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**Electronically Filed**  
**THIRD CIRCUIT**  
**3CCV-20-0000360**  
**23-DEC-2020**  
**08:10 PM**  
**Dkt. 24 NHM**

Attorneys for Plaintiffs  
KEOLA KAAI BANDMANN; VALERIE  
ANN BANDMANN; ROSS DAVID  
STADNYK; AND MARIANNE G.  
FARRELL

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

KEOLA KAAI BANDMANN; VALERIE  
ANN BANDMANN; ROSS DAVID  
STADNYK; AND MARIANNE G.  
FARRELL

Plaintiffs,

vs.

ANDY ANDREWS; ROBERT GOLDEN;  
CHERYL KAUPP; ALICE LINDAHL;  
DARRYL SINGLETON; PATTI  
HATZISTRRAVRAKIS; JOHN DOES 1-10;  
JANE DOES 1-10; DOE PARTNERSHIPS  
1-10; DOE CORPORATIONS 1-10; DOE  
ENTITIES 1-10;

Defendants.

Civil No. 3ccv-20-0360  
(Declaratory Judgment; Other Civil  
Action)

PLAINTIFFS' MOTION FOR  
LEAVE TO AMEND VERIFIED  
COMPLAINT TO ADD PLAINTIFF;  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF  
COUNSEL; DECLARATION OF  
PHILIP A. DENNEY; EXHIBIT 1;  
NOTICE OF NON-HEARING  
MOTION AND CERTIFICATE OF  
SERVICE

NON-HEARING MOTION

JUDGE: Honorable Henry T. Nakamoto  
NO TRIAL DATE SET

**PLAINTIFFS' MOTION FOR LEAVE TO AMEND VERIFIED  
COMPLAINT TO ADD PLAINTIFF**

Plaintiffs KEOLA KAAI BANDMANN, VALERIE ANN BANDMANN, ROSS DAVID  
STADNYK, and MARIANNE G. FARRELL (collectively "Plaintiffs") by and through their

attorneys, Revere and Associates, LLC, hereby request, pursuant to *Hawaii Rules of Civil Procedure* (“HRCP”) Rule 15(c), leave to file the proposed First Amended Verified Complaint in the form attached as Exhibit “1”.

This Motion is made on grounds that leave to amend should be freely granted as there is no undue delay on behalf of Plaintiffs nor prejudice to the Defendants.

This Motion is made pursuant to HRCP, Rules 7, 15, 20, and 54(c) and is supported by the accompanying Memorandum, Declaration and Exhibit attached hereto and the files herein.

DATED: Honolulu, Hawaii, December 23, 2020.

/s/ Amanda L. Dutcher

TERRANCE M. REVERE

AMANDA L. DUTCHER

Attorneys for Plaintiffs

KEOLA KAAI BANDMANN; VALERIE ANN  
BANDMANN; ROSS DAVID STADNYK; AND  
MARIANNE G. FARRELL

## MEMORANDUM IN SUPPORT OF MOTION

### **I. INTRODUCTION**

On September 29, 2020, Plaintiffs filed Verified Complaint against Defendants ANDY ANDREWS, ROBERT GOLDEN, CHERYL KAUPP, ALICE LINDAHL, DARRYL SINGLETON and PATTI HATZISTRRAVRAKIS (collectively “Defendants”). Plaintiffs seek to amend their Complaint to add Mr. Philip A. Denney as a plaintiff to this case.

### **II. BACKGROUND**

Plaintiffs are all owners of lots within the subdivision known as Leilani Estates located in the Puna District, County and State of Hawaii, and members of the Leilani Community Association (“LCA”).

Defendants are either former or current Board of Director members of the LCA.

Mr. Philip A. Denney is a current member of the Board of Directors of the LCA.

On July 29, 2020, Plaintiffs demanded mediation with the LCA for the purpose of resolving a number of disputes that had arisen with regard to the administration of the LCA by the Board of Directors (“Board”).

These disputes include a challenge by Plaintiffs that the March 21, 2020 election of the Board of Directors had been conducted improperly and inconsistent with the LCA governing documents as well as state law.

Plaintiffs also challenge a Bylaw amendment that was improperly authorized by the individual directors in contravention of the LCA governing documents.

Lastly, Plaintiffs challenge various actions by the individual directors that are inconsistent with the LCA governing documents and in violation of their fiduciary duties under state law.

Plaintiffs participated in two mediation sessions with the LCA and attempted to resolve these disputes without the need for litigation. However, mediation was unsuccessful, and Plaintiffs proceeded to file their Complaint with derivative and individual claims asserted against the individual directors responsible for the various violations of the LCA governing documents as well as state and common law.

Mr. Denney, as a member of the LCA, now wishes to join with Plaintiffs in the claims against the individual directors responsible for the wrongful acts as described in the Complaint, filed on September 29, 2020.

### **III. LEGAL AUTHORITY**

Rule 15(a)(2) of the Hawai'i Rules of Civil Procedure ("HRCPP") states, "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires...." The grant or denial of leave to amend under Rule 15(a) is within the discretion of the trial court. *Baldonado v. Way of Salvation Church*, 118 Hawai'i 165, 168, 185 P.3d 913, 916 (Ct. App. 2008). When determining whether leave shall be given, the following standard is employed by the court:

In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given."

*Bishop Tr. Co. v. Kamokila Dev. Corp.*, 57 Haw. 330, 337, 555 P.2d 1193, 1198 (1976).

Hawaii Courts have consistently stated:

In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given."

*Keall'e v. Hml'aiian Elec. Co.*, 65 Haw. 232, 238-39, 649 P.2d 1149, 1154 (1982), quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962).

HRCF, Rule 20, provides:

(a) Permissive joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

HRCF, Rule 20.

#### **IV. ARGUMENT**

The instant motion is not the result of undue delay, bad faith or dilatory motive by the Plaintiffs. Plaintiffs are seeking amendment to add Mr. Denney as a Plaintiff to this case. Mr. Denney shares Plaintiffs' concerns over the actions by defendants and supports the claim that the defendants failed in their duties as current and former directors to manage the LCA in accordance with the LCA governing documents and in violation of their fiduciary duties under state law. See Declaration of Philip A. Denney. Mr. Denney has voiced these concerns as a director of the LCA Board but his concerns have been dismissed. *Id.* Mr. Denney now wishes to join Plaintiffs in seeking relief from this Court related to the claims asserted in the Complaint. *Id.*

Plaintiffs' Motion for Leave to File a First Amended Verified Complaint should be granted because (1) Plaintiffs have not unduly delayed in seeking this amendment; (2) the

amendment will not prejudice the Defendants; (3) Plaintiffs' proposed amendment is not futile; and (4) the Motion is made in good faith and not for undue purposes.

**A. Plaintiffs have not unduly delayed in seeking this amendment.**

Delay is not an issue, as Plaintiffs are seeking this amendment before any trial date has been set and no discovery has been exchanged.

**B. Amendment Will Not Prejudice the Defendants**

Wright and Miller, *Federal Practice and Procedure* § 1488 at 4363-8 (1971) notes the variety of situations in which motions to amend are granted:

Quite appropriately the courts have not imposed any arbitrary timing restrictions on a party's request for leave to amend and permission has been granted under Rule 15(a) at various stages of the litigation: following discovery; after a pretrial conference; at a hearing on a motion to dismiss or for summary judgment; after a motion to dismiss has been granted but before the order of dismissal has been entered; when the case is on the trial calendar and has been set for a hearing by the district court; as the beginning, during, and at the close of the trial; after a judgment has been entered; and even on remand following as appeal. [footnotes omitted].

Wright and Miller also recognize that, "[i]n most cases, delay alone is not a sufficient reason for denying leave." *Id.* at 438.

The filing of the amended complaint will not prejudice the Defendants. No trial date has been set and discovery in this case is in its beginning stages.

**C. Plaintiffs' proposed amendment is not futile.**

"[A]n amendment to a pleading is futile if the proposed claim could not withstand a motion to dismiss for failure to state a claim pursuant to [HRCP] Rule 12(b)(6)." *Office of Hawaiian Affairs v. State*, 110 Haw. 338, 365, 133 P.3d 767, 794 (2006) (quoting *Lucente v. Int'l Bus. Machs. Corp.*, 310 F.3d 243, 258 (2d Cir. 2002) (brackets and citations omitted). Hawaii Courts have recognized that "[a] complaint is not subject to dismissal with prejudice unless it

appears to a certainty that no relief can be granted under any set of facts that can be proved in support of its allegations.” *Giuliani v. Chuck*, 620 P.2d 733, 737-38 (Haw. Ct. App. 1980) (citing 5 Wright & Miller, Federal Practice and Procedure: Civil § 1215).

In this case, Plaintiffs are not proposing to add any claims; however, allowing the amendment addresses directly one of the assertions raised in Defendants’ Motion to Dismiss – that Plaintiffs lack standing to bring a derivative claim. While Plaintiffs dispute Defendants’ assertion that Plaintiffs lack standing to bring a derivative suit against the LCA pursuant to HRS § 414D-90, Plaintiffs’ amendment addresses the “fatal flaw” that Defendants allege Plaintiffs’ Complaint suffers from. Mr. Denney is currently a director of the LCA and thus satisfies HRS § 414D-90.

Defendants’ other arguments in their Motion to Dismiss similarly will not succeed in dismissing Plaintiffs’ claims and Plaintiffs’ amendment is not futile.

Defendants’ argument that Plaintiffs’ claims must be dismissed because the mediator had not declared an impasse is not supported by the law or the record.

First, while mediation is a statutory requirement, there is no criterion provided in the statute that requires a party to wait for the mediator to formally declare an impasse.

Second, the following facts demonstrate that Plaintiffs satisfied HRS § 421J-13:

1. On July 29, 2020 Plaintiffs made their formal demand for mediation.
2. On August 27, 2020, Plaintiffs’ counsel participated in a call with LCA’s counsel to discuss Plaintiffs’ claims.
3. On September 3, 2020, Plaintiffs’ counsel email LCA counsel with a summary of their position.
4. On September 14, 2020, Plaintiffs participated in mediation with Judge McConnell. The session ended with the LCA stating that it did not have the necessary directors available to respond to Plaintiffs’ offer of settlement and so a second mediation session was scheduled.
5. On September 16, 2020, Plaintiffs’ counsel emailed LCA counsel a summary of Plaintiffs’ settlement position.

6. On September 22, 2020, having received no substantive response, Plaintiffs' counsel emailed LCA's counsel and requested a response to Plaintiffs' settlement proposal. Plaintiffs' counsel then exchanged email correspondence with LCA's counsel and despite Plaintiffs' counsel responding to various questions by the LCA to clarify the basis for Plaintiffs' position, the LCA's counsel never responded with any response to Plaintiffs' settlement offer.
7. On September 24, 2020, Plaintiffs participated in a second mediation session. At the end of the session, the mediator explained that the LCA had not changed its position and that on all fronts, the LCA was rejecting Plaintiffs' proposals. The session ended with no agreement by the parties for a further mediation session.
8. On September 28, 2020, Plaintiffs' counsel emailed LCA's counsel and the mediator and summarized the relative positions of the parties at the end of the two sessions. In the email, Plaintiffs' counsel also stated that given the lack of a resolution and no indication that the parties were moving toward a resolution, that the mediation process was at a close.
9. On September 28, 2020 LCA's counsel for the first time attempted a response to Plaintiffs' settlement offer. Not surprising, its response was nothing more than a point-by-point rejection of Plaintiffs' proposed settlement offer with the single exception being that the Board would rescind the bylaws amendment that was improperly adopted and raise the possibility of a January election at a subsequent Board meeting. In all other respects, Defendants rejected Plaintiffs' settlement proposal.
10. On September 29, 2020, Plaintiffs filed their complaint but held off on service.
11. On September 30, 2020, Plaintiffs responded to the LCA purported offer, rejecting the proposal and stating again the terms of their offer.
12. On October 1, 2020, Plaintiffs' counsel exchanged further emails with LCA counsel explaining the basis for Plaintiffs' proposed terms.
13. On October 5, 2020, Plaintiffs contacted its process server and instructed him to proceed with service.

See Declaration of Counsel.

As described above, Plaintiffs participated in two mediation sessions before filing their complaint and then waited an additional week before even attempting service. It is clear from the exchanges between counsel that the parties had thoroughly evaluated and communicated their respective positions and were at an impasse. The fact that the mediator did not formally declare an impasse does not discount the fact that the parties had thoroughly exhausted the mediation process.

**D. Plaintiffs' Motion is Brought in Good Faith.**

As detailed above, this Motion is brought in good faith and not for harassment or other improper purposes. Rather, this motion is brought to allow Plaintiffs the full protection that law allows against the proper parties.

**V. CONCLUSION**

Accordingly, Plaintiffs respectfully request the Court grant this Motion in its entirety and allow them to proceed with filing the First Amended Complaint attached as Exhibit 1.

Dated: Honolulu, Hawai'i, December 23, 2020.

/s/ Amanda L. Dutcher

TERRANCE M. REVERE

AMANDA L. DUTCHER

Attorneys for Plaintiffs

KEOLA KAAI BANDMANN; VALERIE ANN  
BANDMANN; ROSS DAVID STADNYK; AND  
MARIANNE G. FARRELL

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

KEOLA KAAI BANDMANN; VALERIE  
ANN BANDMANN; ROSS DAVID  
STADNYK; AND MARIANNE G.  
FARRELL

Plaintiffs,

vs.

ANDY ANDREWS; ROBERT GOLDEN;  
CHERYL KAUPP; ALICE LINDAHL;  
DARRYL SINGLETON; PATTI  
HATZISTRARAKIS; JOHN DOES 1-10;  
JANE DOES 1-10; DOE PARTNERSHIPS  
1-10; DOE CORPORATIONS 1-10; DOE  
ENTITIES 1-10;

Defendants.

Civil No. 3ccv-20-0360  
(Declaratory Judgment; Other Civil  
Action)

DECLARATION OF COUNSEL

**DECLARATION OF COUNSEL**

I, AMANDA L. DUTCHER, hereby declare:

1. I am an attorney duly licensed to practice law in the State of Hawaii and before this Honorable Court.
2. I am an associate with the law firm of Revere & Associates, LLC, and representing Plaintiffs in the above-entitled action.
3. I have personal knowledge and am competent to testify to the matters herein.
4. On July 29, 2020 Plaintiffs made their formal demand for mediation.
5. On August 10, 2020, Ms. Michele Luke emailed our office and advised that she was representing the LCA in responding to Plaintiffs' demand and that she would be providing a more substantive response once she was able to review the file materials.

6. On August 27, 2020, I participated in a call with Ms. Luke and the LCA general counsel, Mr. Lincoln Ashida, to discuss Plaintiffs' claims.

7. On September 3, 2020, I emailed Ms. Luke and Mr. Ashida with a summary of what was discussed during our call and provided additional clarification as to Plaintiffs' position.

8. On September 14, 2020, Plaintiffs participated in mediation with Judge McConnell. During the session, the mediator communicated to LCA's counsel Plaintiffs' settlement position. The session ended with the LCA stating that it did not have the necessary directors available to respond to Plaintiffs' offer of settlement and so a second mediation session was scheduled.

9. On September 16, 2020, I emailed LCA counsel a summary of Plaintiffs' settlement position after discussing various issues with the mediator and asked that the LCA confirm that they will have the appropriate settlement authority when we meet against with the mediator.

10. On September 22, 2020, having received no substantive response from LCA's counsel regarding Plaintiffs' settlement offer, I emailed LCA's counsel and requested a response. I then exchanged email correspondence with LCA's counsel and despite responding to various questions by Ms. Luke to clarify the basis for Plaintiffs' position, LCA's counsel never responded to Plaintiffs' settlement offer.

11. On September 24, 2020, Plaintiffs participated in a second mediation session. At the end of the session, the mediator explained that the LCA was rejecting Plaintiffs' proposed settlement offer. The session ended with no agreement by the parties for a further mediation session.

12. On September 28, 2020, I emailed LCA's counsel and the mediator and summarized the relative positions of the parties at the end of the two sessions. In the email, I also stated that given the lack of a resolution and no indication that the parties were moving toward a resolution, that the mediation process was at a close and I thanks everyone for their efforts.

13. On September 28, 2020 LCA's counsel for the first time attempted a response to Plaintiffs' settlement offer. Not surprising, Ms. Luke's response was nothing more than a point-by-point rejection of Plaintiffs' proposed settlement offer. However, at the close of Ms. Luke's email, she asked that Plaintiffs respond to the LCA's position.

14. On September 29, 2020, Plaintiffs filed their complaint but held off on service in order to first allow the LCA another chance to accept their offer.

15. On September 30, 2020, I emailed LCA counsel and informed Ms. Luke that Plaintiffs were rejecting the LCA's proposal and restated the terms of Plaintiffs' settlement offer. At the close of my email, I stated that "absent a response from [the LCA] by the end of the today that all of my clients [terms] are accepted as stated, my clients will proceed accordingly."

16. Ms. Luke responded by saying that she would pass on Plaintiffs' position to the Board and asked that she have until the close of the business day on October 2, 2020 to substantively respond to Plaintiffs' settlement offer.

17. On October 1, 2020, I responded to a question by Ms. Luke and again clarified Plaintiffs' settlement position.

18. On October 2, 2020, Ms. Luke did not provide a substantive response to Plaintiffs' settlement offer.

19. On October 5, 2020, having still not received any response to Plaintiffs' settlement offer, I contacted our process server and instructed him to proceed with service.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE  
AND CORRECT.

DATE: Honolulu, Hawaii, December 22, 2020.

/s/ Amanda L. Dutcher  
AMANDA L. DUTCHER

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

KEOLA KAAI BANDMANN; VALERIE  
ANN BANDMANN; ROSS DAVID  
STADNYK; AND MARIANNE G.  
FARRELL

Plaintiffs,

vs.

ANDY ANDREWS; ROBERT GOLDEN;  
CHERYL KAUPP; ALICE LINDAHL;  
DARRYL SINGLETON; PATTI  
HATZISTRARAKIS; JOHN DOES 1-10;  
JANE DOES 1-10; DOE PARTNERSHIPS  
1-10; DOE CORPORATIONS 1-10; DOE  
ENTITIES 1-10;

Defendants.

Civil No. 3ccv-20-0360  
(Declaratory Judgment; Other Civil  
Action)

DECLARATION OF PHILIP A.  
DENNEY

**DECLARATION OF PHILIP A. DENNEY**

I, PHILIP A. DENNEY, hereby declare:

1. I am an owner at the Leilani Estates subdivision, member of the Leilani Estates Community Association ("LCA"), and a current director of the Board of Directors for the LCA.

2. I share Plaintiffs' concerns over the actions by defendants that have failed in their duties as current and former directors to manage the LCA in accordance with the LCA governing documents and in violation of their fiduciary duties under state law.

3. I have voiced my concerns as provided in the Complaint as a director of the LCA Board but my concerns have been dismissed and the other directors which are named in Plaintiffs' Complaint have taken no action to address these concerns.

4. In particular, I have voiced my concerns that the Board is not proceeding with the election of director in compliance with the LCA Bylaws.

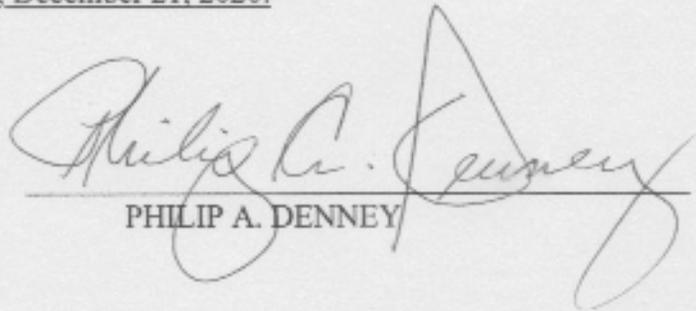
5. On November 12, 2020, during the regular Board meeting, I made a motion to schedule the election for the year 2021 and 2022 for January 21, 2021 in accordance with the LCA Bylaws.

6. In response to my motion, the other directors, including Defendants Robert Golden, Andy Andrews, Patti Hatzistravvakis and Alice Lindahl abstained from a vote on my motion.

7. During the November 12, 2020 meeting, Defendant Robert Golden stated that he would call a special meeting in December to resolve the question of whether a January election should take place as provided in the LCA Bylaws and that such meeting will likely take place the second week of December. However, Mr. Golden never called a special meeting. By abstaining from a vote on my motion, Defendant Directors are simply kicking the can down the road in such a way that no resolution can be achieved in time to have the election in January as required by the LCA Bylaws.

I DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: Honolulu, Hawaii, December 21, 2020.

  
PHILIP A. DENNEY

REVERE & ASSOCIATES  
A Limited Liability Law Company

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KEOLA KAAI BANDMANN; VALERIE  
ANN BANDMANN; ROSS DAVID  
STADNYK; PHILIP A. DENNEY; AND  
MARIANNE G. FARRELL

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

KEOLA KAAI BANDMANN; VALERIE  
ANN BANDMANN; ROSS DAVID  
STADNYK; PHILIP A. DENNEY; AND  
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Plaintiffs,

vs.

ANDY ANDREWS; ROBERT GOLDEN;  
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1-10; DOE CORPORATIONS 1-10; DOE  
ENTITIES 1-10;

Defendants.

Civil No. \_\_\_\_\_  
(Declaratory Judgment; Other Civil  
Action)

**FIRST AMENDED VERIFIED**  
**COMPLAINT; VERIFICATIONS**  
**OF COMPLAINT; DEMAND FOR**  
**JURY TRIAL; SUMMONS**

**FIRST AMENDED VERIFIED COMPLAINT**~~COMPLAINT~~

Plaintiffs KEOLA KAAI BANDMANN, VALERIE ANN BANDMANN, ROSS DAVID  
STADNYK, PHILIP A. DENNEY AND MARIANNE G. FARRELL, (hereinafter "Plaintiffs")  
as owners and members of the LEILANI COMMUNITY ASSOCIATION ("LCA") and as a



derivative action on behalf of the LCA against Defendants ANDY ANDREWS, ALICE LINDAHL, ROBERT GOLDEN, CHERYL KAUPP, DARRYL SINGLETON, and PATTI HATZISTRARAKIS allege and aver as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff KEOLA KAAI BANDMANN (“Plaintiff Keola Bandmann”) is and was at all times relevant the owner of Lots 11, 12, 13 and 16 and a member of the Leilani Community Association (“LCA”).

2. Plaintiffs VALERIE ANN BANDMANN (“Plaintiff Valerie Bandmann”) is and was at all times relevant herein the co- owner of Lots 11, 12, 13 and 16 and a member of the LCA.

3. Plaintiff ROSS DAVID STADNYK (“Plaintiff Stadnyk”) is and was at all times relevant herein the owner of Lot 60 and a member of the LCA.

4. Plaintiff MARIANNE G. FARRELL (“Plaintiff Farrell”) is and was at all times relevant herein the owner Lots 35 and 37 and a member of the LCA.

4.5. Plaintiff PHILIP A. DENNEY (“Plaintiff Denney”) is and was at all time relevant herein the owner of Lots 26 and 27, a member of the LCA, and a current director of the Board of Directors.

~~5.6.~~ Defendant ANDY ANDREWS (“Defendant Andrews”) is and was at all times relevant herein an owner and member of the LCA, and an officer or director of the LCA.

~~6.7.~~ Defendant ROBERT GOLDEN (“Defendant Golden”) is and was at all times relevant herein an owner and member of the LCA, and an officer or director of the LCA.;

~~7.8.~~ Defendant CHERYL KAUPP (“Defendant Kaupp”) is and was at all times relevant herein an owner and member of the LCA, and an officer or director of the LCA.;

~~8.9.~~ Defendant ALICE LINDAHL (“Defendant Lindahl”) is and was at all times

relevant herein an owner and member of the LCA, and an officer or director of the LCA.;

~~9.~~10. Defendant DARRYL SINGLETON (“Defendant Singleton”) is and was at all times relevant herein an owner and member of the LCA, and an officer or director of the LCA.;

~~10.~~11. Defendant PATTI HATZISTRARAKIS (“Defendant Hatzistravakis”) is and was at all times relevant herein an owner and member of the LCA, and an officer or director of the LCA.

~~11.~~12. Plaintiffs will seek leave to amend this complaint, after discovery has commenced, to more specifically identify any Doe Defendants whose true identities, capacity and actions become known to Plaintiffs through discovery.

~~12.~~13. As alleged below, Plaintiffs have commenced this action for, among other things, an injunction and declaratory judgment.

~~13.~~14. As alleged below, Plaintiffs' action against Defendants arises from acts performed by Defendants in the City and County of Hawaii, and within the jurisdiction of the Circuit Court of the Third Circuit, State of Hawaii.

~~14.~~15. Pursuant to Hawaii Revised Statutes (“HRS”) §§ 603-21.5(a)(3) and 632-1, this Court has subject matter jurisdiction for this action.

~~15.~~16. Pursuant to HRS §§ 634-35(a)(1) and 634-35(a)(3), this Court has personal jurisdiction over Defendants.

~~16.~~17. Pursuant to HRS § 603-36(5), the Circuit Court of the Third Circuit for the State of Hawaii is the proper venue.

### **STATEMENT OF FACTS**

~~17.~~18. LEILANI COMMUNITY ASSOCIATION (“LCA”) is a Hawaii nonprofit corporation, organized and existing pursuant to Hawaii Revised Statutes Chapter 421J, its Charter of Incorporation filed with the Department of Regulatory Agencies on January 15, 1969

(“Charter”), the Declaration of Covenants Conditions and Restrictions filed with the Office of Bureau of Conveyances on March 19, 1969 (“CC&Rs”) and the Bylaws of Leilani Community Association attached as Exhibit B to the CC&Rs (“Bylaws”).

~~18.~~19. The Board of Directors of the LCA (“Board”) is authorized to act on behalf of the LCA subject to the limitations on its powers contained in HRS, Chapter 421J, its Charter, CC&Rs and Bylaws and under the common law.

~~19.~~20. Plaintiffs are bringing this action derivatively in the name of the LCA against Defendants for amongst other claims set forth below, breaches of the HRS, breaches of the Charter, CC&Rs and the Bylaws of the LCA, breach of contract, breach of fiduciary duty and violations of Hawaii’s Unfair and Deceptive Practices Act, HRS, Chapter 480.

~~20.~~21. Plaintiffs will fairly and adequately represent the interests of the members of the LCA similarly situated to Plaintiffs. Plaintiffs have no interest adverse to those other owners and members.

~~21.~~22. As described below, Defendants have acted against the interests of all LCA members.

~~22.~~23. Objections and demands for action were made to the Board, however the demands and objections were futile because the actions complained of were deliberately taken by and/or ratified by the Board and the demands otherwise were ignored.

~~23.~~24. It would be futile and fruitless to further ask the Board to take action against Defendants, itself, or to reconsider or reverse the actions it has previously taken, because the Board and Defendants have consistently refused to take such actions when asked to do so.

~~24.~~25. Pursuant to HRS § 421J-13, Plaintiffs Stadnyk, Farrell, Keola and Valerie Bandmann participated in mediation with the LCA but the LCA refused to reconsider or reverse

Defendants' actions.

~~25.~~26. On March 16, 2019 the LCA held its annual meeting of the members and the following members were elected to the LCA Board of Directors: Kris Burmeister, Heath Dalton, Jay Turkovsky, Robert Golden, Kaonohi Jeremiah, Mark Hauanio, and Greg Armstrong.

~~26.~~27. In or around June 2019, Defendant Andrews was appointed to the Board.

~~27.~~28. On June 13, 2019, at the regular meeting of the Board, Defendant Andrews misrepresented to the owners that a previous Board had authorized the LCA to pay for the installation of speed humps on South Maile street.

~~28.~~29. In or around July 2019, Defendant Lindahl was appointed to the Board.

~~29.~~30. In August 2019, Defendant Hatzistravrakis and Plaintiff Valerie Bandmann were appointed to the Board.

~~30.~~31. On August 8, 2019, at the regular meeting of the Board, Defendant Andrews misrepresented to the owners that a previous Board voted as a compassionate gesture to the folks on South Maile street to install speed humps at the LCA's expense.

~~31.~~32. On August 8, 2019, at the regular meeting of the Board, Defendants Andrews and Lindahl misrepresented to owners that 100% of the owners on Maile Street provided their signatures to approve the installation of speed humps on Maile Street.

~~32.~~33. On August 8, 2019, at the regular meeting of the Board, Defendants Andrews and Lindahl misrepresented to owners that renters and absent property owners' signatures were not required under the LCA speed hump policy, as adopted in 2016.

~~33.~~34. On August 8, 2019, at the regular meeting of the Board, the Board voted to have LCA supply funds for three speed humps for South Maile street and to revisit its commitment to pay for the installation of speed humps on South Maile street.

~~34.~~35. Defendant Lindahl lives on South Maile street and personally benefited from Defendants' action to pay for the installation of speed humps on South Maile Street.

~~35.~~36. Other LCA owners have requested to have speed humps installed on other streets and such requests were denied because of strict adherence to the LCA speed hump policy, as adopted in 2016.

~~36.~~37. Defendants improperly afforded Defendant Lindahl an exception to the LCA speed hump policy.

~~37.~~38. In September 2019, Defendant Andrews delegated responsibilities and assignments to the various Board members, including the assignment of CC&R administration and enforcement to Plaintiff Valerie Bandmann.

~~38.~~39. On October 10, 2019, at the regular meeting of the Board, Plaintiff Valerie Bandmann, as the director in charge of CC&R administration and enforcement, discussed her plans to investigate potential violations and to draft letters to owners in violation of the CC&Rs.

~~39.~~40. On October 10, 2019, at the regular meeting of the Board, Defendant Golden informed owners that the Board was working on changing the Bylaws to allow for staggered terms for the Board.

~~40.~~41. On October 24, 2019, Defendant Hatzistravakis informed the Board that she was resigning from the Board.

~~41.~~42. On October 24, 2019, at the regular meeting of the Board, Defendant misled and deceived the owners by failing to inform them that Defendant Hatzistravakis had resigned from the Board.

~~42.~~43. On October 25, 2019 Defendant Hatzistravakis emailed the Board her written resignation from the Board.

~~43.~~44. On November 6, 2019, Defendant Singleton emailed the Board and informed them that he was resigning from the Board.

~~44.~~45. On November 14, 2019, at the regular meeting of the Board, Defendants Hatzistravvakis and Singleton misrepresented to the owners that they were still on the Board and misled and deceived the owners by failing to inform the owners that they had resigned from the Board.

~~45.~~46. On November 14, 2019, at the regular meeting of the Board, Defendant Andrews misrepresented to LCA owners that a maintenance fee increase from \$110 to \$200 per lot was necessary to restore the LCA's reserves.

~~46.~~47. Defendants misled and deceived LCA owners by failing to inform owners that the LCA reserves could be replenished with a significantly lower increase in maintenance fees.

~~47.~~48. Defendants misrepresented to the owners that the maintenance fee increase was authorized by the LCA Bylaws and that the Board had the authority to increase the maintenance fees without a vote of the owners.

~~48.~~49. Defendants misled and deceived LCA owners by failing to inform owners that the maintenance fees increase was inconsistent and a violation of the Bylaws, Article XV, Sections 1- 5, which provide in relevant part:

ARTICLE XV

ASSESSMENTS AND CHARGES

SECTION 1. Regular Annual Assessments. One of the primary purposes and objects of the corporation shall be to establish a suitable and equitable assessment program **to ensure the adequate and continued repair and maintenance of roads and streets and landscaping adjacent thereto and community facilities** within the LEILANI ESTATES as provided in the Charter of Incorporation. In furtherance of such purposes a scale of assessments shall be fixed by the board of directors on a budgetary basis so that sufficient revenue shall be derived therefrom to enable the corporation to accomplish its general purposes and to enable it

to maintain all areas within the subdivision. The amount of any annual assessment shall be determined by the board before the annual meeting of the member of the corporation and each member of the corporation shall be notified of the amount and effective date of such assessment. Initially, such regular annual assessment shall be \$15.00 per year per lot.

...

SECTION 2. Special Assessments. If at any time the board of directors shall find or anticipate that the funds of the corporation are or will be insufficient to reasonably enable the corporation to accomplish its purposes and objectives, the board may, at any regular or special meeting thereof, levy other and further assessments against the members of the corporation as it determines are necessary or desirable. Upon the determination of any such special assessment, the Secretary shall notify each member of the corporation as to the amount of the assessment and its effective date.

SECTION 3. Reserve Fund. In determining the amount of any annual or special assessment, the board of directors shall consider the necessity and advisability of establishing a reserve fund for emergency or extraordinary expenses, and the board shall have the power to reasonably and equitably establish such a reserve fund.

SECTION 4. Veto of Assessments. **If at any time the board of directors either (a) increases the last prior regular annual assessment by more than ten per cent (10%) or (b) declares any special assessment, the members, by an affirmative vote of the members holding a majority of the votes of all the members of the corporation may veto such increase or special assessment at a special meeting duly called for that purpose.** Unless such meeting is called within sixty (60) days of the notice of assessment, the assessment as declared by the board shall be effective as of the date originally announced.

SECTION 5. Approval of Members for Assessments Which Relate to Community Facilities Other Than Maintenance and Landscaping. Anything in these By-Laws to the contrary notwithstanding, **if at any time the board of directors establishes and declares an assessment, or portion thereof, which relates to community facilities other than repair and maintenance of roads and landscaping adjacent thereto as provided in the Charter of Incorporation, such assessment shall not be effective unless and until the members approve and ratify the same by an affirmative vote of not less than sixty (60%) of the entire membership of the corporation.** Votes may be cast either in person or by proxy. (bold added).

~~49.~~50. Defendants explained to the owners by letter dated November 21, 2019 that the maintenance fee increase was necessary to pay for increased expenses related to unanticipated events.

~~50.~~51. Defendants explained to the owners by letter dated November 21, 2019 that the maintenance fee increase was due in part to an increase in legal fees.

~~51.~~52. Defendants' vote to increase maintenance fees was in violation of the Bylaws, Article XV because the payment of legal fees does not further the purpose for regular annual assessments and should have been paid by Special Assessment allowing the owners to approve or ratify such Special Assessment.

~~52.~~53. Defendants' vote to increase maintenance fees was in violation of the Bylaws, Article XV because the increase was in excess of a 10% from the prior regular annual assessment.

~~53.~~54. In November 2019, after completing a number of draft violation letters, Plaintiff Valerie Bandmann was instructed by Defendant Andrews to not send out said letters.

~~54.~~55. Upon information and belief, Defendant Andrews instructed Plaintiff Valerie Bandmann to not send out the violation letters because Defendant Andrews himself was in violation of the CC&Rs and did not want his own infractions to be revealed.

~~55.~~56. Upon information and belief, Defendant Andrews was informed on or about January 19, 2010 that he was violation of the CC&Rs because he had installed an illegal structure on his lot without submitting plans to the LCA in accordance with the CC&Rs.

~~56.~~57. On November 14, 2019, at the regular meeting of the Board, Defendant Lindahl informed the owners that the Board was planning on purging all the building plans held by the LCA.

~~57.~~58. Upon information and belief, Defendant Andrews directed the purge of the building plans in order to conceal his own violations of the CC&Rs.

~~58.~~59. On December 12, 2019, Plaintiff Valerie Bandmann emailed the Board and expressed her concerns that the resignations by Defendants Hatzistravrakis and Singleton were being wrongfully withheld from the owners.

~~59.~~60. On December 12, 2019, at the regular meeting of the Board, Defendants Hatzistravrakis and Singleton misled and deceived the owners by failing to inform owners that they had resigned from the Board.

~~60.~~61. Upon information and belief, Defendant Andrews asked Defendants Hatzistravrakis and Singleton to remain as place-holders on the Board without holding any responsibility or duties as directors so that owners would not raise concerns about the Board's administration of the LCA in anticipation of the upcoming election.

~~61.~~62. When Plaintiff Valerie Bandmann expressed her concerns about the lack of transparency regarding the resignations of Hatzistravrakis and Singleton and her desire to not participate in the same deception to the owners, Defendant Golden asked Plaintiff Valerie Bandmann to remain on the Board as a place holder without holding any responsibility or duties as a director so that owners would not raise concerns about the Board's administration of the LCA in anticipation of the upcoming election.

~~62.~~63. On December 12, 2019, at the regular meeting of the Board, an owner asked Defendant Andrews how he feels about an owner being intimidated and asked to move because he disagrees with what Defendant Andrews has done as President of the LCA and Defendant Andrews's response was that "Probably, in a dark moment, a few times, I've thought a few of you would be better off to get the hell out of here."

~~63.~~64. On December 12, 2019, at the regular meeting of the Board, Defendants as directors for the Board voted on an amendment to the Bylaws that purported to amend (1) Article III, Section 1, (2) Article IV, Section 2, and (3) Article V, Section 1 of the Bylaws.

~~64.~~65. The amendment to Article IV, Section 2 included the addition of the following underlined language:

Election and Term. The directors shall be elected for a two-year term at the annual meeting of the members of the corporation, and shall, unless sooner removed by the members of the corporation as provided in these By-Laws, hold office until their successors shall be duly elected. The terms of office will be staggered two-year terms. Three directors shall be elected in even-numbered years and four directors shall be elected in odd numbered years. Nominations for the directors to be elected shall be made by any member in good standing writing to the Secretary of the corporation nominating his desired candidate. Said nomination shall be made on or before the first day of January of the year in which the election is to occur. In the notice of the January Board of Directors meeting, the Secretary of the corporation shall list the names of all such nominees. The three or four (depending on the year) nominees receiving the highest number of votes shall be declared elected as members of the board of directors and the Secretary of the corporation shall certify the election of such directors.

Note: In order to transition to these staggered terms of office, in the upcoming year of 2020 (but only in that year) there will be held elections for two different terms. Candidates will choose to run for either one of three openings for a two year term or one of four openings for a one-year term. In all subsequent years all elections will be for two-year terms and use the staggered election schedule described above.

~~65.~~66. The amendment to Article V, Section 1 included the addition of the following underlined language:

SECTION 1. Appointment and Term. The officers of the corporation shall be a President, one or more Vice-Presidents, a Treasurer, and a Secretary. The President and Secretary shall be appointed at the annual meeting of the Board of Directors in even numbered years and shall hold office for two years at the pleasure of the board until the annual meeting of the next even numbered year or until a successor shall be duly appointed and qualified. The Vice-President and Treasurer shall be appointed at the annual

meeting of the Board of Directors in odd numbered years and shall hold office for two years at the pleasure of the board until the annual meeting of the next odd numbered year or until a successor shall be duly appointed and qualified. One person may hold more than one office except no one person shall hold the offices of President and Secretary. If a vacancy occurs in any office, the board of directors may appoint a successor to fill such vacancy for the remainder of the term.

~~66.~~67. The amendment to Article III, Section 1 included the addition of the following underlined language:

SECTION 1. Annual Meeting. The annual meeting of the members of the corporation shall be on the third Saturday of March of each year. At the annual meeting the President, Treasurer and Standing Committee Chairmen shall make their annual reports to the members, the members shall elect the members of the board of directors, may transact any general business which may be brought before the meeting and may take any corporate action.

~~67.~~68. Defendants' December 12, 2019 vote was inconsistent with the LCA Charter because the vote did not take place at a meeting of the members and was not approved by more than two-thirds of the members.

~~68.~~69. Defendants were informed by LCA members that their vote to amend the Bylaws without owner participation was in violation of the LCA Charter and Hawaii State law.

~~69.~~70. Defendants intentional and willfully acted in derogation of the LCA Charter and Hawaii State law and amended the Bylaws without member participation.

~~70.~~71. The NINTH paragraph of the Charter states:

The initial By-Laws of the corporation may be adopted by the petitioners of the corporation within thirty (30) days after the effective date of this Charter, and **thereafter may be amended or repealed by the vote of not less than two-thirds (2/3) of the members present, in person or by proxy, at any meeting of the members duly called and held**, the notice of which shall have stated that a purpose of the meeting was to consider the amendment or repeal of the By-Laws.

~~71.~~72. Defendants' December 12, 2019 vote was also inconsistent with the LCA Bylaws

because the vote took place without a vote by the members.

~~72.~~73. Article XVI, Section 1 of the Bylaws state:

Procedure. These By-Laws may be altered, amended, added to or repealed by an affirmative vote of not less than the majority of the board of directors (except as to a change in the number of directors) present at any meeting duly called and held if notice of the proposed amendments shall have been given in the call for such meeting and **subject to the right of the members to alter, amend, add to, or repeal these By-Laws as hereinafter referred to or by an affirmative vote of the members holding the majority of the votes of all the members of the corporation present at any meeting duly called and held if notice of the proposed amendments shall have been in the call for such meeting.**

~~73.~~74. On January 9, 2020, at the regular meeting of the Board, Defendants misled and deceived the owners by calling Plaintiff Valerie Bandmann during roll call and by failing to inform owners that Plaintiff Valerie Bandmann had informed the Board that she was refusing to participate in the ongoing deception and lack of transparency from the Board.

~~74.~~75. As of January 9, 2020, Defendants no longer considered Plaintiff Valerie Bandmann to be a director on the Board but intentionally and willfully withheld this from the owners.

~~75.~~76. On January 9, 2020, Defendants misrepresented to the owners that ballots for the March election would be sent to owners on February 14, 2020.

~~76.~~77. On February 13, 2020, at the regular meeting of the Board, Defendants misled and deceived the owners by calling Plaintiff Valerie Bandmann during roll call and by failing to inform owners that Plaintiff Valerie Bandmann had informed the Board that she was refusing to participate in the ongoing deception and lack of transparency from the Board.

~~77.~~78. As of February 13, 2020, Defendants no longer considered Plaintiff Valerie Bandmann to be a director on the Board but intentionally and willfully withheld this from the

owners.

~~78.~~79. On February 27, 2020, the Board mailed out ballots for the election of directors, which was scheduled to take place on March 21, 2020.

~~79.~~80. On the same day that the ballots were sent out, Defendants caused a second letter to be delivered to all owners in an identical envelope to the one containing the 2020 ballot that stated “Please Read Before Voting in the LCA Election.”

~~80.~~81. Defendants’ propaganda letter disparaged other candidates and asked owners to re-elect them to the Board.

~~81.~~82. Defendants abused their positions as directors to gain access to the list of owners’ in order to send out their propaganda letter with the 2020 ballots.

~~82.~~83. On March 21, 2020, the Board purportedly held an election of directors.

~~83.~~84. The March 21, 2020 election was inconsistent with the LCA Charter, Bylaws and HRS, Chapter 421J because no meeting took place on March 21, 2020, and was therefore invalid.

~~84.~~85. Prior to the Board’s December 12, 2019 vote and illegally amended the Bylaws, Article III, Section 1 of the Bylaws stated:

**SECTION 1. Annual Meeting. The annual meeting of the members of the corporation shall be on the fourth Monday of January of each year.** At the annual meeting the President, Treasurer and Standing Committee Chairmen shall make their annual reports to the members, the members shall elect the members of the board of directors, may transact any general business which may be brought before the meeting and may take any corporate action. (bold emphasis added)

~~85.~~86. In violation of Article III, Section 1 of the Bylaws, the Board failed to hold the annual meeting of the members on the fourth Monday of January of 2020.

~~86.~~87. Article IV, Section 2 states:

SECTION 2. Election and Term. **The directors shall be elected at the annual meeting of the members of the corporation, and shall, unless sooner removed by the members of the corporation as provided in these By-Laws, hold office until their successors shall be duly elected. Nominations for the directors to be elected shall be made by any member in good standing writing to the Secretary of the corporation nominating his desired candidate. Said nomination shall be made on or before the first day of January of the year in which the election is to occur. In the notice of the meeting, the Secretary of the corporation shall list the names of all such nominees. The three (3) nominees receiving the highest number of votes shall be declared elected as members of the board of directors and the Secretary of the corporation shall certify the election of such directors. (bold and underline emphasis added)**

~~87.~~88. In violation of Article IV, Section 2 of the Bylaws, the Board proceeded to hold the election of the directors without a meeting on March 21, 2020.

~~88.~~89. Article IV, Section 3 states:

SECTION 3. Annual Meeting. **The annual meeting of the board of directors of the corporation shall be held at the place of each annual meeting of the members and immediately following such meeting. At the annual meeting the directors shall appoint the officers of the corporation for the following year, may transact any general business which may be brought before the meeting and may take any corporate action. (bold and underline emphasis added)**

~~89.~~90. In violation of Article IV, Section 3 of the Bylaws, the Board proceeded to hold the election of the directors and appointed the officers of the Association without a meeting of members.

~~90.~~91. On March 23, 2020, the League of Women Voters of Hawaii County (“LWV”) certified the results of the so called election and declared the following:

2- year term: Andy Andrews, Cheryl Kaupp, Alice Lindahl.

1-year term: Robert Golden, Patti Hatzistravakis, Philip Denney.

~~91.~~92. According to the LWV, 566 lots voted and 3808 votes were counted.

~~92.~~93. According to the LWV, 22 ballots were voided and not counted.

~~93.~~94. The March 21, 2020 election was inconsistent with the LCA Charter, Bylaws and HRS, Chapter 421J because LCA members were not provided sufficient notice of the election, and therefore invalid.

~~94.~~95. Article III, Section 3 of the Bylaws state:

SECTION 3. Notice of Meetings. A **written notice** of every meeting of the members, stating whether it is an annual, regular or special meeting, the authority for the call of the meeting, the place, day and hour thereof and the purpose therefore **shall** be given by the Secretary or by the person or persons calling the meeting, at least ten (10) but not more than sixty (60) days before the day set for such meeting. **Such notice shall be given to each member in any of the following ways (A) By leaving the same with him personally, or (B) By leaving the same at the residence or usual place of business of such member, or (C) By mailing it airmail, postage prepaid,** or by telegraphing it, addressed to such member at his address as it appears on the membership roll of the corporation. If notice is given pursuant to the provisions of this section, the failure of any member to receive actual notice of meeting shall in no way invalidate the meeting or any proceeding thereat. (bold emphasis added)

~~95.~~96. In violation of Article III, Section 3 of the Bylaws, Defendants failed to provide the LCA Owners written notice of the annual meeting by any of the means provided in Article III, Section 3 of the Bylaws.

~~96.~~97. The March 21, 2020 election was inconsistent with the LCA Charter, Bylaws and HRS, Chapter 421J because LCA owners were improperly excluded from voting in the election, and therefore invalid.

~~97.~~98. Article III, Section 6 of the Bylaws state

SECTION 6. Voting. **At every meeting of the members of the corporation, each member in good standing shall be entitled to vote in person or by proxy** (appointed by instrument in writing, executed by such member or his authorized attorney-in-fact and filed with the Secretary). Each member shall be entitled to one vote per lot. Any member who is in default in the payment of any lot assessment shall not be a member in good standing and while he may attend meetings, he shall not be entitled to vote; provided,

however, **that each member in default shall be so notified in writing at the time and in the manner notice of meetings are given pursuant to Article III, Section 3**, hereof; and provided, further, that if, prior to the commencement of the meeting, the member shall fully pay his delinquency or at least seven days prior or such meeting in writing request a hearing by the board of directors (which board shall promptly act upon his request and determine his eligibility to vote) and be determined by the board to be so eligible to vote, such member shall then be considered a member in good standing and be fully entitled to vote at the meeting. Unless otherwise limited to a shorter period by its terms, a proxy shall only be valid for a period of ninety (90) days and shall not cover a voting right for more than one meeting wherein the members are to vote; provided, however, that said person shall have the right to exercise his voting rights under said proxy at any adjourned meeting if the same is held within ninety (90) days of the date of the proxy. Cumulative voting is permitted as provided by Section 172-93, Revised Laws of Hawaii 1955, as the same now exists or is hereafter amended. [emphasis added]

~~98.99.~~ In violation of Article III, Section 6 of the Bylaws, Defendants excluded the votes of owners they determined were not in good standing without so notifying these owners in writing prior to the election.

~~99.100.~~ HRS § 421J-4 in relevant part provides the following:

(b) A member of the association may give a proxy **to any person** or the board of directors as an entity, and the proxy may be limited as indicated by the member. No proxy shall be irrevocable unless:

...

(d) If a proxy is a standard proxy form authorized by the association, the proxy shall contain boxes wherein the owner may indicate that the proxy is given:

- (1) For quorum purposes only;
- (2) To the individual whose name is printed on a line next to this box;
- (3) To the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the directors present at the meeting; or
- (4) To those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage; provided that if the proxy is returned with no box or more than one

of the boxes in paragraphs (1) through (4) checked, the proxy shall be counted for quorum purposes only. (bold emphasis added)

~~100.~~101. In violation of HRS § 421J-4, Defendants excluded the votes of owners they determined had executed proxies naming members it determined were not in good standing.

~~101.~~102. Defendant Andrews has used LCA counsel for the purpose of making threats of legal action against owners who voiced dissenting views or challenged Defendants' actions.

~~102.~~103. On or around March 19, 2020, Defendant Andrews with the assistance of LCA counsel threatened Jeana Jones, an administrator of the Leilani Estates Community Facebook page, and attempted to censor her by suggesting that her posts were in violation of the law.

~~103.~~104. In or around May - June 2020, Defendant Andrews with the assistance of LCA counsel threatened LCA members Thomas Willemin and Michael Steele and attempted to censor their dissent of Defendant Andrews' conduct with threats of legal action.

~~104.~~105. Defendant Andrews has improperly utilized LCA counsel for his individual interests and/or the interests of the individual board members without concern for the interests of the LCA as a whole.

~~105.~~106. On or around June 2020, Plaintiffs Valerie and Keola Bandmann requested to review association documents, including the ballots from the March 21, 2020 election.

~~106.~~107. Following the March 2020 election other LCA owners challenged the validity of the March 21, 2020 elections and requested to review association documents, including the ballots from the March 21, 2020 election.

~~107.~~108. HRS § 421J-7 provides in relevant part:

**(c) Financial statements, general ledgers, accounts receivable ledgers, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the association for the duration those records are kept by the association, and any documents regarding delinquencies of ninety days or more shall be made available for examination by members** at reasonable hours at a location designated by the board; provided that members shall pay for all costs associated with the examination of these documents. The board may require members to furnish the association with an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the association, its members, or both. Copies of these documents shall be provided to any member upon the member's request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

**(d) Members may view proxies, tally sheets, ballots, members' check-in lists, and the certificates of election, if any, for a period of thirty days following any association meeting;** provided that members may be charged for any costs associated with the examination of the documents. The board may require members to furnish to the association an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the association, its members, or both. Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, members' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any member upon the member's request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request. (bold added)

~~108.~~109. In violation of HRS § 421J-7, Defendants failed to comply with Plaintiffs' requests and continues to withhold from Plaintiffs and other LCA members LCA documents that they are entitled to review.

~~109.~~110. Defendants have used LCA general counsel to hinder LCA owners' access to association documents and to the ballots from the March 21, 2020 election.

~~110.~~111. Upon information and belief, Defendants refused LCA owners access to association documents and the ballots from the March 21, 2020 election because they willingly and knowingly breached the LCA Charter, CC&Rs and Bylaws.

~~111.~~112. HRS § 421J-5 provides in relevant part

(a) All meetings of the board of directors, other than executive sessions, **shall be open to all members** to provide input on the matters being discussed. Members who are not on the board of directors may participate in any deliberation or discussion, other than during executive sessions, unless a majority of a quorum of the board of directors votes otherwise.

~~112.~~113. In violation of HRS § 421J-5, Defendants held meetings not properly noticed and conducted LCA business without providing members an opportunity to participate.

~~113.~~114. HRS § 414D-149 provides in relevant part:

(a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee:

**(1) In good faith;**

**(2) In a manner that is consistent with the director's duty of loyalty to the corporation;**

**(3) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and**

**(4) In a manner the director reasonably believes to be in the best interests of the corporation. (Bold added)**

~~114.~~115. In violation of HRS § 414D-149, Defendants acted in bad faith in discharge of their duties as directors.

~~115.~~116. The actions taken by Defendant Andrews that are in violation of HRS § 414D-149 include among other things the following:

- a. Defendant Andrews improperly instructed Board member Valerie Bandmann to not send out notices of violations because he himself was in violation of the CC&Rs;
- b. Defendant Andrews improperly destroyed the house plans for the lots in violation of the CC&Rs because he himself was in violation of the CC&Rs;
- c. Defendant Andrews has improperly signed contracts with vendors without a vote

- of the board and/or without a signature by a second board member;
- d. Defendant Andrews has improperly held board meeting and intentionally excluded certain board members from such meetings;
  - e. Defendant Andrews has held board meetings and conducted board activities without notice to the members of the association;
  - f. Defendant Andrews had used intimidation to silence board members;
  - g. Defendant Andrews has used intimidation to silence members;
  - h. Defendant Andrews has violated his own ethical policies by disclosing information to non-board members;
  - i. Defendant Andrews has improperly afforded Defendant Lindahl special treatment by using LCA funds to pay for speed humps for South Maile Street.
  - j. Defendant Andrews has improperly used LCA counsel as his personal attorney to conceal his wrongful conduct and to intimidate owners that have voiced dissent against Defendant Andrew's actions.

~~116.~~117. Defendant Andrews has also as an individual violated LCA governing documents by allowing structures to be installed on his property in violation of the CC&Rs.

~~117.~~118. Plaintiffs and all LCA members are entitled to the benefits under the terms of the Charter, CC&Rs and Bylaws.

~~118.~~119. Paragraphs 20 and 21 of the CC&R provides:

20. COVENANTS RUNNING WITH LAND. The foregoing restrictions shall operate as covenants running with the land and the **breach of any such covenants or the conditions or the continuance of any such breach may be enjoined, abated or remedied by** said Declarant, or by the Community Association, or **by any owner**, and by their respective successors and assigns, but by no other person; provided, however that any violation or re-entry shall not forfeit or render invalid the lien of any mortgage or

deed of trust made in good faith and for value as to any lot or any interest therein. Each and all of said restrictions shall be binding upon and enforceable and effective against Declarant, or any other owner including but not limited to any owner whose title to any interest in any lot is acquired through foreclosure or trustee's sale, as well as the successors in interest of any such owner, so long as Declarant or such owner has any interest in such lot. Easements for electricity and telephone are of record.

21. ENFORCEMENT. **Jurisdiction may be take in equity at suit** of the Association, the Declarant or its successors or assigns, **or of any owner to restrict or prevent by injunction, mandatory or restraining, any violation of any of said covenants** upon the part of the Association, Declarant or any owner to be observed and performed, without prejudice to the right of the Association, the Declarant or its successors or assigns or any owner to adopt or pursue any other remedy thereafter for the same breach or failure, or for any subsequent breach or failure, or to take any action to recover damages for any such breach or failure.

~~119.~~120. Plaintiffs raised all the breaches described above with Defendants in various communications and in demanding mediation pursuant HRS § 421J-13.

~~120.~~121. Defendants Andrews, Golden, Lindahl, and Hatzistravarakis failed to act in good faith in mediation with Plaintiffs on September 14, 2020 and September 24, 2020.

~~121.~~122. Defendants Andrews, Golden, Lindahl, and Hatzistravarakis continue to wrongfully control the LCA in violation of the Charter, CC&R, Bylaws and state law despite being notified of such violations.

### **COUNT I** **(Declaratory and Injunctive Relief)**

~~122.~~123. Plaintiffs hereby re-allege and incorporate by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 121 above.

~~123.~~124. This case presents an actual controversy between Plaintiffs on behalf of all LCA members and Defendants.

~~124.~~125. It is necessary to determine the rights and liabilities between Plaintiffs on behalf of all LCA members and Defendants.

~~125.~~126. Pursuant to Chapter 632, Hawaii Revised Statutes and Rule 57 of the Hawaii Rules of Civil Procedure, Plaintiffs on behalf of all LCA members bring this action for declaratory and injunctive relief and seek an adjudication as to the rights and liabilities of the parties hereto in accordance with authority granted them under paragraphs 20 and 21 of the CC&Rs.

~~126.~~127. Plaintiffs challenged the validity of the December 12, 2019 vote to the amend the Bylaws and the March 21, 2020 election but Defendants have refused to rescind either.

~~127.~~128. The Board wrongfully continue to control the LCA in violation of the Charter, CC&R, Bylaws and state law.

~~128.~~129. Defendants' wrongful control of the LCA has and will cause Plaintiffs and all LCA members irreparable harm.

~~129.~~130. Plaintiffs are entitled to a declaration by this Court that:

- a. The Board's December 12, 2019 vote to amend the Bylaws was inconsistent with the LCA Governing Document and HRS, Chapter 421J and thus void ad initio.
- b. The March 21, 2020 election was inconsistent with the LCA Charter, Bylaws and HRS, Chapter 421J and thus void ad initio.

~~130.~~131. Plaintiffs are entitled to injunctive relief and the issuance of a mandatory injunction that states:

- a. The Board is enjoined from: (i) conducting any further meetings, votes, or elections; (ii) imposing any new dues or assessments; or (iii) approving any new budgets or entering into any new contracts.
- b. An election or directors to take place in accordance with LCA Charter, Bylaws

and HRS, Chapter 421J in January 2021.

**COUNT II**  
**(Breach of Contract)**

~~131.~~132. Plaintiffs hereby re-allege and incorporate by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 130 above.

~~132.~~133. The facts alleged above constitute a breach by Defendants of the LCA Charter, CC&Rs and Bylaws.

~~133.~~134. As a direct, proximate and foreseeable result of one of Defendants' acts or omissions Plaintiffs and the LCA have suffered and will continue to suffer damages in an amount to be shown at trial.

**COUNT III**  
**(Breach of Fiduciary Duty)**

~~134.~~135. Plaintiffs hereby re-allege and incorporate by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 133 above.

~~135.~~136. Defendants owe Plaintiffs and all the owners of the LCA fiduciary duties to exercise due care and a duty of loyalty as officers and directors of the LCA.

~~136.~~137. Defendants breached their fiduciary duty by among other things as described above failing to abide by the LCA Charter, CC&Rs, and Bylaws in amending the Bylaws on December 12, 2019 and in holding an election of directors on March 21, 2020.

~~137.~~138. As a direct, proximate and foreseeable result of one of Defendant's acts or omissions Plaintiffs and the LCA have suffered and will continue to suffer damages in an amount to be shown at trial.

**COUNT IV**  
**(Breach of Good Faith and Fair Dealing)**

~~138.~~139. Plaintiffs hereby re-allege and incorporate by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 137 above.

~~139.~~140. The Board acted in bad faith by among other things as described above failing to abide by the LCA Charter, CC&Rs, and Bylaws in amending the Bylaws on December 12, 2019 and in holding an election of directors on March 21, 2020.

~~140.~~141. As a direct, proximate and foreseeable result of one of Defendant's acts or omissions Plaintiffs and the LCA have suffered and will continue to suffer damages in an amount to be shown at trial.

**COUNT V**  
**(Breach of HRS § 414D-36, § 414D-149 and § 414D-187)**

~~141.~~142. Plaintiffs hereby re-allege and incorporate by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 140 above.

~~142.~~143. The Board breached HRS § 414D-36 and HRS § 414D-187 by amending the Bylaws on December 12, 2019 without a meeting of the members and without member participation.

~~143.~~144. The Board breached its duties under HRS § 414D-149 when it failed in act in good faith by failing to abide by the LCA Charter, CC&Rs, and Bylaws in amending the Bylaws on December 12, 2019 and in holding an election of directors on March 21, 2020.

~~144.~~145. As a direct, proximate and foreseeable result of one of Defendant's acts or omissions Plaintiffs and the LCA have suffered and will continue to suffer damages in an amount to be shown at trial.

**COUNT VI**  
**(Breach of HRS § 421J-4 and § 421J-7)**

~~145.~~146. Plaintiffs hereby re-allege and incorporate by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 144 above.

~~146.~~147. The Board breached HRS § 421J-4 by failing to provide owners with proper proxies.

~~147.~~148. The Board breached HRS § 421J-7 by its failure to provide LCA documents when requested by Plaintiffs.

~~148.~~149. As a direct, proximate and foreseeable result of one of Defendant's acts or omissions Plaintiffs and the LCA have suffered and will continue to suffer damages in an amount to be shown at trial.

**COUNT VII**  
**(Breach of § 6.13 and 6.14 of the Restatement, 3d of Property (Servitudes))**

~~149.~~150. Plaintiffs hereby re-allege and incorporate by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 148 above.

~~150.~~151. The Board breached § 6.13 and 6.14 of the Restatement, 3d of Property (Servitudes) when it acted in bad faith by among other things as described above failing to abide by the LCA Charter, CC&Rs, and Bylaws in amending the Bylaws on December 12, 2019 and in holding an election of directors on March 21, 2020.

~~151.~~152. As a direct, proximate and foreseeable result of one of Defendants' acts or omissions Plaintiffs and the LCA have suffered and will continue to suffer damages in an amount to be shown at trial.

**COUNT VIII**  
**(Breach of Unfair and Deceptive Acts and Practices Act)**

~~152.~~153. Plaintiffs hereby re-allege and incorporate by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 151 above.

~~153.~~154. Purchase of property in a community homeowners' association manifests acceptance of an "implied-in-fact contract" for the provision of "facilities and services for the benefit of community residents." *Kaanapali Hillside Homeowners' Ass'n v. Doran*, 112 Hawaii 356, 362, 145 P.3d 899, 905 (App. 2006).

~~154.~~155. Plaintiffs are consumers as defined by HRS § 480-1.

~~155.~~156. A practice may be unfair if it offends public policy as it has been established by statutes, the common law, or otherwise.

~~156.~~157. Defendants committed unfair and deceptive acts or practice when, by among other things as described above, they made misrepresentations to Plaintiffs and all LCA owners regarding their obligations under the LCA Charter, CC&Rs, and Bylaws as well as under Hawaii State law.

~~157.~~158. Defendants committed unfair and deceptive acts or practice when, by among other things as described above, they made misrepresentations to Plaintiffs and all LCA owners regarding their compliance under the LCA Charter, CC&Rs, and Bylaws as well as under Hawaii State law.

~~158.~~159. As a direct, proximate and foreseeable result of the Defendants' actions, Plaintiffs and the LCA have suffered and will continue to suffer damages in an amount to be proven at trial.

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WHEREFORE, Plaintiffs demand judgment and relief against Defendants in an amount in excess of the minimum jurisdictional requirements of this Court, as follows:

- A. For a Declaration as Stated in Count I;
- B. For temporary, preliminary, mandatory, and permanent injunctive relief in Plaintiffs' favor;
- D. For an award of general, specific, compensatory and/or punitive damages against Defendants in an amount to be shown at trial;
- E. For an award of attorneys' fees, costs and interest;
- F. For an award of prejudgment and post judgment interest;

G. For an order by the court compelling a forensic audit of the LCA financial accounts, books and records paid for by Defendants;

H. Disgorgement of any profits; and

I. For such other and further relief as the Court deems appropriate and just.

DATED: Honolulu, Hawaii, ~~September 25, 2020~~.

/s/ Amanda L. Dutcher

TERRANCE M. REVERE

AMANDA L. DUTCHER

Attorneys for Plaintiffs

KEOLA KAAI BANDMANN; VALERIE ANN

BANDMANN; ROSS DAVID STADNYK;

PHILIP A. DENNEY AND MARIANNE G.

FARRELL

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

KEOLA KAAI BANDMANN; VALERIE  
ANN BANDMANN; ROSS DAVID  
STADNYK; AND MARIANNE G.  
FARRELL

Plaintiffs,

vs.

ANDY ANDREWS; ROBERT GOLDEN;  
CHERYL KAUPP; ALICE LINDAHL;  
DARRYL SINGLETON; PATTI  
HATZISTRARAKIS; JOHN DOES 1-10;  
JANE DOES 1-10; DOE PARTNERSHIPS  
1-10; DOE CORPORATIONS 1-10; DOE  
ENTITIES 1-10;

Defendants.

Civil No. 3ccv-20-0360  
(Declaratory Judgment; Other Civil  
Action)

NOTICE OF NON-HEARING  
MOTION AND CERTIFICATE OF  
SERVICE

**NOTICE OF NON-HEARING MOTION**

TO: MICHELE-LYNN E. LUKE, ESQ.  
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ANDY ANDREWS, ROBERT GOLDEN  
CHERYL KAUPP, ALICE LINDHAL,  
DARRYL SINGLETON AND  
PATTI HATZISTAVRAKIS

NOTICE IS HEREBY GIVEN that the undersigned has filed PLAINTIFFS' MOTION FOR LEAVE TO AMEND VERIFIED COMPLAINT TO ADD PLAINTIFF with the above-entitled Court, on behalf of Plaintiffs KEOLA KAAI BANDMANN; VALERIE ANN BANDMANN; ROSS DAVID STADNYK; AND MARIANNE G. FARRELL. Pursuant to *Rules of the Circuit Courts of the State of Hawaii*, Rule 7.2 (c), any response to said Motion must

be filed with the Court no later than ten (10) days after the date of the Certificate of Service identified below. If service of the Motion has been made by mail, pursuant to Rule 6(e) of the *Hawaii Rules of Civil Procedure*, any response to said Motion must be filed with the Court no later than twelve (12) days after the date of the said Certificate of Service.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT, on today's date, a true and correct copy of PLAINTIFFS' MOTION FOR LEAVE TO AMEND VERIFIED COMPLAINT TO ADD PLAINTIFF was duly served electronically upon the following through the Judiciary Electronic Filing System (JEFS):

MICHELE-LYNN E. LUKE, ESQ.  
SAORI TAKAHASHI, ESQ.  
Attorneys for Defendants  
ANDY ANDREWS, ROBERT GOLDEN  
CHERYL KAUPP, ALICE LINDHAL,  
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Dated: Honolulu, Hawai'i, December 23, 2020.

/s/ Amanda L. Dutcher  
\_\_\_\_\_  
TERRANCE M. REVERE  
AMANDA L. DUTCHER  
Attorneys for Plaintiffs  
KEOLA KAAI BANDMANN; VALERIE ANN  
BANDMANN; ROSS DAVID STADNYK; AND  
MARIANNE G. FARRELL