerous hours working on this case. Throughout the duration of this case, his hourly rate ranged from \$260 to \$325 per hour. Fees attributed to Mr. Kupchak's 1,471.0 hrs working on this matter totaled \$463,708.50. His hourly rate is reasonable in that it is at or below the prevailing market rate for professionals in this community of similar experience or background in disputes of this nature.

10. Robert H. Thomas states he: is one of the preeminent land use lawyers in Hawai'i and is a Damon Key partner; was crucial to the defense of this case because of his superior understanding of issues involving appeals, regulatory takings, eminent domain, and land use (zoning and planning); has significant trial experience and he has tried cases and appeals in all levels of Hawaii courts and administrative agencies, as well as appeals in California and the federal courts, including the Court of Federal Claims; and was selected to be included in the Best Lawyers in America in eminent domain and condemnation law. Throughout the duration of this case, Mr. Thomas' hourly rate ranged from \$200 to \$300 per hour. Fees attributed to Mr. Thomas' 690.8 hrs working on this matter totaled \$198,413.50. Mr. Thomas' hourly rate is reasonable in that it is at or below the prevailing market rate for professionals in this community of similar experience or background in similar disputes.

11. Mark M. Murakami states: his experience stems from his previous thirteen years on active duty in the U.S. Coast Guard, including eight years as a licensed attorney, where he became familiar with legal disputes; since then he has represented businesses and landowners in complex commercial litigation and land use and environmental lawsuits, and has pretrial litigation and trial experience. Throughout the duration of this case, Mr. Murakami's hourly rate ranged from \$200 to \$220 per hour. Fees attributed to Mr. Murakami's 761.7 hrs working on this matter totaled \$165,784.00. Mr. Murakami's hourly rate is reasonable in that it is at or below the prevailing market rate for professionals in this community of similar experience or background in similar disputes.

12. With respect to the various other Damon Key attorneys who were not trial counsel but who performed legal services related to Condemnation 1, this Court finds that the rates charged to the Coupé Family for said attorneys are reasonable and at or below the prevailing market rate for professionals in this community of similar experience and background in similar disputes.

13. County and Oceanside have never objected to the rates charged by Damon Key.

14. This Court finds the rates charged for professional services to the Coupé Family to be reasonable under the circumstances, given the complexity, breadth, and amount of issues presented in this case and the extensive experience of counsel in this area of law.

#### **Damages Request-Time Spent on Litigation (Attorneys' Fees)**

15. In total, the Coupé Family seeks damages for Civ. No. 00-1-0181K in the amount of \$1,887,421.82.

16. The Coupé Family seeks damages, in the form of recovery of attorneys' fees for time spent by the following professionals in the amount shown:

Kenneth R. Kupchak	1,471.0 hours
Michael A. Yoshida	275.9 hours
Robert H. Thomas	690.8 hours
Gregory W. Kugle	7.7 hours
Jamesner A. Dumiao	1,666.5 hours
Mark M. Murakami	761.7 hours
Todd Y. Hirai	12.2 hours
Sat K. Freedman	1,011.3 hours
Tred R. Eyerly	27.9 hours
Tricia K. F. Lee	50.2 hours
Trisha M. Barbosa	461.9 hours
Courtney S. Kajikawa	2.9 hours
Noelle B. Catalan	4.7 hours
Caprice R. Itagaki	42.5 hours
Natasha Dexter	5.7 hours
Eugenie M. Kincaid	870.4 hours
Bonnie B. Sin	12.9 hours
Darin R. Leong	2.7 hours
Marion Reyes-Burke	22.2 hours
Diana Young	0.2 hours
Aaron I. Karlen	122.5 hours
Matt T. Evans	31.6 hours

17. The Coupé Family incurred damages in the form of attorneys' fees in the amount of \$1,535,375.07.
18. On March 31, 2005, this Court consolidated Civ. No. 00-1-0181K and 05-1-015K.
19. The Coupé Family motion expressly excluded time spent on Civ. No. 05-1-015K before consolidation; time spent preparing its expert appraisers for valuation of the property for Civ. No. 05-1-015K, and drafting pleadings and arguing motions exclusive to Civ. No. 05-1-015K.
20. The Coupé Family has sought section 101-27 damages for time spent in court-ordered mediation with County and Oceanside. The mediation was ordered over the Coupé Family's objection.
21. In its request, the Coupé Family has acknowledged a settlement payment as a result of a discovery sanction and also acknowledged several courtesy discounts provided

by Damon Key to the Coupé Family. These amounts are denoted in this Court's Order as a "DEDUCTION."

**Damages Request - Costs Incurred**

22. The Coupé Family seeks damages incurred in the form of deposition costs in the amount of \$33,114.79.
23. The Coupé Family seeks damages incurred in the form of duplication costs, at \$.20 per page, in the amount of \$27,483.28.
24. The Coupé Family seeks damages incurred in the form of postage in the amount of \$1,524.93.
25. The Coupé Family seeks damages incurred in the form of long distance and facsimile charges in the amount of \$3,169.40.
26. The Coupé Family seeks damages incurred in the form of intrastate travel, lodging, and parking in the amount of \$22,208.76.
27. The Coupé Family seeks damages incurred in the form of transcript charges in the amount of \$5,165.68.
28. The Coupé Family seeks damages incurred in the form of filing fees, to include ex-officio filing fees, in the amount of \$1,870.93.
29. The Coupé Family seeks damages incurred in the form of electronic research charges in the amount of \$18,504.29.
30. The Coupé Family seeks damages incurred in the form of professional fees associated with Medusky & Co., Inc., Loden and Conahan, PBR Hawaii and John Candon in the amount of \$16,574.51.

31. The Coupé Family also seeks damages incurred in the form of miscellaneous fees, including messenger fees, costs to obtain real estate documentation and delivery services, in the amount of \$5,323.60.

32. County does not contest that the Coupé Family paid the foregoing costs. County has also never argued in this Court that any of the foregoing costs are not properly awardable as damages under section 101-27. Instead, County has argued only that "any award under HRS § 101-27 should be limited to amounts paid for the improper delegation of condemnation power defense in the first case." County's Memorandum in Opposition (filed Oct. 31, 2007) at 7.

#### **Damages Request - General Excise Tax**

33. The Coupé Family seeks damages in the form of general excise tax it paid to Damon Key for legal services amounting to \$61,612.03.

34. County does not contest that the Coupé Family paid this tax, nor does it contest the calculation of the tax.

35. County also has never argued in this Court that general excise tax is not properly awardable as damages under section 101-27. Instead, County has argued only that "any award under HRS § 101-27 should be limited to amounts paid for the improper delegation of condemnation power defense in the first case." County's Memorandum in Opposition (filed Oct. 31, 2007) at 7.

#### **Damages Request - Interest on Expenses and Obligations**

36. The Coupé Family seeks damages in the form of interest at 10% from the date of payment of each invoice issued by its attorneys. This amounts to \$276,722.41.

37. County contests neither the calculation of interest nor the applicable rate.

38. County has also never argued in this Court that such interest is not properly awardable as damages under section 101-27. Instead, County has argued only that "any award under HRS § 101-27 should be limited to amounts paid for the improper delegation of condemnation power defense in the first case." County's Memorandum in Opposition (filed Oct. 31, 2007) at 7.

#### SUPPLEMENTAL CONCLUSIONS OF LAW

If any of these supplemental conclusions of law are deemed findings of fact they shall be construed as such:

1. The Hawaii Supreme Court stated that the Coupé Family is "entitled to costs and attorneys' fees, as well as any expenses that may have been incurred by reason of [the County] taking possession of the property." *County of Hawaii v. C&J Coupe Family Ltd. P'ship*, 119 Haw. 352, 368, 198 P.3d 615, 631 (Haw. 2008).
2. This Court was instructed to "determine whether the fees claimed by [the Coupé Family] are related to Condemnation 1 and are reasonable under relevant standards." *Id.*
3. County has opposed a damage award, both in the trial court and in the Hawaii Supreme Court. The Hawaii Supreme Court found County's interpretation of section 101-27 to lead to an "absurd" result, rendering the statute a "nullity." *Id. at 362-64.*<sup>3</sup>
4. County also asserted that the Coupé Family damages request was untimely as not being brought within ten days of final judgment in Condemnation 1. The Hawaii Supreme Court rejected this argument as "illogical." *Id. at 366.*
5. Haw. Rev. Stat. § 101-27 provides:

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<sup>3</sup>. The Coupé Family has sought from the Hawaii Supreme Court section 101-27 damages related to the appeal.

[I]f, for any cause, the property concerned is not finally taken for public use, a defendant who would have been entitled to compensation or damages had the property been finally taken, shall be entitled, in such proceedings, to recover from the plaintiff all such damage as may have been sustained by the defendant by reason of the bringing of the proceedings . . . including the defendant's costs of court, a reasonable amount to cover attorney's fees paid by the defendant in connection therewith, and other reasonable expenses . . .

6. For the purposes of Haw. Rev. Stat. § 101-27, County, the condemnor, did not prevail. Its suit was dismissed by this Court in its entirety, County took no appeal, and the Coupé Family must be awarded damages. *See County of Hawaii v. C&J Coupe Family Ltd. P'ship*, 119 Haw. 352, 368, 198 P.3d 615, 631 (Haw. 2008); *see also Leslie v. Bd. of Appeals, County of Hawaii*, 109 Haw. 384, 126 P.3d 1071 (Haw. 2006) ("shall" indicates mandatory language); *Schefke v. Reliable Collection Agency, Ltd.*, 96 Haw. 408, 451-52, 32 P.3d 52, 95-96 (Haw. 2001) (use of "shall" indicates mandatory award).

7. County has waived any and all arguments and any new evidence that it did not previously raise in its prior oppositions to the Coupé Family's Motion. The last allowable pleading submitted was December 19, 2007. *See Wong v. Takeuchi*, 88 Haw. 46, 53, 961 P.2d 611, 618 (Haw. 1998) ("Unless there is a specific objection to an expense item, the court ordinarily should approve the item.") (discussing costs under Haw. Rev. Stat. § 607-9)).

8. The test set forth in the Hawaii Supreme Court's opinion is that all damages, including attorneys' fees and reasonable costs, that are "related to Condemnation 1" are properly awarded under Haw. Rev. Stat. § 101-27. *See County of Hawaii v. C&J Coupe Family Ltd. P'ship*, 119 Haw. 352, 368, 198 P.3d 615, 631 (Haw. 2008).

9. To the extent that the damages sought under Haw. Rev. Stat. § 101-27 consist of attorneys' fees, the Coupé Family is entitled to attorneys' fees that "are related to

Condemnation 1 and are reasonable under relevant standards." See *County of Hawaii v. C&J Coupe Family Ltd. P'ship*, 119 Haw. 352, 368, 198 P.3d 615, 631 (Haw. 2008).

#### **LODESTAR FOR CONDEMNATION 1**

10. The lodestar method is the preferred method for determining the "reasonableness" of attorneys' fees. Under this method, the Court determines the number of hours worked and multiplies the hours by a reasonable rate of compensation. *Montalvo v. Chang*, 64 Haw. 345, 358-59, 641 P.2d 1321, 1330-31 (Haw. 1982), *overruled on other grounds by Chun v. Bd. of Trustees of the Employees' Retirement Sys.*, 92 Haw. 432, 992 P.2d 127 (Haw. 2000). The lodestar amount represents a presumptively reasonable fee in and of itself, although it may be adjusted upward or downward under certain circumstances. *Id.* at 358-60 (explaining lodestar provides "reasonably objective basis for valuing an attorney's services," but may be adjusted).

11. Factors to be considered in determining whether attorneys' fees are reasonable include: (1) time and labor required, novelty and difficulty of questions involved, and skill requisite to perform legal service properly; (2) whether acceptance of employment in particular case will preclude lawyer's appearance for others in cases likely to arise out of transaction, and in which there is loss of other employment while employed in particular cases or antagonisms with other clients; (3) customary charges of the Bar for similar services; (4) amount involved in controversy and benefits resulting to client from services; (5) contingency or certainty of compensation; and (6) character of employment, whether casual or for established and constant client. *Tirona v. State Farm. Mut. Auto. Ins. Co.*, 821 F. Supp. 632, 636 (D. Haw. 1993).

12. Condemnation 1 required significant amounts of time and labor, and involved several novel and difficult questions of law.
13. The Coupé Family's attorneys' hourly rates are reasonable in that they are at or below the prevailing market rate for professionals in this community of similar experience or background in disputes of this nature.
14. County and Oceanside have never objected to the number of attorneys representing the Coupé Family, and, indeed, both County and Oceanside were represented throughout this litigation by multiple attorneys and law firms.
15. Work performed by paralegals and law clerks are recoverable under other fee shifting statutes and therefore are recoverable under section 101-27. *See Scheifele*, 96 Haw. at 458, 32 P.3d at 102; *Blair v. Ing*, 96 Haw. 327, 334, 31 P.3d 184 (Haw. 2001).
16. The mere fact that the attorneys' fees incurred might exceed the value of the property sought to be condemned does not, in and of itself, render such fees unreasonable. *See Haddick, Reinwald, O'Connor & Marrack v. Lots of*, 6 Haw. App. 296, 302-03, 719 P.2d 1107, 1112 (Haw. App. 1986)(holding attorneys' fees based on hourly rates or quantum meruit may exceed amount of client's recovery; likewise, in cases in which value of recovery is less than value of an ethically permissible fee, a contingent fee of 100% or more than 100% of a client's recovery is ethically permissible).
17. Where the relief sought is equitable and declaratory in nature (and not pecuniary), it would be improper for courts to place an arbitrary price tag on the relief sought for purposes of determining the reasonableness of attorneys' fees expended in furtherance thereof. *See Tradewinds Hotel, Inc. v. Cochran*, 8 Haw. App. 256, 799 P.2d 60 (Haw. App.

1990) (holding a limitation on attorneys' fees was inapplicable in action on lease where the landlord, as the prevailing party, essentially sought nonmonetary relief).

18. As a matter of law, this Court finds the rates charged to the Coupé Family to be reasonable given the complexity of the case and the skills and experience of the attorneys used. Further, this Court notes Condemnation 1 was litigated for nearly nine years.

19. This Court concludes that the Coupé Family's submitted lodestar is reasonable, fair, and an appropriate measure of a portion of the Coupé Family's damages under section 101-27. The Court notes the County never objected to the reasonableness of the fees.

20. Although no objection was raised by the County as to block billing and/or vagueness of billing entries, this Court reviewed the subject billing and while it notes there are some vague entries as a result of redaction to protect attorney client privilege, and there are some entries block billed, given there were no objection raised, this Court concludes said vague entries and block billing on their face do not raise to the level to be unreasonable.

21. Accordingly, the Coupé Family is entitled to recovering as reasonable damages under Haw. Rev. Stat. § 101-27 attorneys' fees incurred in the amount of \$1,535,375.07.

#### **OTHER DAMAGES**

22. In determining the reasonableness of damages recoverable under Haw. Rev. Stat. § 101-27 (1993) the Court refers to the precedent interpreting Haw. Rev. Stat. § 607-14 (1993) and to the Hawaii Supreme Court's decision *County of Hawaii v. C&J Coupe Family Ltd. P'ship*, No. 2882, --- P.3d ----, 2009 WL 1059623, at \*14 (Haw. April 21, 2009)(determining Appellant C&J Coupé Family Limited Partnership's reasonable damages on appeal).

23. Electronic research charges are not recoverable as reasonable damages in under section 101-27. *See also County of Hawaii v. C&J Coupe Family Ltd. P'ship*, No. 2882, --- P.3d ----, 2009 WL 1059623, at \*14 (Haw. April 21, 2009)(denying Appellant C&J Coupé Family Limited Partnership request for recovery of electronic research and messenger/courier services costs).
24. Deposition expenses incurred are properly awarded as damages under section 101-27, and the Coupé Family is thereby entitled to this reasonable expense amounting to \$33,114.79. The Court notes the County never objected to this cost.
25. Duplication expenses incurred at \$.20 per page are properly awarded as damages under section 101-27, and the Coupé Family is thereby entitled to this reasonable expense amounting to \$27,483.28, as the County has never objected to this cost.
26. Postage expenses incurred are properly awarded as damages under section 101-27, and the Coupé Family is thereby entitled to this reasonable expense amounting to \$1,524.93. The Court notes the County never objected to this cost.
27. Long distance and facsimile charges are properly awarded as damages under section 101-27, and the Coupé Family is thereby entitled to this reasonable expense amounting to \$3,169.40. The Court notes the County never objected to this cost.
28. Intrastate travel, lodging, and parking charges are properly awarded as damages under section 101-27, and the Coupé Family is thereby entitled to be this reasonable expense amounting to \$22,208.76. The Court notes the County never objected to this cost.

29. Transcript charges are properly awarded as damages under section 101-27, and the Coupé Family is thereby entitled to this reasonable expense amounting to \$5,165.68. The Court notes the County never objected to this cost.

30. Filing fees are properly awarded as damages under section 101-27, and the Coupé Family is thereby entitled to this reasonable expense amounting to \$1,870.93. The Court notes the County never objected to this cost.

31. Professional fees for appraisal and discovery services, by Medusky & Co., Inc., Loden and Conahan, PBR Hawaii and John Candon are properly awarded as damages under section 101-27, and the Coupé Family is thereby entitled to this reasonable expense in the amount of \$16,574.51. The Court notes the County never objected to this cost.

32. Miscellaneous fees, including messenger fees, costs to obtain real estate documentation and delivery services, are not recoverable as reasonable damages under section 101-27. *See also County of Hawaii v. C&J Coupe Family Ltd. P'ship*, No. 2882, --- P.3d ----, 2009 WL 1059623, at \*14 (Haw. April 21, 2009)(denying Appellant C&J Coupé Family Limited Partnership request for recovery of electronic research and messenger/courier services costs).

## **INTEREST**

33. This Court finds there is no legal nor factual basis for the \$276,762.41 in prejudgment interest sought as damages under Haw. Rev. Stat. § 101-27 as there is no allegations of undue delay by Plaintiff County. *See also County of Hawaii v. C&J Coupe Family Ltd. P'ship*, No. 2882, --- P.3d ----, 2009 WL 1059623, at \*14 (Haw. April 21, 2009)(denying Appellant C&J Coupé Family Limited Partnership request for prejudgment interest).

## GENERAL EXCISE TAX

34. Finally, the Coupé Family is entitled under Haw. Rev. Stat. § 101-27 to an award of all general excise taxes paid related to Condemnation 1, which amounts to \$61,612.03. County does not dispute that the Coupé Family incurred excise taxes for the professional services provided by its counsel, or that the law requires that such taxes be paid. See Haw. Rev. Stat. § 237-13(6) (1993).

## ORDER

Based on the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED as follows:

Pursuant to Haw. Rev. Stat. § 101-27 (1993), the Coupé Family is entitled to damages, including reasonable attorneys' fees, costs, and other expenses, and judgment is hereby ordered to be entered against County of Hawaii in the following amounts:

ATTORNEYS' FEES	\$ 1,535,375.07
COSTS	\$ 111,112.28
<u>GENERAL EXCISE TAX</u>	<u>\$ 61,612.03</u>
SUBTOTAL	\$1,708,099.38
 <u>DEDUCTION</u> <sup>4</sup>	 <u>\$ 121,227.86</u>
<u>TOTAL</u>	<u>\$1,586,871.52</u>

DATED: Kealakekua, Hawaii

*5/14/09*

  
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JUDGE OF THE ABOVE-ENTITLED COURT

<sup>4</sup> Courtesy discount and/or write-downs of \$58,054.41 provided on the invoices plus the court-ordered discovery sanction amount of \$63,173.45. The Coupé Family settled for less than the court-ordered amount.