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THIRD CIRCUIT

3CCV-23-0000302

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Attorneys for Defendants/Third-Party Plaintiffs

HAWAIIAN PARADISE PARK OWNERS

ASSOCIATION, KARIN HOFFMAN,

and JEFFREY FINLEY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

NICOLE CRAIG, as an individual and as
Trustee of the Revocable Living Trust of
Nicole L. Craig, and ROES 1-50,
inclusive,

Plaintiff,

vs.

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN
HOFFMAN, as an individual and HPPOA
Director, JEFFREY FINLEY, as an
individual and HPPOA Director, and
DOES 1-50, inclusive and DOES 1-20;
inclusive,

Defendants.

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN

Civil No. 3CCV-23-0000302 (Hilo Division)
(HTN)(Declaratory Judgment)

DEFENDANTS HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, KARIN HOFFMAN,
AND JEFFREY FINLEY'S ANSWER TO FIRST
AMENDED COMPLAINT FOR DECLARATORY
JUDGMENT, BREACH OF FIDUCIARY DUTY,
TEMPORARY AND PERMANENT INJUNCTIVE
RELIEF, AND PUNITIVE DAMAGES, FILED
NOVEMBER 9, 2023 [DKT. 86]; DEFENDANTS
AND THIRD-PARTY PLAINTIFFS HAWAIIAN
PARADISE PARK OWNERS ASSOCIATION,
KARIN HOFFMAN, AND JEFFREY FINLEY'S
THIRD-PARTY COMPLAINT AGAINST
WATUMULL INVESTMENT CO., LLC;
DEMAND FOR JURY TRIAL; **[PROPOSED]**
SUMMONS; CERTIFICATE OF SERVICE

TRIAL DATE: January 27, 2025

JUDGE: Hon. Henry T. Nakamoto

(Caption continues onto following page)

HOFFMAN, as an individual and HPPOA Director, JEFFREY FINLEY, as an individual and HPPOA Director, and DOES 1-50, inclusive and DOES 1-20; inclusive,

Third-Party Plaintiffs,

vs.

WATUMULL INVESTMENT CO., LLC

Third-Party Defendant.

638-050

DEFENDANTS HAWAIIAN PARADISE PARK OWNERS ASSOCIATION, KARIN HOFFMAN, AND JEFFREY FINLEY’S ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT, BREACH OF FIDUCIARY DUTY, TEMPORARY AND PERMANENT INJUNCTIVE RELIEF, AND PUNITIVE DAMAGES, FILED NOVEMBER 9, 2023 [DKT. 86]

Defendants HAWAIIAN PARADISE PARK OWNERS ASSOCIATION (“HPPOA”), KARIN HOFFMAN, and JEFFREY FINLEY (hereinafter collectively referred to as “Defendants”), by and through their counsel, Roeca Luria Shin LLP (“RLS Firm”), and for answer to the Amended Complaint, filed on November 9, 2023 [Dkt. 86], state as follows:

PRELIMINARY STATEMENT

FIRST DEFENSE

1. With respect to the allegations contained in Paragraph 1 of the Amended Complaint, Defendants only admit to utilizing approximately one acre for CMB’s, and deny the rest of the allegations.

2. With respect to the allegations contained in Paragraph 2 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

3. With respect to the allegations contained in Paragraph 3 of the Amended Complaint, Defendants deny the validity of any deed restrictions, and admit the remaining allegations thereof.

4. With respect to the allegations contained in Paragraph 4 of the Amended Complaint, Defendants deny “HPP is infamously known as a substandard subdivision” and “HPP is the antithesis of a planned community.” The remainder of this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

5. With respect to the allegations contained in Paragraph 5 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

6. Defendants deny the allegations contained in Paragraph 6 of the Amended Complaint

7. Defendants admit the allegations contained in Paragraph 7 of the Amended Complaint.

8. Defendants deny the allegations contained in Paragraph 8 of the Amended Complaint.

9. Defendants deny the allegations contained in Paragraph 9 of the Amended Complaint.

10. Defendants deny the allegations contained in Paragraph 10 of the Amended Complaint.

11. Defendants deny the allegations contained in Paragraph 11 of the Amended Complaint.

12. Defendants deny the allegations contained in Paragraph 12 of the Amended Complaint.

JURISDICTION AND VENUE

13. Defendants admit the allegations contained in Paragraph 13 of the Amended Complaint.

14. Defendants admit the allegations contained in Paragraph 14 of the Amended Complaint.

PARTIES

15. Defendants admit the allegations contained in Paragraph 15 of the Amended Complaint.

16. With respect to the allegations contained in Paragraph 16 of the Amended Complaint, Defendants admit that HOFFMAN is currently President of HPPOA, and are without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations thereof regarding “relevant periods of this claim” and therefore deny the same.

17. With respect to the allegations contained in Paragraph 17 of the Amended Complaint, Defendants admit that FINLEY is currently Vice President of HPPOA, and are without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations thereof regarding “relevant periods of this claim” and therefore deny the same.

18. With respect to the allegations contained in Paragraph 18 of the Amended Complaint, Defendants state that they are without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations thereof and therefore deny the same.

FACTUAL BACKGROUND

19. With respect to the allegations contained in Paragraph 19 of the Amended Complaint, Defendants only admit Hawaiian Paradise Park (“HPP”) is located in Hawaii County,

Hawaii, in the District of Puna. The remainder of this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

20. Defendants admit the allegations contained in Paragraph 20 of the Amended Complaint.

RELIEF SOUGHT, *INTER ALIA*

21. Defendants deny the allegations contained in Paragraph 21 of the Amended Complaint.

22. Defendants deny the allegations contained in Paragraph 22 of the Amended Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Amended Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Amended Complaint.

MISUSE OF ROAD MAINTENANCE FEES

25. With respect to the allegations contained in Paragraph 25 of the Amended Complaint, Defendants only admit Defendant HPPOA collects annual assessments of approximately \$3,000,000 per year.

26. With respect to the allegations contained in Paragraph 26 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

27. With respect to the allegations contained in Paragraph 27 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

28. With respect to the allegations contained in Paragraph 28 of the Amended Complaint, Defendants admit that Defendant HPPOA told its members that it has taken 5% of the road assessments collected every year since approximately 2018 to “save up” for the installation and maintenance of the CMB’s, but deny the remaining allegations thereof.

29. Defendants deny the allegations contained in Paragraph 29 of the Amended Complaint.

VIOLATIONS OF THE DEEDS FOR CLUSTER MAILBOXES

30. Defendants admit the allegations contained in Paragraph 30 of the Amended Complaint.

31. With respect to the allegations contained in Paragraph 31 of the Amended Complaint, Defendants admit the proposed location for the one-acre mailbox clusters are on lots that were deeded to HPPOA by a company owned by the Watumull’s. The remainder of this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

32. With respect to the allegations contained in Paragraph 32 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

33. Defendants deny the allegations contained in Paragraph 33 of the Amended Complaint.

34. Defendants admit the allegations contained in Paragraph 34 of the Amended Complaint.

35. With respect to the allegations contained in Paragraph 35 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

36. With respect to the allegations contained in Paragraph 36 of the Amended Complaint, Defendant HPPOA denies any restrictions are valid, and admits the remaining allegations thereof.

37. Defendants admit the allegations contained in Paragraph 37 of the Amended Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Amended Complaint.

APPLICATION OF HRS 421J

39. With respect to the allegations contained in Paragraph 39 of the Amended Complaint, Defendants deny “HPP is infamously known as a substandard subdivision” and “HPP is the antithesis of a planned community.” The remainder of this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

40. With respect to the allegations contained in Paragraph 40 of the Amended Complaint, Defendants state that they are without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations thereof and therefore deny the same.

41. With respect to the allegations contained in Paragraph 41 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

42. Defendants admit the allegations contained in Paragraph 42 of the Amended Complaint.

43. With respect to the allegations contained in Paragraph 43 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

44. With respect to the allegations contained in Paragraph 44 of the Amended Complaint, Defendants admit HRS Chapter 421J applies to Defendant HPPOA, and denies the remaining allegations thereof.

45. With respect to the allegations contained in Paragraph 45 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

46. With respect to the allegations contained in Paragraph 46 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

47. With respect to the allegations contained in Paragraph 47 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

48. With respect to the allegations contained in Paragraph 48 of the Amended Complaint, this paragraph is incomplete and unintelligible. To the extent a response is required, Defendants deny them.

COUNT 1 – Declaratory Judgment
(The Deed to the Subject Properties Does Not Permit Installation and/or Maintenance of
CMB's)
as to Defendant HPPOA

49. With respect to the allegations contained in Paragraph 49 of the Amended Complaint, Defendants repeat and reallege their answers to Paragraphs 1 through 48 of the Amended Complaint as set forth above.

50. With respect to the allegations contained in Paragraph 50 of the Amended Complaint, Defendant HPPOA denies any restrictions being valid and the remainder contains legal

conclusions to which no response is required. To the extent a response is required, Defendants deny them.

51. With respect to the allegations contained in Paragraph 51 of the Amended Complaint, Defendant HPPOA denies any restrictions being valid and the remainder contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

52. With respect to the allegations contained in Paragraph 52 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

COUNT 2 – Declaratory Judgment
(HPPOA Cannot Use Money Collected From Its Members as Road Assessments to Fund
the CMB’s In Any Way)
as to Defendant HPPO

53. With respect to the allegations contained in Paragraph 53 of the Amended Complaint, Defendants repeat and reallege their answers to Paragraphs 1 through 52 of the Amended Complaint as set forth above.

54. With respect to the allegations contained in Paragraph 54 of the Amended Complaint, Defendant HPPOA admits it collects annual assessments for uses including road maintenance.

55. Defendants deny the allegations contained in Paragraph 55 of the Amended Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Amended Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Amended Complaint.

58. Defendants deny the allegations contained in Paragraph 58 of the Amended Complaint.

59. With respect to the allegations contained in Paragraph 59 of the Amended Complaint, Defendant HPPOA admits funds are being used for CMB installation, but states that it is without knowledge or information sufficient to form a belief as to the truth or veracity of the remaining allegations thereof and therefore deny the same.

60. With respect to the allegations contained in Paragraph 60 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

COUNT 3 – Declaratory Judgment
(HPPOA Can Not Use Funds Collected as Road Maintenance Fees for Anything Other
Than Road Maintenance Activities)
as to Defendant HPPOA

61. With respect to the allegations contained in Paragraph 61 of the Amended Complaint, Defendants repeat and reallege their answers to Paragraphs 1 through 60 of the Amended Complaint as set forth above.

62. With respect to the allegations contained in Paragraph 62 of the Amended Complaint, Defendant HPPOA admits it collects annual assessments for uses including road maintenance.

63. Defendants deny the allegations contained in Paragraph 63 of the Amended Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Amended Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of the Amended Complaint.

66. With respect to the allegations contained in Paragraph 66 of the Amended Complaint, Defendant HPPOA admits funds are being used for CMB installation, but states that it is without knowledge or information sufficient to form a belief as to the truth or veracity of the remaining allegations thereof and therefore deny the same.

67. With respect to the allegations contained in Paragraph 67 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

COUNT 4 – Declaratory Judgment
(HPPOA Must Disgorge the Misappropriated Amounts of Road Maintenance Fees Paid by
Lot Owners From the Non-Restricted General Fund to the Restricted Road Fund)
as to Defendant HPPOA

68. With respect to the allegations contained in Paragraph 68 of the Amended Complaint, Defendants repeat and reallege their answers to Paragraphs 1 through 67 of the Amended Complaint as set forth above.

69. Defendants deny the allegations contained in Paragraph 69 of the Amended Complaint.

70. Defendants deny the allegations contained in Paragraph 70 of the Amended Complaint.

71. With respect to the allegations contained in Paragraph 71 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

COUNT 5 – Negligent Breach of Fiduciary Duty
(as to Defendants HOFFMAN and FINLEY)

72. With respect to the allegations contained in Paragraph 72 of the Amended Complaint, Defendants repeat and reallege their answers to Paragraphs 1 through 71 of the Amended Complaint as set forth above.

73. With respect to the allegations contained in Paragraph 73 of the Amended Complaint, Defendants HOFFMAN and FINLEY only admit that they owe certain duties to HPPOA, and deny the remaining allegations thereof.

74. Defendants deny the allegations contained in Paragraph 74 of the Amended Complaint.

75. With respect to the allegations contained in Paragraph 75 of the Amended Complaint, Defendants only admit that Defendant HPPOA has incurred expenses clearing and grading lots in preparation for CMBs, and deny the remaining allegations thereof.

76. Defendants deny the allegations contained in Paragraph 76 of the Amended Complaint.

COUNT 6 – Reckless Breach of Fiduciary Duty
(as to Defendants HOFFMAN and FINLEY)

77. With respect to the allegations contained in Paragraph 77 of the Amended Complaint, Defendants repeat and reallege their answers to Paragraphs 1 through 76 of the Amended Complaint as set forth above.

78. With respect to the allegations contained in Paragraph 78 of the Amended Complaint, Defendants HOFFMAN and FINLEY only admit that they owe certain duties to HPPOA, and deny the remaining allegations thereof.

79. Defendants deny the allegations contained in Paragraph 79 of the Amended Complaint.

80. With respect to the allegations contained in Paragraph 80 of the Amended Complaint, Defendants admit that HPPOA has incurred expenses clearing and grading lots in preparation for CMBs , and deny the remaining allegations thereof.

81. Defendants deny the allegations contained in Paragraph 81 of the Amended Complaint.

COUNT 7 – Intentional Breach of Fiduciary Duty
(as to Defendants HOFFMAN and FINLEY)

82. With respect to the allegations contained in Paragraph 82 of the Amended Complaint, Defendants repeat and reallege their answers to Paragraphs 1 through 81 of the Amended Complaint as set forth above.

83. With respect to the allegations contained in Paragraph 83 of the Amended Complaint, Defendants HOFFMAN and FINLEY admit that they owe certain duties to HPPOA, and deny the remaining allegations thereof.

84. Defendants deny the allegations contained in Paragraph 84 of the Amended Complaint.

85. With respect to the allegations contained in Paragraph 85 of the Amended Complaint, Defendants only admit that Defendant HPPOA has incurred expenses clearing and grading lots in preparation for CMBs, and deny the remaining allegations thereof.

86. Defendants deny the allegations contained in Paragraph 86 of the Amended Complaint.

COUNT 8 – Declaratory Judgment
(HPPOA is Not a “Planned Community Association” Under HRS421J and HPPOA Must
Revoke Its 4/19/23 Resolution)
as to Defendant HPPOA

87. With respect to the allegations contained in Paragraph 87 of the Amended Complaint, Defendants repeat and reallege their answers to Paragraphs 1 through 86 of the Amended Complaint as set forth above.

88. With respect to the allegations contained in Paragraph 88 of the Amended Complaint, Defendants only admit HRS Chapter 421J applies to Defendant HPPOA and lots in HPP, and denies the remaining allegations thereof.

89. Defendants deny the allegations contained in Paragraph 89 of the Amended Complaint.

90. With respect to the allegations contained in Paragraph 90 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

COUNT 9 – Temporary and Permanent Injunctive Relief
(as to all Defendants)

91. With respect to the allegations contained in Paragraph 91 of the Amended Complaint, Defendants repeat and reallege their answers to Paragraphs 1 through 90 of the Amended Complaint as set forth above.

92. Defendants deny the allegations contained in Paragraph 92 of the Amended Complaint.

93. With respect to the allegations contained in Paragraph 93 of the Amended Complaint, Defendants deny any harm to Defendant HPPOA and its members, and without knowledge or information sufficient to form a belief as to the truth or veracity of the remainder of the allegations thereof and therefore deny the same.

94. Defendants deny the allegations contained in Paragraph 94 of the Amended Complaint.

95. Defendants deny the allegations contained in Paragraph 95 of the Amended Complaint.

96. Defendants deny the allegations contained in Paragraph 96 of the Amended Complaint.

97. With respect to the allegations contained in Paragraph 97 of the Amended Complaint, this paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny them.

COUNT 10 – Punitive Damages
(as to Defendants HOFFMAN and FINLEY)

98. With respect to the allegations contained in Paragraph 98 of the Amended Complaint, Defendants repeat and reallege their answers to Paragraphs 1 through 97 of the Amended Complaint as set forth above.

99. With respect to the allegations contained in Paragraph 99 of the Amended Complaint, Defendants HOFFMAN and FINLEY only admit that they owe certain duties to HPPOA, and deny the remaining allegations thereof.

100. Defendants deny the allegations contained in Paragraph 100 of the Amended Complaint.

101. Defendants deny the allegations contained in Paragraph 101 of the Amended Complaint.

102. Defendants deny the allegations contained in Paragraph 102 of the Amended Complaint.

103. Defendants deny any and all allegations contained in the Amended Complaint which are not specifically responded to herein.

SECOND DEFENSE

104. The Amended Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

105. Defendants intend to rely upon any matter constituting an avoidance or affirmative defense as set forth in Rule 8(c) of the Hawaii Rules of Civil Procedure and intends to seek leave to amend their answer to allege any such matters of which Defendants may become aware during the course of discovery or trial of this action.

FOURTH DEFENSE

106. Defendants reserve the right to assert any affirmative defense which may be disclosed in discovery.

FIFTH DEFENSE

107. The claims of Plaintiff as alleged herein are due to the negligence, fault, breach of warranty, and/or strict liability of other parties over whom Defendants have no control and for which Defendants bear no responsibility or liability.

SIXTH DEFENSE

108. Defendants give notice that they intend to rely upon the doctrine that there was no privity between Plaintiff and Defendants.

SEVENTH DEFENSE

109. Plaintiff's claims are barred by the failure of Plaintiff to provide appropriate and adequate documentation concerning Plaintiff's alleged injuries.

EIGHTH DEFENSE

110. Plaintiff's claims are barred by Plaintiff's lack of standing to assert a private right of action for the matters complained of.

NINTH DEFENSE

111. Plaintiff lacks standing and/or capacity to assert the claims set forth in Plaintiff's Amended Complaint.

TENTH DEFENSE

112. Defendants give notice that they intend to rely upon the defense that this action is barred because Plaintiff has failed to join indispensable parties pursuant to Rule 19, Hawaii Rules of Civil Procedure.

ELEVENTH

113. Plaintiff's claims are barred since there was no "special relationship" between Plaintiff and Defendants.

TWELFTH DEFENSE

114. Defendants are not liable for the injuries and/or damages allegedly suffered by Plaintiff because Defendants did not have actual or constructive notice or knowledge of the conditions alleged to have existed, if said conditions alleged were responsible for the injuries and/or damages suffered by Plaintiff.

THIRTEENTH DEFENSE

115. Defendants owed no duty to Plaintiff, and, even assuming such a duty existed, Defendants did not breach said duty.

FOURTEENTH DEFENSE

116. During the time period of the events alleged in the Amended Complaint, Defendants did not have ownership, jurisdiction, control, maintenance or management over neighboring property for which the alleged deed restrictions were created to protect its owners' commercial interests. Accordingly, Defendants are not liable for any such damages and/or injuries.

FIFTEENTH DEFENSE

117. Plaintiff's claims are barred on the grounds of public policy.

SIXTEENTH DEFENSE

118. Plaintiff's bad faith bars their claims, or any damages must be reduced as a result of Plaintiff's comparative bad faith.

SEVENTEENTH DEFENSE

119. Plaintiff is barred from maintaining this action against Defendants for lack of legal duty.

EIGHTEENTH DEFENSE

120. Defendants intend to rely upon the affirmative defense of no breach of duty.

NINETEENTH DEFENSE

121. Defendants assert that Plaintiff's claims were made in bad faith and for purposes of harassment and therefore Defendants are entitled to their attorneys' fees and costs incurred.

TWENTIETH DEFENSE

122. Defendants affirmatively assert the doctrine of economic waste.

TWENTY FIRST DEFENSE

123. Defendants intend to rely upon the affirmative defense of advice of counsel.

TWENTY SECOND DEFENSE

124. Defendants intend to rely upon the affirmative defense of the Business Judgment Rule.

WHEREFORE, Defendants pray as follows that:

A. The Amended Complaint against Defendants be dismissed with prejudice and that they be awarded their costs and attorneys' fees;

B. If it be determined that Plaintiff, Defendants and/or any other party to this action were negligent with respect to the events described in the Amended Complaint, the comparative

degree of fault of each such party be determined in accordance with Section 663-31, H.R.S., and judgment be rendered accordingly; and

C. The Court award such other and further relief as it deems just and equitable in the premises.

DATED: Honolulu, Hawai‘i, November 17, 2023.

/s/ Barron T. Oda
JAMES SHIN
JAMES R. FERGUSON
BARRON T. ODA
Attorneys for Defendants
HAWAIIAN PARADISE PARK OWNERS
ASSOCIATION, KARIN HOFFMAN,
and JEFFREY FINLEY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

NICOLE CRAIG, as an individual and as
Trustee of the Revocable Living Trust of
Nicole L. Craig, and ROES 1-50,
inclusive,

Plaintiff,

vs.

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN
HOFFMAN, as an individual and HPPOA
Director, JEFFREY FINLEY, as an
individual and HPPOA Director, and
DOES 1-50, inclusive and DOES 1-20;
inclusive,

Defendants.

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN
HOFFMAN, as an individual and HPPOA
Director, JEFFREY FINLEY, as an
individual and HPPOA Director, and
DOES 1-50, inclusive and DOES 1-20;
inclusive,

Third-Party Plaintiffs,

vs.

WATUMULL INVESTMENT CO., LLC

Third-Party Defendant.

Civil No. 3CCV-23-0000302 (Hilo Division)
(HTN)(Declaratory Judgment)

DEFENDANTS/THIRD-PARTY PLAINTIFFS
HAWAIIAN PARADISE PARK OWNERS
ASSOCIATION, KARIN HOFFMAN, and
JEFFREY FINLEY'S THIRD-PARTY
COMPLAINT AGAINST WATUMULL
INVESTMENT CO., LLC

TRIAL DATE: January 27, 2025
JUDGE: Hon. Henry T. Nakamoto

Defendants/Third-Party Plaintiffs HAWAIIAN PARADISE PARK OWNERS ASSOCIATION, KARIN HOFFMAN, and JEFFREY FINLEY (hereinafter referred to as “Defendants/Third-Party Plaintiffs”), by and through their counsel, Roeca Luria Shin LLP, a Third-Party Complaint against WATUMULL INVESTMENT CO., LLC (hereinafter “Third-Party Defendant”), alleges as follows:

1. P O BOX 10905
HONOLULU, Hawaii 96816

2. Plaintiff Nicole Craig’s FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT, BREACH OF FIDUCIARY DUTY, TEMPORARY AND PERMANENT INJUNCTIVE RELIEF, AND PUNITIVE DAMAGES, NOVEMBER 9, 2023 [DKT. 86] in the above- captioned action, a copy of which is attached hereto as Exhibit "A".

The Amended Complaint alleges, among other things, that Plaintiff was injured and/or damaged as a result of certain acts and/or omissions of Defendants/Third-Party Plaintiffs concerning activity occurring on real property located in Hawaiian Paradise Park (“HPP”) identified by TMKs as 1-5-047-026, 1-5-028-050, and 1-5-054-234.

3. Third Party Defendant or its predecessor(s) in interest, including but not limited to Hawaiian Paradise Park Corp. was the former owner of real property located in HPP identified by TMKs as 1-5-047-026, 1-5-028-050, 1-5-023-040, and 1-5-054-234 (“HPP Property”).

4. Third Party Defendant owns real property located in HPP identified by TMKs as 1-5-047-173, 1-5-028-001, 1-5-023-001, and 1-5-054-201 (“Neighboring Property”).

5. In 1963, the County of Hawai‘i took legal action and Hawaiian Paradise Park Corp. was ordered to build roadways in HPP.

6. The roads Hawaiian Paradise Park Corp. built were never dedicated to the County of Hawai‘i because they did not meet the County of Hawai‘i’s standards for construction of roads.

7. In 1972, Paradise Hui Hanalike (Defendant HPPOA / Third Party Plaintiff HPPOA’s former name) was formed by HPP residents to force resolution of ongoing issues of road construction and maintenance with Hawaiian Paradise Park Corp.

8. In 1977, Paradise Hui Hanalike and Hawaiian Paradise Park Corp. reached a settlement under which Hawaiian Paradise Park Corp. quitclaimed its property in interest in certain roadway parcels and several lots of twenty acres each to Paradise Hui Hanalike, including the HPP Property.

9. Hawaiian Paradise Park Corp. included certain restrictions in the HPP Property deeds, including prohibitions on any commercial or residential use when it conveyed the HPP property to Paradise Hui Hanalike.

10. The HPP Property lots are all located across the street from the corresponding Neighboring Property lots.

11. Third Party Defendant or its predecessor(s) in interest planned to commercially develop the Neighboring Property.

12. Third Party Defendant or its predecessor(s) in interest included certain restrictions in the HPP Property deeds to protect its commercial interests in its Neighboring Property.

13. Third Party Defendant or its predecessor(s) in interest included certain restrictions in the HPP Property deeds to prevent Defendant HPPOA / Third Party Plaintiff HPPOA from engaging in activities upon the HPP Property which could create commercial competition with Third Party Defendant or its predecessor(s) in interest.

14. Third Party Defendant or its predecessor(s) in interests' inclusion of certain restrictions in the HPP Property deeds was meant to prevent or stifle commercial competition.

15. Third Party Defendant or its predecessor(s) in interests' inclusion of certain restrictions in the HPP Property deeds was meant to create a commercial monopoly for itself in the immediate vicinity of the HPP Property and Neighboring Property.

16. Third Party Defendant or its predecessor(s) in interests' inclusion of certain restrictions in the HPP Property deeds constituted unfair and deceptive acts or practices.

17. Third Party Defendant or its predecessor(s) in interests' inclusion of certain restrictions in the HPP Property deeds was and continues to be against public policy.

18. Third Party Defendant or its predecessor(s) in interests' inclusion of certain restrictions in the HPP Property deeds was and continues to be unlawful.

19. Third Party Defendant or its predecessor(s) in interest do not appear to have ever commercially developed the Neighboring Property.

20. Third Party Defendant has no ongoing reason to maintain the unlawful restrictions in the HPP Property deeds.

COUNT 1: DECLARATORY RELIEF AS TO HPP PROPERTY DEEDS

21. Defendants/Third-Party Plaintiffs reallege and reincorporate Paragraphs 1 through 20 as if fully restated herein.

22. An actual controversy exists as to the validity and lawfulness of the restrictions contained in the HPP Property deeds.

23. Declaratory relief is sought for the restrictions contained in the HPP Property deeds to be declared void *ab initio*.

COUNT 2: INJUNCTIVE RELIEF AS TO HPP PROPERTY DEEDS

24. Defendants/Third-Party Plaintiffs reallege and reincorporate Paragraphs 1 through 23 as if fully restated herein.

25. An actual controversy exists as to the validity and lawfulness of the restrictions contained in the HPP Property deeds.

26. Injunctive / equitable relief is sought for the restrictions contained in the HPP Property deeds to be removed.

COUNT 3: ACTS/ OMISSIONS OF THIRD-PARTY DEFENDANT

27. Defendants/Third-Party Plaintiffs reallege and reincorporate Paragraphs 1 through 26 as if fully restated herein.

28. If Plaintiff was injured or damaged as alleged, such injuries and/or damages were the legal result of acts and/or omissions of the Third-Party Defendant, and not the legal result of any act and/or omission of Defendants/Third-Party Plaintiffs.

COUNT 4: ACTIVE AND PRIMARY LIABILITY OF THIRD-PARTY DEFENDANT

29. Defendants/Third-Party Plaintiffs reallege and reincorporate Paragraphs 1 through 28 as if fully restated herein

30. If it is determined that Defendants/Third-Party Plaintiffs and the Third-Party Defendants, or any of them, are liable to Plaintiff, the liability of Defendants/Third-Party Plaintiffs is passive and secondary and the liability of the Third-Party Defendant, is active and primary.

COUNT V: INDEMNITY, CONTRIBUTION, AND/OR REIMBURSEMENT

31. Defendants/Third-Party Plaintiffs reallege and reincorporate Paragraphs 1 through 30 as if fully restated herein

32. If any judgment is entered against Defendants/Third-Party Plaintiffs, Defendants/Third-Party Plaintiffs are entitled to indemnity, contribution and/or reimbursement from the Third-Party Defendants, and each of them.

WHEREFORE, Defendants/Third-Party Plaintiffs pray as follows:

A. That if Plaintiff be found entitled to any judgment herein, such judgment be entered against the Third-Party Defendants, or any of them, and not against Defendants/Third-Party Plaintiffs;

B. That if it be determined that Defendants/Third-Party Plaintiffs and one or more of the Third-Party Defendants are joint tortfeasors, the relative degrees of fault of each joint tortfeasor be determined as provided for by Sections 633-11 through 663-17 of the Hawaii Revised Statutes, and that Defendants/Third-Party Plaintiffs have judgment for indemnity, contribution and/or reimbursement against each joint tortfeasor for any excess which must be paid or owed by Defendants/Third-Party Plaintiffs over and above their pro rata share;

C. That Defendants/Third-Party Plaintiffs be awarded their costs and reasonable attorneys' fees; and

D. That the Court award such other and further relief as it deems just and equitable.

DATED: Honolulu, Hawai'i, November 17, 2023.

/s/ Barron T. Oda
JAMES SHIN
JAMES R. FERGUSON
BARRON T. ODA
Attorneys for Defendants/Third-Party Plaintiffs
HAWAIIAN PARADISE PARK OWNERS
ASSOCIATION, KARIN HOFFMAN,
and JEFFREY FINLEY

NICOLE CRAIG
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In Pro Per for Plaintiff
NICOLE CRAIG

Electronically Filed
THIRD CIRCUIT
3CCV-23-0000302
09-NOV-2023
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IN THE CIRCUIT COURT OF THE THIRD DISTRICT

STATE OF HAWAII

NICOLE CRAIG, as an individual and as
Trustee of the Revocable Living Trust of
Nicole L. Craig,

Plaintiff,

v.

HAWAIIAN PARADISE PARK OWNERS
ASSOCIATION, a Hawai'i nonprofit
corporation, KARIN HOFFMAN, as an
individual and HPPOA Director, JEFFREY
FINLEY, as an individual and HPPOA
Director, and DOES 1-50, inclusive,

Defendants.

Civil No. 3CCV-23-302
(Declaratory Judgment)

**FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT, BREACH
OF FIDUCIARY DUTY, TEMPORARY
AND PERMANENT INJUNCTIVE
RELIEF, AND PUNITIVE DAMAGES;
SUMMONS**

Judge: Hon. Henry T. Nakamoto

Trial Date: 1/27/25

**COMPLAINT FOR DECLARATORY JUDGMENT, BREACH OF COVENANT,
BREACH OF FIDUCIARY DUTY, INJUNCTIVE RELIEF, AND PUNITIVE DAMAGES**

COMES NOW Plaintiff NICOLE CRAIG, as an individual and as Trustee of the Revocable Living Trust of Nicole L. Craig, *in pro per*, ("CRAIG" or "Plaintiff") with this Complaint for Declaratory Judgment, Breach of Fiduciary Duty, Punitive Damages, and Injunctive Relief against Hawaiian Paradise Park Owners Association ("HPPOA"), a Hawaii non-profit corporation, Karin Hoffman ("HOFFMAN"), as an individual and as a Board Member of HPPOA, and Jeffrey Finley ("FINLEY"), as an individual and as a Board Member of HPPOA.

PRELIMINARY STATEMENT

1. This action arises from the Defendant HPPOA's decision to use one acre on each of three parcels of land for the installation and use of cluster mailboxes ("CMB's") in violation of a deed restricting the use of these lots to "park, playground, recreation or school" and any directly auxiliary use thereto. In addition, the HPPOA is misusing funds that it has assessed and collected from owners of property in the HPPOA that are restricted for road maintenance exclusively by the HPPOA Bylaws.
2. The parcels of land at issue are located in Hawaiian Paradise Park, Kea'au, Hawai'i ("HPP") and identified as TMK 1-5-047-206 ("Lot B"), TMK 1-5-028-050 ("Lot C") and TMK 1-5-054-234 ("Lot D") (collectively "Subject Properties").
3. Each CMB installation will contain approximately 2,000 mailboxes each on each restricted lot. The installations will include clearing and grading of the lots, paving, striping, parking spaces, concrete bases for the mailboxes, and installation of the mail box units themselves.
4. HPP is infamously known as a substandard subdivision consisting of "Phase I" and "Phase II" lots. All lots were sold as unimproved land that needed to be cleared, graded, and any residence built by the owner. "Phase I" lots in HPP have no covenants or restrictions in their deeds. "Phase II" lots have only one covenant or restriction and that is the requirement to pay road fees every year to the HPPOA. Many roads in HPP are still gravel roads. HPP is the antithesis of a "planned community".
5. The vast majority of owner lots in HPP are zoned as Agricultural, with some exceptions.
6. Each year, HPPOA collects road assessments from lot owners, funds which are restricted by the Bylaws for **exclusive use for road maintenance**. Despite the Bylaw restriction, HPPOA is funding the installation and maintenance of the CMB's with these restricted road funds.

7. This action also arises from Defendant HPPOA's adopted resolution on April 19, 2023 that HPPOA constitutes a "planned community association" pursuant to HRS 421J.
8. Defendants HOFFMAN and FINLEY have significantly breached their fiduciary duty to the HPPOA and its members by using HPPOA as their personal fiefdoms and orchestrating the violation of the deed and the misappropriation and use of restricted road funds, as well as fraudulently convincing the Board and members that it qualifies as a "planned community association" and that HRS 421J applies to it. They have done this by obtaining and circulating incomplete, incorrect and illogical legal opinions from attorneys that do not withstand even a layman's common-sense test. They have also mischaracterized these legal opinions to the HPPOA Board and members and intentionally distorted and falsified the meaning of the Bylaws to the HPPOA Board and members for their own purposes.
9. This Complaint seeks, *inter alia*, a declaration that Defendant HPPOA may not install CMB's on the Subject Properties; a declaration that HPPOA may not use money collected from its members as restricted road funds to fund the CMB's in any way (including installation and maintenance); a declaration that Defendant HPPOA may not use money collected from its members for any purpose other than exclusively for road maintenance; and a declaration that, as the Bylaws currently stand, HPPOA may not transfer funds into a non-road account for anything other than reimbursement of HPPOA non-road assets for road maintenance, capped at 5% of the restricted road funds.
10. The Complaint also seeks, *inter alia*, that the improperly skimmed restricted road funds transferred into the non-road account be disgorged by the HPPOA back into the restricted road funds, with statutory interest.
11. This Complaint also seeks, *inter alia*, a declaration that Defendant HPPOA is not a "planned community association" and that HRS 421J does not apply to it.

12. The Complaint also seeks, *inter alia*, a finding that Defendants HOFFMAN and FINLEY have breached their fiduciary duty and that the Court award punitive damages for their brazen violations of the deed and the HPPOA Bylaws.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this matter under Sections 603-21.5(3), 632-1, and 414D of the Hawai'i Revised Statutes.
14. Venue is properly in this Court pursuant to Section 603-36 of the Hawai'i Revised Statutes, as the events and omissions giving rise to this action arose in this judicial circuit.

PARTIES

15. Defendant HPPOA is a Hawai'i non-profit organization with its mailing address in Kea'au, Puna District, County and State of Hawai'i.
16. Defendant HOFFMAN is currently President of HPPOA, and has been a Board member during relevant periods of this claim.
17. Defendant FINLEY is currently Vice President of HPPOA, and has been a Board member during relevant periods of this claim.
18. Plaintiff is an individual who resides in Hawaii, and is a member in good standing of HPPOA, and who is Trustee of property owned by a living trust within HPP.

FACTUAL BACKGROUND

19. Hawaiian Paradise Park ("HPP") is a census designated place in Hawaii County, Hawaii, in the District of Puna. With a population, according to the United States Census, between 11,000 and 14,000, if it were a city, it would be the 28th most populated city in the State of Hawaii. HPP is subdivided into approximately 8,850 lots owned by individuals, with several plots of 20 acres retained and owned by HPPOA.

20. Hawaiian Paradise Park Owners Association (“HPPOA”) is a Hawai’i nonprofit corporation. It acts pursuant to Bylaws amended and restated on July 22, 2010.

RELIEF SOUGHT, *INTER ALIA*

21. This Complaint seeks, *inter alia*, a declaration that Defendant HPPOA may not install CMB’s on the Subject Properties as the deed currently stands; a declaration that HPPOA may not use money collected from its members as restricted road funds to fund the CMB’s in any way (including installation and maintenance); a declaration that HPPOA may not use money collected from its members for any purpose other than exclusively for road maintenance; and a declaration that, as the Bylaws currently stand, HPPOA may not transfer funds into a non-road account for anything other than reimbursement of HPPOA non-road assets for road maintenance, capped at 5% of the restricted road funds.
22. The Complaint also seeks that the improperly skimmed restricted road funds transferred into the non-road account be disgorged back into the restricted road funds, with statutory interest.
23. The Complaint also seeks a declaration that Defendant HPPOA is not a “planned community association” under HRS 421J and 421J does not apply to HPPOA, and that the Court order Defendant HPPOA to revoke its April 19, 2023 resolution.
24. The Complaint also seeks a finding that HOFFMAN and FINLEY have breached their fiduciary duty and that the Court award compensatory and punitive damages for their brazen violation of the deed and the HPPOA Bylaws.

MISUSE OF ROAD MAINTENANCE FEES

25. The HPPOA collects annual road maintenance assessments from every property owner in HPP, in an amount of approximately **\$3,000,000 per year**.

26. The Bylaws outline the powers and authority of the Board of Directors. In pertinent part, to:

“Collect all assessments and fees levied by the Association, including the road maintenance assessments...**All funds generated by the collection of road maintenance assessments must be deposited into a separate bank account**, and shall not be commingled with any other Association funds. **Said road maintenance funds shall be expended solely and exclusively for expenses arising from the actual operation and administration of road maintenance activities** and compensation for the use of its non-road maintenance assets as per Article XI.” Article VIII, Section 8(o) (emphasis added).

“Ensure that finances are protected and managed in the best interest of the Association. To accomplish this purpose, the board shall establish reasonable formulas, policies, and procedures by which administrative costs are to be divided between restricted funds and the non-road fund...[]...Nothing in this section shall be interpreted in such a way as to relieve the board of the responsibility to account for all road funds separately in accordance with generally accepted accounting practices **nor to empower the board to expend road maintenance funds for any purpose other than road maintenance activities.**” Article VIII, Section 8(k) (emphasis added).

27. Article XI states that:

“The road maintenance funds are restricted funds and shall be used exclusively for road maintenance activities¹. A portion of road maintenance funds shall be exclusively used to compensation the Association General Fund for the use of the Association’s non-road maintenance assets for road maintenance purposes. The amount of compensation shall be determined annually by the board and shall not exceed 5% of road maintenance funds collected in every given year.” Article XI, Section 3 (emphasis added).

28. Defendant HPPOA told its members that it has taken 5% of the road assessments collected every year since approximately 2018 to “save up” for the installation and maintenance of the CMB’s. Defendant FINLEY told Plaintiff and its other members that this 5% of the road assessments were deposited directly into the non-road fund and never deposited in the restricted road fund, and therefore do not “count” as restricted road funds. This is a falsity and a flagrant thumbing of the nose at the Articles of the Bylaws cited above.

¹ “Road maintenance activities” are defined in the Bylaws as “An activity engaged in for the purpose of managing, maintaining, improving, preserving or protecting any road or road easement in Hawaiian Paradise Park, including collecting, accounting for, administering, and protecting road maintenance funds, and managing, operating, maintaining and protection road maintenance property.” HPPOA Bylaws, Article V, Section 1.

29. Defendant HPPOA is currently using these road assessments to pay for non-road maintenance purposes, specifically the clearing and grading of the Subject Properties (see below) for the installation of CMB's.

VIOLATIONS OF THE DEEDS FOR CLUSTER MAILBOXES

30. HPPOA notified its members that for the past six years, it has been setting aside 5% of the restricted road funds into the non-road account in order to save up for the CMB project.

HPPOA said it has budgeted \$600,000 for the CMB project.

31. The proposed location for these one-acre mailbox clusters are on lots that were deeded to HPPOA by a company owned by the Watumull's, a prominent family in Hawai'i. The deeds state the express condition that:

"...said property shall always be used for park, playground, recreational or school uses only, and that no part of the property shall ever be used for any residential use, nor for any commercial mercantile or business use that is not directly auxiliary to said public uses..."

32. The parcels of land at issue are located in Hawaiian Paradise Park, Kea'au, Hawai'i ("HPP") and identified as TMK 1-5-047-206 ("Lot B"), TMK 1-5-028-050 ("Lot C") and TMK 1-5-054-234 ("Lot D") (collectively "Subject Properties").

33. The HPPOA has fraudulently and falsely told the members that:

"The deed restrictions state the property cannot be used for residential or commercial use which the mailboxes are neither. The restrictions are for parks and education and communal use, which the mailboxes are for the community." www.hppoa.net, Mailbox FAQ's.

34. HPPOA admits that it has not received any indication from the Watumull's that they intend to modify the deed.

35. The deed provides standing to Plaintiff to sue HPPOA for enforcement of the deed. The deed states:

“..in the event Grantee shall at any time use or permit the property, or any part thereof, to be used in any manner in violation of the foregoing conditions, the Grantor or any person who from time to time may be the owner of any lot located within the Hawaiian Paradise Park Subdivision may sue to specifically enforce the use restrictions contained herein or to enjoin violation or threatened violation of the covenants and conditions hereof.”

The deed further states that HPPOA shall be responsible for attorneys’ fees and costs incurred by the plaintiff in any such suit. A copy of the deed is attached as Exhibit A.

36. Each CMB installation will contain approximately 2,000 mailboxes on each restricted lot.

The installations will include clearing and grading of the lots, paving, striping, parking spaces, concrete bases for the mailboxes, and installation of the cluster mailbox units themselves.

37. Defendant HPPOA has begun clearing and grading on the Subject Properties in preparation for the installation of concrete, asphalt and the CMB’s.

38. Defendant HPPOA has expended restricted road maintenance funds on this clearing and grading.

APPLICATION OF HRS 421J

39. HPP is infamously known as a substandard subdivision consisting of “Phase I” and “Phase II” lots. All lots were sold as unimproved land that needed to be cleared, graded, and any residence built by the owner. “Phase I” lots in HPP have no covenants or restrictions in their deeds. “Phase II” lots have only one covenant or restriction and that is the requirement to pay road fees every year to the HPPOA. Many roads in HPP are still gravel roads. HPP is the antithesis of a “planned community”.

40. Plaintiff’s deed does not contain any conditions, covenants or restrictions.

41. The vast majority of lots in HPP are zoned as Agricultural.

42. On April 19, 2023, the HPPOA Board of Directors, including Defendants HOFFMAN and FINLEY adopted a resolution declaring that HPP was a “planned community” under HRS 421J and that provisions of HRS 421J apply to HPP.
43. Prior to this resolution, the HPPOA was correctly following HRS 414D which applies to non-profit corporations.
44. Defendant HPPOA claims that HRS 421 applies to HPP because it applies “...to all community and homeowners’ associations of 10 or more parcels, regardless of whether an assessment was written into a deed, as long as such an assessment can be enforced by a lien,” citing HRS 421J. Memorandum to Nicole Craig, dated 8/4/23. This is an intentional falsification of the statute.
45. HRS 412J applies to “planned community associations”. HRS 421J-1.
46. HRS 421J defines a “planned community”, as either a condominium or timeshare, or a common interest community when “[r]eal property [is] subject to a recorded declaration placing restrictions and obligations on the owners of the real property that are enforced or enforceable by a separate entity, the association, established for that purpose whether or not mentioned in the declaration.” HRS 421J-2.
47. HRS 421J defines “recorded” as “recorded or filed in the bureau of conveyances of the State or in the office of the assistant registrar of the land court of the State, as appropriate.” HRS 421J-2.
48. Since HPP is not a condominium or time share, and since at least half the deeds in HPP have no recorded CC&R’s, including Plaintiff’s, Defendant HPPOA, including Plaintiff’s.

COUNT 1 – Declaratory Judgment
(The Deed to the Subject Properties Does Not Permit Installation and/or Maintenance of
CMB's)
as to Defendant HPPOA

49. Plaintiff alleges and incorporates by reference the allegations made in the preceding paragraphs.
50. The deed to the proposed CMB sites limits HPPOA's use of the land for park, playground, recreational or school uses only.
51. One-acre CMB areas are not considered park, playground recreational or school uses.
52. An actual controversy has arisen and now exists between Plaintiff and HPPOA concerning whether HPOA has the lawful authority to build and/or maintain CMB sites on these lots.

COUNT 2 – Declaratory Judgment
(HPPOA Cannot Use Money Collected From Its Members as Road Assessments to Fund
the CMB's In Any Way)
as to Defendant HPPO

53. Plaintiff alleges and incorporates by reference the allegations made in the preceding paragraphs.
54. HPPOA collects an annual assessment from HPP lot owners for road maintenance fees.
55. The HPPOA Bylaws restrict the use of these fees for road maintenance activities only.
56. Installation and maintenance of CMB's cannot be considered road maintenance activities within the meaning of the Bylaws.
57. The HPPOA Bylaws require these road maintenance fees to be deposited into a separate account and can only be transferred to a non-restricted account if they are used to reimburse HPPOA for the use of HPPOA non-road assets for road maintenance activities.
58. HPPOA has deposited and/or transferred road maintenance fees into the non-restricted General Fund in excess of any permitted reimbursement and has therefore violated the Bylaws.

59. HPPOA is using these funds, and will use these funds in the future, for the installation and maintenance of CMB's.
60. An actual controversy has arisen and now exists between Plaintiff and HPPOA concerning whether HPPOA can now use these "non-road" account funds to pay for the CMB installation and maintenance.

COUNT 3 – Declaratory Judgment
(HPPOA Can Not Use Funds Collected as Road Maintenance Fees for Anything Other
Than Road Maintenance Activities)
as to Defendant HPPOA

61. Plaintiff alleges and incorporates by reference the allegations made in the preceding paragraphs.
62. HPPOA collects an annual assessment from HPP lot owners for road maintenance fees.
63. The HPPOA Bylaws restrict the use of these fees for road maintenance activities only.
64. The HPPOA Bylaws require these road maintenance fees to be deposited into a separate account and can only be transferred to a non-restricted account if they are used to reimburse HPPOA for the use of HPPOA non-road assets for road maintenance activities.
65. HPPOA has deposited and/or transferred road maintenance fees into the non-restricted General Fund in excess of any permitted reimbursement and has therefore violated the Bylaws.
66. HPPOA is using these funds, and will use these funds in the future, for the installation and maintenance of CMB's.
67. An actual controversy has arisen and now exists between Plaintiff and HPPOA concerning whether HPPOA can use road maintenance funds collected from lot owners for anything other than road maintenance activities as defined by the Bylaws.

COUNT 4 – Declaratory Judgment
(HPPOA Must Disgorge the Misappropriated Amounts of Road Maintenance Fees Paid by
Lot Owners From the Non-Restricted General Fund to the Restricted Road Fund)
as to Defendant HPPOA

68. Plaintiff alleges and incorporates by reference the allegations made in the preceding paragraphs.
69. The HPPOA Bylaws require road maintenance fees to be deposited into a separate account and can only be transferred to a non-restricted account if they are used to reimburse HPPOA for the use of HPPOA non-road assets for road maintenance activities.
70. HPPOA has deposited and/or transferred road maintenance fees into the non-restricted General Fund in excess of any permitted reimbursement and has therefore violated the Bylaws.
71. An actual controversy has arisen and now exists between Plaintiff and HPPOA concerning whether HPPOA must reimburse road maintenance funds collected from lot owners back into the restricted road fund.

COUNT 5 – Negligent Breach of Fiduciary Duty
(as to Defendants HOFFMAN and FINLEY)

72. Plaintiff alleges and incorporates by reference the allegations made in the preceding paragraphs.
73. At all times relevant to this claim, Defendants HOFFMAN and FINLEY owed a fiduciary duty to HPPOA and its members, including Plaintiff.
74. HOFFMAN and FINLEY negligently breached that duty on more than one occasion and such breaches were the actual and proximate cause of harm to HPPOA and its members, including Plaintiff.

75. HPPOA has incurred undetermined expenses clearing and grading lots in preparation for the installation and maintenance of CMB's in violation of the Subject Properties' deed and HPPOA Bylaws.
76. Accordingly, Defendants HOFFMAN and FINLEY are liable in damage to HPPOA and its members, including Plaintiff, in excess of \$50,000.00, the exact amount to be proven at trial, arising out of HOFFMAN and FINLEY's negligent breach of their fiduciary duty to HPPOA and its members, including Plaintiff.

COUNT 6 – Reckless Breach of Fiduciary Duty
(as to Defendants HOFFMAN and FINLEY)

77. Plaintiff alleges and incorporates by reference the allegations made in the preceding paragraphs.
78. At all times relevant to this claim, Defendants HOFFMAN and FINLEY owed a fiduciary duty to HPPOA and its members, including Plaintiff.
79. HOFFMAN and FINLEY recklessly breached that duty on more than one occasion and such breaches were the actual and proximate cause of harm to HPPOA and its members, including Plaintiff.
80. HPPOA has incurred undetermined expenses clearing and grading lots in preparation for the installation and maintenance of CMB's in violation of the Subject Properties' deed and HPPOA Bylaws.
81. Accordingly, Defendants HOFFMAN and FINLEY are liable in damage to HPPOA and its members, including Plaintiff, in excess of \$50,000.00, the exact amount to be proven at trial, arising out of HOFFMAN and FINLEY's reckless breach of their fiduciary duty to HPPOA and its members, including Plaintiff.

COUNT 7 – Intentional Breach of Fiduciary Duty
(as to Defendants HOFFMAN and FINLEY)

82. Plaintiff alleges and incorporates by reference the allegations made in the preceding paragraphs.
83. At all times relevant to this claim, Defendants HOFFMAN and FINLEY owed a fiduciary duty to HPPOA and its members, including Plaintiff.
84. HOFFMAN and FINLEY intentionally breached that duty on more than one occasion and such breaches were the actual and proximate cause of harm to HPPOA and its members, including Plaintiff.
85. HPPOA has incurred undetermined expenses clearing and grading lots in preparation for the installation and maintenance of CMB's in violation of the Subject Properties' deed and HPPOA Bylaws.
86. Accordingly, Defendants HOFFMAN and FINLEY are liable in damage to HPPOA and its members, including Plaintiff, in excess of \$50,000.00, the exact amount to be proven at trial, arising out of HOFFMAN and FINLEY's intentional breach of their fiduciary duty to HPPOA and its members, including Plaintiff.

COUNT 8 – Declaratory Judgment
(HPPOA is Not a "Planned Community Association" Under HRS421J and HPPOA Must
Revoke Its 4/19/23 Resolution)
as to Defendant HPPOA

87. Plaintiff alleges and incorporates by reference the allegations made in the preceding paragraphs.
88. Defendant HPPOA has declared itself a "planned community association" under HRS 421J and claims that all provisions of HRS 421J apply to HPPOA and lots in HPP.
89. Defendant HPPOA does not meet the conditions and definitions or a "planned community association" under HRS 421J.

90. An actual controversy has arisen and now exists between Plaintiff and Defendant HPPOA concerning whether HPPOA is a “planned community association” under HRS 421J and whether HRS 421J applies to HPPOA at all.

COUNT 9 – Temporary and Permanent Injunctive Relief
(as to all Defendants)

91. Plaintiff alleges and incorporates by reference the allegations made in the preceding paragraphs.
92. Plaintiff, HPPOA and its members have been and continue to be irreparably harmed by HPPOA’s actions of using road funds for the CMB’s as well as the current clearing and grading the land, and the installation and maintenance of the CMB’s.
93. Monetary damages would be inadequate to compensate Plaintiff, the HPPOA and its members for such harm.
94. Plaintiff has shown a substantial likelihood of success on the merits.
95. Temporary and permanent injunctions would be in the public interest.
96. The equities weigh in favor of injunction relief.
97. Plaintiff therefore requests a temporary and permanent injunction that no additional work is to be done on the Subject Properties to turn the lots into CMB areas, and requiring Defendants to otherwise comply with the restrictive covenants on the land, HPPOA Bylaws, and other controlling documents.

COUNT 10 – Punitive Damages
(as to Defendants HOFFMAN and FINLEY)

98. Plaintiff alleges and incorporates by reference the allegations made in the preceding paragraphs.
99. At all relevant times, Defendants HOFFMAN and FINLEY owed HPPOA and its members, including Plaintiff, a duty to act with due care and regard for HPPOA and its members’

rights, safety and interests, including HPPOA and its members' property and financial interests.

100. Defendants breached that duty of due care on more than one occasion by acting intentionally, willfully, wantonly, maliciously, oppressively and with gross negligence in their violations of the Subject Properties' deed and the misuse of restricted road maintenance funds.
101. HOFFMAN and FINLEY outrageous conduct included lying about attorney opinions to the members of HPPOA, and orchestrating the violation of the deed and the misappropriation and use of restricted road funds. They did this, in part, by obtaining and lying about, and circulating incomplete, incorrect and illogical legal opinions from attorneys that do not withstand even a layman's common-sense test. They also lied to members about the restrictions on the road funds in the Bylaws.
102. Accordingly, Defendants HOFFMAN and FINLEY are liable for punitive damages to Plaintiff in excess of \$50,000.00 each, the exact amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff CRAIG respectfully requests that this Court enter judgment and provide the following relief:

- A. A declaratory judgment that the deed to the Subject Properties does not permit the installation and/or maintenance of CMB's by Defendant HPPOA;
- B. A declaratory judgment that Defendant HPPOA cannot use money collected from HPP lot owners as road funds to fund, install or maintain the CMB's in any way.
- C. A declaratory judgment that Defendant HPPOA may not use road funds collected from HPP lot owners for anything other than road maintenance activities as defined by the HPPOA Bylaws;

- D. A declaratory judgment that Defendant HPPOA must disgorge any and all road maintenance fees paid by HPP lot owners out of the non-restricted general fund and deposit them into the restricted road maintenance fund;
103. A declaratory judgment that HPP is not a “planned community” and HPPOA is not a “planned community association” under HRS 421J and that 421J does not apply to HPPOA in any way;
104. That Defendant HPPOA be ordered to revoke its April 19, 2023 resolution;
105. That Defendant HPPOA be ordered to pay 10% statutory interest *per annum* to the road funds for funds improperly deposited and/or transferred in from the restricted road fund into the unrestricted general fund;
106. That Defendants HOFFMAN and FINLEY be ordered to reimburse the restricted road fund for amounts improperly incurred by HPPOA’s installation work on the CMB’s up to and until this order is granted, with 10% statutory interest *per annum*;
107. That Defendants HOFFMAN and FINLEY be ordered to pay Plaintiff punitive damages in excess of \$50,000 each;
108. That Plaintiff be awarded reasonable attorneys’ fees, costs, and other expenses of litigation;
109. For such other and further relief as this Court deems just and proper.

DATED: Morgan Hill, CA, November 9, 2023.

/s/ Nicole Craig
NICOLE CRAIG
In Pro Per
PLAINTIFF

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

NICOLE CRAIG, as an individual and as
Trustee of the Revocable Living Trust of
Nicole L. Craig, and ROES 1-50,
inclusive,

Plaintiff,

vs.

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN
HOFFMAN, as an individual and HPPOA
Director, JEFFREY FINLEY, as an
individual and HPPOA Director, and
DOES 1-50, inclusive and DOES 1-20;
inclusive,

Defendants.

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN
HOFFMAN, as an individual and HPPOA
Director, JEFFREY FINLEY, as an
individual and HPPOA Director, and
DOES 1-50, inclusive and DOES 1-20;
inclusive,

Third-Party Plaintiffs,

vs.

WATUMULL INVESTMENT CO., LLC

Third-Party Defendant.

Civil No. 3CCV-23-0000302 (Hilo Division)
(HTN)(Declaratory Judgment)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Defendants/Third-Party Plaintiffs HAWAIIAN PARADISE PARK OWNERS
ASSOCIATION, KARIN HOFFMAN, and JEFFREY FINLEY, by and through their counsel,
Roeca Luria Shin LLP, hereby demand a trial by jury on all issues raised herein.

DATED: Honolulu, Hawai‘i, November 17, 2023.

/s/ Barron T. Oda

JAMES SHIN

JAMES R. FERGUSON

BARRON T. ODA

Attorneys for Defendants/Third-Party Plaintiffs
HAWAIIAN PARADISE PARK OWNERS
ASSOCIATION, KARIN HOFFMAN,
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Attorneys for Defendants

HAWAIIAN PARADISE PARK OWNERS

ASSOCIATION, KARIN HOFFMAN,

and JEFFREY FINLEY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

NICOLE CRAIG, as an individual and as
Trustee of the Revocable Living Trust of
Nicole L. Craig, and ROES 1-50,
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Plaintiff,

vs.

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN
HOFFMAN, as an individual and HPPOA
Director, JEFFREY FINLEY, as an
individual and HPPOA Director, and
DOES 1-50, inclusive and DOES 1-20;
inclusive,

Defendants.

Civil No. 3CCV-23-0000302 (Hilo Division)
(HTN)(Declaratory Judgment)

[PROPOSED] SUMMONS

TRIAL DATE: January 27, 2025

JUDGE: Hon. Henry T. Nakamoto

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN

(Caption continues onto following page)

HOFFMAN, as an individual and HPPOA
Director, JEFFREY FINLEY, as an
individual and HPPOA Director, and
DOES 1-50, inclusive and DOES 1-20;
inclusive,

Third-Party Plaintiffs,

vs.

WATUMULL INVESTMENT CO., LLC

Third-Party Defendant.

638-050

Of Counsel:

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A Limited Liability Law Partnership

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Attorneys for Defendants

HAWAIIAN PARADISE PARK OWNERS

ASSOCIATION, KARIN HOFFMAN

and JEFFREY FINLEY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

NICOLE CRAIG, as an individual and as
Trustee of the Revocable Living Trust of
Nicole L. Craig, and ROES 1-50,
inclusive,

Plaintiff,

vs.

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN
HOFFMAN, as an individual and HPPOA
Director, JEFFREY FINLEY, as an
individual and HPPOA Director, and
DOES 1-50, inclusive and DOES 1-20;
inclusive,

Defendants.

Civil No. 3CCV-23-0000302 (Hilo Division)
(HTN)(Declaratory Judgment)

SUMMONS

TRIAL DATE: January 27, 2025

JUDGE: Hon. Henry T. Nakamoto

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN

(Caption continues onto following page)

HOFFMAN, as an individual and HPPOA
Director, JEFFREY FINLEY, as an
individual and HPPOA Director, and
DOES 1-50, inclusive and DOES 1-20;
inclusive,

Third-Party Plaintiffs,

vs.

WATUMULL INVESTMENT CO., LLC

Third-Party Defendant.

638-050

SUMMONS

TO: Third-Party Defendant WATUMULL INVESTMENT CO., LLC

YOU ARE HEREBY SUMMONED and required to file with the Court and serve upon James Shin, Esq., James R. Ferguson, Esq. and Barron T. Oda, Esq., counsel for Defendants/Third-Party Plaintiffs HAWAIIAN PARADISE PARK OWNERS ASSOCIATION, KARIN HOFFMAN, and JEFFREY FINLEY, whose address is 900 Davies Pacific Center, 841 Bishop Street, Honolulu, Hawai'i 96813; and upon NICOLE CRAIG, *In Pro Per* for Plaintiff, whose address is 1057 Cochrane Road, Suite 160-33, Morgan Hill, California 95037, an answer to the Third-Party Complaint which is herewith served upon you. This action must be taken within 20 days after the service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Third-Party Complaint.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in any entry of default and default judgment against the disobeying person or party.

DATED: Hilo, Hawai‘i, _____

CLERK OF THE ABOVE-ENTITLED COURT

NICOLE CRAIG v. HAWAIIAN PARADISE PARK OWNERS ASSOCIATION, et al.,
CIVIL No. 3CCV-23-0000302 SUMMONS

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

NICOLE CRAIG, as an individual and as
Trustee of the Revocable Living Trust of
Nicole L. Craig, and ROES 1-50,
inclusive,

Plaintiff,

vs.

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN
HOFFMAN, as an individual and HPPOA
Director, JEFFREY FINLEY, as an
individual and HPPOA Director, and
DOES 1-50, inclusive and DOES 1-20;
inclusive,

Defendants.

HAWAIIAN PARADISE PARK
OWNERS ASSOCIATION, a Hawai'i
nonprofit corporation, KARIN
HOFFMAN, as an individual and HPPOA
Director, JEFFREY FINLEY, as an
individual and HPPOA Director, and
DOES 1-50, inclusive and DOES 1-20;
inclusive,

Third-Party Plaintiffs,

vs.

WATUMULL INVESTMENT CO., LLC

Third-Party Defendant.

Civil No. 3CCV-23-0000302 (Hilo Division)
(HTN)(Declaratory Judgment)

CERTIFICATE OF SERVICE

TRIAL DATE: January 27, 2025
JUDGE: Hon. Henry T. Nakamoto

I hereby certify that a true and correct copy of the foregoing was duly served by depositing the same in the United States Mail, postage prepaid [M], hand-delivery [HD], facsimile transmission [F], electronic mail [EM], or Judiciary Electronic Filing System [JEFS] to the following on November 17, 2023:

NICOLE CRAIG
1057 Cochrane Road, Suite 160-33
Morgan Hill, California 95037
In Pro Per for Plaintiff
NICOLE CRAIG

[M]

DATED: Honolulu, Hawai‘i, November 17, 2023.

/s/ Barron T. Oda

JAMES SHIN

JAMES R. FERGUSON

BARRON T. ODA

Attorneys for Defendants/Third-Party Plaintiffs
HAWAIIAN PARADISE PARK OWNERS
ASSOCIATION, KARIN HOFFMAN,
and JEFFREY FINLEY