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17 CHRISTINA RICE, derivatively on
18 behalf of Hawaiian Electric Industries, Inc.
19 and Hawaiian Electric Company, Inc.

20 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
21 STATE OF HAWAII

22 CHRISTINA RICE, derivatively on
23 behalf of Hawaiian Electric Industries, Inc.
24 and Hawaiian Electric Company, Inc.
25 Plaintiff,

26 v.

27 CELESTE A. CONNORS, SCOTT W.H.
28 SEU, THOMAS B. FARGO, YOKO
OTANI, ELISIA K. FLORES, RICHARD J.
DAHL, PEGGY Y. FOWLER, MICHAEL J.
KENNEDY, MICAH A. KANE, KEITH P.
RUSSELL, WILLIAM JAMES SCILACCI,
JR., TIMOTHY E. JOHNS, JAMES A.
AJELLO, SHELEE M. T. KIMURA,
TAYNE S.Y. SEKIMURA, MARY E. KIPP,
ALANA K. PAKKALA, TOBY B.
TANIGUCHI, and DOES 1 through 50,
inclusive,

Case No. _____
(Other Civil Action)

**VERIFIED SHAREHOLDER DERIVATIVE
COMPLAINT FOR:**

- 1. BREACH OF FIDUCIARY DUTY,**
 - 2. ABUSE OF CONTROL,**
 - 3. CORPORATE WASTE, and**
 - 4. UNJUST ENRICHMENT;**
- DEMAND FOR JURY TRIAL; SUMMONS**

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Defendants,
and
Hawaiian Electric Industries, Inc. and
Hawaiian Electric Company, Inc.,
Nominal Defendants.

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1 Plaintiff Christina Rice (“Plaintiff”), derivatively on behalf of Hawaiian Electric Industries,
2 Inc. and Hawaiian Electric Company, Inc. (collectively “Hawaiian Electric”, “Company”, or
3 “Companies”), brings this action against Defendants Celeste A. Connors, Scott W.H. Seu, Thomas
4 B. Fargo, Yoko Otani, Elisia K. Flores, Richard J. Dahl, Peggy Y. Fowler, Michael J. Kennedy,
5 Micah A. Kane, William James Scilacci, Jr., Timothy E. Johns, James A. Ajello, Shelee M. T.
6 Kimura, Mary E. Kipp, Alana K. Pakkala, Toby B. Taniguchi (collectively, “Board”, “Directors”,
7 “Board of Directors”, “Defendants”, or “Individual Defendants”), and Does 1 through 50,
8 inclusive, for violations of Hawaii common law and alleges the following based on investigations
9 by Plaintiff and Plaintiff’s counsel, including a review of legal and regulatory filings, press
10 releases, and media reports about Hawaiian Electric. Plaintiff believes that substantial additional
11 evidentiary support will exist for the allegations set forth below after a reasonable opportunity for
12 discovery.

13 **I. INTRODUCTION**

14 Hawaiian Electric’s Board of Directors has refused to make urgently needed repairs to the
15 company’s electrical infrastructure and has prioritized profits over safety. As a result, the Directors



1 have enriched themselves—and destroyed Lahaina.

2 **II. NATURE OF THE ACTION**

3 1. This is a stockholder derivative action against the Board of Directors and officers
4 of Hawaii Electric Industries, Inc. and Hawaiian Electric Company, Inc. (“Hawaiian Electric” or
5 the “Companies”) for breaching their fiduciary duties to the Companies by wrongfully diverting
6 millions of dollars of corporate funds away from safety, maintenance, and operations projects,
7 the foreseeable result of which was the occurrence of the Maui Fire – the deadliest fire in modern
8 U.S. history. Hawaii Gov. Josh Green stated that “This is the largest natural disaster we've ever
9 experienced.”

10 2. For over a decade, the Companies’ Directors, officers, senior executives, and upper
11 management (collectively, “Leadership”) have knowingly failed to properly maintain transmission
12 and distribution lines. Repeatedly refusing to approve urgently needed increases to the Company’s
13 safety and maintenance budgets, Hawaiian Electric’s Directors created a situation in which
14 catastrophic incidents like the 2023 Maui fire would likely and foreseeably result. To operate
15 Hawaiian Electric’s power lines under these conditions was reckless and represents a callous
16 indifference to the loss of human life, tangible property, and natural habitat. In so doing,
17 Defendants breached their fiduciary duties to Hawaiian Electric and its shareholders.

18 3. The Individual Defendants knew about these safety deficiencies, failed to timely
19 remediate the safety risks, signed SEC filings falsely stating that the Company was adequately
20 addressing safety issues, and then attempted to cover up their own wrongdoing when news reports
21 disclosed that Hawaiian Electric was the cause of the Maui Fire.

22 4. Instead of spending sufficient money on safety, Hawaiian Electric’s directors
23 caused the Company to spend its capital on “green energy” initiatives that earned the Company
24 millions of dollars in bonuses, which the Individual Defendants used to increase their executive
25 compensation and directors’ fees.

26 5. In 2022, the Defendants approved increased compensation to Defendant Seu of
27 \$3.57 million, a significant increase from his 2021 compensation of \$1.9 million. The Directors
28 also increased the payment of dividends for 2023, increasing the quarterly dividend from \$0.35

1 per share of \$0.36 per share. Thus, instead of increasing necessary spending on electrical safety
2 and infrastructure; so as to prevent wildfires, the Company’s officers and directors approved
3 increased compensation for themselves and increased dividends that reduced money available for
4 increasing safety.

5 6. Between 2019 and 2022, ***Hawaiian Electric invested less than \$245,000 on***
6 ***wildfire-specific projects on the island***, according to regulatory filings. The utility did not seek
7 state approval to raise rates to pay for broad wildfire-safety improvements until 2022.¹ Instead of
8 spending necessary funds to prevent fires caused by its equipment, Hawaiian Electric instead spent
9 millions of dollars towards efforts to achieve a 100 percent renewable energy goal.

10 7. The defendants’ repeated failure to maintain the Company’s electrical
11 infrastructure in safe condition ended up causing irreparable loss of human life and property
12 damage on August 8, 2023. The Maui fire began when power lines operated by Hawaiian Electric
13 fell to the ground in high winds near the intersection of Lahainaluna Road and Ho‘okahua Street
14 at approximately 6:30 a.m. A small fire that could be seen by the downed lines spread into the
15 field across the street from the Intermediate School.

16 8. Rather than acknowledging fault, the Company’s officers and directors pointed
17 their fingers elsewhere. They even went so far as to blame the Maui firefighters for the fire in an
18 August 27, 2023 press release approved by Defendant Kimura which stated:

19 The Maui County fire chief subsequently reported that the Fire Department had
20 determined that the Morning Fire was “extinguished,” and the Fire Department left
the scene by 2 p.m.

21 9. The clear import of such press release was that the Maui Fire Department had failed
22 to ensure that the Morning Fire, which Hawaiian Electric admits was caused by its downed electric
23 lines, was fully extinguished, resulting in the re-ignition of the fire later in the afternoon. The
24 press release went on to state:

25
26
27 ¹ See “Hawaii Invests in Renewable Energy Rather Than Wildfire Prevention,” Institute for Energy
28 Research, Aug. 23, 2023.

- 1 • Shortly before 3 p.m., while the power remained off, our crew members saw a small
2 fire about 75 yards away from Lahainaluna Road in the field near the Intermediate
3 School. They immediately called 911 and reported that fire.
- 4 • By the time the Maui County Fire Department arrived back on the scene, it was not
5 able to contain the Afternoon Fire and it spread out of control toward Lahaina.

6 10. The Company's officers and directors had actual knowledge of the severe and acute
7 risks to the Company and consumers from potential fires caused by its equipment. In 2022, when
8 Defendants belatedly began to seek approval to spend additional money on wildfire prevention,
9 they filed an application with the PUC that acknowledged that "The risk of a utility system causing
10 a wildfire ignition is significant." The company's application cited the devastating fires caused by
11 PG&E's electrical infrastructure in Northern California, demonstrating that the Defendants were
12 well aware of the risk and the Company's existing deficiencies in the area. The company said it
13 needed the funding to ensure its facilities were not "the origin or a contributing source of ignition
14 for a wildfire." Despite recognizing the acute risk, the Defendants failed to take action to
15 immediately rectify the material deficiencies at Hawaiian Electric. Critically, Hawaiian Electric
16 failed to adopt and implement a power shutoff system that could have prevented the Maui fire.

17 11. Moreover, after the fire, the Individual Defendants failed to preserve all relevant
18 evidence and improperly caused Hawaiian Electric to move evidence from its original location,
19 impeding an investigation by the ATF. This represented bad faith conduct by the Company's
20 fiduciaries, which will likely result in the Company being assessed substantial fines and penalties.

21 12. Such conduct by directors constitutes bad faith and disloyal conduct which cannot
22 be indemnified. As a result, the Defendants named herein face a substantial likelihood of liability
23 and any demand on them to bring this case would be a futile and useless act. Plaintiff is therefore
24 excused from making any demand prior to filing this complaint.

25 13. Directors and officers of Hawaii corporations have a fiduciary relationship to and
26 a duty to act in the best interests of the corporation and the corporation's shareholders. Here, the
27 Director Defendants owe a fiduciary duty to the Company and all its shareholders, including duties
28 of care and loyalty.

1 14. These duties required Defendants to ensure that Hawaiian Electric invested in
2 safety and maintenance. Doing so would have protected the Company’s long-term interest by
3 reducing the risk of costly incidents such as the Maui Fire. Instead, Defendants routinely cut the
4 safety and maintenance budgets requested by the Company’s own internal experts and staff,
5 created a policy of saving money regardless of consequences, incentivized employees not to
6 document or to minimize safety and maintenance problems, ignored problems of which they were
7 aware, and used the mirage of short-term financial gains that these practices created as a basis for
8 inflating their own compensation. Defendants did all this knowing it would increase the risk of
9 devastating fires.

10 15. This unlawful behavior has severely damaged the Company. As a result of
11 Defendants’ conduct and the raging wildfire that resulted in Maui on August 8, 2023, the Company
12 now faces billions of dollars in potential damages and penalties. Hawaiian Electric also faces the
13 still-unaddressed costs of safety and maintenance, exacerbated both by Defendants’ deferrals on
14 safety spending and the Maui Fire’s destruction, which created additional need for investigation,
15 repair, and remediation. Meanwhile, Defendants have lined their own pockets with unjustified
16 salaries, fees, wages, stock grants, bonuses, and perks.

1 16. As of August 31, 2023, the Company's stock (blue line below) was down 70% year-
2 to-date, almost exclusively due to liabilities from the Maui Fire, as reflected in the following chart:



15 17. For these reasons and as set forth more fully herein, Plaintiff seeks to enjoin
16 Defendants' wrongdoing and to force the Company to enact such governance changes as are
17 necessary to ensure that Hawaiian Electric fully addresses safety and maintenance issues. Plaintiff,
18 on behalf of the Company, also seeks money damages from the Individual Defendants, who
19 breached their fiduciary duties and should now be held accountable for the financial and
20 reputational harm they caused to Hawaiian Electric and its shareholders.

21 **III. JURISDICTION AND VENUE**

22 18. This Court has jurisdiction over this dispute pursuant to HRS §634-35. The amount
23 in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of this Court.
24 This case involves a Hawaii corporation that is headquartered and conducts substantial operations
25 in this jurisdiction. As the primary provider of power and energy to the majority of individuals,
26 businesses, and entities in this circuit, Hawaiian Electric has and will continue to have a substantial
27 impact on the Hawaii economy. Each Individual Defendant serves or served during the relevant
28

1 time period as an officer and/or director of the Company and (1) conducted business in Hawaii;
2 and (2) committed a tort in Hawaii; and (3) has sufficient contacts with Hawaii as a director and/or
3 officer of the Company to make proper this Court’s exercise of personal jurisdiction over them.

4 19. Venue is proper in this Court. A substantial part of the events or omissions giving
5 rise to the claims alleged occurred in Honolulu, Hawaii, which is located within this jurisdiction.
6 Because a significant amount of the harm, as well as important evidence, is located within this
7 jurisdiction, this is the best venue for this action. Each Defendant has sufficient contacts with this
8 jurisdiction that venue in this jurisdiction is appropriate. Several Defendants reside within the
9 First Circuit such that the exercise of jurisdiction by this Court is appropriate.

10 **IV. THE PARTIES**

11 **A. Plaintiff**

12 20. Plaintiff Christina Rice is a stockholder of Hawaiian Electric Industries, Inc., has
13 been a stockholder of the Company since at least 2005, and has continuously owned those shares
14 at all times since she acquired the shares to the present.

15 **B. Nominal Defendants**

16 21. *Nominal Defendants* Hawaiian Electric Industries, Inc. and Hawaiian Electric
17 Company, Inc. are Hawaii corporations sharing some of the same directors and officers and a
18 corporate headquarters at 1001 Bishop Street, Suite 2900, Honolulu, Hawaii 96813. Hawaiian
19 Electric Industries is a holding company that conducts its business through its wholly owned
20 subsidiary, Hawaiian Electric Company, a public utility that (i) provides power and energy services
21 throughout the State of Hawaii , (ii) is the primary provider of power and energy to 95% of the
22 Hawaiian islands, including Maui, and (iii) is governed by the PUC. Both Hawaiian Electric
23 Industries and Hawaiian Electric Company will be referred to as “Hawaiian Electric” or the
24 “Companies” except where distinction is necessary. Hawaiian Electric Industries is named in this
25 Complaint as a nominal defendant in this shareholder derivative case, which is brought on its
26 behalf.

1 **C. Officers and Directors of Hawaiian Electric Industries, Inc.**

2 22. *Individual Defendant Celeste A. Connors* (“Connors”) is and has been a director of
3 Hawaiian Electric Industries, Inc. since 2019. She is also a member of the Board’s Nominating
4 and Corporate Governance Committee.

5 23. *Individual Defendant Scott W.H. Seu* (“Seu”) is and has been a director and member
6 of the Executive Committee at Hawaiian Electric Industries, Inc. since 2022. Seu is also President
7 and CEO of Hawaiian Electric Industries. Seu also served in numerous leadership positions at
8 Hawaiian Electric Company for over 28 years, including serving as President and CEO of
9 Hawaiian Electric Company from February 2020 to December 2021; Senior Vice President, Public
10 Affairs, Hawaiian Electric Company (January 2017 – February 2020); Vice President, System
11 Operation, Hawaiian Electric Company (May 2014 – December 2016); Vice President, Energy
12 Resources and Operations, Hawaiian Electric Company (January 2013 – April 2014); and Vice
13 President, Energy Resources, Hawaiian Electric Company (August 2010 – December 2012). As
14 an expert in risk management and executive with decades of experience running Hawaiian Electric
15 Company, Seu was aware of the material risks posed to the Company due to potential wildfires
16 and had a duty to address and mitigate such risks.

17 24. *Individual Defendant Thomas B. Fargo* (“Fargo”) is and has been a director of
18 Hawaiian Electric Industries, Inc. since 2005. He also serves and has served at all relevant times
19 as Chairman of the Board and Chairman of the Executive Committee of Hawaiian Electric
20 Industries, Inc., as well as a member of the Board’s Compensation & Human Capital Management
21 Committee and the Board’s Nominating and Corporate Governance Committee. Fargo also served
22 as a Director of Hawaiian Electric Company, Inc. from 2005 to 2016.

23 25. *Individual Defendant Yoko Otani* (“Otani”) is and has been a director of Hawaiian
24 Electric Industries, Inc. and member of the Board’s Audit and Risk Committee since January 1,
25 2023. The Company represents in its Proxy Statement that Otani is an expert on risk management,
26 stating: “At the height of the financial crisis in 2008-2009 and thereafter with regulatory reforms
27 in the financial services sector. Ms. Otani advised some of the most prestigious national and
28 international financial services companies on multiple aspects of risk, compliance, business

1 strategy and corporate governance in her role as managing director at a global financial consulting
2 firm.” As an expert in risk management and member of the Company’s Audit and Risk Committee,
3 Otani was aware of the material risks posed to the Company due to potential wildfires and had a
4 duty to address and mitigate such risks.

5 26. *Individual Defendant Elisia K. Flores* (“Flores”) is and has been a director of
6 Hawaiian Electric Industries, Inc. and member of the Board’s Audit and Risk Committee since
7 November 29, 2021.

8 27. *Individual Defendant Richard J. Dahl* (“Dahl”) is and has been a director of
9 Hawaiian Electric Industries, Inc. since 2017. He also serves and has served at all relevant times
10 as a member of the Executive Committee of Hawaiian Electric Industries, Inc., as well as a member
11 of the Board’s Compensation & Human Capital Management Committee and the Board’s Audit
12 and Risk Committee. The Company represents in its Proxy Statement that Dahl is an expert on
13 risk management, stating: “He is an audit, risk management and financial expert from his former
14 chairmanship of the IDACORP, Inc. audit committee, membership on the Dine Brands Global,
15 Inc. audit committee, previous work experience with accounting firm Ernst & Young, and prior
16 licensure as a Certified Public Accountant and Certified Bank Auditor.” Dahl also served as
17 Director of the Hawaiian Electric Company, Inc. from 2017-2019.

18 28. *Individual Defendant Peggy Y. Fowler* (“Fowler”) is and has been a director of
19 Hawaiian Electric Industries, Inc. since 2011. She also serves and has served at all relevant times
20 as a member of the Executive Committee of Hawaiian Electric Industries, Inc., as well as a member
21 of the Board’s Compensation & Human Capital Management Committee and the Board’s
22 Nominating and Corporate Governance Committee. Fowler also served as a Director of Hawaiian
23 Electric Company, Inc. from 2009 to 2016. Fowler also previously served in executive roles for
24 38 years at Portland General Electric, including as President and CEO of the utility. Due to such
25 experience, Fowler was well aware of the risks of wildfires and the need to adopt and implement
26 a power shutoff system to avoid such wildfires.

27 29. *Individual Defendant Keith P. Russell* was a director of Hawaiian Electric
28 Industries Inc. during the relevant time period, including from at least 2011 to 2023.

1 30. *Individual Defendant Michael J. Kennedy* (“Kennedy”) is and has been a director
2 of Hawaiian Electric Industries, Inc. since August 1, 2022.

3 31. *Individual Defendant Micah A. Kane* (“Kane”) is and has been a director of
4 Hawaiian Electric Industries, Inc. since August 1, 2019. He also serves and has served at all
5 relevant times as a member of the Board’s Compensation & Human Capital Management
6 Committee and the Board’s Nominating and Corporate Governance Committee. Kane also served
7 as Director of the Hawaiian Electric Company, Inc. from 2012-2019.

8 32. *Individual Defendant William James Scilacci, Jr.* (“Scilacci”) is and has been a
9 director of Hawaiian Electric Industries, Inc. since 2019. He also serves and has served at all
10 relevant times as a member of the Executive Committee of Hawaiian Electric Industries, Inc., as
11 well as a member of the Board’s Audit and Risk Committee. The Company’s Proxy Statement
12 touts the fact that Scilacci has extensive utility experience through his over 20 years in financial
13 management with Southern California Edison, the primary energy supply company for Southern
14 California. The Proxy also states that “Mr. Scilacci has a keen understanding and extensive
15 knowledge of enterprise risk management from his role as Chief Financial Officer of Edison
16 International. For eight years, Mr. Scilacci managed Edison International’s enterprise risk
17 management program identifying, monitoring, and forecasting new risks to the company including
18 ESG related risks such as the impacts of climate change.” As an expert in risk management and
19 executive with decades of experience running Southern California Edison, Scilacci was aware of
20 the material risks posed to the Company due to potential wildfires and had a duty to address and
21 mitigate such risks.

22 **D. Officers and Directors of Hawaiian Electric Company, Inc.**

23 33. *Individual Defendant Timothy E. Johns* (“Johns”) is and has been at all relevant
24 times a director of the Hawaiian Electric Company and Chairman of its Board of Directors. The
25 Company’s website states that Johns has “[c]orporate governance knowledge and familiarity with
26 financial oversight and fiduciary responsibilities from overseeing the HMSA Internal Audit
27 department, from his prior service as a director for The Gas Company LLC (now Hawaii Gas) and
28 his current service as a trustee of the Parker Ranch Foundation Trust (charitable trust with assets

1 valued at over \$350 million), as a director and Audit Committee Chair for Parker Ranch, Inc.
2 (largest ranch in Hawaii, with significant real estate assets), as a director and Audit Committee
3 member for Grove Farm Company, Inc. (privately-held community and real estate development
4 firm operating on the island of Kauai) and on the board of Kualoa Ranch, Inc.”

5 34. *Individual Defendant James A. Ajello* (“Ajello”) is and has been at all relevant times
6 a director of the Hawaiian Electric Company and member of its Board’s Audit and Risk
7 Committee. Ajello also serves as Senior Vice President Finance, Chief Financial Officer and
8 Treasurer, Portland General Electric Company. Ajello also served as Executive Vice President
9 and Chief Financial Officer, Hawaiian Electric Industries, Inc. (HEI), from 2011 to April 2017.

10 35. *Individual Shelee M. T. Kimura* (“Kimura”) is and has been since January 2022 the
11 President and CEO of the Hawaiian Electric Company. Prior to that, she served as the company’s
12 senior vice president of Customer Service & Public Affairs and senior vice president of Business
13 Development & Strategic Planning.

14 36. *Individual Defendant Tayne S.Y. Sekimura* is and has been at all relevant times the
15 CFO and Chief Risk Officer of the Hawaiian Electric Company. Sekimura is a CPA and
16 previously worked at KPMG before joining Hawaiian Electric. Prior to assuming her current role
17 as CFO and Chief Risk Officer, Sekimura held various leadership positions at Hawaiian Electric
18 in internal audit, information technology, facilities management, and customer service.

19 37. *Individual Defendant Mary E. Kipp* (“Kipp”) is and has been at all relevant times a
20 director of the Hawaiian Electric Company and member of its Board’s Audit and Risk Committee.
21 She has also served as President and Chief Executive Officer, Puget Sound Energy, Inc., since
22 January 2020. Previously, she worked at El Paso Electric Company (NYSE: EE), President 2014-
23 2015, Chief Executive Officer 2015-2017, President and Chief Executive Officer 2017-2019.

24 38. *Individual Defendant Alana K. Pakkala* (“Pakkala”) is and has been at all relevant
25 times a director of the Hawaiian Electric Company and member of its Board’s Audit and Risk
26 Committee.

1 **B. The Individual Defendants Are Responsible for Ensuring Hawaiian Electric**
2 **Complies with Hawaii and Federal Regulations**

3 44. Hawaii’s Public Utilities Code requires that every public utility exercise reasonable
4 care to operate its facilities in a safe and responsible manner and to avoid harm to the public.
5 Section 8.2 of the PUC’s General Order No. 7, “Standards for Electric Utility Service in the State
6 of Hawaii,” states that “Each utility shall exercise reasonable care to reduce the hazards to which
7 its employees, its customers, and the general public may be subjected.”³

8 45. These regulations were known to the Individual Defendants. As the top officers
9 and directors of HAWAIIAN ELECTRIC, they had the responsibility of ensuring that these
10 regulations were met and that safety was made a top priority at HAWAIIAN ELECTRIC, in order
11 to protect human lives and property, and to ensure that there were no serious events that would
12 significantly impact and harm the Company and the public. The Individual Defendants failed in
13 their obligations to ensure that HAWAIIAN ELECTRIC complied with federal and Hawaii state
14 regulations.

15 46. HAWAIIAN ELECTRIC COMPANY, INC., by its own admission, has taken a
16 “decentralized” approach to “Enterprise Risk Management (ERM)” and has never recruited or
17 hired an individual with specific risk management expertise to identify and remediate risks.
18 Instead, the Company has simply saddled its CFO, Defendant Tayne S.Y. Sekimura, with the
19 responsibility to also serve as the Company’s Chief Risk Officer, even though most utilities have
20 a separate individual perform such role. As acknowledged by Hawaiian Electric Industries in its
21 2023 Proxy Statement:

22 Hawaiian Electric’s Chief Financial Officer, who also serves as its Chief Risk
23 Officer, is responsible for identifying, assessing, managing, monitoring and
24 reporting risks at the Utility, which serves the islands of O’ahu, Hawai’i, Maui,
25 Molokai and Lanai.

26 See HAWAIIAN ELECTRIC industries, inc., 2023 proxy statement, at p. 19.

27 ³ Available at <https://puc.hawaii.gov/wp-content/uploads/2013/04/General-Order-7.pdf>, last
28 visited Sept. 5, 2023.

1 47. Prior to joining Hawaiian Electric, Sekimura had no experience with utilities,
2 safety, or risk management at an operational level. Her only job prior to joining Hawaiian Electric
3 was working as an accountant at KPMG.

4 48. As part of the Board's ongoing risk oversight, Sekimura is responsible for providing
5 regular reports to the HEI Board and Audit & Risk Committee on the status of those risks, any
6 changes to the risk catalog or management's assessment of those risks, and any other risk
7 management matters that the Board may request from time to time. The Board and Audit & Risk
8 Committee are also supposed to receive reports from HEI's internal auditor evaluating the
9 effectiveness of management's implementation of the approved ERM system.

10 49. The HEI Board has assigned to the Audit & Risk Committee the responsibility of
11 assisting in the oversight of the overall risk management strategy of the Company. In providing
12 such assistance, the Audit & Risk Committee is specifically required to discuss policies with
13 respect to risk assessment and risk management, including the guidelines and policies governing
14 the process by which risk assessment and risk management are undertaken at the Company, and
15 to report to the Board the committee's discussion and findings so that the entire Board can consider
16 changes (if any) in the Company's risk profile.⁴

17 50. The Individual Defendants knew and understood that it was their responsibility to
18 manage risk and ensure that safety was a priority. Instead of doing so, the Individual Defendants
19 put profits before safety, which has resulted in the significant harm to HAWAIIAN ELECTRIC
20 and the public that is the subject of this lawsuit.

21 VI. SUBSTANTIVE ALLEGATIONS

22 A. **The Individual Defendants Knew They Were Vastly Underspending on Wildfire 23 Safety Yet Failed to Take Necessary Action to Protect the Public Against Wildfires 24 Caused by the Company's Aging and Dangerous Equipment**

25 51. For years leading up to the Maui Fire, the Individual Defendants knowingly failed
26 to properly maintain Hawaiian Electric's transmission and distribution lines. Through their
27 repeated refusal to approve urgently needed increases to the Company's safety and maintenance

28 ⁴ HAWAIIAN ELECTRIC INDUSTRIES, INC., 2023 PROXY STATEMENT, at p. 19.

1 budgets, Hawaiian Electric’s officers and directors directly contributed to the catastrophic 2023
2 Maui fire. To operate Hawaiian Electric’s power lines under these conditions was reckless and
3 represented an abdication of their fiduciary duties and a callous indifference to the loss of human
4 life, tangible property, and natural habitat.

5 52. The Individual Defendants knew about the Company’s safety deficiencies, failed
6 to timely remediate the safety risks, signed SEC filings falsely stating that the Company was
7 adequately addressing safety issues, and then attempted to cover up their own wrongdoing when
8 news reports disclosed that Hawaiian Electric was the cause of the Maui Fire.

9 53. At the same time that they were annually refusing to approve capital spending on
10 the Company’s aging electrical infrastructure and wildfire prevention measures, Hawaiian
11 Electric’s officers and directors caused the Company to spend most of its capital on “green energy”
12 initiatives that earned the Company millions of dollars in bonuses, which the Individual
13 Defendants used to increase their executive compensation and directors’ fees.

14 54. In 2022, the Defendants approved increased compensation to Defendant Seu of
15 \$3.57 million, a significant increase from his 2021 compensation of \$1.9 million. The Directors
16 also increased the payment of dividends for 2023, increasing the quarterly dividend from \$0.35
17 per share of \$0.36 per share. Thus, instead of increasing necessary spending on electrical safety
18 and infrastructure so as to prevent wildfires, the Company’s officers and directors approved
19 increased compensation for themselves and increased dividends that reduced money available for
20 increasing safety.

21 55. Between 2019 and 2022, *Hawaiian Electric invested less than \$245,000 on*
22 *wildfire-specific projects on the island*, according to regulatory filings. The Company did not seek
23 state approval to raise rates to pay for broad wildfire-safety improvements until 2022.⁵ Instead of
24 spending necessary funds to prevent fires caused by its equipment, Hawaiian Electric instead spent
25 millions of dollars towards efforts to achieve a 100 percent renewable energy goal.

26
27 ⁵ See “Hawaii Invests in Renewable Energy Rather Than Wildfire Prevention,” Institute for Energy
28 Research, Aug. 23, 2023.

1 **B. Hawaiian Electric Caused the Maui Fire**

2 56. Hawaii Electric has admitted that its electrical equipment caused the Maui Fire. On
3 August 27, 2023, the Company issued a press release which stated that “A fire at 6:30 a.m. (the
4 “Morning Fire”) [on August 8, 2023] appears to have been caused by power lines that fell in high
5 winds.”⁶ The Company claims that it believed the Morning Fire was fully extinguished a few hours
6 later. However, the Company also admits that at approximately 3:00 p.m. the same day, “a second
7 fire (the “Afternoon Fire”) began in the same area.” The Company claims that it has not
8 determined the cause of the Afternoon Fire even though it broke out “in the same area” as the
9 Morning Fire. The available evidence all suggests that the Afternoon Fire was simply a
10 continuation of the Morning Fire caused by Hawaiian Electric’s electrical lines sparking a fire after
11 coming down in high winds. No other cause of the Afternoon Fire has been posited by Hawaiian
12 Electric or any other person.

13 57. Aided by high winds, the Afternoon Fire spread quickly and soon endangered
14 populated areas. By the late afternoon of August 8, 2023, the entire town of Lahaina was
15 destroyed. Residents of the town had only a matter of moments to gather their families and attempt
16 to escape the blaze. Many jumped in the ocean to attempt to escape the inferno. Some drowned
17 in the ocean. Many others could not escape Lahaina in time and tragically perished.

18 58. The Maui Fire was devastating, as the following photographs shows:
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28 ⁶ See “Hawaiian Electric Provides Update on Lahaina Fires, Response,” Aug. 27, 2023.

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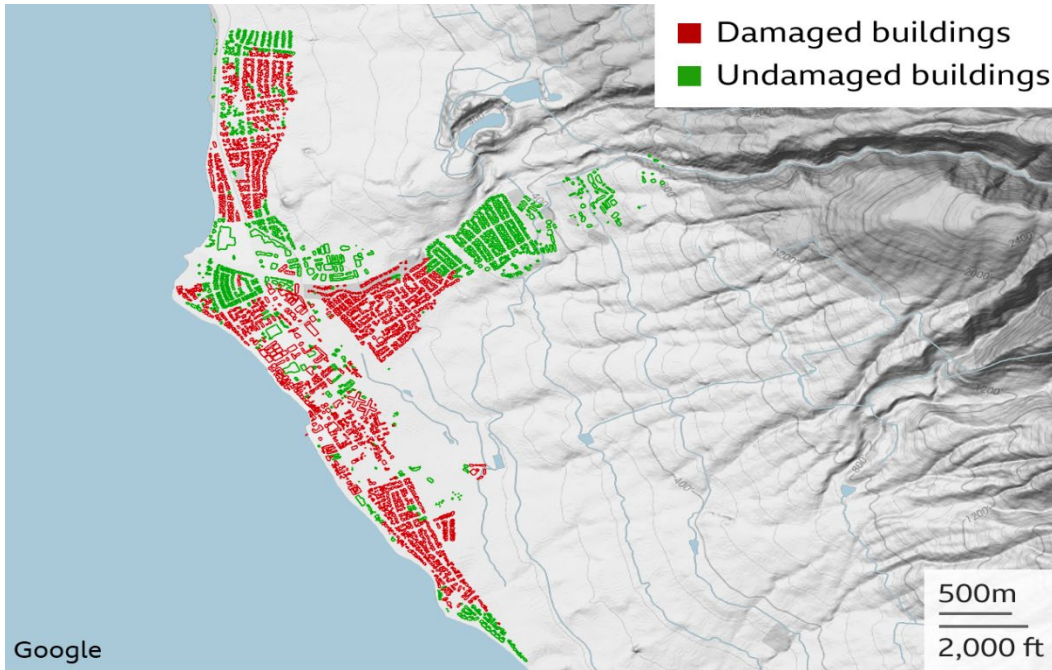


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1 59. Tragically, at least 115 people have been confirmed dead and scores more remain
2 unaccounted for, complicating the effort to identify the precise number of people killed.

3 60. The Maui Fire also had a devastating effect on property owners. The following
4 map identifies the number of structures lost in the fire:



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15 Source: FEMA/ESRI, data published 12 Aug

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16 **C. The Maui Fire Was a Foreseeable and Likely Outcome of Defendants’ Conduct that**
17 **Could Have Been Prevented**

18 **1. The Individual Defendants Knew Other Utilities Had Adopted Power Shutoff**
19 **Systems to Protect Against Wildfires During High Wind Conditions But**
20 **Failed to Adopt Such a System at Hawaiian Electric**

21 61. The Individual Defendants were aware in advance of the Maui Fire of the extreme
22 fire danger presented by the type of high wind weather conditions that occurred on August 8, 2023.
23 They specifically were aware that San Diego Gas & Electric had adopted such a “de-energization”
24 program over a decade earlier to protect the public against catastrophic wildfires. They were also
25 aware that Pacific Gas & Electric had belatedly done so in 2019 after the deadly Camp Fire caused
26 by its equipment drove it into bankruptcy.⁷ PG&E had tried unsuccessfully for years to implement

27 ⁷ See Jeff St. John, “California on Edge as PG&E’s Power Outage Plan Goes Into Effect,” Green
28 Tech Media, Oct. 9, 2019.

1 a “vegetation management program” to try to keep vegetation cleared from its power lines. It had
2 learned the hard way that an effective power shut-off system was the only way to avoid the
3 catastrophic loss of life and people’s homes in extreme high wind situations. They were also aware
4 that in December 2018, the California PUC had opened Order Instituting Rulemaking (OIR) 18-
5 12-005 to examine its rules allowing electric utilities to de-energize power lines in case of
6 dangerous conditions.

7 62. Hawaiian Electric’s Board of Directors was thus well aware of the need to adopt
8 and implement a power-shutoff system. The directors knew of the need for a power shutoff system
9 due to either their operational experience at Hawaiian Electric, their knowledge of what SDGE
10 and PG&E had done, and/or their roles at other utility companies. For example, Defendant Fowler
11 previously served in executive roles for 38 years at Portland General Electric, including as
12 President and CEO of the utility. Due to such experience, Fowler was well aware of the risks of
13 wildfires and the need to adopt and implement a power shutoff system to avoid such wildfires. For
14 eight years, Defendant Scilacci managed Edison International’s enterprise risk management
15 program identifying, monitoring and forecasting new risks to the company including risks from
16 wildfires. As an expert in risk management and executive with decades of experience running
17 Southern California Edison, Scilacci was aware of the material risks posed to the Company due to
18 potential wildfires and had a duty to address and mitigate such risks.

19 63. Moreover, in the days preceding the Maui Fire, the Individual Defendants were
20 aware of extreme fire risk due to high winds from Hurricane Dora, a category 4 storm. On Friday,
21 August 4, 2023, the National Weather Service in Honolulu (“NWS”) posted on Twitter, that
22 Hawai‘i could experience “indirect impacts” from Hurricane Dora from Monday, August 7, 2023
23 through Wednesday, August 9, 2023, including “Strong and gusty trade winds” and “Dry weather
24 & high fire danger.”

25 64. On Sunday, August 6, 2023, the National Weather Service in Honolulu issued a
26 “fire weather watch” for the state: “Strong and gusty winds, combined with low humidities ... may
27 lead to critical fire conditions across leeward areas over the coming days.”
28

1 65. The Defendants were also aware of the connection between passing hurricanes and
2 wildfires. In 2020, researchers from the University of Hawaii and the East-West Center
3 established a causal relationship between fires on Maui and O‘ahu to winds from Hurricane Lane.⁸
4 That 2020 report, entitled “Fire and Rain: The Legacy of Hurricane Lane in Hawai‘i,” published
5 in the *American Meteorological Society’s Journal*, found that neither thunderstorms nor lightning
6 started the fires. The Honolulu Fire Department attributed the O‘ahu fire to power lines arcing in
7 Hurricane Lane’s high winds.

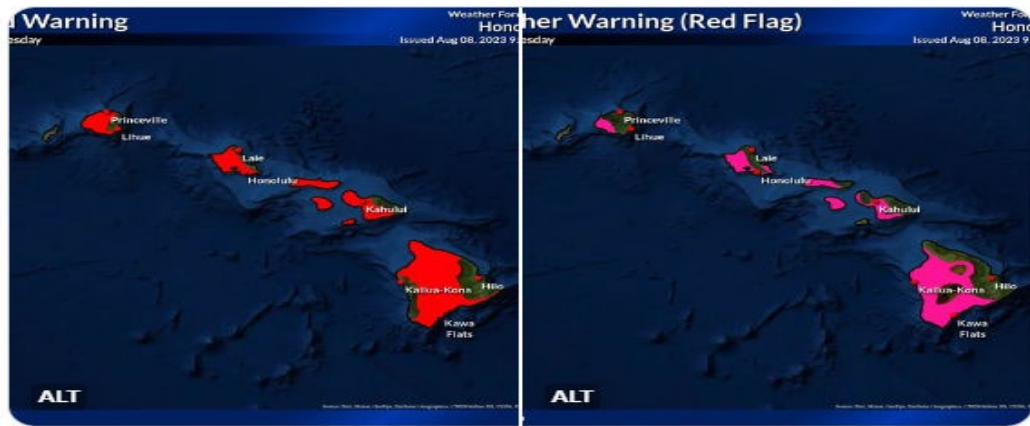
8 66. Early on the morning of Monday, August 7, 2023, *the weather service issued “a*
9 *red flag warning” as dry lands, coupled with “strong and gusty easterly winds and low*
10 *humidities,” create “critical fire weather conditions.” “Any fires that develop will likely spread*
11 *rapidly,”* the warning said. The same day, the National Weather Service recorded incredibly high
12 wind gusts across Hawaii, with a high-wind warning issued by the organization for portions of
13 Maui County through 6 a.m. Wednesday. It indicated that some regions would go on to face wind
14 gusts up to 67 miles per hour throughout the week, which officials say fueled the strength of the
15 wildfires across the island.

16 67. The Individual Defendants were also well aware that Maui had been in a drought
17 prior to the fire, according to the National Integrated Drought Information System. The defendants
18 knew that the drought, combined with high winds, created the perfect storm for the incoming
19 blazes.

20 68. On Tuesday, August 8, 2023, the day of the fire, winds continued to increase
21 substantially. The NWS issued both a High Wind Warning and Red Flag Warning for portions of
22 the Hawaiian Islands, including West Maui. Specifically, the NWS warned that: “High Wind: 30–
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26 _____
27 ⁸ See Dan Frosch & Jim Carlton, *Hawaii Officials Were Warned Years Ago that Maui’s Lahaina*
28 *Faced High Wildfire Risk*, WALL STREET JOURNAL, (Aug. 11. 2023), available at
<https://www.wsj.com/articles/hawaii-maui-fire-risks-plans-government-e883f3a3>.

1 45 mph winds, gusts up to 60 mph . . . Red Flag: High fire danger with rapid spread. NO outdoor
2 burning. Stay safe & cautious!”



3:27 PM · Aug 8, 2023 · 149.8K Views

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17 69. Despite these warnings and the increased winds, the Individual Defendants failed
18 to take action to protect the public against the risk of wildfires caused by the Company’s electrical
19 equipment. Defendants left Hawaiian Electric’s electrical lines energized and failed to shut off the
20 power to protect the public.

21 70. Darren Pai, a spokesperson for Hawaiian Electric, admitted that the Company did
22 not have a formal power shutoff plan.

23 71. *Defendant Kimura further admitted that the Company considered temporarily*
24 *shutting off power before the Maui Fire but decided not to do so* because she decided that
25 Hawaiian Electric needed to keep the electricity on to serve the Company’s customers.⁹ Many
26

27 ⁹ See Ivan Penn, “Hawaiian Electric Was Warned of Its System’s Fragility Before Wildfire,” THE
28 NEW YORK TIMES, Aug. 19, 2023.

1 utilities have used the same excuse in the past to reject necessary power shutoff systems, arguing
2 that customers would get angry if left without power.¹⁰

3 72. The Defendants' conscious decision to refuse to shut off power during the
4 extremely dangerous conditions prior to the Maui Fire directly caused the fire and loss of life and
5 property, resulting in the deadliest natural disaster in Hawaii's history.

6 **D. The Individual Defendants Knew Hawaiian Electric's Electrical Equipment Was**
7 **Unsafe**

8 73. For years prior to the Maui Fire, the Individual Defendants were aware of urgently
9 needed repairs to the Company's electrical infrastructure yet failed to make necessary repairs.

10 74. During the 2019 wildfire season, one of the worst Maui had ever seen, Hawaiian
11 Electric concluded that it needed to do far more to prevent its power lines from emitting sparks.

12 75. In 2022, Hawaiian Electric belatedly made a funding request for \$189.7 million
13 from the Hawaii Public Utilities Commission to harden its power grid statewide. In the
14 application, *Hawaiian Electric said that the risk of its utility system "causing a wildfire ignition*
15 *is significant.*" The company said it needed the funding to ensure its facilities were not "the origin
16 or a contributing source of ignition for a wildfire." The application referred to necessary upgrades
17 to its systems and noted that California's power shutoff plan was among electric industry strategies
18 "used to mitigate wildfire risks until more robust preventive measures have been implemented in
19 an area."

20 76. Further, the Company has caused past wildfires and yet the Individual Defendants
21 failed to make necessary repairs to its systems. A downed Hawaiian Electric power line ignited
22 an August 2018 blaze that scorched 2,000 acres and devoured more than 20 homes, which at the
23 time was "the largest fire in Maui's history." But the Individual Defendants failed to cause the
24 Company to include upgrades to power poles and other fire prevention measures as part of its
25 modernization strategy the year after that fire.

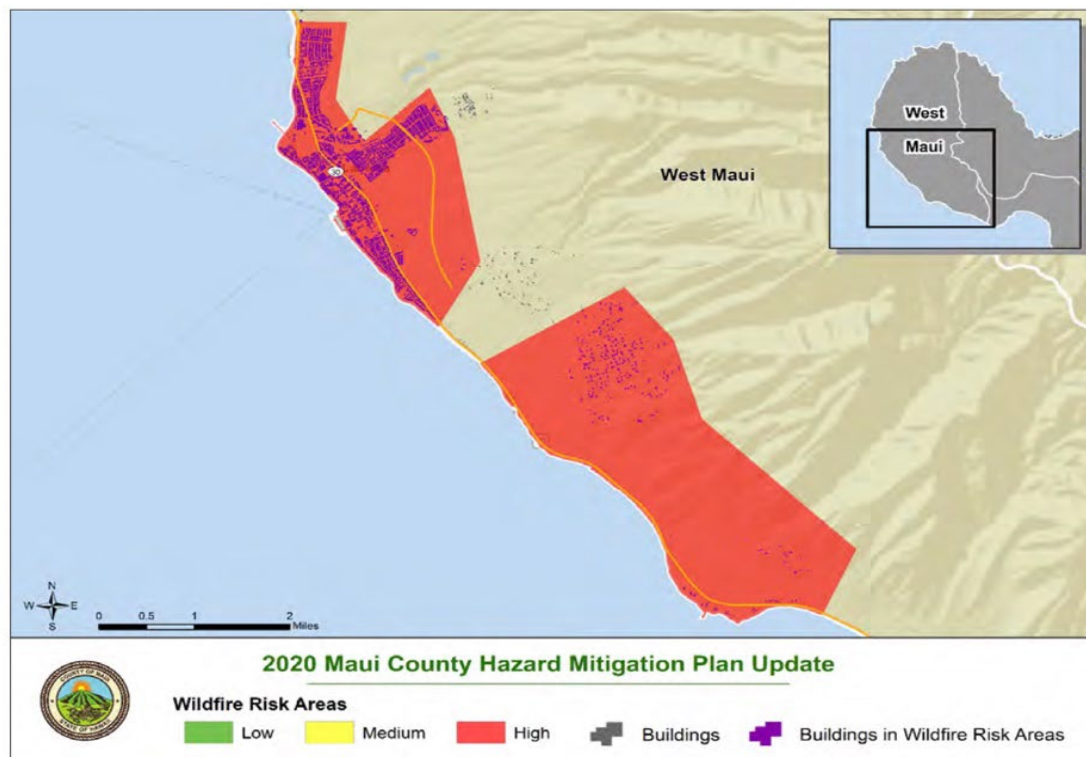
26 ¹⁰ "It's worth noting that even in places where this has been used, it is controversial and it's not
27 universally accepted," Hawaiian Electric President and CEO Shelee Kimura said at a news
28 conference, referring to a formal power shutoff. "It can be seen as being a hardship for those
customers that have medical needs."

1 77. The Hawaii Wildfire Management Organization identified Lahaina as a hotspot for
2 wildfires in 2018 and each year thereafter. “Dry! Windy! Hot!”, the report exclaimed in a
3 description of Lahaina and nearby areas.

4 78. In 2019, the company issued a press release announcing that it would use drones to
5 help assess fire hazards in drought-prone areas in West Maui. The resort to the use of drones was
6 an acknowledgment that the Company had failed to spend sufficient funds to prevent its equipment
7 from posing a high risk of starting wildfires. The Individual Defendants’ actions essentially
8 represented a concession that they had given up on preventing wildfires and had resorted to trying
9 to spot them once they had already started.

10 79. In 2020, Lahaina was identified as a High-Risk Wildfire Area in the Maui County
11 Hazard Mitigation Plan Update:

12 **Maui County Hazard Mitigation Plan Update**



25 *Figure 256. Buildings in Wildfire Risk Areas in Southern West Maui Community Planning Area.*

1 80. The Individual Defendants also knew that the Company did not use available
2 technologies to mitigate fire risk, including non-expulsion fuses, covered conductors, underground
3 power lines, composite power poles, and fiberglass and other non-wood materials.

4 81. In addition, the Individual Defendants have known or should have known that the
5 Company’s choice of chemical treatments for its poles can also make its equipment unsafe. For
6 example, HAWAIIAN ELECTRIC uses and has used poles treated with pentachlorophenol in
7 liquefied petroleum gas by the Cellon® process. Those poles tend to experience surface decay
8 below ground regardless of the type of wood used for the poles. As a result, digging inspections
9 are required for poles treated by these processes for all wood types. However, Plaintiff believes
10 that HAWAIIAN ELECTRIC has failed to conduct the proper inspections and further, when
11 HAWAIIAN ELECTRIC has been advised of necessary repairs to such poles, HAWAIIAN
12 ELECTRIC failed to repair the poles in a timely manner. These failures are a breach of
13 HAWAIIAN ELECTRIC’s obligations to the public and have been a cause of fires.

14 82. Indeed, in its 2022 PUC application Hawaiian Electric admitted that it needed funds
15 to strengthen its electrical poles. It also admitted that it knew that its defective poles could fall
16 onto highways, thus impeding emergency vehicles responding to a wildfire. The application
17 stated:

18 “If poles adjacent to major highway overhead crossings were to fail in a storm or
19 hurricane, causing the pole or conductor to fall into a major highway or freeway,
20 this would impede traffic, potentially including emergency vehicles, and would
take significant resources, time, and coordination with other emergency response
efforts to make the repairs.”

21 *See In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC., HAWAI’I*
22 *ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LIMITED For Approval to*
23 *Commit Funds in Excess of \$2,500,000 for Climate Adaptation Transmission and Distribution*
24 *Resilience Program and to Recover Costs through the Exceptional Project Recovery Mechanism,*
25 *June 30, 2022, at p. 42.*

26 83. The Company’s PUC application specifically admitted that it needed to urgently
27 spend funds to replace “80 poles for a total of \$7,708,000 in Maui County. These plans are based
28

1 on the first five years of a longer-term plan to harden the most critical poles in the Companies’
 2 service territories.” *Id.* at p. 43. It also admitted that the Company needed to “replace copper
 3 conductors with aluminum in wildfire risk areas” like Maui because “[c]opper conductors tend to
 4 become brittle and pose a higher risk of failure compared to aluminum.” *Id.* at 50.

5 84. The Individual Defendants specifically stated in the PUC Application that over \$6.2
 6 million was needed for “wildfire prevention & mitigation” on Maui, including Lahaina, which was
 7 identified as a Wildfire Priority Area:

8 ***In Maui County, the current wildfire priority areas include: West Maui (Lahaina***
 9 ***to Kapalua), Ma’alaea, Olowalu, Moloka’i (from west Moloka’i to Kawela), and***
 10 ***Lāna’i. The total estimated program cost for Maui County is \$6,243,000.***¹¹

11 85. Moreover, the \$6.2 million in needed expenditure were just for Wildfire Mitigation
 12 and Prevention. The Company conceded that over \$40 million in capital improvements/repairs
 13 were needed on Maui to help prevent wildfires, as reflected in the following chart it submitted as
 14 part of its PUC Application:¹²

ME.005279: Resiliency Program - Maui	\$ 28,849,289	\$ 11,394,097	\$ 40,243,386
1: Critical T-Line Hardening	\$ 8,432,862		\$ 8,432,862
2: Critical Customer Circuit Hardening	\$ 4,768,120		\$ 4,768,120
3: Critical Pole Hardening	\$ 7,708,259		\$ 7,708,259
4: Wildfire Prevention & Mitigation	\$ 6,243,176		\$ 6,243,176
5: Substation Flood Monitors	\$ 664,174		\$ 664,174
6: Maui Distribution Feeder Ties	\$ 1,032,699		\$ 1,032,699
7: Hazard Tree Removal	\$ -	\$ 11,159,895	\$ 11,159,895
8: Resilience Modeling	\$ -	\$ 234,202	\$ 234,202

20 86. Despite acknowledging that \$40 million in repairs were needed to protect against
 21 wildfires, ***Hawaiian Electric and its Board of Directors failed to make any of the repairs or***
 22 ***capital improvements following the application.***

23 **E. Hawaiian Electric’s Corporate Culture Puts Profits Over Safety**

24 87. Rather than spend the money it obtains from customers for infrastructure
 25 maintenance and safety, the Individual Defendants have caused HAWAIIAN ELECTRIC to
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27 ¹¹ See Application at p. 52.

28 ¹² See Application at p. 53.

1 funnel this funding to boost their own profits and compensation. This pattern and practice of
2 favoring profits over having a solid and well-maintained infrastructure that would be safe and
3 dependable for years to come left HAWAIIAN ELECTRIC vulnerable to an increased risk of a
4 catastrophic event such as the Maui Fire.

5 **F. Hawaiian Electric is Required to Safely Design, Operate, and Maintain Its Electrical**
6 **Systems and Surrounding Vegetation**

7 88. At all times prior to August 8, 2023, the Individual Defendants owed a duty to
8 ensure that HAWAIIAN ELECTRIC properly constructed, inspected, repaired, maintained,
9 managed and/or operated its power lines and/or other electrical equipment and to keep vegetation
10 properly trimmed and maintained so as to prevent foreseeable contact with such electrical
11 equipment. In the construction, inspection, repair, maintenance, management, ownership, and/or
12 operation of its power lines and other electrical equipment, the Individual Defendants owed a duty
13 to ensure that HAWAIIAN ELECTRIC complied with a number of statutes, regulations, and
14 standards.

15 89. HAWAIIAN ELECTRIC is required to comply with a number of design standards
16 for its electrical equipment. Pursuant to a 2002 national standard, HAWAIIAN ELECTRIC must
17 ensure that portions of its power lines can withstand winds of up to 105 miles per hour.

18 90. The Individual Defendants failed to cause the Company to comply with the relevant
19 standards. At the time of the Maui Fire, many of the utility’s 60,000, mostly wooden power poles,
20 which its own documents described as built to “an obsolete 1960s standard,” were leaning and
21 near the end of their projected lifespan. They were nowhere close to meeting the 2002 national
22 standard that key components of Hawaii’s electrical grid be able to withstand 105 mile per hour
23 winds. *See* Jennifer McDermott, “Bare Electrical Wires, Leaning Power Poles in West Maui Were
24 Possible Cause of Fires,” MAUI NEWS, Aug. 28, 2023.

25 91. A 2019 filing by the Company said its 60,000 poles, nearly all wood, were
26 vulnerable because they were already old and Hawaii is in a “severe wood decay hazard zone.” It
27 admitted it had fallen behind in replacing the old wooden poles because of other priorities and
28 warned of a “serious public hazard” if they “failed.” Google street view images of poles taken

1 before the fire show the bare wire. Videos and images analyzed by The Associated Press
2 confirmed those wires were among miles of line that Hawaiian Electric Co. left naked to the
3 weather and often-thick foliage, despite a recent push by utilities in other wildfire — and hurricane
4 — prone areas to cover up their lines or bury them.¹³

5 92. A former member of the Hawaii Public Utilities Commission confirmed many of
6 Maui’s wooden power poles were in poor condition. Jennifer Potter lives in Lahaina and until the
7 end of last year was on the commission, which regulates Hawaiian Electric. “Even tourists that
8 drive around the island are like, ‘What is that?’ They’re leaning quite significantly because the
9 winds over time literally just pushed them over,” she said. “That obviously is not going to
10 withstand 60, 70 mile per hour winds. So, the infrastructure was just not strong enough for this
11 kind of windstorm ... The infrastructure itself is just compromised.”¹⁴

12 93. Sixty percent of the utility poles on West Maui were damaged and were still down
13 on Aug. 14, according to Defendant Kimura at a media conference — 450 of the 750 poles.

14 94. Pictures from the day of the Maui Fire reveal that the affected area was littered with
15 downed Hawaiian Electric power lines, as the following images show:¹⁵

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26 ¹³ See Jennifer McDermott, “Bare Electrical Wires, Leaning Power Poles in West Maui Were
Possible Cause of Fires,” MAUI NEWS, Aug. 28, 2023.

27 ¹⁴ *Id.*

28 ¹⁵ See “High winds result in power outages to thousands in West Maui, Olinda-Pi‘iholo,” Maui
Now, Aug. 8, 2023.



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14 95. Further, HAWAIIAN ELECTRIC must follow several standards to protect the
15 public from the consequences of vegetation and/or trees coming into contact with its power lines
16 and other electrical equipment. In 2007, Hawaii adopted the standards of the National Electric
17 Safety Code to govern Hawaii Electric's electrical transmission lines. HRS §6-73-11. Pursuant
18 to the provisions of the NESC, HAWAIIAN ELECTRIC is required to maintain around and
19 adjacent to any pole or tower which supports a switch, fuse, transformer, lightning arrester, line
20 junction, or dead end or corner pole, a firebreak which consists of a clearing of not less than 10
21 feet in each direction from the outer circumference of such pole or tower. Also, HAWAIIAN
22 ELECTRIC is required to maintain clearances of four to 10 feet for all of its power lines, depending
23 of their voltage. In addition, dead trees, old decadent or rotten trees, trees weakened by decay or
24 disease and trees or portions thereof that are leaning toward the line which may contact the line
25 from the side or may fall on the line shall be felled, cut, or trimmed so as to remove such hazard.

26 96. HAWAIIAN ELECTRIC is also required to inspect its distribution facilities to
27 maintain a safe and reliable electric system. In particular, HAWAIIAN ELECTRIC must conduct
28 detailed inspections of all of its overhead transformers in urban areas at least every five years.

1 HAWAIIAN ELECTRIC is also required to conduct “intrusive” inspections of its wooden poles
2 that have not already been inspected and are over 15 years old.

3 97. Hawaii’s Revised Statutes also state that, for any maintenance issues that are not
4 specifically addressed in the statutes or in the National Electric Safety Code, such maintenance
5 “should be done in accordance with accepted good practice for the given local conditions known
6 at the time by those responsible for the construction or maintenance.” HRS §6-73-14.

7 98. The Defendants knew or should have known that such standards and regulations
8 were minimum standards, and that HAWAIIAN ELECTRIC has a duty to identify vegetation that
9 posed a foreseeable hazard to power lines and/or other electrical equipment and manage the growth
10 of vegetation near its power lines and equipment so as to prevent the foreseeable danger of contact
11 between vegetation and power lines starting a fire. Further, HAWAIIAN ELECTRIC has a duty
12 to manage, maintain, repair, and/or replace its aging infrastructure to protect public safety. These
13 objectives could and should have been accomplished in a number of ways, including, but not
14 limited to, putting electrical equipment in wildfire-prone areas underground, increasing
15 inspections, developing and implementing protocols to shut down electrical operations in
16 emergency situations, modernizing infrastructure, and/or obtaining an independent audit of its risk
17 management programs to ensure effectiveness.

18 **G. Defendants Paid Themselves Millions of Dollars in Compensation Despite Doing**
19 **Nothing to Improve Wildfire Safety**

20 99. HAWAIIAN ELECTRIC filed a Proxy Statement in 2023 detailing the
21 compensation of some of the defendants.
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2022 SUMMARY COMPENSATION TABLE

NAME AND 2022 PRINCIPAL POSITIONS	YEAR	SALARY (\$) ¹	BONUS (\$) ²	STOCK AWARDS (\$) ³	NONEQUITY INCENTIVE PLAN COMPENSATION (\$) ⁴	CHANGE IN PENSION VALUE AND NONQUALIFIED DEFERRED EARNINGS (\$) ⁵	ALL OTHER COMPENSATION (\$) ⁶	TOTAL PENSION VALUE (\$) ⁷	TOTAL WITHOUT CHANGE IN VALUE (\$) ⁸	TOTAL (\$) ⁹
Scott W. H. Seu HEI President & CEO ASB Chair	2022	875,000	—	1,830,874	869,129	236,512	—	3,575,003	3,811,515	
	2021	506,667	—	821,405	599,588	1,002,005	—	1,927,660	2,929,665	
	2020	419,750	—	651,282	394,587	999,547	—	1,465,619	2,465,166	
Paul K. Ito HEI Executive Vice President, CFO & Treasurer*	2022	313,425	108,750	244,373	140,054	—	9,150	815,752	815,752	
Kurt K. Murao HEI Executive Vice President, General Counsel, Chief Administrative Officer and Corporate Secretary	2022	428,667	—	467,085	255,475	—	15,281	1,166,508	1,166,508	
	2021	402,000	—	499,262	443,638	252,374	14,873	1,359,773	1,612,147	
	2020	352,000	—	369,992	244,954	315,725	—	966,946	1,282,671	
Shelee M. T. Kimura Hawaiian Electric President & CEO	2022	450,000	—	814,267	249,909	—	—	1,514,176	1,514,176	
Ann C. Teranishi ASB President & CEO	2022	605,000	—	600,723	764,357	—	56,774	2,026,854	2,026,854	
	2021	473,707	—	626,520	600,098	—	23,996	1,724,321	1,724,321	
Gregory C. Hazelton Former HEI Executive Vice President and CFO	2022	278,733	—	757,904	193,721	—	15,126	1,245,484	1,245,484	
	2021	546,400	—	1,100,746	653,243	116,175	26,054	2,326,443	2,442,618	
	2020	543,750	—	707,755	412,830	186,825	26,328	1,690,663	1,877,488	

100. The Proxy also discloses that Hawaiian Electric Company's CEO Shelee Kimura received an annual bonus in 2022 tied to profit, worker safety and bolstering the supply of renewable energy, but not linked specifically to reducing wildfire risk. Kimura received a cash bonus in 2022 based on her performance against 10 measures including profit and customer satisfaction. Wildfire risk mitigation was not on the list, according to the Proxy Statement. Power

1 industry analysts say pay incentives should be tied to cutting risk, a strategy that could help prevent
2 catastrophic wildfire losses. “If we tie executive pay at many levels of the organization, not just
3 the CEO, to safety and wildfire safety, then the organization will work harder to meet those goals,”
4 said consultant Alison Silverstein, a former adviser to the U.S. Federal Energy Regulatory
5 Commission.

6 101. Defendant Kimura missed meeting many of her goals last year. Kimura still
7 received 74%, or \$337,500, of her potential bonus award despite missing seven out of 10 target
8 goals. And Kimura’s total compensation for 2022 of \$1,514,176 was a significant increase from
9 her 2021 compensation.

10 102. Other than Defendant Kimura, the Hawaiian Electric Company, Inc. does not
11 publicly report the compensation of its other executives. This information is thus within the
12 exclusive possession of Defendants and discovery is necessary to allege the specific amounts by
13 which the other executives and board members of Hawaiian Electric Company, Inc. have been
14 unjustly enriched.

15 103. In contrast to Hawaiian Electric, the Company’s fellow utilities have tied executive
16 compensation to success in achieving wildfire prevention measures. San Diego Gas & Electric, a
17 unit of Sempra, allocates 20% of target bonus payouts for 2023 to wildfire mitigation and 33% to
18 other safety measures. PG&E’s Board of Directors has also caused it to link the CEO’s pay to
19 goals directly tied to wildfire prevention.

20 104. In addition to improperly failing to tie executive compensation to wildfire
21 prevention success, Hawaiian Electric’s Board of Directors has allowed Company insiders to profit
22 from the diversion of resources to green energy initiatives. Back in January 2022, Jim Kelly, Vice
23 President for Hawaii Electric, admitted that the Company was pursuing an incentive program
24 geared towards getting solar hooked up to the grid more quickly. Kelly admitted that Hawaiian
25 Electric had a specific profit motive to connect rooftop solar faster. “If we can continue to make
26 that interconnection experience a positive thing, *then it’s potentially up to three million dollars*
27 *upside for us,*” Kelly said. Julia Simon, “Biden’s Climate Agenda is Stalled in Congress. In
28 Hawaii, One Key Part is Going Ahead,” NPR, Jan. 15, 2022. Kelly also stated that Hawaiian

1 Electric could get as much as a \$15 million bonus by 2023 if it continued to bring renewable
 2 projects online. *Id.* The Individual Defendants profited in the form of higher executive
 3 compensation and director fees from these bonus payments that were received at the expense of
 4 investing sufficient capital towards wildfire prevention.

5 105. The members of Hawaiian Electric’s Board of Directors were responsible for
 6 setting the compensation of the CEO and other executives in such a manner as to ensure proper
 7 consideration of safety and prevention of wildfires. They failed to do so, thus breaching their
 8 duties of good faith and loyalty to the Company.

9 106. Defendant Seu, CEO of Hawaiian Electric Industries, was rewarded in 2022 with
 10 outsized compensation that is **32 times the median pay of the Company’s employees**, as reflected
 11 in the following chart¹⁶:

12 CEO TO MEDIAN EMPLOYEE PAY RATIO

	PRESIDENT & CEO		MEDIAN EMPLOYEE	
13	[Redacted]			
14				
15				
16	Salary	\$ 875,000	\$	115,383
17	<hr/>			
18	Overtime Pay	—		—
19	<hr/>			
20	Stock Awards	1,830,874		—
21	<hr/>			
22	Nonequity Incentive Plan Compensation	869,129		—
23	<hr/>			
24	All Other Compensation	—		3,457
25	<hr/>			
26	Change in Pension Value:	236,512		—
27	<hr/>			
28	TOTAL	\$ 3,811,515	\$	118,840

16 Source: Company’s 2023 Proxy Statement, at p. 61.

107. The Director Defendants, meanwhile, also increased their own compensation, thus personally benefiting from underspending on safety. As demonstrated in the chart below, the Director Defendants increased their own compensation substantially from 2019 to 2022:

The Increase in Director Compensation at Hawaiian Electric From 2019 to 2022

Director	2019	2020	2021	2022
Scilacci	\$157,870	\$196,500	\$198,000	\$231,500
Dahl	\$194,128	\$203,066	\$211,000	\$241,500
Fowler	\$209,720	\$209,500	\$212,500	\$240,000
Fargo	\$211,000	\$285,008	\$327,500	\$350,000
Seu	N/A	\$2,465,166	\$2,929,665	\$3,811,515
Kennedy	N/A	N/A	N/A	\$176,704
Kane	\$116,283	\$189,500	\$191,000	\$262,333
Connors	\$148,832	\$186,500	\$189,500	\$215,000
Flores	N/A	N/A	\$105,267	\$232,113
Russell	\$212,500	\$218,000	\$220,000	\$252,000

108. The Proxy further detailed the standards governing executive compensation. None of the criteria are related to success in reducing the risks related to wildfires.

109. The table below identifies the Company's 2022 annual incentive metrics, the objective each measure serves, the level of achievement required to attain the threshold, target and maximum levels for each metric, the results for 2022 and the percentage of target achieved.

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2022 ANNUAL INCENTIVE PERFORMANCE METRICS & WHY WE USE THEM	WEIGHTING	THRESHOLD	GOALS			RESULTS	TOTAL ACHIEVED AS A % OF TARGET OPPORTUNITY
			TARGET	MAXIMUM			
Seu, Ito, Murao and Hazelton							
HEI Consolidated Adjusted Net Income ¹ focuses on fundamental earnings, which correlates to shareholder value	60%	\$208.2M	\$231.3M	\$247.5M	\$230.6M		
Utility Operations ² supports effective utility operations for all stakeholders	25%	See note 2 below	See note 2 below	See note 2 below	See note 2 below		99%
ASB Return on Assets (ROA) ³ measures how efficiently the Bank deploys its assets by comparing return to total assets	15%	0.66%	0.76%	0.86%	0.82%		
Kimura							
Utility Consolidated Net Income focuses on fundamental earnings, which correlates to shareholder value	40%	\$174.3M	\$193.7M	\$203.4M	\$188.9M		
Utility Consolidated Customer Satisfaction ⁴ focuses on improving the customer experience through all points of contact with the Utility	15%	Consolidated score of 76 or a benchmark of 60th percentile in 2 of 4 quarters	Consolidated score of 76 or a benchmark of 60th percentile in 3 of 4 quarters	Consolidated score of 76 or a benchmark of 60th percentile in 4 of 4 quarters	Below Threshold		
Utility Consolidated Reliability: System Average Interruption Duration Index (SAIDI) ⁵ promotes system reliability for customers	5%	127 minutes and Reliability SAIDI PIM penalty \$340,000 or less	111 minutes and no Reliability SAIDI PIM penalty	96 minutes and no Reliability SAIDI PIM penalty	119 minutes and Reliability SAIDI PIM penalty \$79,000		
Utility Consolidated Reliability: System Average Interruption Frequency Index (SAIFI) ⁵ promotes system reliability for customers	5%	1.34 interruptions and Reliability SAIFI PIM penalty \$340,000 or less	1.21 interruptions and no Reliability SAIFI PIM penalty	1.08 interruptions and no Reliability SAIFI PIM penalty	1.06 interruptions and no Reliability SAIFI PIM penalty		
Utility Consolidated Safety: Total Cases Incident Rate (TCIR) ⁶ rewards improvements in workplace safety, promoting employee well-being and reducing expense	7.5%	1.37 TCIR	1.03 TCIR	0.92 TCIR	1.61 TCIR		
Utility Consolidated Safety: Severity Rates ⁶ rewards improvements in workplace safety, promoting employee well-being and reducing expense	7.5%	18.53	16.00	13.46	37.11		74%
Utility Consolidated Human Capital Management (HCM): Strategic Workforce Planning ⁷ rewards strategic workforce supply and demand assessment and development of effective people strategies	5%	Create strategic workforce plans for 1 strategic initiative and for each of the 4 strategic workforce plans that were created in 2021, complete 70% of the action items that have target completion dates in 2022	Create strategic workforce plans for 2 strategic initiatives and for each of the 4 strategic workforce plans that were created in 2021, complete 80% of the action items that have target completion dates in 2022	Create strategic workforce plans for 3 strategic initiatives and for each of the 4 strategic workforce plans that were created in 2021, complete 90% of the action items that have target completion dates in 2022	Maximum		

1	Utility Consolidated Human Capital Management (HCM): Diversity, Equity & Inclusion (DEI) ⁷ promotes awareness and removal of barriers to equity and inclusion in the workplace		80% of employees participate in a minimum of one qualifying DEI activity	90% of employees participate in a minimum of one qualifying DEI activity	99% of employees participate in a minimum of one qualifying DEI activity	100% of employees participate in a minimum of one qualifying DEI activity
2						
3						
4	Utility Decarbonization: Renewable Portfolio Standard (RPS) ⁸ promotes increased sales of energy derived from renewable sources	5%	39.0%	40.0%	41.0%	39.1%
5						
6	Utility Decarbonization: Electrifications promotes the decarbonization of Hawai'i through improved electric vehicle charging infrastructure				Achieve the Target, plus: 1. Complete design and construction of infrastructure to support 2 additional new fast chargers at 2 existing sites and 2. If approved by PUC, launch Commercial Make Ready Pilot within 30 days of final authority to do so	Threshold
7						
8			1. Launch eBus Make Ready Pilot within 30 days of PUC acceptance or approval of Pilot Final Program Design Report and 2. Commission 7 new fast chargers at 4 new sites	Achieve the Threshold, plus: 1. Complete design and construction of infrastructure to support 2 additional new fast chargers at 2 existing sites		
9						
10		5%				
11						
12						
13						
14						
15	Teranishi*					
16	ASB ROAs	40%	0.66%	0.76%	0.86%	0.82%
						180%

17 110. As the chart reveals, no weighting whatsoever is given to executives' success or
18 lack thereof in reducing one of the material enterprise risks facing Hawaiian Electric — the risk of
19 wildfires caused by the Company's old and decaying electric equipment. By adopting and
20 approving a compensation policy that fails to factor in this material enterprise risk, the Director
21 Defendants breached their fiduciary duties.

22 **H. Defendants Caused Hawaiian Electric to Make Materially Misleading Statements**
23 **About the Company's Safety Efforts and Risk Mitigation Controls**

24 111. In the Company's annual proxy statements from 2021 to 2023, the Individual
25 Defendants caused the Company to represent that the Board of Directors, especially the
26 Compensation & Human Capital Management Committee (currently comprised of Defendants
27 Fargo, Flores, Fowler, and Kane) structured executive compensation at the Company in such a
28

1 manner as to protect the Company from excessive risk taking by its executives. For example, the
2 2023 Proxy stated in all capitalized letters:

3 OUR PROGRAMS ARE DESIGNED TO GUARD AGAINST EXCESSIVE RISK¹⁷

4 112. The 2023 Proxy also made the following misrepresentation:

5 Risk mitigation features of our programs. Our compensation programs incorporate
6 the following features to promote prudent decision-making and guard against
7 excessive risk¹⁸

8 113. The 2023 Proxy also represented the following:

9 **Board Oversight of Strategy and Risk Management**

10 *Effective management of risks and opportunities improves the sustainability,
11 well-being and resilience of our communities, our state and our environment —
12 and leads to sustained long-term value creation for our investors.*

13 As a Board, we see ESG-related strategies and risks as having the same potential
14 as other strategies and risks to impact long-term value creation. As a result, *we
15 deliberately composed our Board to ensure we have directors who have direct
16 experience related to ESG topics, including renewable energy, climate change
17 strategy and environmental management.*

18 Our full Board reviews and provides input on our strategies and major risks and
19 determines our risk appetite. This includes risks relating to safety, other human
20 capital considerations and climate change.

21 114. Under a heading entitled “What We Don’t Do,” the 2023 Proxy also represented
22 “No compensation programs that are reasonably likely to create material risk to the Company.”¹⁹

23 115. These statements were materially false and/or misleading because the Board of
24 Directors and its Compensation & Human Capital Management Committee had done absolutely
25 nothing to tie executive compensation to success in reducing the risk of wildfires being caused by
26 the Company’s electrical equipment. Since wildfire risk was and is a highly material risk to the
27 Company, the failure of the Company’s compensation practices and policies to eliminate or
28

26 ¹⁷ See 2023 Proxy at p. 48.

27 ¹⁸ *Id.*

28 ¹⁹ *Id.* at p. 31.

1 mitigate risks from wildfires was as material deficiency that should have been, but was not,
2 disclosed in the Proxy Statements.

3 **I. The Individual Defendants Breached Their Duties By Failing to Preserve Evidence**
4 **After the Maui Fire**

5 116. The Individual Defendants breached their fiduciary duties to the Companies by
6 causing Hawaiian Electric to haul away fallen poles, power lines, transformers, conductors, and
7 other equipment from near a Lahaina substation starting around Aug. 12, 2023, before
8 investigators from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) arrived
9 on scene.²⁰

10 117. The Defendants' actions likely violated national guidelines on how utilities should
11 handle and preserve evidence after a wildfire and deprived investigators the opportunity to view
12 any poles or downed lines in an undisturbed condition before or after the fire started, according to
13 court documents, letters and other records obtained by The Washington Post.

14 118. In a statement, Hawaiian Electric spokesman Darren Pai admitted that the Company
15 removed evidence from the site of the Maui Fire but claimed that the evidence had been "carefully
16 photographed, documented and stored." But carefully photographing evidence and then moving
17 it from its original location does not comply with applicable standards and interferes with a proper
18 investigation by independent experts.

19 119. By the time ATF investigators arrived on Maui to help with determining the origin
20 and cause of the wildfires there, Hawaiian Electric's utility crews had cleared much of the site near
21 the substation off Lahainaluna Road and moved damaged equipment to a warehouse.²¹

22 120. Hawaiian Electric issued a statement indicating that it would "take reasonable steps
23 to preserve evidence but cannot make any guarantees due to the rapidly evolving situation on the
24 ground, which also is not within our control." There is a strict process for how utilities should
25 handle the site where a fire started. The National Fire Protection Association states that "the

26 ²⁰ See Brianna Sacks, "Maui Utility May Have Compromised Evidence in Fire Probe, Lawyers
27 Say," Washington Post, Aug. 26, 2023.

28 ²¹ *Id.*

1 integrity of the fire scene needs to be preserved. ... Evidence should not be handled or removed
2 without documentation” and the scene cordoned off with tape or flags.

3 121. The Individual Defendants breached their fiduciary duties by failing to immediately
4 preserve all evidence. Hawaiian Electric likely faces large penalties for the Company’s failure to
5 preserve such evidence. California utility officials fined PG&E and SoCal Edison for altering or
6 not properly preserving evidence after a fire before investigators arrived.

7 122. PG&E is not the only utility that has faced legal troubles for removing evidence
8 from a fire scene. After a disastrous spate of fires in Oregon in 2020, a class-action lawsuit was
9 filed against PacifiCorp for the blazes. The case focused on the utility’s destruction of evidence.
10 A jury found the utility had played a significant role in starting those blazes and owed plaintiffs
11 \$73 million.

12 123. Defendant Fowler previously served in executive roles for 38 years at Portland
13 General Electric, including as President and CEO of the utility. Due to such experience, Fowler
14 was well aware of the duty to preserve evidence and aware of the fines and penalties that
15 PacifiCorp faced for its failure to preserve evidence. Notwithstanding such knowledge, Fowler
16 and her fellow directors breached their fiduciary duties to immediately cause Hawaiian Electric to
17 preserve all evidence after the Maui Fire.

18 124. All the Individual Defendants were also aware of the fines and penalties PG&E
19 faced for its failure to preserve evidence. They had closely followed the legal and regulatory
20 proceedings against PG&E after the Northern California wildfires, including the Butte and Camp
21 fires. In 2022, Hawaiian Electric stated that it was familiar with PG&E’s troubles, noting in a
22 regulatory filing that utility companies can be held liable when it comes to sparking or spreading
23 a wildfire and citing PG&E’s “\$15 billion settlement” with victims as an example. “The risk of a
24 utility system causing a wildfire ignition is significant,” the company wrote.

25 125. On the afternoon of Aug. 12, 2023, a Washington Post reporter visited the area
26 where residents say, and videos show the initial Maui Fire ignited. In a dirt alleyway across from
27 the Hawaiian Electric substation, there was a damaged pole lying on the ground, the top of it
28 haphazardly sitting in some nearby trees, with lines coiled up and pieces of a pole stacked around

1 it. Experts who examined the photo questioned why the material was left there without tags or
2 being taped off from the public. About a week later, that equipment was gone.²²

3 126. In comparison, within hours of the Camp Fire igniting, CalFire arson investigators
4 arrived at PG&E’s transmission towers where they suspected the blaze ignited and assessed the
5 ground, noticing the fire’s burned path, according to a report from the Butte County district
6 attorney. “Looking up, the investigators saw a detached line hanging down into the steel
7 superstructure of the high-voltage transmission tower,” the report said. They immediately
8 launched an investigation.

9 127. In a news conference after the fire, Hawaiian Electric *CEO Shelee Kimura said*
10 *that 400 out of West Maui’s 750 poles were damaged or destroyed in the windstorm and fires,*
11 *and 300 out of 575 transformers were visibly damaged.* The substation off Lahainaluna Road
12 was destroyed.

13 128. Data from Whisker Labs, a company that uses an advanced sensor network to
14 monitor grids across the United States, found numerous incidents in the power grid late on Aug.
15 7, 2023 knocking out power. The power came back on at 6:10 a.m. the next day, the data shows,
16 and then went back off again at 6:39 a.m. It was during that time that a fire sparked in the grass
17 by the Lahainaluna substation, according to residents and the Maui Fire Department.²³

18 **VII. DAMAGES**

19 **A. Defendants Have Inflicted Massive Damages Upon HAWAIIAN ELECTRIC**

20 129. Defendants’ gross mismanagement of HAWAIIAN ELECTRIC has led to
21 corporate liability of billions of dollars. Defendants’ conduct, in leading to this outcome, was a
22 breach of their fiduciary duty to HAWAIIAN ELECTRIC and of their duties of loyalty and care.

23 130. “Hawaiian Electric focused on different issues other than fire safety and has lost
24 almost \$3 billion in market capitalization” since the Maui fire, said Michael Underhill, chief
25 investment officer at Capital Innovations.

26 _____
27 ²² *Id.*

28 ²³ *Id.*

1. Share Price Decimated by Over 70%

131. As of August 31, 2023, the Company's stock was down 70% year-to-date, almost exclusively due to liabilities from the Maui Fire, compared to the S&P 500, which increased 13.5%, as reflected in the following chart:



132. Given HAWAIIAN ELECTRIC's long history of corporate malfeasance, this was a foreseeable and likely consequence of any Maui-Fire-like catastrophe. Defendants should have done everything possible to prevent such a fire. Instead, they delayed necessary safety and maintenance investments and diverted money to Defendants' compensation and to green energy initiatives. Thus, Defendants violated their duties of care and loyalty to HAWAIIAN ELECTRIC by creating a loss in value of at least \$3,000,000,000 USD, which was the stock market's initial estimate of HAWAIIAN ELECTRIC's potential liability for the Maui Fire.

2. \$3.8 Billion In Liability Created

1 133. Additionally, Defendants actions, discussed above, in creating the conditions that
2 precipitated the Maui Fire, caused massive liabilities for HAWAIIAN ELECTRIC, currently
3 estimated to amount to a minimum of \$3,800,000,000. Spencer Kimball, *Electric Utilities Face*
4 *Billions in Wildfire Liability With Aging Power Lines Risking Another Catastrophe*, CNBC, Aug.
5 28, 2023 (Fitch warned that the company faces more than \$3.8 billion in potential liability for the
6 Maui wildfires.). These damages were the foreseeable and likely consequence of any Maui-Fire-
7 like conflagration.

8 3. HAWAIIAN ELECTRIC's Credit Rating Slashed

9 134. In the aftermath of the Maui Fire, the rating agencies slashed HAWAIIAN
10 ELECTRIC's credit rating to near-junk status: "Fitch, Moody's and S&P recently downgraded
11 Hawaiian Electric's credit rating to junk status, with Fitch warning that the company faces more
12 than \$3.8 billion in potential liability for the Maui wildfires." Spencer Kimball, *Electric Utilities*
13 *Face Billions in Wildfire Liability With Aging Power Lines Risking Another Catastrophe*, CNBC,
14 Aug. 28, 2023. This means that it will be more expensive than it was before for the Company to
15 borrow money for the safety and maintenance improvements that are so desperately needed.
16 Unfortunately, the higher interest rate payments will also mean that less money, in absolute terms,
17 will be available for needed improvements to the Company's electrical infrastructure. By creating
18 this foreseeable and likely cycle of increasing costs of capital, Defendants have breached their
19 duties to HAWAIIAN ELECTRIC.

20 135. In addition, Defendants' wrongdoing has caused the government to open a new
21 investigation into the Board's governance practices. On August 31, 2023, it was announced that
22 House Energy and Commerce Committee Chair Cathy McMorris Rodgers (R-WA), Energy,
23 Climate, and Grid Security Subcommittee Chair Jeff Duncan (R-SC), and Oversight and
24 Investigations Subcommittee Chair Morgan Griffith (R-VA) sent a letter to Hawaiian Electric
25 seeking information regarding the role of electric infrastructure in the August fires that broke out
26 on the island of Maui and in the town of Lahaina. Letters were also sent to the Hawaii Public
27 Utilities Commission and the Hawai'i State Energy Office. Chairs Rodgers, Duncan, and Griffith
28 asked Hawaiian Electric to respond to the following requests for information:

- 1 (a) What is your understanding of the sequence of events and actions on August 8,
2 2023, involving the Lahaina fire, including actions taken by Hawaiian Electric?
3
4 (b) Please describe all actions taken by Hawaiian Electric to address fire risks to the
5 electric grid on Maui prior to August 8, 2023 (going back through 2013).
6
7 (c) Please describe all actions taken by Hawaiian Electric, Hawaii Public Utilities
8 Commission, Hawai'i State Energy Office and any other applicable entities to
9 mitigate invasive grasses and other vegetation on the island of Maui, in order to
10 prevent or minimize fire risks.
11
12 (d) Please provide Hawaiian Electric spending on Maui for the past ten years,
13 including, but not limited to, specific spending for utility infrastructure, for energy
14 generation, to meet Hawaii's renewable energy mandates, and to address identified
15 fire risks.
16
17 (e) What Hawaiian Electric actions regarding fire risks to the Maui electric grid are
18 pending before the Hawaii Public Utilities Commission? What is the status of
19 those actions?
20
21 (f) Has the Hawai'i State Energy Office been involved in grid modernization,
22 hardening, and resilience efforts by Hawaiian Electric? If yes, please describe
23 those efforts.
24
25 (g) In July 2021, the Maui County government assessed and issued a report on the
26 growing threat of fire to the island. Did the report involve any recommendations
27 regarding the electric grid? If yes, what is the status of implementing those
28 recommendations?
29
30 (h) What orders has the Hawaii Public Utilities Commission issued, or actions taken,
31 since 2018, to address fire risks to the electric grid on Maui?
32
33 (i) What actions did Hawaiian Electric take after the Maui fires on August 8, 2023,
34 relating to the removal of any equipment, including but not limited to, damaged
35 power lines and poles?

1 (j) Did Hawaiian Electric, Hawaii Public Utilities Commission, and/or the Hawai'i
2 State Energy Office receive any funds from the Infrastructure Investment and Jobs
3 Act of 2021 or the Inflation Reduction Act of 2022? If so, please provide the
4 amount of money, the program under which the funding was awarded, and the type
5 of funding (grant, loan, etc.).

6 **4. Hawaiian Electric Has Been Forced to Cut Its Dividend**

7 136. On August 24, 2023, the Company announced that it was discontinuing its
8 dividend. The Company's filing, signed by Defendant Sekimura, stated: "the HEI Board of
9 Directors has determined that, to further increase its cash position, it will suspend the quarterly
10 cash dividend on the company's common stock, beginning with the third quarter of 2023. We
11 regret that this may impact members of our local communities who rely on this dividend as a
12 source of income."

13 137. The stock market understands most investors buy stock in utilities such as Hawaiian
14 Electric for the dividends. The loss of the dividend hurts the Company's investors and damages
15 the Company's ability to attract new investors and retain existing investors. The Company's
16 August 24, 2023 filing admitted that the dividend cut was directly caused by the liabilities created
17 by the Maui Fire. The filing stated: "We are proactively strengthening our balance sheets as
18 Hawaiian Electric continues providing reliable service to our customers and supporting the
19 recovery in Maui."

20 **VIII. DEMAND FUTILITY ALLEGATIONS**

21 138. Plaintiff brings this action derivatively in the right of and for the benefit of
22 HAWAIIAN ELECTRIC to redress injuries suffered and to be suffered by HAWAIIAN
23 ELECTRIC as a result of Defendants' breaches of fiduciary duty, abuse of control, and gross
24 mismanagement. Plaintiff and Plaintiff's counsel will adequately and fairly represent the interests
25 of HAWAIIAN ELECTRIC in enforcing and prosecuting its rights. Prior to filing, Plaintiff,
26 through counsel, delivered a copy of the complaint to HAWAIIAN ELECTRIC.

27 139. Plaintiff was a shareholder of HAWAIIAN ELECTRIC Corporation at the time of
28 the wrongdoing complained of, has continuously been a shareholder of HAWAIIAN ELECTRIC

1 since at least 2005, and is a current shareholder. Hawaiian Electric Company, Inc. is the operating
2 subsidiary of Hawaiian Electric Industries, Inc.

3 140. Based upon the Defendants' acts and omissions in direct violation of their fiduciary
4 duties of care, good faith, honesty, and loyalty, a pre-suit demand on the HAWAIIAN ELECTRIC
5 Board to bring the claims asserted in this action is excused as a futile and useless act. HAWAIIAN
6 ELECTRIC's Board of Directors personally profited from the wrongdoing alleged in this
7 Complaint, and it was HAWAIIAN ELECTRIC's Board of Directors and officers who oversaw
8 HAWAIIAN ELECTRIC and its culture of neglect, described herein.

9 141. Plaintiff has not made any demand on the Board of Directors of Hawaiian Electric
10 Corporation or Hawaiian Electric Industries to investigate and prosecute the wrongdoing alleged
11 herein. Such a demand is excused because: (i) making a demand would be a futile and useless act
12 as the majority of both Companies' directors are not able to conduct an independent and objective
13 investigation of the alleged wrongdoing, and (ii) the wrongful conduct of Defendants is not subject
14 to protection under the business judgment rule. Under such circumstances, the demand
15 requirement is excused since making such a demand on the Boards of Directors would be futile.
16 *Fujimoto v. Au*, 95 Haw. 116, 19 P.3d 699 (2001).

17 142. At the time this derivative lawsuit was commenced, HAWAIIAN ELECTRIC
18 INDUSTRIES INC.'s Board of Directors consisted of the following seven directors: Fargo, Seu,
19 Connors, Flores, Fowler, Kane, and Scilacci. The board of directors of Hawaiian Electric
20 Company, Inc. consisted of the following six directors: Johns, Kimura, Ajello, Kip, Pakkala and
21 Taniguchi. All directors served on the Boards during the period during which the Companies
22 engaged in, authorized, or ignored the wrongdoing alleged in this complaint.

23 143. All members of the Board directly participated in the alleged wrongdoing and thus
24 are interested in the challenged misconduct. As a result, all the directors are incapable of
25 exercising independent and objective business judgment. This demonstrates (i) that all of the
26 current directors of both Hawaiian Electric Industries Inc. and Hawaiian Electric Company Inc.
27 are potentially liable to the Companies, (ii) that they cannot be trusted to appropriately adjudicate
28 this case as they all directly participated in and approved the wrongdoing; (iii) they have condoned

1 and intend to condone and continue such misconduct, and (iv) that the current directors of both
2 Boards have demonstrated no intention of suing themselves or the other individuals whose
3 wrongdoing resulted in the deadliest natural disaster in Hawaii's history.

4 144. Furthermore, the members of both Boards of Directors profited substantially from
5 maintaining an environment and culture that prioritized short-term gains over safety and
6 maintenance. The misconduct of both Boards of Directors resulted in the Maui Fire, which has
7 destroyed HAWAIIAN ELECTRIC's credibility and resulted in the deaths of at least 115 people.
8 The culture that led to the incidents at issue was fostered by the Defendants in this case, who lack
9 the objectivity to judge their own misconduct. Accordingly, a majority of both Boards engaged in
10 the wrongdoing and have interests adverse to performing a fair and unbiased investigation.

11 145. Demand is also futile because the Board has neutered itself from any ability to
12 pursue recoupment of the significant and improper compensation realized by the Defendants.
13 Hawaiian Electric has a clawback policy, but it is limited to situations where an employee's
14 misconduct results in a restatement of the Company's financial results. The policy states:

15 "An executive compensation recovery policy (clawback policy) permits
16 recoupment of performance-based compensation paid to executives found
17 personally responsible for fraud, gross negligence or intentional misconduct *that*
causes a significant restatement of HET's financial statements."

18 *See* 2023 Proxy Statement at p. 48 (emphasis added).

19 146. Thus, even if it is established that some of the Individual Defendants engaged in
20 fraud, gross negligence, or intentional misconduct with respect to the Maui Fire, the Director
21 Defendants have no ability to recoup such executives' performance-based compensation unless
22 the Company restates its financial results. A restatement is not likely in this case because the
23 wrongdoing has nothing to do with improper recognition of revenue, and instead involves the
24 failure of the defendants to protect the Company against risks from wildfires. Because the Board
25 is not capable of pursuing the relief sought in this action concerning improper and unjust
26 compensation awarded to Defendants, demand is futile; Plaintiff is the only party who can pursue
27 and obtain such relief since Plaintiff's claims are not encumbered by the Company's clawback
28 policy.

1 147. Demand is also futile because all Director Defendants of both Companies acted in
2 bad faith and breached their duty of loyalty to the Companies by causing the Companies to move
3 evidence about the Maui Fire, thus failing to preserve key evidence in its original location so it
4 could be viewed and analyzed by the ATF. As demonstrated in detail *supra*, the Individual
5 Defendants caused the Company to move utility poles, transformers, and other key evidence to a
6 warehouse before AFT investigators could arrive on the scene. This conduct impeded
7 investigators' ability to view the evidence in its original location, unadulterated. The misconduct
8 and evidence spoliation will likely result in substantial fines and penalties being imposed on the
9 Companies. Breaches of the duties of good faith and loyalty cannot be indemnified. As a result,
10 the Director Defendants of both Companies face a substantial likelihood of personal liability for
11 breaching such duties. Demand as to all Director Defendants is thus futile.

12 148. Defendants cannot consider a demand because (i) their decision to operate
13 HAWAIIAN ELECTRIC in violation of the law is not a protected business decision and (ii) they
14 all face a substantial likelihood of liability for breaching their duties of loyalty and good faith.
15 These defendants were either informed of HAWAIIAN ELECTRIC's deteriorating and dangerous
16 electric infrastructure and failed to take action or are consciously violating their duty to stay
17 informed about the core business of HAWAIIAN ELECTRIC. Such a decision could not have
18 been an action taken in good faith and is accordingly not protected by the business judgment rule.
19 Furthermore, the conscious failure of Defendants to act in the face of the overwhelming number
20 of warnings is a breach of the duties of care and loyalty. This breach subjects them to a substantial
21 likelihood of liability. Since demand on the majority of the Boards of Directors is futile, demand
22 is excused.

23 149. Despite the Individual Defendants having knowledge of the history of their own
24 misconduct and mismanagement, the current Boards of Directors have failed and refused to seek
25 recovery for HAWAIIAN ELECTRIC for any of the misconduct alleged herein.

26 150. HAWAIIAN ELECTRIC's directors and top officers pocketed millions of dollars
27 in salaries, bonuses, and directors' fees, further enriching themselves at the expense of the
28 Companies to which they owe fiduciary duties of good faith, honesty, and loyalty. The Companies'

1 leadership made an active decision to divert money necessary for safety and operational protocols
2 towards other purposes and at the same time approved bonus payments and developed a corporate
3 culture that placed short-term economic gain over long-term profitability. In so doing, the
4 Individual Defendants and the Boards of Directors have caused irreparable financial and
5 reputational harm to the Companies. The directors have for years consciously failed to take
6 responsibility for safeguarding the public against wildfires caused by the Company's electrical
7 equipment. Thus, neither of the Boards of Directors could exercise independent objective
8 judgment in deciding whether to bring this action or to vigorously prosecute the claims alleged
9 herein.

10 151. The Directors cannot be relied upon to reach a truly independent decision about
11 whether to commence the demanded action against themselves and the officers responsible for the
12 misconduct alleged in this Complaint because, *inter alia*, the Boards are currently dominated by
13 Defendants (i) who were personally and directly involved in the acts of mismanagement, abuse of
14 control, and waste alleged, (ii) who approved the actions complained of, and (ii) to whose
15 directives and views the Boards have consistently acceded and will continue to accede.

16 152. A majority of the directors received personal and financial benefits while they
17 caused or permitted the Company to engage in the extensive misconduct detailed in this complaint.
18 Non-employee directors received annual cash retainers, cash fees for meetings attended, as well
19 as lucrative equity awards for serving as directors and members of Board committees. Employee
20 directors were also compensated in both cash and "incentive" awards of cash and stock, in large
21 part based on the Company's financial and sales results.

22 153. The members of the Boards of Directors are biased and cannot appropriately and
23 fairly adjudicate any demand on the Boards.

1 **IX. CAUSES OF ACTION**

2 **A. First Cause of Action: Breach of Fiduciary Duty**

3 **(Against All Defendants)**

4 154. Plaintiff incorporates by reference the allegations set forth above as though fully
5 restated herein.

6 155. Defendants, as the Companies' directors and officers, owed fiduciary duties to the
7 Companies, and were and are required to use their abilities to control and manage the Companies
8 in a fair, just, and equitable manner to ensure that the Companies complied with applicable laws
9 and contractual obligations, to refrain from abusing their positions of control, and not to favor their
10 own interests at the expense of the Companies. Defendants breached their fiduciary duties to the
11 Companies, including without limitation their duties of care, good faith, honesty, and loyalty.

12 156. Defendants' misconduct was a substantial and proximate cause of the harm caused
13 to the Companies.

14 157. The wrongful conduct particularized herein was not due to an honest error in
15 judgment but rather to Defendants' gross mismanagement, bad faith, and reckless disregard of the
16 rights and interests of the Companies, its shareholders, and its ratepayers, and for acting without
17 the reasonable and ordinary care which they owed the Companies. As a result, Defendants have
18 participated in harming the Companies and have breached fiduciary duties owed to the Companies.
19 Defendants knowingly aided, encouraged, cooperated and/or participated in, and substantially
20 assisted the other Defendants in the breaches of their fiduciary duties.

21 158. By reason of the foregoing, the Companies have sustained and will continue to
22 sustain damages and injuries for which they have no adequate remedy at law.

23 **B. Second Cause of Action: Abuse of Control**

24 **(Against All Defendants)**

25 159. Plaintiff incorporates by reference the allegations set forth above as though fully
26 restated herein.

27 160. By virtue of their positions and financial holdings in the Companies, Defendants
28 exercised control over the Companies and its operations and owed duties as officers and directors

1 and controlling persons to the Companies not to use their positions of control within the Companies
2 for their own personal interests and contrary to the interests of the Companies.

3 161. Defendants' conduct amounts to an abuse of their control of the Companies in
4 violation of their obligations to the Companies. Defendants knowingly aided, encouraged,
5 cooperated, and participated in this abuse of control and substantially assisted the other defendants
6 in their abuse of control.

7 162. As a result of Defendants' abuse of control, the Companies have sustained and will
8 continue to sustain damages and injuries for which it has no adequate remedy at law.

9 **C. Third Cause of Action: Corporate Waste**

10 **(Against All Defendants)**

11 163. Plaintiff incorporates by reference the allegations set forth above as though fully
12 restated herein.

13 164. As alleged in detail above, Defendants had a fiduciary duty to exercise good faith
14 and diligence in the administration of the affairs of the Companies and in the use and preservation
15 of its property and assets. Defendants also had the highest obligation of fair dealing.

16 165. Defendants breached these duties by wasting the Companies' corporate assets. For
17 example, the Defendants diverted corporate assets that were specifically intended for safety and
18 maintenance for other improper corporate purposes.

19 166. As a result of the Defendants' actions, the Companies have suffered losses and
20 incurred substantial costs in investigating and defending itself against pending actions. The
21 Companies also have to incur the substantial costs of conducting internal investigations, as well as
22 the costs of dealing with investigations by regulatory agencies. The Companies also face
23 substantial penalties and fines for failing to preserve evidence related to the Maui Fire.

24 167. As a result of the Defendants' wrongful conduct, the Companies have suffered and
25 continues to suffer damages, all in an amount to be determined according to proof at trial.

1 **D. Unjust Enrichment**

2 **(Against All Defendants)**

3 168. Plaintiff incorporates by reference the allegations set forth above as though fully
4 restated herein.

5 169. Defendants derived compensation and other benefits from the Companies and were
6 otherwise unjustly enriched during the time in which the wrongful practices occurred to the
7 detriment of the Companies. Defendants profited by engaging in the wrongful conduct set forth
8 in the Complaint above. Defendants also wrongfully converted funds belonging to the Companies.

9 170. Defendants' enrichment is directly and causally related to the detriment of the
10 Companies.

11 171. These benefits were accepted by Defendants under such circumstances that it would
12 be inequitable for it to be retained without payment. As alleged above, Defendants breached their
13 fiduciary duties of good faith and loyalty and abused their positions of control to the Companies.
14 Therefore, Defendants are not justified to retain the benefits conferred upon them.

15 **X. PRAYER FOR RELIEF**

16 Plaintiff, on behalf of herself and the Companies, prays for relief and judgment as set forth
17 below:

18 1. Awarding compensatory damages against all Defendants, jointly and severally, in
19 an amount to be proven at trial;

20 2. Awarding restitution, disgorgement of all illicit proceeds generated as a result of
21 the wrongful conduct alleged herein;

22 3. Awarding appropriate equitable relief, including any injunctive or declaratory relief
23 necessary to change and/or reform HAWAIIAN ELECTRIC's corporate governance, policies and
24 culture;

25 4. Awarding punitive damages at the maximum amount permitted by law;

26 5. Awarding pre-judgment interest, as well as reasonable attorneys' fees and other
27 costs; and

28 6. Awarding such other relief as this Court may deem just and proper.

1 DATED: Honolulu, Hawaii, September 8, 2023

2 Respectfully submitted,

3 TAMASHIRO SOGI & BONNER
4 A LAW CORPORATION

5 /s/ Addison D. Bonner

6 Addison D. Bonner

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21 *Attorneys for Plaintiff*
22 CHRISTINA RICE, derivatively on
23 behalf of Hawaiian Electric Industries, Inc.
24 and Hawaiian Electric Company, Inc.

VERIFICATION

1
2 I, Christina Rice, verify that I am a shareholder of nominal defendant Hawaiian Electric
3 Industries, Inc. (the “Company”), and that I have continuously owned stock in the Company since
4 at least 2005. I have reviewed the allegations in this Shareholder Derivative Complaint (the
5 “Complaint”). As to those allegations of which I have personal knowledge, I believe them to be
6 true; as to those allegations of which I lack personal knowledge, I rely upon my counsel and
7 counsel’s investigation, and believe them to be true. Having received a copy of the Complaint and
8 reviewed it with counsel, I authorize its filing.
9

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Dated: 9/8/2023 | 4:57 PM PDT

12
13 *Chris Rice*

14 _____
Christina Rice