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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PHILIP A. DENNEY derivatively on behalf
of LEILANI COMMUNITY
ASSOCIATION,

Plaintiff,

vs.

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

Defendants,

and

LEILANI COMMUNITY ASSOCIATION,
Nominal Defendant.

Civil No. 3CCV-20-0000360
(Declaratory Judgment; Other Civil
Action)

**SECOND AMENDED VERIFIED
COMPLAINT; VERIFICATION;
CERTIFICATE OF SERVICE**

Judge: Hon. Henry T. Nakamoto
No Trial Date

SECOND AMENDED VERIFIED COMPLAINT

Plaintiff PHILIP A. DENNEY, (hereinafter "Plaintiff") as owner and member 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 HATZISTAVRAKIS alleges and aver as follows:

PARTIES AND JURISDICTION

1. PHILIP A. DENNEY (“Plaintiff Denney”) is and was at all time relevant herein the owner of Block 11, Lots Nos. 26 and 27, a member of the LCA, and a current director of the Board of Directors.

2. Nominal Defendant LEILANI COMMUNITY ASSOCIATION (“LCA”) is a non-profit corporation, organized and existing pursuant to Hawaii Revised Statutes, Chapter 421J.

3. 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.

4. 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.;

5. 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.;

6. 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.;

7. 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.;

8. Defendant PATTI HATZISTAVRAKIS (“Defendant Hatzistavrakis”) is and was at all times relevant herein an owner and member of the LCA, and an officer or director of the LCA.

9. Plaintiff 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 Plaintiff through discovery.

10. As alleged below, Plaintiff has commenced this action for, among other things, an injunction and declaratory judgment.

11. As alleged below, Plaintiff's 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.

12. Pursuant to Hawaii Revised Statutes ("HRS") §§ 603-21.5(a)(3) and 632-1, this Court has subject matter jurisdiction for this action.

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

14. 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

15. 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").

16. 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.

17. Plaintiff is 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.

18. Plaintiff will fairly and adequately represent the interests of the members of the LCA similarly situated to Plaintiff. Plaintiff has no interest adverse to those other owners and members.

19. As described below, Defendants have acted against the interests of all LCA members.

20. 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.

21. 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.

22. Pursuant to HRS § 421J-13, Keola Kaai Bandmann, Valerie Ann Bandmann, Ross David Stadnyk, and Marianne G. Farrell participated in mediation with the LCA to address the issues raised in this lawsuit but the LCA refused to reconsider or reverse Defendants' actions.

23. 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.

24. In or around June 2019, Defendant Andrews was appointed to the Board.

25. 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.

26. In or around July 2019, Defendant Lindahl was appointed to the Board.
27. In August 2019, Defendant Hatzistavrakis and Valerie Bandmann were appointed to the Board.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. Defendants improperly afforded Defendant Lindahl an exception to the LCA speed hump policy.
35. In September 2019, Defendant Andrews delegated responsibilities and

assignments to the various Board members, including the assignment of CC&R administration and enforcement to Valerie Bandmann.

36. On October 10, 2019, at the regular meeting of the Board, 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.

37. 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.

38. On October 24, 2019, Defendant Hatzistavrakis informed the Board that she was resigning from the Board.

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

40. On October 25, 2019 Defendant Hatzistavrakis emailed the Board her written resignation from the Board.

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

42. On November 14, 2019, at the regular meeting of the Board, Defendants Hatzistavrakis 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.

43. 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.

44. 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.

45. 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.

46. 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).

47. 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.

48. 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.

49. 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.

50. 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.

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

52. Upon information and belief, Defendant Andrews instructed 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.

53. 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.

54. 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.

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

56. On December 12, 2019, Valerie Bandmann emailed the Board and expressed her concerns that the resignations by Defendants Hatzistavrakis and Singleton were being wrongfully withheld from the owners.

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

58. Upon information and belief, Defendant Andrews asked Defendants Hatzistavrakis 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.

59. When Valerie Bandmann expressed her concerns about the lack of transparency regarding the resignations of Hatzistavrakis and Singleton and her desire to not participate in the same deception to the owners, Defendant Golden asked 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.

60. 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."

61. 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.

62. 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.

63. 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.

64. 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.

65. 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.

66. 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.

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

68. 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.

69. Defendants' December 12, 2019 vote was also inconsistent with the LCA Bylaws because the vote took place without a vote by the members.

70. 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.**

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

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

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

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

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

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

77. 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."

78. Defendants' propaganda letter disparaged other candidates and asked owners to re-elect them to the Board.

79. 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.

80. On March 21, 2020, the Board purportedly held an election of directors.

81. 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.

82. 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)

83. 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.

84. 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)

85. 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.

86. 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)

87. 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.

88. 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 Hatzistavrakis, Philip Denney.

89. According to the LWV, 566 lots voted and 3808 votes were counted.

90. According to the LWV, 22 ballots were voided and not counted.

91. 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.

92. 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)

93. 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.

94. 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.

95. 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]

96. 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.

97. 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)

98. 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.

99. 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.

100. 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.

101. 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.

102. 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.

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

104. 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.

105. 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)

106. In violation of HRS § 421J-7, Defendants failed to comply with Valerie and Keola Bandmann's requests and continues to withhold from Valerie and Keola Bandmann and other LCA members LCA documents that they are entitled to review.

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

108. 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.

109. 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.

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

111. 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)

112. In violation of HRS § 414D-149, Defendants acted in bad faith in discharge of

their duties as directors.

113. 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 has 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.

114. 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.

115. Plaintiff and all LCA members are entitled to the benefits under the terms of the Charter, CC&Rs and Bylaws.

116. 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.

117. Plaintiff raised all the breaches described above with Defendants in various communications and in Keola Kaai Bandmann, Valerie Ann Bandmann, Ross David Stadnyk, and Marianne G. Farrell demanding mediation pursuant HRS § 421J-13.

118. Defendants Andrews, Golden, Lindahl, and Hatzistavrakis failed to act in good faith in mediation with Keola Kaai Bandmann, Valerie Ann Bandmann, Ross David Stadnyk,

and Marianne G. Farrell on September 14, 2020 and September 24, 2020.

119. Defendants Andrews, Golden, Lindahl, and Hatzistavrakis 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)

120. Plaintiff hereby re-alleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 119 above.

121. This case presents an actual controversy between Plaintiff on behalf of all LCA members and Defendants.

122. It is necessary to determine the rights and liabilities between Plaintiff on behalf of all LCA members and Defendants.

123. Pursuant to Chapter 632, Hawaii Revised Statutes and Rule 57 of the Hawaii Rules of Civil Procedure, Plaintiff 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.

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

125. The Board wrongfully continues to control the LCA in violation of the Charter, CC&R, Bylaws and state law.

126. Defendants' wrongful control of the LCA has and will cause Plaintiff and all LCA members irreparable harm.

127. Plaintiff is 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.
128. Plaintiff is 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 of directors to take place in accordance with LCA Charter, Bylaws and HRS, Chapter 421J in January 2021.

**COUNT II
(Breach of Contract)**

129. Plaintiff hereby re-alleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 128 above.

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

131. As a direct, proximate and foreseeable result of one of Defendants' acts or omissions Plaintiff 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)**

132. Plaintiff hereby re-alleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 131 above.

133. Defendants owe Plaintiff 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.

134. 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.

135. As a direct, proximate and foreseeable result of one of Defendant's acts or omissions Plaintiff 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)

136. Plaintiff hereby re-alleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 135 above.

137. 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.

138. As a direct, proximate and foreseeable result of one of Defendant's acts or omissions Plaintiff 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)

139. Plaintiff hereby re-alleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 139 above.

140. 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.

141. 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.

142. As a direct, proximate and foreseeable result of one of Defendant's acts or omissions Plaintiff 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)

143. Plaintiff hereby re-alleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 142 above.

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

145. The Board breached HRS § 421J-7 by its failure to provide LCA documents when requested by members.

146. As a direct, proximate and foreseeable result of one of Defendant's acts or omissions Plaintiff 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))

147. Plaintiff hereby re-alleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 146 above.

148. 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.

149. As a direct, proximate and foreseeable result of one of Defendants' acts or

omissions Plaintiff 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)

150. Plaintiff hereby re-alleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 149 above.

151. 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).

152. The LCA is consumer as defined by HRS § 480-1.

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

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

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

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

WHEREFORE, Plaintiff demands 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 Plaintiff's 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, February 23, 2021.

/s/ Amanda L. Dutcher

TERRANCE M. REVERE
AMANDA L. DUTCHER
Attorneys for Plaintiff
PHILIP A. DENNEY

VERIFICATION OF SECOND AMENDED COMPLAINT

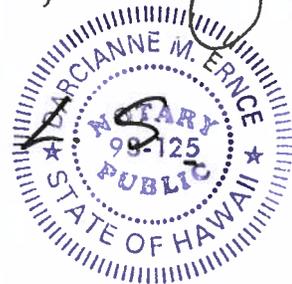
STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HAWAII)

On this 23rd day of February, 2021, before me personally appeared PHILIP A. DENNEY, being first duly sworn on oath, deposes and says under penalty of perjury that he/she is an individual and party to the above-entitled action, and states that he/she has read the foregoing Verified Second Amended Complaint, knows the contents thereof, and that the same are true to the best of his/her information, knowledge and belief.

Philip A. Denney
PHILIP A. DENNEY

Subscribed and sworn to before me
this 23rd day of February, 2021.

Darcianne M. Ernce
Notary Public, State of Hawaii
My commission expires: 3/18/21



NOTARY CERTIFICATION

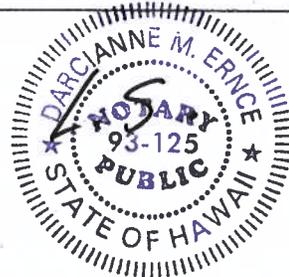
Doc. Date: 2/23/21 Jurisdiction: First Circuit # Pages: 27

Doc. Description: VERIFIED SECOND AMENDED COMPLAINT

Name of Notary: Darcianne M. Ernce

[Signature] Date: 2/23/21

Notary Signature Date



IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PHILIP A. DENNEY derivatively on behalf
of LEILANI COMMUNITY
ASSOCIATION,

Plaintiff,

vs.

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

Defendants,

and

LEILANI COMMUNITY ASSOCIATION,
Nominal Defendant.

Civil No. 3CCV-20-0000360
(Declaratory Judgment; Other Civil
Action)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT, on today's date, a true and correct copy of the VERIFIED
SECOND AMENDED COMPLAINT was duly served electronically upon the following through
the Judiciary Electronic Filing System (JEFS):

MICHELE-LYNN E. LUKE, ESQ.
SAORI TAKAHASHI, ESQ.

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Attorneys for Defendants
ANDY ANDREWS, ROBERT GOLDEN
CHERYL KAUPP, ALICE LINDHAL,
DARRYL SINGLETON AND
PATTI HATZISTAVRAKIS

Dated: Honolulu, Hawai`i, February 24, 2021.

/s/ Amanda L. Dutcher

TERRANCE M. REVERE
AMANDA L. DUTCHER
Attorneys for Plaintiff
PHILIP A. DENNEY

NOTICE OF ELECTRONIC FILING

**Electronically Filed
THIRD CIRCUIT
3CCV-20-0000360
24-FEB-2021
08:28 PM
Dkt. 121 NEF**

An electronic filing was submitted in Case Number 3CCV-20-0000360. You may review the filing through the Judiciary Electronic Filing System. Please monitor your email for future notifications.

Case ID: 3CCV-20-0000360

Title: Keola Kaai Bandmann Valerie Ann Bandmann Ross David Stadnyk and Marianne G. Farrell, Plaintiffs, v. Andy Andrews Robert Golden Cheryl Kaupp Alice Lindahl Darryl Singleton Patti Hatzistravakis John Does 1-10 Jane Does 1-10 Doe Partnerships 1-10 Doe Corporations 1-10 Doe Entities 1-10, Defendants.

Filing Date / Time: WEDNESDAY, FEBRUARY 24, 2021 08:28:21 PM

Filing Parties: Philip Denney

Case Type: Circuit Court Civil

Lead Document(s):

Supporting Document(s): 120-Complaint Amended

Document Name: 120-SECOND AMENDED VERIFIED COMPLAINT; VERIFICATION; CERTIFICATE OF SERVICE

If the filing noted above includes a document, this Notice of Electronic Filing is service of the document under the Hawai'i Electronic Filing and Service Rules.

This notification is being electronically mailed to:
Recorded Proceeding 3rd Circuit (*ldb3HAppeals@courts.hawaii.gov*)
Saori Paige Takahashi (*stakahashi@kdubm.com*)
Michele-Lynn E. Luke (*mluke@kdubm.com*)
Third Circuit Court 2nd Division (*2nddivision.3cc@courts.hawaii.gov*)
Amanda Lee Dutcher (*amanda@revereandassociates.com*)
Terrance M. Revere (*terry@revereandassociates.com*)
The following parties need to be conventionally served:
Philip A Denney

