OFFICE OF HAWAIIAN AFFAIRS

BOARD OF TRUSTEES

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Keoni Souza
OHA Board of Trustees Vice Chairperson
Chair of Investments & Land Management Committee
Trustee, At-Large

Phone: (808) 594-1857

OFFICE OF HAWAIIAN AFFAIRS
BOARD OF TRUSTEES
560 N. Nimitz Hwy., Suite 200
Honolulu, HI 96817

CONFIDENTIAL
Trustee Code of Conduct Complaint — Strictly Confidential Pursuant to OHA BOT Executive Policy Manual, Appendix 7

June 29, 2026

Honorable Kaialiʻi Kahele
Chairperson, Board of Trustees
Office of Hawaiian Affairs
560 N. Nimitz Highway, Suite 200
Honolulu, Hawaiʻi 96817

Re: Letter of Complaint Pursuant to OHA BOT Executive Policy Manual, Appendix 7 — Trustee Code of Conduct

Respondent Trustees: Carmen Hulu Lindsey, Kalei Akaka, Keliʻi Akina, and Luana Alapa

Re: Unauthorized Filing of Dkt. 162 in *Ferreira v. Office of Hawaiian Affairs, et al.*, Civil No. 1CCV-25-0001822

Dear Chair Kahele:

I write in my capacity as Vice Chair of the Board of Trustees ("Board") of the Office of Hawaiian Affairs ("OHA") to file this Letter of Complaint pursuant to the OHA BOT Executive Policy Manual ("Policy Manual"), Appendix 7 — Trustee Code of Conduct ("Code of Conduct"). This complaint is directed at Trustees Carmen Hulu Lindsey, Kalei Akaka, Keliʻi Akina, and Luana Alapa (collectively, the "Respondent Trustees").

OHA Trustees serve as members of a public trust governing board. The Board is responsible for setting OHA policy and managing OHA's trust, and individual Trustees may dissent, vote no, express personal views, seek personal legal advice, and preserve personal defenses. However, absent Board authorization, individual Trustees may not purport to act in an official capacity to bind OHA, waive OHA-held privileges, disclose confidential Board communications, or take litigation positions contrary to duly adopted Board action.

Keoni Souza
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Chair of Investments & Land Management Committee
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I respectfully request that this complaint be processed in strict confidence in accordance with the procedures set forth in the Code of Conduct and that it be forwarded to the Respondent Trustees and all other Trustees within five (5) days as required thereunder.

I. Nature of the Complaint

For clarity, this complaint does not challenge any Trustee's right to dissent, vote against a Board action, speak as an individual, seek personal legal advice, or preserve personal defenses. Nor does it seek to punish disagreement with any Board decision. This complaint challenges the alleged use of official capacity, outside Board authorization, to publicly file a court pleading that purports to take positions for OHA or for Trustees in their official capacities; takes positions contrary to duly adopted Board directives and OHA's official litigation position; materially prejudices or risks prejudicing OHA, its governance authority, and its beneficiaries; and/or discloses, uses, or purports to waive OHA-held confidential or privileged information.

On June 26, 2026, a document titled "Defendants Carmen Hulu Lindsey, Kalei Akaka, Keli'i Akina, and Luana Alapa, Each in Their Official Capacities, Answer to First Amended Complaint, Filed April 21, 2026 [Dkt. 131]" (the "Answer") was filed at Docket 162 in *Ferreira v. Office of Hawaiian Affairs, et al.*, Civil No. 1CCV-25-0001822 (the "Litigation"). The Answer was filed by counsel from Goodsill Anderson Quinn & Stifel LLP on behalf of the Respondent Trustees, each in their official capacities.

The Answer was filed without authorization from the Board, without the knowledge or consent of the Chairperson, and without notifying OHA's Board legal counsel (Dentons US LLP). The Board has never authorized Goodsill Anderson Quinn & Stifel LLP to appear for OHA, to appear for Trustees in their official capacities in a manner purporting to bind OHA, or to advance positions inconsistent with OHA's Board-authorized litigation strategy. The Board has likewise never authorized any of the Respondent Trustees to file pleadings or papers on OHA's behalf in this Litigation. To the contrary, the Board, at a duly noticed and agendized meeting, authorized and ratified OHA's litigation strategy—to compel arbitration pursuant to the written employment agreement—authorized Dentons US LLP as OHA's counsel of record, ratified court filings made by Dentons in furtherance of that strategy, and expressly directed that positions taken by Trustees in their official capacities must align with duly adopted Board positions and that any inconsistent filings be withdrawn.

Because the Respondent Trustees are named in this Litigation solely in their official capacities, a suit against them in that capacity is, as a matter of law, a suit against OHA itself. *See Kentucky v.*

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Chair of Investments & Land Management Committee
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Graham, 473 U.S. 159, 165–66 (1985). Accordingly, the filing of the Answer purports to bind OHA to positions directly contrary to the Board's duly adopted litigation strategy and is materially prejudicial to OHA and its beneficiaries.

Additionally, the Answer appears to disclose and rely upon confidential and privileged Board communications, including matters discussed during executive session, and purports to waive attorney-client privilege by supporting disclosure of executive-session minutes—all without the affirmative vote of the full Board.

II. Provisions Allegedly Violated

Based on the foregoing facts, I allege that the Respondent Trustees' conduct appears to violate the following provisions of the Code of Conduct, the Policy Manual, and applicable law:

A. Duty of Care (Policy Manual § 1.3.b(1); Appendix 7, Subpart 1A)

Trustees are required to act within their authority, in good faith, with due care, on a fully informed basis and in a deliberative manner. The filing of the Answer without Board authorization, outside any duly called meeting, and in direct contravention of a duly adopted Board litigation strategy appears to violate the duty of informed decision-making and the requirement of comprehensive understanding before acting.

B. Duty of Loyalty (Policy Manual § 1.3.b(2); Appendix 7, Subpart 1A)

Trustees must exercise power in OHA's best interest, dedicate themselves to OHA's mission, and refrain from disclosure of confidential, proprietary, or privileged information. The unauthorized Answer admitted allegations of the First Amended Complaint that OHA disputes—including allegations that the plaintiff was retaliated against and suffered loss of reputation, and admitting whistleblower liability for retaliation—directly contrary to OHA's interests. Further, no Board member has authority to act solely on their own to further a personal agenda or direct OHA operations. (Appendix 7, Subpart 1A, Duty of Loyalty and Authority to Act.)

C. Duty of Obedience (Policy Manual § 1.3.b(3); Appendix 7, Subpart 1A, § 5)

The duty of obedience requires fidelity to OHA's mission, purpose, Bylaws, and other governing documents, and compliance with OHA's policies and procedures. The Code of Conduct provides that "once the Board has acted, trustees are expected to uphold and support those decisions and comply with duly enacted Executive Policies and directives."

Keoni Souza
OHA Board of Trustees Vice Chairperson
Chair of Investments & Land Management Committee
Trustee, At-Large

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(Appendix 7, Subpart 1A, § 5, Duty of Compliance With Board Decisions.) While trustees may dissent during deliberation and continue to express differing opinions, the filing of legal pleadings in an official capacity that seek to defeat OHA's duly authorized litigation position crosses the line from permissible disagreement into insubordination to Board directives.

D. Duty of Confidentiality and Protection of Privileged Communications (Policy Manual §§ 1.3.c–e, 3.11.c; Appendix 7, Subpart 1A)

The Policy Manual provides that matters discussed in executive session are confidential and shall not be discussed outside executive session (§ 1.3.c); that any matter discussed with BOT attorneys is privileged and only an affirmative vote of the full BOT may waive privilege (§ 1.3.d); and that actions to disclose confidential, proprietary, or privileged information without affirmative vote of the full BOT constitute a breach of fiduciary obligation subject to censure (§ 1.3.e). Section 3.11.c further provides that all legal advice and communications to the BOT are protected by attorney-client privilege, no individual Trustee can waive that privilege, and disclosure without an affirmative vote of the full BOT is a breach of fiduciary obligation subject to censure.

The Answer appears to disclose and reference confidential executive-session communications and purports to support disclosure of executive-session minutes, all without an affirmative vote of the full Board. This conduct appears to constitute a breach of the Respondent Trustees' fiduciary duty of confidentiality.

E. Unauthorized Action Outside Board Meetings (Policy Manual §§ 1.2.b, 1.3.j)

Section 1.3.j provides that "Trustees have decision-making authority only when acting as a Trustee in a duly called and agendized meeting" and that "the BOT shall not be bound in any way by any action or statement on the part of any individual Trustee or employee, except when such statement or action is directly related to a specific action of the BOT." Section 1.2.b confirms that "individual or collective statements by Trustees in any other form have no authority in OHA's operations." The unauthorized Answer was filed without any Board action, policy, or active resolution recorded in the BOT minutes authorizing it.

F. Potential Sunshine Law Implications (HRS Chapter 92)

Executive sessions are closed to the public under HRS §§ 92-4 and 92-5, and executive-session minutes must be held to protect confidentiality. (Policy Manual § 1.4.l.) Minutes cannot be breached without consent of Board Counsel, and requests to access executive-session minutes must comply with HRS § 92-9(b). (§ 1.4.l.) The disclosure or reference

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to executive-session matters in a public court filing raises serious Sunshine Law concerns.

G. State Ethics Code (HRS Chapter 84; Policy Manual § 1.3.p; Appendix 7)

The Code of Conduct requires compliance with HRS Chapter 84, including HRS § 84-12 (confidential information). (Policy Manual § 1.3.p; Appendix 7.) Violations may carry administrative fines in the amount authorized by law, disciplinary action, and voiding of favorable state action.

III. Requests

Pursuant to the complaint procedures set forth in the Code of Conduct (Policy Manual, Appendix 7), I respectfully request the following:

1. That this Letter of Complaint be received and processed in accordance with the procedures outlined in Appendix 7 of the Policy Manual;
2. That a copy of this complaint be forwarded to each of the Respondent Trustees and all other Trustees within five (5) days, as required;
3. That the filing, notification, content, and nature of this complaint be treated as strictly confidential in accordance with Appendix 7;
4. That, upon timely receipt of a letter from another Trustee supporting that this complaint be heard at a Code of Conduct hearing, the Chair convene a special Board meeting as soon as reasonably possible for the presentation and adjudication of this complaint in an in-camera session; and
5. That the Board consider appropriate sanctions as authorized under the Code of Conduct and the Policy Manual, which may include, without limitation, a letter of censure, a motion of censure, removal from committees or appointments, restriction on access to documents or information, and such other relief as the Board deems appropriate.

This complaint is filed within thirty (30) days of the alleged event (June 26, 2026), as required by the Code of Conduct.

I affirm that before filing this complaint, the nature of the conduct at issue—an unauthorized court filing directly contrary to Board directives—did not, in my judgment, lend itself to conciliatory resolution, as the filing was made without advance notice to the Chair or Board counsel and its effects are immediate and irreversible absent court intervention.

Keoni Souza
OHA Board of Trustees Vice Chairperson
Chair of Investments & Land Management Committee
Trustee, At-Large

Phone: (808) 594-1857

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Nothing in this complaint constitutes a final adjudication of the Respondent Trustees' conduct. The Respondent Trustees shall have a full and fair opportunity to be heard in accordance with the procedures set forth in the Code of Conduct.

Respectfully submitted,



Keoni Souza
Vice Chairperson, Board of Trustees
Office of Hawaiian Affairs

cc: (via confidential transmittal upon forwarding by the Chair)

Trustee Carmen Hulu Lindsey
Trustee Kalei Akaka
Trustee Keli'i Akina
Trustee Luana Alapa
Trustee Brickwood Galuteria

Brickwood Galuteria
Chair of Beneficiary Advocacy & Empowerment Committee
Trustee, At-Large

Phone: (808) 594-1860

OFFICE OF HAWAIIAN AFFAIRS
BOARD OF TRUSTEES
560 N. Nimitz Hwy., Suite 200
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CONFIDENTIAL

June 30, 2026

Chair Kailali'i Kahele
Office of Hawaiian Affairs
Board of Trustees

Re: Letter of Support for Complaint Pursuant to OHA BOT Executive Policy Manual, Appendix 7 — Trustee Code of Conduct; Unauthorized Filing of Dkt. 162 in *Ferreira v. Office of Hawaiian Affairs, et al.*, Civil No. 1CCV-25-0001822

Dear Chair Kahele:

I write pursuant to the OHA Board of Trustees Executive Policy Manual ("EPM"), Appendix 7 — Trustee Code of Conduct, to provide my support for having the Trustee Code of Conduct complaint submitted by Vice Chair Keoni Souza on June 29, 2026 (the "Complaint") heard at a Code of Conduct hearing.

Under the EPM, to ensure a complaint has merit to be considered and reviewed, at least one other Trustee must provide the Board Chairperson, within three (3) days of notice of the complaint being forwarded to all Trustees, a letter indicating support for having the complaint heard at a Code of Conduct hearing. This letter serves that purpose.

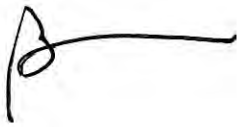
Having reviewed Vice Chair Souza's Complaint concerning the alleged unauthorized filing of Dkt. 162 in *Ferreira v. Office of Hawaiian Affairs, et al.*, Civil No. 1CCV-25-0001822, I believe the Complaint raises matters of sufficient gravity and concern to warrant a full hearing under the Code of Conduct procedures set forth in the EPM. The allegations, if substantiated, implicate fundamental duties owed by Trustees to OHA and its beneficiaries.

I respectfully request that you convene a special Board meeting as soon as reasonably possible for the presentation and adjudication of the Complaint in an in-camera Code of Conduct hearing session, in accordance with the procedures established in Appendix 7 of the EPM.

This letter of support is not a final adjudication of the matters raised in the Complaint. The Respondent Trustees shall have a full and fair opportunity to be heard under the Code of Conduct procedures. I expressly reserve the right and responsibility to attend, deliberate upon, and decide the matter based on the presentations and evidence submitted at the hearing. Consistent with the EPM, the issuance of this letter of support does not disqualify me from attending and deliberating upon the Complaint at the Code of Conduct hearing.

I further request that this letter, the Complaint, and all related proceedings be treated as strictly confidential in accordance with the requirements of EPM Appendix 7.

Respectfully submitted,



Brickwood Galuteria
Trustee, Office of Hawaiian Affairs
Board of Trustees

cc: Vice Chair Keoni Souza

ECFX Copy of Service

This is a courtesy copy from ECFX for the filing listed. Submitted documents are attached.

Filing Details	
Client Matter #	10112776-000002-1CC
Matter Name	OFFICE OF HAWAIIAN AFFAIRS, et al./Ferreira, Stacy
Court	Hawaii Circuit Court 1st Circuit Oahu
Case Name	Ferreira v OHA et al. (OHA/Ferreira)
Case Number	1CCV-25-0001822
Date/Time	2026-06-26 11:59 AM HST
Description	JEFS Notice in case:1CCV-25-0001822, Ferreira v. Office of Hawaiian Affairs, et al.
Documents	See attachments: • 162-Defendants Carmen Hulu Lindsey, Kalei Akaka, Keli'i Akina and Luana Alapa, Each in Their Official Capacities, Answer to First Amended Complaint, Filed April 21, 2026 [Dkt. 131]
Filed By	KALEI AKAKA, Individually and in Her Official Capacity
Original Notice	See attachments
Copied	cindy.ching@dentons.com; wendi.chang@dentons.com; joseph.adams@dentons.com; cindy.murakami@dentons.com; docket.general.lit.hnl@dentons.com; janna.ahu@dentons.com; paul.alston@dentons.com; wendy.hanakahi@dentons.com; courtney.vega@dentons.com; rose.patrocinio@dentons.com; claire.black@dentons.com
Blind Copied	General/Litigation Docketing and iManage

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Dentons US LLP
1001 Bishop Street
Suite 1800
Honolulu, HI 96813
United States

dentons.com

June 26, 2026

VIA EMAIL (jmackey@goodsill.com)

John S. Mackey, Esq.
Goodsill Anderson Quinn & Stifel LLP
First Hawaiian Center, Suite 1600
999 Bishop Street
Honolulu, Hawai‘i 96813

Re: Ferreira v. Office of Hawaiian Affairs, et al., Civil No. 1CCV-25-0001822 — Demand for Immediate Withdrawal of Unauthorized Official-Capacity Answer [Dkt. 162]

Dear Mr. Mackey:

We are counsel of record for the Office of Hawaiian Affairs (“OHA”) in the above-captioned matter. We write to demand the immediate withdrawal of the document filed today, June 26, 2026, at Docket 162, titled “Defendants Carmen Hulu Lindsey, Kalei Akaka, Keli‘i Akina, and Luana Alapa, Each in Their Official Capacities, Answer to First Amended Complaint, Filed April 21, 2026 [Dkt. 131]” (the “Answer”). The filing is unauthorized, directly contrary to OHA’s duly adopted litigation strategy, and materially prejudicial to OHA.

I. The Answer Was Filed Without OHA Authorization.

As you are aware, the Board of Trustees of OHA (“Board”), at a duly noticed and agendized meeting, authorized and ratified OHA’s litigation strategy in this case, which is to compel arbitration of the plaintiff’s claims pursuant to the written employment agreement containing an arbitration provision. The Board further authorized Dentons US LLP as OHA’s counsel of record and ratified all court documents filed by Dentons in furtherance of that strategy. The Board has also expressly affirmed that positions taken by trustees in their official capacities must align with duly adopted Board positions and directed that any inconsistent filings be withdrawn.

Neither you, nor Goodsill Anderson Quinn & Stifel LLP, nor the four individual trustees—Carmen Hulu Lindsey, Kalei Akaka, Keli‘i Akina, and Luana Alapa (the “Minority Trustees”)—have been authorized by OHA or the Board to file any pleading, answer, or other document on behalf of OHA. You have received no such authorization from duly authorized counsel or through any Board action.

The significance of this point cannot be overstated: under the operative First Amended Complaint, the Minority Trustees are named *solely in their official capacities*. An official-capacity suit is, in law and in fact, a suit against the entity itself. *See, e.g., Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985). Accordingly, by filing Dkt. 162 on behalf of the Minority Trustees in their official capacities, you have purported to file a pleading on behalf of OHA itself—without any authority to do so.

II. The Filing Violates OHA's Executive Policy Manual and Governing Framework.

OHA's Executive Policy Manual is dispositive on this issue:

> **Section 1.3.j:** *"Trustees have decision-making authority only when acting as a Trustee in a duly called and agendized meeting. The BOT shall not be bound in any way by any action or statement on the part of any individual Trustee or employee, except when such statement or action is directly related to a specific action of the BOT."*
>
> **Section 1.2.b:** *"The only policies, decisions, authorizations, or limitations in effect at the BOT level are those explicitly listed as policies or active resolutions in the BOT minutes" and "[i]ndividual or collective statements by Trustees in any other form have no authority in OHA's operations."*
>
> **Section 3.11.h–i:** *The BOT shall retain an attorney to render legal opinions and prepare legal documents when requested by the BOT, and the BOT may employ other attorneys on an as-needed basis.*

Dkt. 162 was not authorized by any Board action. It was not filed pursuant to any policy or active resolution recorded in the BOT minutes. It was filed by counsel retained without Board authorization for purposes contrary to the Board's duly adopted litigation strategy. Under the Executive Policy Manual, it is a nullity—an unauthorized collective action by individual trustees that "ha[s] no authority in OHA's operations."

III. The Filing Is Materially Prejudicial to OHA Because It Improperly Admits Untruthful or Unfounded Statements.

The content of Dkt. 162 is extraordinary. Rather than defending OHA's interests, the Trustees' Answer admits numerous allegations of Ferreira's FAC that are unfounded or simply untrue, including: Answer ¶24 admits the allegations of ¶¶ 111 and 112 of the FAC which are that Ferreira was retaliated against, thereby causing her loss of reputation in the community. None of which is true nor supported by the evidence.

Answer ¶¶31 and 33 admit whistleblower liability for retaliation. This is untrue and contrary to the position of OHA. Your clients are not authorized to make official-capacity admissions to bind OHA to liability. What authority do you have from OHA to make such admissions?

Moreover, the Answer purports to waive attorney-client privilege by supporting disclosure of executive session minutes. Under Executive Policy Manual § 3.11.c, no Trustee, by individual action, may waive privilege; "actions to disclose privileged information without the affirmative vote of the full BOT will be considered a breach of fiduciary obligation and subject to censure imposed by remaining Trustees."

IV. Demand

OHA hereby demands that you take the following actions immediately:

1. **Immediately withdraw Dkt. 162** by filing a notice of withdrawal with the Court and serving all parties no later than the close of business on June 27, 2026.
2. **Confirm in writing** to undersigned counsel, no later than 5:00 p.m. HST on June 27, 2026, that Dkt. 162 has been withdrawn.
3. **Cease and desist** from filing or serving any papers purporting to speak for OHA, the Board of Trustees, or any trustee in an official capacity unless you have received express written authorization from OHA's duly authorized counsel or through formal Board action.
4. **Preserve all documents and communications** concerning the authorization (or lack thereof) for Dkt. 162 and any related filings, including but not limited to all communications with the Minority Trustees, any third parties, and plaintiff's counsel regarding the strategy, substance, or filing of the Answer.

V. Reservation of Rights and Consequences of Non-Compliance

OHA expressly reserves all rights and remedies available to it, including but not limited to:

- Seeking court relief to strike Dkt. 162 as unauthorized and filed without standing;
- Seeking monetary and other sanctions under applicable court rules;
- Pursuing Rule 11 remedies to the extent applicable, given OHA's position that the Answer was signed and filed without a factual or legal basis for the authority claimed and for an improper purpose;
- Referral to the Office of Disciplinary Counsel for attorney disciplinary proceedings, as appropriate; and
- Pursuing appropriate trustee discipline against the Minority Trustees pursuant to OHA's Code of Conduct and Sanctions framework, which may include censure, removal from committees, restriction on access to OHA documents, and other sanctions authorized under the Executive Policy Manual, Appendix 7.

You and your clients should further be aware that the Minority Trustees' conduct in authorizing and supporting an unauthorized filing directly contrary to the Board's duly adopted litigation strategy implicates their duties of loyalty, obedience, and care under the Executive Policy Manual and applicable law. The duty of obedience requires each trustee to act in fidelity and adhere to OHA's mission, purpose, bylaws, and governing documents; abide by OHA's policies and procedures; and comply with all applicable laws and regulations. (Executive Policy Manual § 1.3.b(3).) The Code of Conduct makes clear that once the Board has taken official action, trustees are expected to uphold and support those decisions, even if they personally disagree. (Subpart 1A, § 5.)

There is, as OHA has previously noted to the Court, a vast difference between expressing individual disagreement—which the Code of Conduct explicitly encourages during deliberations—and filing a legal brief in an official capacity that seeks to defeat OHA's own duly authorized litigation position. The Minority Trustees have crossed that line. To the extent their conduct violates applicable duties, ethics rules, or the State Ethics Code, they risk sanctions, censure, suspension, or other discipline by appropriate authorities, including administrative fines, disciplinary action, and the voiding of favorable actions as provided under Hawai‘i law.

This letter is without prejudice to any and all rights, remedies, claims, or defenses of OHA, all of which are expressly reserved. We trust that you will give this matter your immediate attention.

Very truly yours,

DENTONS US LLP

Paul Alston
Claire Wong Black
Wendy F. Hanakahi
Joseph B. Adams
Janna Wehilani Ahu

Counsel for the Office of Hawaiian Affairs

cc: Deborah A. DiCristofaro, Esq. (via email)
Everett Ohta, General Counsel, OHA
Chair Kai Kahele

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

STACY KEALOHALANI FERREIRA, Plaintiff, vs. OFFICE OF HAWAIIAN AFFAIRS; KAIALI`I KAHELE, Individually and in His Official Capacity; KEONI SOUZA, Individually and in His Official Capacity; DAN AHUNA, Individually and in His Official Capacity; KALEI AKAKA, in Her Official Capacity; KELI`I AKINA, in His Official Capacity; LUANA ALAPA, in Her Official Capacity; BRICKWOOD GALUTERIA, Individually and in His Official Capacity; CARMEN HULU LINDSEY, in Her Official Capacity; JOHN D. WAIHE`E IV, Individually and in His Official Capacity; SUMMER L.H. SYLVA, Individually; JOHN DOES 1-10; JANE DOES 1-10; DOE AGENCIES 1-10, Defendants.	Civil No. 1CCV-25-0001822 (Other Civil Action) **DECLARATION OF EVERETT OHTA**

DECLARATION OF EVERETT OHTA

I, Everett Ohta, hereby declare and state under penalty of perjury that the following facts are true and correct:

1. I am the General Counsel for Defendant OFFICE OF HAWAIIAN AFFAIRS ("OHA"). I have held this position since July 16, 2025. Prior to that, my title at OHA was Associate General Counsel, but I served as the interim General Counsel since December 18, 2021 until I was hired as the General Counsel and I served as the interim Director of Human Resources from July 1, 2023 to February 29, 2024. I have worked for OHA since May 2010.

2. In the ordinary course of my duties, I attend Board meetings, and have access to OHA's records, including the Board's executive session minutes and executive policy manual.

These records are created and maintained in the regular course of OHA's business, and it is the regular practice of OHA to make and keep such records.

3. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

4. OHA is separately represented in this action, Civil No. 1CCV-25-0001822, by Dentons US LLP. Dentons' representation was authorized and ratified by the Board for this matter.

5. On April 2, 2026, at a duly noticed meeting of OHA's Board of Trustees conducted in accordance with HRS Chapter 92 (the Sunshine Law), the full Board determined and ratified OHA's authorized litigation posture, including its defenses, affirmative defenses, and pending motion to compel arbitration, in accordance with OHA's governance requirements and applicable law. OHA's authorized litigation posture is to compel arbitration of Plaintiff's claims pursuant to the written employment agreement containing an arbitration provision. The Board further ratified court documents filed by Dentons in furtherance of that strategy and affirmed that positions taken by trustees in their official capacities must align with duly adopted Board positions.

6. On June 26, 2026, a pleading was filed at Dkt. 162 styled as an "Answer" by Trustees Carmen Hulu Lindsey, Kalei Akaka, Keli'i Akina, and Luana Alapa, "each in their official capacities," through the law firm Goodsill. Goodsill does not represent OHA.

7. The OHA Board of Trustees did not vote to authorize, approve, or ratify the filing of Dkt. 162.

8. To OHA's knowledge, no duly noticed meeting of OHA's Board of Trustees was held under HRS Chapter 92 (the Sunshine Law) to authorize, approve, or ratify the filing of Dkt.

162 or any related action by Trustees Carmen Hulu Lindsey, Kalei Akaka, Keli‘i Akina, and Luana Alapa in their official capacities or as agents of OHA.

9. The OHA Board of Trustees did not authorize any trustee or group of trustees to make admissions of liability, concessions of claims, or statements supporting the Plaintiff’s requested relief on OHA’s behalf in this action.

10. The OHA Board of Trustees did not authorize any trustee or group of trustees to waive OHA’s defenses, affirmative defenses, privileges, or arbitration rights in this action.

11. The OHA Board of Trustees did not authorize any deviation from OHA’s litigation strategy as determined by the Board and as implemented by OHA’s counsel of record, Dentons US LLP.

12. The positions, admissions, and concessions set forth in Dkt. 162 do not reflect the authorized position of OHA.

13. Attached as Exhibit A are true and correct excerpts of the OHA Executive Policy Manual.

Executed in Honolulu, Hawai`i, on June 29, 2026.

/s/ Everett Ohta

EVERETT OHTA

APPENDIX 7 – Code of Conduct and Sanctions for Violation of the Code of Conduct Policy

OFFICE OF HAWAIIAN AFFAIRS
BOARD OF TRUSTEES EXECUTIVE POLICY

CODE OF CONDUCT AND SANCTIONS FOR VIOLATION OF THE CODE OF CONDUCT

Part I. Board of Trustees' Code of Conduct [44]

A. Purpose. The purpose of this policy is to establish the standards of conduct required of each Trustee of the Office of Hawaiian Affairs Board of Trustees hereinafter referred to as "Trustees". As public officials, Trustees are guided in their professional conduct by (1) fiduciary duties, (2) the Office of Hawaiian Affairs ("OHA") Board of Trustees' Executive Policies, and (3) Federal, State, and County laws applicable to Trustee conduct. All members of the OHA Board of Trustees, hereinafter referred to as "Board" shall adhere to the highest ethical standards of conduct reflected in state law and Board policies.

B. Standards of Conduct.

1. In order to support the vision, mission, values and goals of OHA and fulfill its statutory obligations, the Board must function as a collegial unit. The Board functions well as a unit when its individual members act ethically, are committed to working together, and operate in a non-partisan manner. The Board creates a positive climate when it acts with integrity and civility, and uses its influence appropriately.
2. This Code of Conduct is comprised of (1) fiduciary responsibilities; (2) the OHA Board of Trustees' Executive Policies; and (3) laws applicable to Trustee conduct. All members of the Board shall be provided a copy of this Code of Conduct and Sanctions for Violation of the Code of Conduct contemporaneously with their taking of his or her official Oath of Office. All members of the Board shall annually sign statements affirming their compliance with their official oath of office and provisions of this Code of Conduct.
3. The Code of Conduct shall consist of the following components:
    a. Fiduciary Duties
        i. Duty of Care
        ii. Duty of Loyalty
        iii. Duty of Obedience
        iv. Duty of Impartiality

[44] **BR 16-01:** Code of Conduct and Sanctions for Violation of the Code of Conduct (First reading: February 25, 2016; Second reading March 15, 2016).

b. The OHA Board of Trustees Executive Policies:
c. Statutory Standards of Conduct for public officials and state employees include:
    i. Confidentiality (HRS §84-12)
    ii. Taking of the Oath of Office (The Constitution of the State of Hawai'i, Article XVI General and Miscellaneous Provisions, Section 4, Oath of office)
    iii. Employment (HRS §84-18 Restrictions on post employment)
    iv. Fair Treatment and Use of State and OHA Personnel, Assets, Resources, and Time for Other than OHA Business (HRS §84-13)
    v. Financial Disclosure (HRS §84-17)
    vi. Conflicts of Interest (HRS §84-14)
    vii. Gifts (HRS §84-11)

Subpart 1A. Standards of Fiduciary Duties and Responsibilities.

A. Members of the Board serve a public interest role and thus have a clear obligation to conduct all affairs of OHA in a manner consistent with this concept. Members of the Board are expected to place the welfare of OHA above personal interests, the interests of family members, or others who may be personally involved in affairs affecting OHA. All decisions of the Board shall be made solely on the basis of a desire to promote the best interests of OHA and its beneficiaries.

1. Duty of Care and Informed Decision-Making. Trustees shall strive to make informed decisions based on sufficient information, thoughtful deliberation and comprehensive understanding of issues. To achieve that goal, Board members gather information by listening, asking questions, analyzing materials and exploring issues thoroughly in conjunction with other Trustees, staff, and constituency groups. In other words, thorough due diligence should be conducted and considered before decision-making on all major issues.
2. Duty of Care and Duty of Loyalty and Protection of OHA Assets, Resources, Personnel, and Time. The Board established Executive Policies regarding a Trustee Sponsorship and Trustee Allowance program. Each Trustee must diligently and prudently expend those funds in a fair and impartial manner for the OHA beneficiaries and, when applying personal judgment, shall ensure that such application of judgment is consistent with his or her fiduciary responsibilities and in compliance with OHA's policies and procedures.
3. Duty of Loyalty and Authority to Act. Each Board member is encouraged to contribute his or her talents and perspectives to the Board. Although Board members are free to voice their personal opinions, no Board member has the authority to solely act on his or her own to further a personal agenda or to direct OHA employees or operations.
4. Duty of Loyalty and Official Spokesperson. Trustees are the stewards of OHA and the advocates of its policies and programs. The official spokesperson for the Board is the Chairperson of the Board or the Chairperson's designee.

5. Duty of Loyalty and Duty of Compliance With Board Decisions. Trustees have a fiduciary duty to act with loyalty to the institution and in compliance with its governing framework and duly adopted decisions. Trustees are encouraged to exercise independent judgment and engage in open, respectful deliberation during the decision-making process, including expressing dissenting views. However, once the Board has taken official action, Trustees are expected to uphold and support those decisions, even if they personally disagree, and to comply with all duly enacted Executive Policies and directives. This duty reflects each Trustee's responsibility to act in the best interests of OHA and its beneficiaries, and to maintain the integrity and unity of the institution's governance. Continued expression of a differing opinion, even after a matter has been voted upon, does not constitute a lack of support for a decision. Members of the Board are allowed to communicate disagreement with a decision without fear of being silenced.
6. Duty of Impartiality. While many decisions must by definition benefit some beneficiaries more than others, individual Trustees, however, must remain impartial and must not favor any beneficiary over another. This requirement to remain neutral becomes more difficult when the Trustee is also a beneficiary.

Subpart 1B. Standards Established by Board Executive Policies.

A. Conflicts of Interest. (Implements HRS §84-14)

1. Conditions of Potential Conflict of Interest. Conditions of potential conflict of interest exists when the Board must consider any matter for OHA which also directly involves a:
    i. Trustee or a member of the Trustee's family (which shall be a spouse, parents, siblings and their spouses, children and their spouses, and any household member);
    ii. public or private organization with which a Trustee is affiliated, as defined below; or
    iii. Trustee's personal financial interest as defined under chapter 84, HRS, as amended;
2. Disclosure by Trustee of Potential Conflict of Interest. Any affected Trustee, at the first knowledge of the matter, shall fully disclose, as noted below, the precise nature of the interest or involvement.
3. Exception to Disclosure Requirement. This disclosure requirement shall not apply to any Trustee who declares a conflict of interest and recuses himself/herself from consideration of the matter at hand before the Board.
4. Definition of Affiliation. For purposes of this provision, an affiliation exists if a Trustee or a member of the Trustee's family is an owner (which shall be an ownership interest valued at more than $5,000 or 10% or more ownership of the business), officer, director, trustee, partner, employee (which shall also include legal counsel, consultant, contractor, advisor, or representative) or agent of such organization.

5. Written Disclosures. All disclosures required under this Article must be directed in writing to the Board Chairperson who, together with the Board Counsel, shall be responsible for the administration of this Bylaw.
    i. Disclosure Process. A Trustee who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the Trustee's financial interests or those of an associated business, unless the effect on the Trustee is no greater than on other members of the Trustee's business classification, profession, or occupation, must take the following actions:
        (1) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest; and
        (2) Deliver copies of the statement to the Board Chairperson for distribution to the Board.
    ii. Conflict of Interest. If a potential conflict of interest presents itself and there is insufficient time to provide the written statement under paragraphs (a) and (b) immediately above, the Trustee must orally inform the Board of the potential conflict in open meeting session.
6. Report to Chairperson of the Board. Matters covered under this provision shall be reported initially to the Chairperson for appropriate action. Should the Chairperson be the Trustee with a potential conflict, the matter shall be reported to the Vice Chairperson. Should both the Chairperson and the Vice Chairperson have a potential conflict, the matter shall be reported to the Chairperson of a Board standing committee.
7. Disclosed Information to Be Held in Confidence. Information disclosed to the Chairperson shall be held in confidence to the extent required by law.
8. Required Actions for Trustee with Potential Conflict of Interest. If a potential conflict of interest arises for a Trustee, the Board Chairperson assigns the matter in which the potential conflict arises, if possible, to another Trustee or other individual who does not have a conflict of interest. A Trustee with a potential conflict of interest shall:
    i. Abstain from influence over the action or decision in question. File a statement describing the potential conflict and the action taken if the Trustee is not permitted or is otherwise unable to abstain from action in connection with the matter. The statement shall be filed within a week of the action taken.

        "Abstain" means a Trustee who has a potential conflict of interest shall not chair a meeting, participate in any vote, offer any motion or discussion, or otherwise attempt to influence other Trustees on the matter giving rise to the potential conflict of interest.
9. The Board Chairperson shall promptly distribute copies of the statement to the Board members.

10. Determination of Conflicts. Questions concerning possible conflicts of interest shall be directed to the Chairperson of the Board. The Board shall resolve the questions by majority (5) vote at a Board meeting in compliance with Chapter 92, HRS, as amended. Where any matter covered by Chapter 84, HRS, as amended, is involved, the potential conflict shall be referred to the Board Counsel for guidance and, if necessary, the Hawai'i State Ethics Commission for disposition. Questions of potential conflict not covered by Chapter 84, HRS, as amended, and questions of conflict under Section 78-4, HRS, as amended, shall be referred to the Board Counsel for a legal opinion.

B. Employment. Except as provided in this subpart, a Trustee shall not seek or accept employment with departments with State of Hawai'i or Counties within the State of Hawai'i while serving as a Trustee. This provision does not prohibit any Trustee from employment as an adjunct faculty member from employment with a college or university in a non-administrative, part-time position.

Subpart 1C. Laws and Prohibited Activities.

A. Use of position to secure benefits. Except as otherwise provided by law or policy of the Board, a Trustee shall not use the position, authority, title, influence, or prestige of a Trustee to secure special privileges or exemptions not available to the general public for the benefit of the Trustee, Trustee's family members, or others. (HRS §84-13)

B. Confidential or protected communications. Except as otherwise required by law or authorized by the Board, a Trustee shall not disclose to any unauthorized persons information or communication subject to confidentiality by action of the Board or other applicable law or policy, including proprietary information and/or privileged attorney/client communications. (HRS §84-12)

C. Use of influence. Except for those decisions that are subject to the direct authority of the Board, no Trustee shall attempt to influence OHA's internal hiring process or the awarding of consulting or other contracts subject State Procurement Code and administrative rules. (HRS Chapter 103D - Hawai'i Public Procurement Code and HRS Chapter 103F - Purchases of Health and Human Services, as amended).

D. Restrictions on Campaign Activities. Trustees must observe state law restrictions on campaign activities which prohibit the preferential use of OHA resources or incidents of office for oneself or another candidate. The following activities by Trustees are violations of the OHA Code of Conduct and the state ethics code (HRS Chapter 84-Standards of Conduct):

1. Using OHA time, equipment, supplies, or OHA premises for campaign activities or campaign purposes. "Campaign activities" or "campaign purposes" include: selling, purchasing, or distributing campaign fundraiser tickets, including complimentary tickets;

conducting campaign meetings; distributing campaign literature or materials; soliciting campaign assistance or support; or producing campaign literature or materials or storing such materials.

   a. OHA time means the actual time during which a state official or employee, etc., is supposed to be performing his or her state duties. State time thus excludes lunchtime, break time, vacation time, and so forth.
   b. OHA equipment includes, for example, copy machines, fax machines, telephones, typewriters, computers, and vehicles such as OHA trucks and cars.
   c. OHA supplies include stationery, paper, stamps, and other office supplies.
   d. OHA premises include offices, conference rooms, working areas, and so forth. OHA premises or facilities that are available to the public for use (e.g., for holding meetings or conducting business) may also be used for campaign activities on the same basis as the facilities are available to the public.

2. Using state personnel during state time for the purpose of performing campaign tasks or activities.
3. Using the state mail or messenger service for campaign purposes.
4. Using state computers or e-mail accounts for campaign purposes.
5. Soliciting campaign contributions or campaign assistance by sending letters addressed to state officials or employees at their state offices.
6. Using one's official position to give unwarranted advantages or preferential treatment to campaigns. The State Ethics Code prohibits state officials, employees, legislators, and board and commission members from using their official positions to coerce campaign contributions or campaign assistance from anyone. State officials, employees, legislators, and board and commission members should also avoid combining official business with campaign solicitations.
7. Selling fundraiser tickets to or soliciting the purchase of fundraiser tickets from subordinates or businesses or persons supervised or inspected.
8. Candidates walking through state agencies to meet with state employees for campaign purposes. The Hawai'i State Ethics Commission believes that the State Ethics Code prohibits candidates from being allowed to walk through state agencies to meet with state employees for campaign purposes.

E. State Seal. The state seal may not be used by a state official or employee in conjunction with campaigning if such use gives the state official or employee or another any unwarranted advantage or preferential treatment in violation of HRS §84-13, as amended. State officials and employees are advised to contact the Hawai'i State Ethics Commission for advice before using the state seal on campaign materials. Anyone using the state seal in conjunction with a campaign may also wish to contact the Department of the Attorney General regarding the application of HRS §5-6, as amended.

F. Misdemeanor For Fundraising In Government Facilities. In addition to the State Ethics Code, HRS §11-354 makes it a misdemeanor for any person to solicit a campaign contribution in a government facility used for official duties by a state or county employee. This law does not apply to certain government facilities that are permitted to be used for political activities. HRS §11-354 is part of the campaign spending law.

G. Conflict Between Code of Conduct and Applicable Laws. The provisions of applicable law shall govern in the event of any conflict between the law and this Board Executive policy.

H. Penalties For Violation of the State Ethics Code.

1. An administrative fine of up to $500 for each violation may be imposed by the Hawai'i State Ethics Commission.
2. Disciplinary action such as reprimand, probation, demotion, suspension, or discharge may be imposed by Hawai'i State Ethics Commission.
3. Any favorable state action is voidable, and the Attorney General may pursue all legal and equitable remedies.

Part II. Sanctions for Violations of the Trustee Code of Conduct

A. Procedure for Responding to Violations or Breaches of the Code of Conduct

1. In enacting and promulgating these sanctions for violation of the Code of Conduct, the Board is not in any way asserting that these sanctions are exclusive remedies for a Code of Conduct violation. The Board recognizes that jurisdiction over criminal behavior resides in federal, state, and county law enforcement authorities and the respective justice systems. Conduct identified as criminal behavior shall be referred to the appropriate law enforcement authorities without inordinate delay.
2. As to an internal OHA process for addressing violations, should evidence or 148 allegations of Code of Conduct violations by a Trustee of OHA come to the attention of the Chairperson of the Board, which after further review by the Chairperson appears to constitute a breach of the Code of Conduct, the Chairperson and the Vice Chairperson shall discuss the matter with the Trustee to obtain additional facts and perspective and to seek a mutually agreeable resolution.
3. Should the Code of Conduct continue to be violated by the Trustee after discussion with either the Chairperson or the Vice Chairperson, the Chairperson shall bring information on the violation forward to the BOT in executive session. Should the Code of Conduct thereafter continue to be violated, the Chairperson, after appropriate consultation with the Board Counsel, will place the matter on the agenda for appropriate action by the Board of Trustees. The Board shall discuss the matter in executive session, allowing the Trustee

whose conduct is at issue to provide an explanation of the conduct. The Board may then by majority (5) vote censure or sanction the Trustee.

B. Complaint Process

1. A Trustee who believes that a fellow Trustee has violated the Code of Conduct may seek resolution of the matter through appropriate conciliatory measures prior to commencing an official complaint under the Code of Conduct.
2. A Trustee or the OHA Administrator who wishes to commence an official complaint under the Code of Conduct shall file a letter of complaint with the Board Chairperson within THIRTY (30) days of the alleged event occurring and indicate the nature of the complaint and the section or sections of the Code of Conduct that are alleged to have been violated by the Trustee. The Trustee who is alleged to have violated the Code of Conduct and all other Trustees shall be forwarded a copy of the letter of complaint by the Board Chairperson, or where otherwise applicable in what follows, by the Vice-Chairperson, within FIVE (5) days of receipt by the Board Chairperson of the letter of complaint. If the complaint is with respect to the conduct of the Board Chairperson, the letter of complaint shall be filed with the Vice-Chairperson.
3. When a Trustee or the OHA Administrator files a letter of complaint and a copy of that letter of complaint is forwarded to all Trustees, the filing, notification, content, and nature of the complaint shall be deemed to be strictly confidential, the public disclosure of which shall be deemed to be a violation of the Code of Conduct. Public disclosure of the complaint and any resulting decision taken by the Board may be disclosed by the Board Chairperson only at the direction of the Board, following the disposition of the complaint by the Board at a Code of Conduct hearing.
4. To ensure that the complaint has merit to be considered and reviewed, at least one other Trustee must provide to the Board Chairperson, within THREE (3) days of the notice in writing of the complaint being forwarded to all Trustees, a letter indicating support for having the complaint heard at a Code of Conduct hearing. Any Trustee who forwards such a letter of support shall not be disqualified from attending and deliberating upon the complaint at a Code of Conduct hearing convened to hear the matter, solely for having issued such a letter.
5. Where no letter supporting a hearing is received by the Board Chairperson in the THREE (3) day period referred to in section 5 above, the complaint shall not be heard. The Board Chairperson shall notify all other Trustees and the OHA Administrator in writing that no further action of the Board shall occur.
6. Where a letter supporting a hearing is received by the Board Chairperson in the THREE (3) day period referred to in section 5 above, the Board Chairperson shall convene, as soon as is reasonably possible, a special meeting of the Board to allow the complaining Trustee to present his or her views of the alleged violation of the Code of Conduct.

7. At the special meeting of the Board, the Board Chairperson shall indicate, at the commencement of the meeting, the nature of the business to be transacted and that the complaint shall be heard in an *in-camera* session of the special meeting. Without limiting what appears below, the Board Chairperson shall ensure fairness in dealing with the complaint by adhering to the following procedures:
    a. The Code of Conduct complaint shall be conducted at an *in-camera* Code of Conduct hearing session of a special Board meeting convened for that purpose. All preliminary matters, including whether one or more Trustees may have a conflict of interest in hearing the presentations regarding the complaint, shall be dealt with prior to the presentation of the complaint on behalf of the complaining Trustee.
    b. The sequence of the Code of Conduct hearing shall be:
        i. The complaining Trustee or OHA Administrator shall provide a presentation which may be written or oral or both;
        ii. The respondent Trustee shall provide a presentation which may be written or oral or both;
        iii. The complaining Trustee or OHA Administrator shall then be given an opportunity to reply to the respondent Trustee's presentation;
        iv. The respondent Trustee shall then be provided a further opportunity to respond to the complaining Trustee's presentation and subsequent remarks;
        v. The remaining Trustees of the Board shall be given the opportunity to ask questions of both parties;
        vi. The complaining Trustee or OHA Administrator shall be given the opportunity to make final comments; and
        vii. The respondent Trustee shall be given the opportunity to make final comments.
    c. Following the presentation of the respective positions of the parties, the parties and all persons other than the remaining Trustees who do not have a conflict of interest shall be required to leave the room, and the remaining Trustees shall deliberate in private, without assistance from Administration. The Board may, however, in its sole discretion, call upon legal advisors to assist them on points of law or the drafting of a possible resolution.
    d. If the remaining Trustees in deliberation require further information or clarification, the parties shall be reconvened and the requests made in the presence of both parties. If the information is not readily available, the presiding Chairperson may request a recess or, if necessary, an adjournment of the Code of Conduct hearing, or an adjournment to continue the current meeting to a later date.
    e. In the case of an adjournment, no discussion by Trustees whatsoever of the matters heard at the Code of Conduct hearing may take place until the meeting is reconvened.

f. The remaining Trustees in deliberation may draft a resolution indicating what action, if any, may be taken regarding the respondent Trustee.
g. The presiding Chairperson shall reconvene the parties to the Code of Conduct hearing and request a motion to revert to the open meeting in order to pass the resolution.
h. All documentation that is related to the Code of Conduct hearing shall be returned to the Chairperson or designee immediately upon conclusion of the Code of Conduct hearing and shall be retained in accordance with legal requirements.
i. The presiding Chairperson shall declare the special Board meeting adjourned.

8. A violation of the Code of Conduct may result in the Board instituting, without limiting what follows, any or all of the following sanctions:
    a. Having the Board Chairperson write a letter of censure marked "personal and confidential" to the offending Trustee, on the approval of a majority of those Trustees present and allowed to vote at the special meeting of the Board;
    b. Having a motion of censure passed by a majority of those Trustees present and allowed to vote at the special meeting of the Board;
    c. Having a motion to remove the offending Trustee from one, some or all Board committees or other appointments of the Board passed by a majority of those Trustees present and allowed to vote at the special meeting of the Board, for a time not to exceed the Trustee's term as Trustee.
    d. Any Board action favorable to a Trustee obtained in violation of this executive policy is voidable on behalf of the Board; provided that in any proceeding to void a Board action pursuant to this policy, the interests of third parties who may be damaged thereby shall be taken into account. Any proceeding to void a Board action shall be initiated within SIXTY (60) days after the determination of a violation under this policy. The Board may pursue all legal and equitable remedies and/or sanctions through the Board Counsel.
    e. The offending Trustee shall not engage in interactions with OHA administrative staff.
    f. The offending Trustee shall not have access to documents and information which are intended to deter or prevent misuse of that information.
    g. The offending Trustee's shall not be allowed out of state travel.
    h. The offending Trustee shall not have use of a Trustee allowance or requiring third-party administration of the Trustee Allowance Fund.
    i. The offending Trustee shall not have the privilege of publishing articles in *Ka Wai Ola* and OHA's internet sites.
9. The Board may, in its sole discretion, make public its findings at the special meeting or at a regular meeting of the Board.

Office of Hawaiian Affairs
560 N Nimitz Hwy. Ste. 200
Honolulu, HI 96817

ACTION ITEM – ROLL CALL

BOARD OF TRUSTEES MTG.	**DATE: July 6, 2026**

The Chair moves the following action for the Board's consideration:

Motion Directing the Withdrawal of Unauthorized Filing (Dkt. 162) and Reaffirming Board Governance Authority

I move that the Board of Trustees:

Directs Trustees Lindsey, Akaka, Akina, and Alapa to immediately withdraw Docket No. 162 from the Circuit Court.

Directs those Trustees to refrain from making any court filings or taking any other actions in their official capacities on behalf of the Board unless such actions have first been properly agendized, deliberated upon, and approved by a majority of the Board in accordance with applicable law and Board policy.

Affirms that every Trustee retains the right to bring any matter before the Board for consideration through the Board's established governance processes.

Reaffirms that, once the Board has taken official action, Trustees acting in their official capacities owe a duty of loyalty to the Board and are expected to uphold and implement duly adopted Board decisions.

Declares that adoption of this motion constitutes the official action of the Board authorizing and directing the immediate withdrawal of Docket No. 162, and that no further Board action shall be required to carry out this directive.

Motion: 11:38 am **Vote:** 11:44 am

TRUSTEE		**1**	**2**	**ʻAE (YES)**	**AʻOLE (NO)**	**KANALUA (ABSTAIN)**	**EXCUSED**
DAN	**AHUNA**			**X**			
KALEI	**AKAKA**				**X**		
KELIʻI	**AKINA**					**X**	
LUANA	**ALAPA**						**Left meeting at 11:40 am**
BRICKWOOD	**GALUTERIA**			**X**			
HULU	**LINDSEY**						**Left meeting at 11:41 am**
KEONE	**SOUZA**			**X**			
JOHN	**WAIHEʻE**			**X**			
CHAIR KAI	**KAHELE**			**X**			
TOTAL VOTE COUNT				**5**	**1**	**1**	

MOTION: [ ] UNANIMOUS [X] PASSED [ ] DEFERRED [ ] FAILED

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STACY KEALOHALANI FERREIRA,) CIVIL NO. 1CCV-25-00001822
) (Other Civil Action)
Plaintiff,)
)
vs.)
)
OFFICE OF HAWAIIAN AFFAIRS;)
KAIALI'I KAHELE, Individually and in His Official Capacity;)
KEONI SOUZA, individually and in his official capacity;)
DAN AHUNA, Individually and in His Official Capacity;)
KALEI AKAKA, in Her Official Capacity; KELI'I AKINA, in His Official Capacity; LUANA ALAPA, in Her Official Capacity; BRICKWOOD GALUTERIA, individually and in His Official Capacity; CARMEN HULU LINDSEY, in Her Official Capacity; JOHN D. WAIHE'E IV, individually and in His Official Capacity; SUMMER L.H. SYLVA, in Her Individual capacity; JOHN DOES 1-10; JANE DOES 1-10; DOE AGENCIES 1-10,)
)
Defendants.)

BEFORE THE HONORABLE STEVEN R. NICHOLS

TRANSCRIPT OF RECORDED PROCEEDINGS

AUGUST 6, 2026

TRANSCRIBED BY: ADRIANNE IGE KURASAKI, CSR 388
Registered Professional Reporter
Hawaii CSR #388; California CSR #11470

APPEARANCES:

For Plaintiff Stacy Kealohalani Ferreira:

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DANIEL COMER, ESQ.
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For Defendant OFFICE OF HAWAIIAN AFFAIRS; KAIALI'I KAHELE, Individually and in His Official Capacity; KEONI SOUZA, individually and in His Official capacity; DAN AHUNA, Individually and in His Official Capacity; BRICKWOOD GALUTERIA, individually and in His Official Capacity; JOHN D. WAIHE'E IV, individually and in His Official Capacity; and SUMMER L.H. SYLVA, in Her Individual capacity:

PAUL ALSTON, ESQ.
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1001 Bishop Street, Suite 1800
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For Defendants KALEI AKAKA, in Her Official Capacity; KELI'I AKINA, in His Official Capacity; LUANA ALAPA, in Her Official Capacity; CARMEN HULU LINDSEY, in Her Official Capacity:

JOHN S. MACKEY, ESQ
Goodsill Anderson Quinn & Stifel
First Hawaiian Center
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Honolulu, Hawaii 96813
(808)547-5600

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(Recorded proceedings commenced at 9:01 a.m.)

THE COURT CLERK: All rise. Circuit Court of the First Circuit, 18th Division, the Honorable Steven R. Nichols presiding.

In the gallery, please be seated.

On the civil motions calendar, calling Case No. 1, 1CCV-25-1822, Ferreira versus Office of Hawaiian Affairs, for motion to dismiss, motion to disqualify, substantive joinder to the motion to disqualify, motion to strike, motion to compel, and scheduling conference.

Counsel, appearances, please.

MS. BRONSTER: Good morning, Your Honor. Margery Bronster, Lanson Kupau, and Daniel Comer on behalf of Stacy Ferreira.

THE COURT: Okay. Good morning to all of you.

MR. ALSTON: Good morning, Your Honor. Paul Alston and Janna Ahu on behalf of the majority trustees and OHA. Also present are Trustee Kahele, Trustee Souza, and Trustee Galuteria.

Also present are Everett Ohta and Rozelle Agag, in-house counsel with OHA.

THE COURT: Good morning to all of you.

MR. MAKEY: Good morning, Your Honor. John Mackey here on behalf of Trustees Akaka, Alapa, Akina,

and Lindsey. Each of them are here (Indiscernible).

THE COURT: Okay. Good morning.

Okay. First order of business is we did receive -- and everyone can be seated -- an application for extended coverage. It was submitted by *Civil Beat*. Mr. -- is it Mr. Lovell or Lovell?

MR. LOVELL (CIVIL BEAT): Mr. Lovell.

THE COURT: Okay. Mr. Lovell, or *Civil Beat*, Yesterday at 4:34 p.m., it was not submitted to the 18th Division. It gets routed through us. We received it, and it was routed to us at 7:32 a.m. And therefore, we promptly filed the extended -- or the application for extended coverage.

Ms. Bronster, Mr. Kupau, who's going to be arguing today on behalf of your client?

MS. BRONSTER: Depends on the motion, but we'll both be arguing.

THE COURT: Okay. Well, Ms. Bronster, what is your position as to the application for extended coverage?

MS. BRONSTER: We have no objection.

THE COURT: Okay. Thank you very much.

Mr. Alston?

MR. ALSTON: No objection, Your Honor.

THE COURT: Mr. Mackey?

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MR. MAKEY: No objection, Your Honor.
THE COURT: Okay. And I would have -- even had there been an objection, I would have granted the application, anyway.
Mr. Lovell, are you intending on using any mobile devices to record, to film?
MR. LOVELL (CIVIL BEAT): Not today, Your Honor. Just for still photography, if possible.
THE COURT: Okay. And you're going to use your phone to do that?
MR. LOVELL (CIVIL BEAT): Yes.
THE COURT: Okay. I would only ask that you remain in one area and not wander around. So you can find a better spot, if you'd like a better spot -- I'm sorry?
MR. LOVELL (CIVIL BEAT): Is it okay if I move to the jury box, Your Honor?
THE COURT: Absolutely. Absolutely.
MR. LOVELL (CIVIL BEAT): Thank you.
THE COURT: And then, Mr. Lovell, I would just ask that if you are going to take pictures of the Court, you try to leave court staff, not myself. But my judicial assistance and my law clerk out of any photos --
MR. LOVELL (CIVIL BEAT): Sure.

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THE COURT: -- I'd appreciate that.
Thank you very much.
And then obviously, this order will last going forward. Mr. Lovell, if you're going to plan on attending future hearings, if you can just e-mail the 18th Division, letting us know ahead of time so we can make sure you have proper seating and we know you're coming.
And then obviously, if other media outlets are going to be interested in this case and there's going to be multiple media organizations seeking to film, you guys have to work together, pool together, and designate one representative in dealing with the Court.
You understand all that; right?
MR. LOVELL (CIVIL BEAT): Yes.
THE COURT: Okay. Thank you very much. Mr. Lovell, welcome to the 18th Division. Glad to have you. Okay.
MR. LOVELL (CIVIL BEAT): Thank you.
THE COURT: Thank you.
Okay. So here's how I see it. A lot of these issues are very much intertwined within one another and it's difficult to separate or parse them out given the nature of the disputes.
I do think, however, that we need to resolve

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the motion to compel arbitration first because that is challenging the Court's jurisdiction to rule on any of the other issues. And so my suggestion would be we deal with that issue first. If I grant it, then we have to discuss and litigate how that affects the other motions as far as the motion to disqualify, the motion to strike answer, especially the motions to disqualify, how they sort of interweave with one another. If I deny the motion to compel arbitration, then we get to the rest of the motion to dismiss as to the official capacity, individually named the defendants, the defamation claim. Then we get to the motion to strike answer, the motion to disqualify. All of those are sort of interwoven.
We're going to leave the motion to compel for last as I think that's independent -- well, not completely independent. But that can be treated separately.
As far as the motion for contempt of court, we have continued that by stipulation in agreement with Ms. Ichinose's counsel, Mr. Bickerton. So we're going to hear that on August 25th, I believe.
Okay. Does everyone agree with sort of the structure that I laid out this morning?
Mr. Kupau?
MR. KUPAU: Yes. The only part that I have a

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concern in is really the most important issue is the motion to disqualify. Because if that motion is granted, then they don't have counsel to hear the other motions. And perhaps with other counsel and other advice, those other issues or positions --
THE COURT: And I -- I understand.
MR. KUPAU: -- may change. But I just wanted to bring that for the record.
THE COURT: And that's why I stated at the beginning, first I have to decide, look, is there a valid motion to compel arbitration. Am I -- and then if there is, how does that affect the four trustees who believe they were not represented by Mr. Alston when he filed the motion to compel arbitration and how to unpack all of that.
But first, I have to have at least some base-level understanding of do I have jurisdiction over these other issues. And in my mind, I think these are interwoven enough that I can do this. And really, this is one hearing, one motion. All of these issues are going to weave together. Nothing is going to -- but I would prefer to deal with motion to compel arbitration first.
MR. KUPAU: Understood.
THE COURT: Okay. But I understand very much

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your concerns. And I thought about that as well. But that's how I would like to proceed.

MR. KUPAU: Absolutely.

THE COURT: Okay.

MR. KUPAU: Understood.

MS. BRONSTER: And, Your Honor, I hope that because they are intertwined, you will allow both of us to take up various issues. And if there is an overlap, we apologize but --

THE COURT: It's completely okay. Absolutely. These are important issues. Just we look at the public interest in this case. We look at the number of members of our community, whether they be trustees or just members of the community be present. I'm going to give you guys however much time you guys need. Okay?

MS. BRONSTER: Thank you, Your Honor.

THE COURT: Mr. Alston.

MR. ALSTON: We have no objection to proceeding that way, Your Honor.

THE COURT: Mr. Mackey.

MR. MAKEY: Judge, respectfully, we would also object to proceeding otherwise, then first with the motion to disqualify. It's our belief that the four trustees here are continuing to be adversely affected by the ongoing conflict of interest that Dentons has in

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this case, and that that needs to be resolved before they continue to advocate with this material adversity to our clients. They're continuing to be harmed to the extent they continue to argue any motion other than the motion to disqualify first.

THE COURT: Okay. I note your objection Mr. Mackey. We're still going to proceed the way that I want to proceed. Okay?

MR. MAKEY: Thank you, Your Honor.

THE COURT: Mr. Alston, it is your motion.

MR. ALSTON: Thank you, Your Honor.

There are two critical factors that dictate how this motion to compel arbitration should be resolved. The first is the Supreme Court's decision in Gabriel v. Pacific Island Academy. And the second is the -- I should have said three. The second is the contract, and the third, of course, is the complaint which frames Ms. Ferreira's complaints against -- against OHA and the trustees.

The scope of the provision insofar as it says "all disputes arising from or referring to the contract" is essentially identical to the provision that was at issue in Gabriel. And what the Court said there is instructive here. The Court said basically that in light of our policy to support discovery --

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THE COURT: Mr. Alston, let me just push back --

MR. ALSTON: Sure.

THE COURT: -- because there's been -- in the opposition they raise some issues. And I think you would agree, and I'll see if Ms. Bronster and Mr. Kupau -- who's arguing this motion, Mr. Kupau?

MR. KUPAU: I am.

THE COURT: Okay. -- Mr. Kupau agreed that the language, in the event of any dispute arising out of an referring to this contract is generally considered to be a broad general agreement to arbitrate.

Would you agree with that?

MR. ALSTON: I agree with that.

THE COURT: Mr. Kupau, would you -- just that line alone, would you agree that that language right there, "arising out of and referring to," is generally considered under case law a general agreement to arbitrate?

MR. KUPAU: Well, the specific language is "arising out of" this agreement or the contract --

THE COURT: Again --

MR. KUPAU: -- but that's --

THE COURT: I specifically left out of "this contract." I left out those two words.

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But dispute -- "any dispute arising out of and referring to." If you look at the case law in Hawaii and even in federal cases, that is widely considered to be a general agreement to arbitrate; correct?

MR. KUPAU: With the exception on whether or not that agreement applies to specific claims that are being brought in this case.

THE COURT: Again --

MR. KUPAU: So I cannot agree with you on that.

THE COURT: -- Mr. Kupau, my question again is, I deliberately left out those two words "this" and "contract." But I'm assuming you've reviewed the case law on motions to compel arbitration. And would you agree that the language "any dispute arising out of and referring to" is considered under federal case law and Hawaii case law to be a general agreement to arbitrate?

MR. KUPAU: Okay. I'm going to try again. And I apologize that I didn't make it clear.

THE COURT: You don't have to agree with me, Mr. Kupau.

MR. KUPAU: Okay. I don't.

THE COURT: Okay.

MR. KUPAU: Because the two words that you're leaving out, when you said "I left out those two words," in law and especially in life words matter. Those words

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matter.
THE COURT: Okay. Let me hear from Mr. Alston.
So Mr. Alston, so I agree with you as far as "any dispute arising out of and referring to" general agreement to arbitrate. I think the question for the Court and what's raised by Mr. Kupau is the following three words, I guess, "to this contract." And then further on down in the powers of the arbitrator, "may deny the claims or award damages for breach of contract." And then the also further limitations of no pain and suffering, emotional distress, tort consequential or punitive damages may be awarded.
So if you could focus your arguments on addressing some of those issues raised by Mr. Kupau.
MR. ALSTON: (Indiscernible.)
THE COURT: And certainly those are questions that I have in my mind as well.
MR. ALSTON: Absolutely, Your Honor.
First, with respect to the breadth of the language, I think Gabriel teaches that it includes everything including claims based on statute. Because that's what was at issue in Gabriel. And the Court said because contracts in Hawaii are deemed to incorporate -- incorporate general law of Hawaii, then her -- her statutory claim was within the scope of that provision.

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I think also and it's incredibly important to look at the language of the complaint where in count after count, time after time, as we've identified in the motion, Ms. Ferreira's complaint weaves in the contract. It weaves in her desire for protection of her rights under the contract. It weaves in alleged violations of authority under the contract. And you simply cannot read -- especially given that every allegation is woven into every other -- every claim, you cannot read that complaint without saying that what she is doing is pursuing a case that arises from and refers to the contract. Her own complaint refers literal -- by incorporation directly literally dozens of references to the contract. So that's dispositive of that issue.
On the issue of remedy, I would say two things. One is that when the Supreme Court said that general law and statutory law is incorporated into that particular arbitration clause, by definition that means that the arbitrator has authority to provide whatever remedies the controlling statutory -- if there is one, controlling statutory scheme may entail. Okay. So we're not saying that --
THE COURT: So -- but I'm faced with an argument, and Mr. Kupau's going to say is if the contract --

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MR. ALSTON: Right.
THE COURT: -- stated and only stated "any dispute arising out of and referring to this contract."
MR. ALSTON: Right.
THE COURT: But it would also appear in his argument to be made that the employment contract limits the powers of the arbitrator by only allowing him or her to either, one, deny a claim; or number two, to award damages. And furthermore, even further the limits the ability to award damages to solely those damages that arise out of a breach of contract.
MR. ALSTON: Right.
THE COURT: So how do you unpack that?
And I think we also need to be aware of the Douglas case, which is, you know, still a 2000 -- 2006 case, which states that "A plaintiff may not be deemed to have waived comprehensive statutory rights and remedies absent an unambiguous and knowing agreement to arbitrate those statutory disputes."
So how do I unpack the separate Supreme Court cases and also I think well-settled case law that, hey, the parties have the ability to limit the powers of the arbitrator.
MR. ALSTON: Right. I would say three -- three things. First, when the Supreme Court said in Gabriel

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that the whistleblower provision was within the breadth of the general language of agreeing to arbitrate, necessarily that carries with it the ability to obtain the remedies that are called for under that statute or any other statute that may apply to her condition -- her situation.
The second is that you have the authority and, I submit, the arbitrator has the authority to strike that out of -- that limitation out to the extent that it violates any public policy or violates any statutory requirement that a full array of remedies be available.
THE COURT: So you're talking about severability?
MR. ALSTON: Severability, that's right.
And that -- and that limitation on remedies is not -- is not something that controls the broad language of arbitrability -- that governs arbitrability. It is something that more narrowly -- more narrowly applies and which can be stricken.
And the third is -- the third, and I think this is very important, that you can read that language to reflect that when the Supreme Court says that general laws are incorporated into contracts and they're close -- and that a general arbitration law includes them, you could say that those remedies arise from a

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breach of her agreement, because certainly violating the whistleblower statute would be a breach of her contractual rights. Violating the Sunshine Law would be a violation of her rights if they occurred -- if in fact they occurred as described.

So that what I'm saying is that, in that language, there is nothing that forbids an arbitrator from saying I find, for example, that the OHA -- that OHA violated her contract by acting in a way inconsistent with the whistleblower statute or by acting in a way that's inconsistent with the Sunshine Law, because those aspects of Hawaii law are woven into her contract as they are into every contract.

So I think that there is a very easy path that allows you to say the parties agreed to arbitrate and either the remedy provision is broad enough because it implicitly incorporates the statutory rights and remedies; or the statutory limitation can be severed, as indicated -- you know, because it is inconsistent with the Douglas decision or other decisions about public policy that say if you've got a statutory claim, you necessarily have to have that remedy, maybe in all cases and maybe in cases except in cases where you've explicitly, you know, by specific reference agreed to waive those remedies. Right?

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And I know that they've cited some cases that say, for example, in Title 7 litigation, a limitation to -- a limitation on certain remedies is not permitted. Well, if you apply that same rule here, what you do is say that limitation on remedies, which is distinct and easily severed is out of the picture. When you go to arbitration, you arbitrate all claims and remedies that arise from or refer to her agreement.

And as I said, you can't read the contract in this case and come away with the belief that Ms. Ferreira herself separates the statutory claim she's made from her contract, given the enumerable references or nearly enumerable references in the complaint to her contract or rights under the contract or remedies under the contract and so forth.

So I think there's ways to get through all of that, Your Honor, very easily and give -- and give full faith and credit to the broad agreement to arbitrate.

THE COURT: Okay.

MR. ALSTON: Okay.

THE COURT: Are you -- you're not concluding your argument? You're just answering --

MR. ALSTON: No, I'm not concluding my argument on this particular issue, Your Honor.

I think that, you know, we're left with the --

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on arbitrability, we're left with the reality that the claims that are asserted are woven into her contractual rights. She's done it herself. We didn't -- we're not -- we're not faced with a complaint which doesn't mention her contract and we're trying to say, wait a minute, Judge, you can't read that complaint without also considering this separate contract which is nowhere to be found in her complaint.

We're drawing on her own characterization of her claims that brings us squarely into the broad language about arbitration. And then we're dealing at worst --

THE COURT: Wouldn't all whistleblower claims have to have some foundation basis in the employment contract?

MR. ALSTON: Well, they certainly would, Your Honor, because under the whistleblower statute, under 378-61, I believe, the definition of someone who qualifies to invoke the statute is that they are an employee, which means they work under a contract for hire. So she -- the whistleblower claim has to implicate.

THE COURT: Right.

MR. ALSTON: You know, she has to at least say I have a contract for hire; therefore, I'm an employee;

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therefore, I'm entitled to invoke the whistleblower statute.

THE COURT: Okay. And then since we're sort of talking about this contract, who authored the contract? And then the follow-up question is, does it matter?

MR. ALSTON: I don't -- I have no idea who authored it. It preceded me, Your Honor. And I don't think it matters. I mean, these are sophisticated parties. Ms. Ferreira is earning $200,000 a year in a very high-ranking executive position.

THE COURT: Do you think -- do you think pay and salary automatically equates to sophistication?

MR. ALSTON: I believe pay and salary equate to her ability to negotiate, her ability to walk away. She's not somebody who is desperate and hungry and needs any job she can get. So what I'm saying is this is not a -- there's no evidence -- there's no argument, even, that this is a contract of adhesion; that she was forced to take this as it was presented to her.

I don't know the -- who drafted it in the first instance. I don't know what negotiations are. But they haven't come and said, you know, poor Ms. Ferreira, she's forced to sign this contract because she was desperate.

And I think given how high -- how high ranking

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the position is, given that it required her to apply and seek the position, you know, she can't come in and say and they made me do it. You know, this is not a click-bait contract. This is something that was clearly tailored to her and her situation. So it doesn't matter who actually took the pen. What matters is the result.

THE COURT: Okay. I think it is clear, though, Ms. Ferreira herself did not author this employment contract.

MR. ALSTON: I would not suggest that Ms. Ferreira was the sole author of this. And that -- and I just don't think any party gets the benefit of the idea that someone else drafted it, and therefore it's construed against them. That is a very weak rule of construction, not -- you know, and they haven't put forward any basis in the record for believing that that should be invoked here.

THE COURT: Okay. Okay. Thank you, Mr. Alston.

MR. ALSTON: I have nothing further.

THE COURT: Okay. Mr. Kupau.

And then, Mr. Mackey, we'll go with you last. Okay?

MR. ALSTON: So I just -- all I did was address the arbitrability issue, Your Honor.

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THE COURT: Yes. That's all we're going to do right now.

MR. ALSTON: Okay.

THE COURT: Yeah. And then you'll have a chance to rebut whatever arguments they make. If they bring up --

MR. ALSTON: Thank you, Your Honor.

THE COURT: -- other issues regarding your ability to represent, you can then weave in arguments in your rebuttal. And then I'll make a preliminary decision as to arbitration, and then we'll go and unpack the rest of the matters before me.

Mr. Kupau.

MR. KUPAU: Thank you.

There were only two people in the room where it happened, and that's the two people that signed that contract. And that was Trustee Lindsey and Stacy Ferreira. That has never been mentioned by them. Because when you look at a contract, we were taught in law school, you and I, meeting of the minds, intent. What was the intent? But also the language, too. Any and all claims arising out of this contract. Not any and all claims arising out of your employment. Very specific. The language in there matters. The words matter. The limitation that's placed in there in terms

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of what reliefs Ms. Ferreira can get matters. And she can't get the relief in arbitration, according to how it's written, that she has in that first amended complaint.

THE COURT: So Mr. Alston tells me and argues that even with the terms this contract -- of this contract, he points to your first amended complaint which over and over and over again refers to the employment contract. Doesn't a complaint that refers to the employment contract necessarily arise out of that contract? Even if it's not a breach. It's a statutory remedy. Doesn't it still necessarily arise originally from her employment with the Office of Hawaiian Affairs and her signing of a contract with the Office of Hawaiian Affairs?

MR. KUPAU: Mr. Alston's wrong.

THE COURT: Tell me why.

MR. KUPAU: Okay. It's because you cannot have egregious acts on someone and then say all of that stuff is going to go to arbitration and you can't get relief for emotional distress, conspiracy, defamation, whistleblower, Sunshine Law violations. You can't get it. But yet, he argues that somehow when we get to arbitration, if that's what he wants, that some arbitrator's going to say I'm now going to reform and

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rewrite the contract to give me abilities and remedies that the written word doesn't have. You can't have it two ways. You want to say it says what it says. But it can be fudged in and moved later.

THE COURT: Okay. So that's --

MR. KUPAU: If I could finish.

THE COURT: That's a question that I had -- hold on.

MR. KUPAU: Okay.

THE COURT: That's a question that I had when Mr. Alston raised that argument, is was it the ability of the arbitrator to go and rewrite the terms of the arbitration agreement. I think that's probably where you're going, but I just wanted to make sure.

MR. KUPAU: Yes.

Well, when you look at the people that actually signed it, you got the five majority trustees that didn't sign it. You have the Chair that wasn't even there at OHA when it was signed. But yet, if you take a look at the declaration provided by Trustee Lindsey and the opposition by the -- I called them the heroic four trustees --

THE COURT: Okay. So, Mr. Kupau, I think that's -- let's not put labels.

MR. KUPAU: Well, the minority trustees or

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however you want me to refer to them.
THE COURT: All right.
MR. KUPAU: But they actually said this isn't what was intended. The person who signed the contract says this isn't what was intended. Her claims wasn't intended to be in arbitration.
THE COURT: So you've attached two declarations in support of this argument; correct?
MR. KUPAU: Yes.
THE COURT: The one declaration of Ms. Ferreira and then the other, the declaration of Trustee Lindsey.
MR. KUPAU: Yes.
THE COURT: How do I get to even reviewing those declarations? What legal authority allows me to review those in interpreting the contract?
MR. KUPAU: Well, those are the people that signed it. They're under oath, as declaration should be. And they've been filed with Your Honor.
And so it also eliminates any ambiguity.
THE COURT: (Indiscernible.) Okay. That's --
MR. KUPAU: Right.
THE COURT: Yeah.
MR. KUPAU: So if there's any questions, the people that signed it that had the intent are telling you, we're clearing up any ambiguity that may exist.

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THE COURT: Okay. So what is your alleged ambiguity that even allows me to consider Ms. Ferreira and Ms. -- or Trustee Lindsey's declarations?
MR. KUPAU: No, the ambiguity is what they're trying to say, which is, Ah, even though it's really not worded that way, everything in her complaint -- and which, if you look at the first amended complaint, there's not one claim for breach of contract. There's Sunshine Law violations. There's whistleblower violations, defamation, and civil conspiracy.
What they're trying to do is say even though she hasn't claimed it, let's pretend and now convert that into a breach of contract.
THE COURT: Okay. But what language in the -- you still haven't --
MR. KUPAU: And maybe I'm not understanding you.
THE COURT: -- is what language in this Section 16 is ambiguous?
MR. KUPAU: I think the ambiguity, if they're going to argue it, is the "arising out of this contract," which we point out, no, isn't ambiguous because you have to bring a breach of contract claim. And that's why, under a breach of contract claim, the arbitrator can award emotional distress, can award those

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types of tort remedies because a breach of contract claim isn't a tort.
So that's why, if you look at that and you look at the two-prong test that we referenced, is there an agreement. Yes. But what is it limited to. And the two people in signed it -- no matter what case you read, where have you ever seen a case where it's brought by -- and you have declarations of the two people that signed it saying that's not what we meant and that's not what's in there. This is a first. That's why this doesn't belong in arbitration.
Which arbitration, for the layman, is let's hide it, let's the keep it secret, let's go and put it behind the veil. If you want public disclosure, you want accountability, and you want it to be in the light of day, keep it in this court.
THE COURT: On that, Mr. Kupau, because I think this is -- you know, you've argued this sort of argument at the last hearing you argued to me.
MR. KUPAU: Uh-huh.
THE COURT: But that seems to contradict with the very strong public policy expressed by not only our appellate courts but the federal courts, that agreements to arbitrate should be generally enforced. And there's a strong public policy in favor of arbitration because

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of the expediency in which issues can be resolved, because of the relative inexpensiveness of the -- of resolving it in that forum.
So you're arguing don't keep things in the shadows, but we do have established case law that states if there's a general agreement to arbitrate, public policy is in favor of sending it to arbitration.
So tell me why this is a case that shouldn't fall under the general public policy to send it to arbitration.
MR. KUPAU: Because those cases never had the two signatories saying this isn't what we signed; this isn't what we agreed to. None of those cases say that.
THE COURT: And --
MR. KUPAU: And you had mentioned the public interest and granting the extended coverage. Well, the public interest is here in front of you in the light of day, not in the shadows of arbitration. Let's go and get to the truth. Let's get in front of you, and let's go ahead and make this thing public and have accountability for everybody involved. That's what the Native Hawaiian beneficiaries are entitled to. That's what they deserve. And that's what you should give them.
THE COURT: Anything further, Mr. Kupau?

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MR. KUPAU: No.
THE COURT: Mr. Mackey.
MR. MAKEY: Thank you, Your Honor.
I think as Mr. Alston' argument acknowledges, that if this provision is intended to do what they suggest here and require arbitration and statutory claims is at best very poorly drafted. And clearly, it's ambiguous.
THE COURT: Okay. Mr. Mackey, just audio's not picking you up. So we're going to move --
MR. MAKEY: Thanks.
THE COURT: We also have the hand mic if you need.
MR. MAKEY: Yeah, that'll be --
THE COURT: My law clerk has one right behind you.
MR. MAKEY: Okay. How's this? That okay? Okay.
THE COURT: Sorry about that, Mr. Mackey.
MR. MAKEY: No problem.
If the intention of this arbitration provision is to do what Mr. Alston is trying to persuade the Court to do here, it is, I think as he has acknowledged, seriously flawed and at best certainly ambiguous, which warrants consideration of, you know, how it's to be

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interpreted, including the outside assistance of the declarations in this case.
And I think you should look to interpret it based on the language within the provision itself rather than do what he seems to be suggesting, is assume it was written to be unlawful; in other words, to compel arbitration of statutory claims, yet attempt to deprive a plaintiff of their right to recover those statutory damages, to which they might be entitled.
THE COURT: Would you agree, Mr. Mackey, that statutory rights such as whistleblower civil rights can be compelled to arbitration?
MR. MAKEY: Of course. Most, yes. These certainly could be, yes. This in my view is a question of statute -- of contractual interpretation. And as, you know, I think as agreed, if the intention is to require arbitration of statutory rights, this is clearly written in a way that makes that a difficult argument for Mr. Alston to make. And the language attempting to preclude her from recovery of emotional distress or punitive or noncontractual damages is either unlawful or a reflection of the intention of the parties in entering this contract to limit arbitration to issues relating to the contract. That interpretation is supported by the declarations, which reflect that the intention was to

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require arbitration of issues related to Ms. Ferreira's performance under the contract. In other words, her work performance that might result in discipline or termination. And those are things like, you know, the investigation in this case and matters that can be kept under wraps pursuant to the open meetings act -- or Open Records Act that are personnel matters and that are appropriately confined to a more private forum than having them at court.
So I think that that's the interpretation that really is the -- ought to be the first stop for the Court, rather than resorting to, I think, what Mr. Alston would have to suggest is severing a provision is unlawful in order for this to -- at the outset be considered.
THE COURT: What would be the outcome if I severed the language that's stated "The arbitrator may either deny the claims or award damages for breach of contract," and then the following, (indiscernible) "note per or post judgment interest may be awarded," so on, so forth.
MR. MAKEY: Right.
THE COURT: What would be the effect if I severed that?
MR. MAKEY: You would essentially be removing

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the provision that allows you to correctly interpret the contract. It still has the same language that you have to interpret. You just removed the provision of the agreement itself that governs how it's to be interpreted, as best as anything does in this -- in this, I think, admittedly poorly written agreement. They're not making any argument that any party as the drafter, you know, is entitled not have this construed in favor of one party or another based on who's the drafter.
There's also the matter of the cost sharing. DPR in this case simply hasn't kept up with what modern arbitration providers provide for. So this agreement sends it to DPR, whose rules require the parties to split fees. That's something explained in the Gabriel case. And it continues to be the case, I think as we put in the record previously. And that would require Ms. Ferreira effectively to pony up around $50,000 at least, just for the opportunity to take her shot at bringing these claims.
And we don't yet have a clear case. You know, the Gabriel case is certainly somewhat distinguishable based on Ms. Gabriel's income. But even if somebody in Hawaii making $200,000 should not be expected to pony up $50,000 in order to --

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THE COURT: Has that argument been adequately raised by the plaintiff, though?

MR. MAKEY: Well, it certainly was brought up by us in our prior objection to this motion. We're raising it again. I think we're discussing the Gabriel case. And I don't think there's any dispute that we all understand how DPR works. I don't think there's any dispute here as to how that provision is going to affect her. And I think that if you look back at the way the Gabriel court picked apart that arbitration agreement with multiple unconscionable provisions, I think this one warrants the same result.

THE COURT: Okay. Anything further?

MR. MAKEY: No.

THE COURT: Okay. Thank you, Mr. Mackey.

Mr. Alston, I'll let you rebut the arguments raised by Mr. Kupau and Mr. Mackey.

MR. ALSTON: Thank you, Your Honor.

Your Honor, I'd like to start where Mr. Mackey ended. He described, without evidence in the record, a requirement on the part of DPR that the parties split fees in an arbitration. And he implied to the Court, if he didn't say it expressly, that somehow the parties agreed to arbitrate under the auspices of DPR. That's not true. If you read the dispute resolution provision,

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it refers to mediation under the auspices of DPR. And then in the second paragraph, with respect to the arbitration, there's no reference to DPR. It simply says the parties will arbitrate before a single arbitrator mutually agreed upon by the parties. So that whatever rules he wants to rely on coming from DPR, we can't be bound by them. And we're certainly willing to choose an arbitrator independently of DPR or under another forum, if that's what the parties mutually agree on. So you can't say that.

The second thing, Your Honor, is under this provision regarding cost sharing, the provision is different, I submit, than it was in Gabriel because it says that Ms. Ferreira shall bear one-half of the arbitrator's fees and administrative expenses unless otherwise ordered by the arbitrator for good cause. I don't think I could with a straight face argue that her alleged poverty or inability to pay wouldn't be good cause. And the arbitrator has the authority here from the get-go to say I'm not going to -- I'm going to arbitrate, but I'm not going to require Ms. Ferreira to pay half the costs because she can't afford it, if that's what they're -- if that's what she was ever to try to argue. But as you know, she hasn't tried to argue she can't afford it. Other people have come to

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her aid but without enough evidence to give you any pause with respect to the record that exists here and her ability to pay.

Secondly, Your Honor, with respect to parole evidence, you pressed Mr. Kupau hard to identify the ambiguity. And I think with respect to the controlling language about the breadth of the duty to arbitrate, he doesn't identify anything like that. And he can't because -- because, as you indicated earlier, the language that's used here, like the language in Gabriel, reflects a general duty to arbitrate. And nothing that Ms. Ferreira says or a single trustee who doesn't represent or reflect the will of the entire entity or the entire board can create an ambiguity where none exists given the clarity of the language regarding the breadth of the arbitration provision.

With respect to the breadth of that provision, in Gabriel, the language was that there was a duty to arbitrate concerning any disputes, quote, concerning this agreement. Okay. And the Court said, well, because -- because Hawaii law was incorporated into the contract, then the statutory claims are also within the arbitration clause.

Paragraph 17 of Ms. Ferreira's contract says, "This contract shall be governed by the laws of the

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state of Hawaii." Virtually identical in effect -- or actually, I would say identical in effect to the language the Court relied upon in Gabriel to say that they had to arbitrate the dispute under six -- under Chapter 378. And we're not going to suggest that if Hawaii law incorporates -- if Hawaii law is incorporated in the rights created by Chapter 378, our need to be arbitrated, that somehow the parties agreed to -- or the Court should forbid the party from having to deal with the remedy -- the remedial scheme in whatever statute is incorporated, okay, and whether that's as a result of interpreting the breadth of what's possible for breach of contract or whether that's simply as a matter of striking out that limitation and saying whatever remedy's appropriate can be granted, we'll accept that. It doesn't really matter.

Mr. Kupau says that --

THE COURT: So if I sever that out --

MR. ALSTON: Yes.

THE COURT: -- say I'm inclined to send this to arbitration and I sever that out, the limitation on the arbitrator's ability to -- the limitation placed on the arbitrator --

MR. ALSTON: Right.

THE COURT: -- they can either deny a claim or

award damages for breach of contract, say I sever that out and the following language, does that get into any issues -- and again, go back to Douglas -- that Ms. Ferreira knowingly agreed to send any sort of statutory claims to arbitration.

MR. ALSTON: I submit not, Your Honor. And I would ask you to look at Gabriel because in Gabriel, the Court said it would strike the arbitration clause because the cost-sharing provision was so deeply woven into the fabric of the agreement.

What they did was look at that agreement -- look at that agreement sentence by sentence and it says we have to take out this sentence because, you know, it's not proper; we have to take this sentence because it's procedurally or substantively unconscionable or both. And then they said what we're left with is only the first sentence of this provision, which makes no mention of arbitration. All right. That's not this case. In fact, the obligation to arbitrate is clearly set forth in separate language that, no matter what you do to blue pencil or red pencil the limitation on remedies, you're still left with the broad commitment to arbitrate.

And the Supreme Court said, well, we can't order to arbitrate because when we strike out everything

that's -- we can't order Ms. Gabriel to arbitrate because when we strike out the offending parts, we're left with a sentence that says nothing about arbitration. Here, it's the exact opposite. You could strike out what you find offends public policy and still be left with a very detailed provision about the parties committing to agreeing first to mediation and then to arbitration as the sole way to proceed.

The last point that Mr. Kupau raised is that somehow you'll be fostering secrecy and trying to hide this and creating a situation --

THE COURT: So as to that, Mr. Alston, I'm not --

MR. ALSTON: I wasn't going to respond to it unless you wanted me to.

THE COURT: -- compelled by that line of argument. I think that would be a mistake for the Court, for me or for any court, to base that as a decision whether to compel something to arbitration or not. I am compelled to follow law and interpreting this contract, not --

MR. ALSTON: Exactly. But that's exactly --

THE COURT: -- whether to --

MR. ALSTON: -- what I was going to say, Your Honor.

THE COURT: Okay.

MR. ALSTON: And, yeah. And, Your Honor, unless you have questions, I have nothing further.

THE COURT: No, I'm good. Thank you, Mr. Alston.

Okay. So I'm going to give my ruling on the motion to compel arbitration. So I've reviewed the opposition, the -- I'm sorry, the motion, the opposition, the joinder, and the four trustees' opposition and the reply and certainly entertained argument this morning and asked questions of counsel. The governing law under HRS 658A-6, I decide whether with an agreement to arbitrate exists and whether a controversy is subject to that agreement. Under the same statute, the arbitrator decide whether a condition precedent to arbitrability has been fulfilled.

In State v. Nakanelua, the Hawaii Supreme Court reiterated that when the Court is faced with a motion to compel arbitration under 658A, the Court is limited to determining whether an arbitration agreement exists, No. 1; and 2, whether the subject matter of the dispute is arbitrable under that agreement.

And I think if you look at 658A-7, both parties quoted this statute. It requires the Court to order arbitration only if there's an enforceable agreement

arbitrate the dispute at issue and it authorizes a stay only for a claim that is subject to arbitration.

I look at Yamamoto v. Chee, which is a 2020 Hawaii Supreme Court case, orders that the Courts examine the arbitration clause in the context of the entire agreement and acknowledge that claims can be maintained independently of the contract. Claims that can be maintained independently of the contract do not fall within the scope of the arbitration clause merely because the contract may be referenced -- referred to as evidence.

I look at Douglas v. Pflueger, 110 Haw 520, a 2006 Hawaii Supreme Court case. We discussed -- certainly Mr. Alston and I discussed the effects of that case, how to navigate that case, which recognizes Hawaii's strong public policy favoring arbitration but also explained that employee may not be deemed to have waived comprehensive statutory rights, remedies, and procedural protections absent a knowing agreement to arbitrate those statutory disputes.

And I looked at United Public Workers v. Abercrombie, which is a 2014 Hawaii Supreme Court case, which explains that the plain language of the whistleblowers' Protection Act contemplates a person alleging a violation may sue in Circuit Court, and that

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the Court shall order remedies for violations of the act. And I do conclude that when I read Section 16 as a whole, I do not find that it is unlimited agreement to arbitrate every single dispute having any factual connection to plaintiff's employment.

The clause starts off seemingly as if it's a general agreement arbitrate. I would note that "of this contract" -- if it just remained at "of this contract" or "any dispute arising out of and referring to this contract," if that was the sole language, and there was nothing further, I would probably compel this to arbitration, despite Mr. Kupau's arguments about keeping things in the shadows. Because I feel that, look, case law supports, if there's a general agreement to arbitrate, you go to arbitration. No matter what statutory rights you are asserting, you've agreed and case law, again, supports that there's a general understanding that parties to a contract acknowledge the existence of the laws of the state of Hawaii and that the contract exists under the laws of the state of Hawaii. But this is not that kind -- it did not end there.

I do find that reading this dispute resolution clause as a whole, you can interpret it one of two ways. Either it expressly limits the scope of the arbitration

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agreement by continuing to refer to -- in Paragraph 2, the arbitration is the sole final remedy available to the parties to a dispute under this contract. "Under this contract" here seems to be a limiting -- limiting the scope of the arbitration. And then perhaps the most important language, this seems to clearly limit the scope of the arbitration is further in Paragraph 2 near the end, the arbitrator may either, one, deny claim; or two, order damages.

And the arbitration agreement further limits the ability of the arbitrator to award damages for only breach of contract. It expressly prohibits the arbitrator from entertaining any idea of damages for pain and suffering, which Whistleblower Protection Act does not allow. Emotional distress towards consequential or punitive damages. And I look at that, it mentions nothing of an ability to reinstate injunctive relief, which clearly are remedies allowed and authorized by the whistleblower protection statutes. And I look at that as a whole. So either one, it's a clear limitation; or number two, it creates an ambiguity, in which case then I am allowed to consider parole evidence as an ambiguity in the language of the statute, statutory construction. And we do have a declaration from Ms. Ferreira that states it was her

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understanding that she was only signing this arbitration agreement as it pertained to her employment status and not agreeing to arbitrate her statutory protections.

So again, under Yamamoto v. Chee, I have to consider the entire agreement and I cannot compel arbitration of claims that can be maintained in the penalty of the contract, certainly statutory claims. And no party really mentioned Sunshine Law claims. I think it'd be a massive stretch to view this arbitration agreement as contemplating Sunshine Law claims. And I'm going to take that as sort of a tacit acknowledgment by the lack of any argument to that by any of the attorneys here today. But certainly, the Sunshine Law claims fall in line with my analysis and reasoning that I've already stated.

And I do want to highlight certain factors that I think are important for the record because Mr. Alston brought up the issue of severability. And I think that is something the Courts have to look at. In this case, I do not feel that I could sever because I do not feel then that there is -- again, going back to Douglas -- would be a knowing and voluntarily -- voluntary waiver of her statutory claims, especially in light of the clear limitation or, again, at worse, an ambiguous limitation on the powers of the arbitrator.

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And so I'm going to deny the motion to compel arbitration. Let me just make sure. And again, I really think Douglas -- the Douglas case and the language there is extremely important when interpreting arbitration clauses and statutory rights. And I think this particular arbitration contract -- and again, I posed the question to Mr. Alston about who authored it, who drafted it. And he said it's not important. And I don't think it is. None of my ruling's are based off that.

But I do believe that word choices matter. And the author of this contract clearly was not Ms. Ferreira. This contract was drafted by someone at OHA who made it many years past or two days before. And the drafter chose these specific words, and they're limited to those specific words. So that'll be the ruling of the Court as to arbitration issue.

So now we're going to go to the rest of the grounds for dismissal, the motion to strike the answer, and the motion to disqualify the Denton's law firm. My suggestion is, I think on those issues, we can have one argument each. I don't think we need to separately address each and every one of those. I'll give you as much time as you need. Again, these are important issues. I don't want to limit.

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We have -- we have something at 11 o'clock, so we still have an hour to unpack the rest. And if we need go longer, we'll go longer.

Mr. Alston, your motion still. And we'll just incorporate the other motions as we argue.

MR. ALSTON: Thank you, Your Honor.

Your Honor, we've been going about an hour. Could we take a short break?

THE COURT: Absolutely.

MR. ALSTON: Okay.

THE COURT: Take a five-minute break.

MR. ALSTON: That'd be great. Thank you, Your Honor.

THE COURT: How about come back around -- I'll give you guys 10 minutes. 10:05.

MR. ALSTON: All right. Thank you.

THE COURT: 10:05 a.m., we will come back. Okay. Thank you very much, everyone.

THE COURT CLERK: All rise. Court is in recess.

(A recess was taken.)

THE COURT CLERK: This Court is reconvened.

On the civil motions calendar, calling Case No. 1, 1CCV-25-1822, Ferreira versus Office of Hawaiian Affairs, for motion to dismiss, motion to disqualify,

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substantive joinder, motion to strike, motion to compel, and scheduling conference.

Counsel, appearances, please.

MS. BRONSTER: Margery -- appearances again?

THE COURT: Yeah, we're all gathered here. Mr. Kupau, Ms. Bronster, Mr. Alston, Mr. Mackey. Everyone's here today.

So I just want to make clear, just for the analysis, the issue was not --

MR. KUPAU: Can the gallery be seated?

THE COURT: Yeah, yeah, everyone can be seated.

MR. KUPAU: Okay. Thank you.

THE COURT: The issue was not the existence of an agreement to arbitrate. It was the scope of the arbitration. And I declined to rewrite or sever out the portions that I highlighted because I thought that, in doing so, it would create a situation where I could not make a finding that there was an unambiguous and knowing waiver of statutory rights, which is required under the Douglas case. So that's just to be clear.

Now let's move on to the motions to dismiss including -- so this is involving the official/individual capacity trustees, all of them, and the defamation and the civil conspiracy case.

Mr. Alston.

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MR. ALSTON: Thank you.

Before I get to that, Your Honor, as you probably know, under Chapter 658A-28, there is a right to take an appeal from an order denying arbitration. There is authority. And I've been involved personally in multiple cases where this circuit judges have recognized that the United States Supreme Court decision in a case called Coinbase v. Bielski, which is 599 US 736, means that when an appeal like that is taken, the case is stayed. I -- in a normal case, I would have gone into the gallery and out into the hall and asked my client whether it intends to appeal. And then I would -- but -- and then proceed from there. I don't have that luxury here because I cannot ask the majority trustees or anyone to make a decision about that.

And what I would suggest -- what I would request, Your Honor, is that we take a pause, give me an opportunity to confer with the trustees as a group under the Sunshine Law, and then decide whether they're prepared to proceed with the case without an appeal or whether they wish to initiate appeal and trigger what I believe is a mandatory stay of the proceedings during the course of that case.

THE COURT: Why can't we resolve some of these other issues today before you -- so my question is,

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maybe you take an appeal, maybe I'm wrong --

MR. ALSTON: Right.

THE COURT: -- but how would that affect my rulings that I make today as to the other issues? Because whatever rulings I make now are under the umbrella that this is staying with me.

MR. ALSTON: Right. I understand.

THE COURT: If I'm wrong about that --

MR. ALSTON: Right.

THE COURT: -- and it should have been compelled to arbitration, would have that undo all of my decisions I make today?

MR. ALSTON: Well, except you're then in a position of making advisory rulings and you just don't -- we just don't know.

We would suggest the better course is to wait, decide if we take it appeal, decide whether you're going to adhere to the practice of other judges in Hawaii to recognize an automatic stay. And if either of those things doesn't happen, that is we don't appeal or you decide the stay doesn't apply and we go forward, then you're making real decisions about real issues that are in front of you, not issuing decisions that you may never -- just advisory decisions that may never come into effect.

THE COURT: And so this is -- this was an issue that -- not this specific issue, but this is a problem that arose in my mind, is why did we have one motion, sort of like an omnibus motion, that it has a motion to compel packed in with multiple motions to dismiss for multiple reasons. There's the official and individual capacity grounds to dismiss. There's a defamation ground to dismiss. There's the civil conspiracy grounds to dismiss. Each of those in a different case could have been and might have been a separate motion that would have been separately briefed. And then we also have the conflict issues and the motion to strike the answer.

My preference, Mr. Alston, is to resolve these issues today.

MR. ALSTON: Okay.

THE COURT: And then if you decide to appeal, if everything is stayed after that, then at least we have some guidance as to where this case stands if it is stayed. Versus, if we don't resolve these matters today, you do appeal, there is a stay, we still have some very fundamental issues that are left out there unresolved.

MR. ALSTON: Right.

THE COURT: And my understanding, because, you

know, some of the parties have given me links as part of their argument to OHA meetings. A lot of these issues are taking up a lot of time within the governance of OHA. And I think it serves everyone to at least have an understanding of where I'm going to land on these rulings, whether they ultimately end up being advisory or not, I think it provides some level of clarity and I think it's important in a case like this.

MR. ALSTON: I think you're -- I understand, Your Honor. And I think you should understand that one motion was filed because the rules limit a party to one Rule 12(b)(6) motion; right?

THE COURT: I understand. No, I --

MR. ALSTON: Or one 12(b) motion.

THE COURT: Right.

MR. ALSTON: So you're forced into a position where if you're going to argue before answering, you've got to do it in one blow. You can't piecemeal out the argument. So that's why you're faced with the motion we filed.

THE COURT: I understand. And your point is well-taken, Mr. Alston, but I think we're going to go forward. Okay?

MR. ALSTON: That's fine, Your Honor. I understand your position and we'll go forward.

On the motion to dismiss, Your Honor, with respect to the issues of the claims under the whistleblower statute and the Sunshine Law, I think the argument is simple, clear, and really not -- it doesn't admit to any dispute in that under both statutes, it is the entity, whether it's the Board under the Sunshine statute or the employee -- employer under the whistleblower statute. That is the entity against whom the claim exists.

THE COURT: What about this argument raised by Mr. Kupau and Ms. Bronster that, yeah, we're not saying -- we're not suing the individuals in their official or individual capacity for damages. We're suing them because, if we are successful in our injunctive relief remedies on the whistleblower remedies, we need them named to effect whatever ruling the Court gives, whether it's reinstatement, whether it's benefits.

What's your response to that argument?

MR. ALSTON: Something she made up on whole cloth.

I mean to suggest that when the -- when you -- if you were to enter an order against OHA, it wouldn't be binding against every one who comes under OHA's umbrella, be they trustees, be they employees, be they

anybody who's acting as part of or in concert with OHA. They would be bound. And so for -- and so if you enter -- if you were to enter a remedy that says OHA must do something, that will -- that will, of course, bind everybody who's part of the organization.

THE COURT: And in fact, we have an election coming up; correct?

MR. ALSTON: Right.

THE COURT: And that election covers many of the trustees, if not all of the trustees?

MR. ALSTON: Indeed it does. I believe five of the nine, Your Honor.

THE COURT: I see the signs all over town.

MR. ALSTON: Right.

THE COURT: In fact, I was out Leeward Coast and I saw Mr. Souza's sign out there over the weekend.

So we live in a world that maybe some of these five trustees are not even trustees --

MR. ALSTON: Right.

THE COURT: -- after November.

MR. ALSTON: Right.

THE COURT: And I don't think anyone in this case, whether it's appealed or not, is contemplating that this matter is going to be resolved before November.

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MR. ALSTON: Right.
THE COURT: So we have a situation where if one of the trustees remains, whether in their individual or official capacity come January February of 2027, they may no longer be a trustee.
MR. ALSTON: Right.
THE COURT: They may no longer have the ability to effect whatever order comes out of this Court.
MR. ALSTON: Right. But to the extent people have been sued in their official capacity, then under the rules, automatically there is a substitution of the replacement. And so because -- because a suit in their individual capacity is only a suit against the entity.
THE COURT: Right.
MR. ALSTON: It doesn't matter who's named here.
THE COURT: Okay.
MR. ALSTON: Okay. And -- but, you know, that raises a good point, Your Honor, in terms of how this case goes forward. It would also be appropriate for the Court to stay its hand until after the election because, as you say, the election will impact five of the people maybe positively, maybe negatively. And if that -- if it goes one way, the current majority may be -- may remain a majority or become a larger majority; or if it

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goes another way, they may become a minority. And Ms. Lindsey or another member of the minority might become the leader of OHA. We don't know.
And it certainly makes sense, I submit, for the Court and the parties to pause until we see who is going to be driving the ship as it were while this case goes forward.
THE COURT: Okay. And again respectfully, I'm going to --
MR. ALSTON: I know. I understand. I understand. I'm going to -- I know you'd like to go forward. I'm just saying that, writ large, there is an issue about who's going to drive the ship forward.
THE COURT: Right.
MR. ALSTON: And at some point, you may want to take that up and decide that it's appropriate to pause. And I'm not -- I won't ask you to do that today. But, you know, we'll see how it goes.
So beyond this -- the fact that the statutory remedies and the statutory obligations are against the Board in the case of the Sunshine Law or the employer in the case of whistleblower claim, we have -- we have the duplication that if you sue the entity, you don't need to sue the individuals. And Ms. Bronster obviously sued both, I submit, to create a chaotic situation. And then

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she layered in the -- initially all and then only some of the trustees in their individual capacity even though there's nothing to suggest that people acting in their individual capacity have the ability to violate either the Sunshine Law or the whistleblower statute or can be held accountable for remedies under either statute.
And once you get rid of the trustees and you're left with OHA, she's left with the ability to pursue whatever remedy might be appropriate. And the Court has the power to enforce that remedy in whatever way may be necessary. But you don't have the chaotic situation where you've got -- what you presently have. Okay.
THE COURT: So Mr. Alston, what you're saying to me on the record --
MR. ALSTON: Yes.
THE COURT: -- that if it comes down to it --
MR. ALSTON: Right.
THE COURT: -- and there's a decision by me ultimately at a trial --
MR. ALSTON: Right.
THE COURT: -- and it's upheld on appeal --
MR. ALSTON: Right.
THE COURT: -- that is against the Office of Hawaiian Affairs, no matter who is in the position of a board of trustees, they would be compelled to comply

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with the order of the Court; correct?
MR. ALSTON: Because they are -- the Office of Hawaiian Affairs is the umbrella and the employees and the trustees are simply constituents -- that may be not the best word, but I'll use it for now -- constituents of OHA. They are part of OHA. They act under -- you know, they act to implement the duties of OHA.
THE COURT: Okay.
MR. ALSTON: Okay.
THE COURT: Okay. Thank you.
MR. ALSTON: All right.
So I think the statutory language controls who is properly before the Court with respect to those claims.
With respect to the individual -- naming five trustees in their individual capacity, we have the Intracorporate Conspiracy Doctrine, which indicates that people who are part of an organization can't conspire. So they fall away as a group, and then you're left with the defamation claim. And the defamation claim fails for a whole number of reasons. One is, to the extent that it's against Mr. Kahele in his individual capacity, it is clearly covered by the SLAPP statute okay. The SLAPP statute has an exception for people working in their official capacity. But the SLAPP statute doesn't

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extend claims made against someone in their individual capacity, which is what is present here.

And so if you -- if you dismiss under the SLAPP statute, that eliminates Trustee Kahele in that capacity. If you don't, then he has the right to appeal, and that would automatically stay the entire case.

THE COURT: So Mr. Alston, when you filed the motion to dismiss --

MR. ALSTON: Yes, Your Honor.

THE COURT: -- and you included the SLAPP statute --

MR. ALSTON: Right.

THE COURT: -- did you contemplate that the filing of a SLAPP motion, whether it's embedded within a larger motion or it's its own special motion, stays the remaining matters until --

MR. ALSTON: Sorry, Your Honor, I couldn't --

THE COURT: Did you contemplate that the filing of that motion stays everything else?

MR. ALSTON: No. It is the filing of an appeal from the denial of the motion.

THE COURT: Okay. But also included in the SLAPP statute is, upon filing of a SLAPP motion to dismiss, it stays other matters including discovery.

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MR. ALSTON: And we could have done that. We didn't. We didn't seek that relief.

THE COURT: Okay.

MS. AHU: We did.

MR. ALSTON: We did?

THE COURT: But it automatically -- it automatically --

MR. ALSTON: I beg your -- I beg your pardon. I'm corrected by my brain trust here. We did seek that. We did seek that relief, Your Honor.

THE COURT: Okay. Well, it's automatic embedded in the SLAPP statute --

MR. ALSTON: Correct, Your Honor.

THE COURT: -- that if you're going to file a special motion to dismiss under the SLAPP statute --

MR. ALSTON: Right.

THE COURT: -- that all other matters are stayed until resolution of the SLAPP motion.

MR. ALSTON: Right.

THE COURT: Okay. All right.

MR. ALSTON: Okay. So with respect to the application of the statute, clearly to the extent they're complaining about Mr. Kahele's actions in a board forum that's protected --

THE COURT: So can I press you on this just a little bit.

MR. ALSTON: Sure.

THE COURT: Because what about the argument that the defamation claim against Mr. Kahele? Yes, they labeled it in his individual capacity in their complaint. But if you look at the actual actions they're complaining of, they clearly were --

MR. ALSTON: Official capacity.

THE COURT: -- in his official capacity.

MR. ALSTON: Right.

THE COURT: So how do we untangle that in relation to the SLAPP statute?

MR. ALSTON: Okay. If it was in his official capacity, the exception of the statute applies. Okay. There's no dispute about that.

THE COURT: Right.

MR. ALSTON: It expressly says a claim against a public official acting in their official capacity.

THE COURT: Then he would not have the protections of the SLAPP statute?

MR. ALSTON: Correct, Your Honor.

THE COURT: But how would that affect the litigation and their ability to proceed against him on a defamation claim in this official capacity?

MR. ALSTON: Well, because of the way they've

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pleaded it, it may trigger the right to appeal if you were to say it's not covered by the SLAPP statute. I haven't ever discussed that possibility with Mr. Kahele, and I can't find out how we --

THE COURT: But say they chose to sue him for defamation in his official capacity --

MR. ALSTON: Okay.

THE COURT: -- not in his individual, how would that -- what --

MR. ALSTON: The SLAPP -- if I may.

THE COURT: Go ahead.

MR. ALSTON: The SLAPP statute wouldn't apply.

THE COURT: Right.

MR. ALSTON: But the immunity provisions of Chapter 662, which are incorporated into Chapter 10, the OHA statute, would apply. And Chapter 662 says basically, the State and its employees are not liable for libel or slander or a number of other things. And so at that point, it triggers statutory immunity under Chapter 662.

And thirdly, if you get past those hurdles, we get to the question of whether they have pleaded with enough clarity, recognizing this is a noticed pleading state. But had they pleaded with enough clarity, that anything Mr. Kahele may have said in the boardroom was

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defamatory or could have been defamatory at all. Then they don't know what he said. Obviously, they're just sort of shooting in the dark about what was said. And I submit that you can't simply shoot in the dark and say I was defamed by somebody by saying who said something, I have no -- I don't know what they said, but I must have been defamed.

And that's the peculiar circumstance where they don't -- you know, in a normal defamation case, the plaintiff would come in and say the defendant called me a thief, the defendant called me a liar, the defendant, you know, said I was a pedophile, whatever defamatory.

Here, within the context of the executive session, I submit that that detail just doesn't exist and they're just simply speculating. And this is not a -- the Court doesn't exist to let them pursue a fishing expedition in that regard.

Okay. And those are my arguments or comments on the motion to dismiss, Your Honor, unless you have any more questions.

THE COURT: No.

MR. ALSTON: Okay. With respect to the motion to compel discovery --

THE COURT: So I want to take that up last.

MR. ALSTON: Okay. Fine. That's fine,

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Your Honor.

Okay. Then with respect to --

THE COURT: So that's going to be a separate event after we --

MR. ALSTON: If we get there.

THE COURT: -- untangle everything else. Yes.

MR. ALSTON: I'll get there, Your Honor.

Okay. With respect to the motion to strike the filings by the four -- the minority trustees, you have to start with the idea of who's properly in this dice begin with. You'll recall that when Mr. Mackey first came aboard, strangely he said don't act on the motion to dismiss. Well --

THE COURT: And indeed, I questioned him as to why he wouldn't want his clients to be dismissed --

MR. ALSTON: Indeed.

THE COURT: -- from any action.

MR. ALSTON: Indeed. Indeed. It's hard to image any client wanting to stay in litigation.

But -- and where the statutory framework of both the Sunshine Law and the whistleblower law are so clear about who is properly targeted, then his clients should have gotten out of the -- at the gate. They should never have been sued, but they should have gotten out of the starting gate. Right?

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And for them to instead stay in when they're not properly part of this case and to make filings that directly undermine the position of OHA as an organization, with speculative comments, with gratuitous waivers of claims, and suggestions that Ms. Ferreira's entitled to, you know, the maximum damages possible under the law, it's just not -- clearly not appropriate. And you know, therefore because they were not properly named, they -- their subsequent filings or all of their filings that are inconsistent with their position as minority trustees should be stricken.

The Akana case is crucially important here. In Akana, she filed an action in her official and individual capacities against her fellow trustees at OHA. And the Supreme Court said nothing in Chapter 10 or -- allows that. And there is no indication that the board writ large as an org -- and as an entity allowed the filing to occur -- or said the filing could occur.

And so that teaches that where they are in their -- in this case in their individual -- excuse me, in their official capacity, they have no authority to file. They should not be filing anything. And that should have been true -- that was true from the day they were named in the first amended complaint in their individual capacity.

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THE COURT: You mean official.

MR. ALSTON: I mean -- excuse me -- in their official capacity. Thank you very much.

So in that respect, Your Honor, I think that all of their filings are inappropriate under Akana and should be tossed because they simply befoul the record with material that is inappropriately here.

THE COURT: And is it your argument that the same line of reasoning applies to the motion to disqualify the Dentons law firm?

MR. ALSTON: Yes, Your Honor. Yes, exactly right. Because -- because, you know, in order to find -- material adversity is a term of art. You can have adversity between people over political issues, over personal issues, over a whole variety of things, and they don't rise to the level of what the courts recognize as material adversity. And where they are not in this case, they don't have -- and not properly participating in this case because of their minority status. And because the majority has the authority -- the sole authority to direct OHA's litigation positions, they -- the adversity between them that ought to be resolved at the Board table doesn't translate into material adversity for the purposes of our representation here.

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And so I think, you know, it's only because Ms. Bronster over filed, overcharged in an effort, I think, to -- I submit, to create a chaotic situation where you would have people scrambling to get control of the lectern so they could address the Court and say bad things or unhelpful things that they're here in the first place. And if the case is limited to OHA as an entity, which is the only proper defendant named for the principal claims, then you would have clarity because OHA would speak with one voice.

Now, could that voice change through time if there was an election and somebody else took -- you know, a different faction got control? Yes. But that's true with any institutional --

THE COURT: What trustees are up for -- not that it factors in, but what trustees are up for reelection?

MR. ALSTON: Boy. I believe Trustee Lindsey, Trustee Akaka, Trustee Galuteria, Trustee Souza, and Waihee.

THE COURT: Okay.

MR. ALSTON: So it is three members of the majority faction and two members of the minority faction.

All right, Your Honor? And so from the

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beginning, we approached the Board and said this is a strategy, okay. I provided during the meetings, which are confidential and privileged, but I could submit the minutes of those meetings under seal if you -- in camera, I should say. Not under seal because then everybody would see them. But in camera so you can see what was discussed.

I submit it's letters to the individual trustees, consulting with them in exactly the manner that's required under the Rule 1.0, according to the Supreme Court in the decision in Franco where it says written submissions are consultation. And in response to all that, I got one trustee, Trustee Akina, to agree to the motion that we filed. Others didn't. But we've been consistent from day one.

MR. KUPAU: Objection. Now disclosing attorney-client communications.

MR. ALSTON: I'm not disclosing attorney-client communications.

MR. KUPAU: I just wanted to object.

MR. ALSTON: We've been consistent with the approach, with the strategy, with the effort to get everybody out, to trim this case down to just OHA as a defendant. And, you know, there have been collateral issues that don't involve the legal or financial

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implications of this case that have driven a different approach --

THE COURT: Okay.

MR. ALSTON: -- by some people.

So I would ask you, Your Honor, to grant the motion to dismiss, to cut this case down to just OHA as a defendant, to take out Trustee Kahele because of his immunity order under the SLAPP statute or Chapter 662 or both. And then basically, let this case go forward with us as representing the entity.

THE COURT: I do have one final question --

MR. ALSTON: What was that?

THE COURT: -- and it pertains to Ms. Sylva. And there's an argument raised by the plaintiffs that Ms. Sylva is a necessary party --

MR. ALSTON: Right.

THE COURT: -- under Rule 19 because her job could be affected.

And when you look at similar cases that are going through our court system, one that was near and dear to my heart, although I was gone by the time it made its way to court was the case involving the defender counsel and the Office of the Public Defender.

In that case, *Civil Beat*, through its legal arm, filed a lawsuit against the defender counsel. And

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there was another body because there were joint complaints. And Jon Ikenaga, who was the public defender, and at issue in that case was the election for the new -- at the time new public defender. He was named as a necessary party under Rule 19.

So as it pertains to Summer Sylva, why should she be dismissed, when it appears that one way or another her appointment as interim CEO could be affected?

MR. ALSTON: Two reasons, Your Honor. One is she has been and continues to be willing to be bound by whatever rulings are made about her -- about her position. And she's here in court today. And I -- if Your Honor feels it's necessary to question her about her willingness to be bound without being a party, certainly free to let her answer a question about that.

The second thing, Your Honor, is by definition, she is in an interim capacity, right. Ms. Ferreira's contract ends by its terms in October. At that point, OHA will be seeking a new administrator. It's already -- the Board has already approved a process for starting the search for a new administrator. That person would supplant Ms. Sylva in whatever capacity she's there today. And so at that point, her presence is no longer -- certainly no longer required. And

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that's just a few short weeks away.
THE COURT: Okay.
MR. ALSTON: And so she's gone.
THE COURT: Okay. Thank you, Mr. Alston.
MR. ALSTON: Any other questions, Your Honor?
THE COURT: No. Thank you for very much for being willing to engage.
Mr. Kupau.
MR. KUPAU: Yes. And some of this, we're going to split. Ms. Bronster is going to help me.
It's been said many times in court in different situations, but justice delayed is justice denied. All I hear is delayed; appeal this; stay that.
THE COURT: Mr. Kupau, I'm not doing these -- my decisions --
MR. KUPAU: Okay. Which I'm glad. I just need to make that for the record.
The other thing, too, is we have claims for defamation and conspiracy. Those go to the specific trustees which were identified. What's also troubling with the argument is it appears that Mr. Alston, again, even though we have a motion to disqualify, is arguing for the dismissal of all nine of the trustees, where four of them are saying we didn't ask for that. That's troubling without dealing -- as we had said before --

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THE COURT: Well, the official response -- and Mr. Mackey certainly will get up and argue.
But the official response is they're not asking to not be dismissed. They're just saying a position. They're not asking in their official filings to stay and remain in the case. They're saying they -- whatever decision I make as to the dismissal, they will live with, essentially is what they're saying.
So they're not asking to stay the case.
MR. KUPAU: Understand.
THE COURT: And if they are, I have serious questions as to the legal ethics behind that as to what attorney would want their clients to remain in a lawsuit.
And a pet peeve of mine since I've taken the bench is when individuals are unnecessarily named in litigation. Because I think what's forgotten by lawyers is the impact it has on members of our community when they're named in a lawsuit and needlessly so. If they ask for mortgage, they have to say, hey, yes, I've been named in a lawsuit. It's ridiculous. It's going to get dismissed, whatever, but they're put in this position to explain to some other governing body -- a bank that has control over their lives, that has control over how much their mortgage payment is, what their insurance is --

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they're forced to explain themselves away.
So again, I would take issue with any lawyer saying, no, I want my client to remain in this case. And then I would start to question the motives behind that why do you want your client to remain in this case? Is it for some other motivation that has not been brought to the light of day.
So again, you're not arguing on behalf of the four trustees, nor should you be. But that is also a question that I have because it seems as if you, even more so than Mr. Mackey, are representing the interest of the trustees. It is your firm who filed the motion to disqualify. It is your firm who has taken the lead on most of the opposition. You guys are usually the first one to oppose.
And my question is: Why is that? Why didn't the motion to disqualify the Dentons law firm come from Mr. Mackey, who purportedly represents the four trustees?
MR. KUPAU: We've taken the position of what is right and just. And I share one of your concerns same concern.
One of my pet peeves is also when people are removed from their jobs unlawfully when they're besmirched in meetings, when women are intimidated in

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their position as trustees. That's my pet peeve. And that's what's happened here. It's coming up on a year since my client has been removed from her job.
If I may --
THE COURT: And so slight pushback because intimidation against fellow trustees is not part of this lawsuit. As far as the claims, the whistleblower claims, and certainly the trustees are not having -- do not have any claims themselves.
Again I've reviewed --
MR. KUPAU: Yes.
THE COURT: -- some of the proceedings. Optics are what they are. But that's -- I want to keep the facts to the facts of this case and the whistleblower claims, the Sunshine Law claims, the defamation, the conspiracy claims.
MR. KUPAU: So we'll stick with the facts. The facts are: She went to the trustees to tell them what Kahele was doing. And when you look at this, you have an organization -- and the thing that I hope is not lost, when you have Native Hawaiian assets that are arguably between 500 and $600 million, what's the most important thing with that organization? Because they fight over it in congress all the time. It's the budget. Because the budget says where the money goes.

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And that's the crucial part about this in Kahele messing with the budget. And she went and reported that to the trustees and she asked them, please protect me.

THE COURT: Okay. Mr. Kupau, that -- we're arguing the merits seemingly of the lawsuit itself. What I want to know is --

MR. KUPAU: This is going to keeping them individually and in their official capacity.

THE COURT: Okay. So what authority what legal authority allows you to sue Keoni Souza individually under Whistleblower Protection Act, under Sunshine Law, and the other majority -- we'll call them the majority trustees. Leaving out the defamation claim. But what legal authority allows you to do so, whether it's the Sunshine Law or it's our Whistleblower Protection Act?

MR. KUPAU: So with respect to HRS 10-16(d), "In matters involving other forms of remedies, the office, its officers and employees, and the members of the Board shall be subject to suit as provided by any other provision of law and by common law." And when you --

THE COURT: Exactly, "as provided by any other provision of law." So you're suing under the Whistleblower Protection Act. The Whistleblower

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Protection Act, does it allow you to sue an individual?

MR. KUPAU: I'll give you a classic example.

THE COURT: I prefer a yes or no question -- a yes or no answer, not an example.

MR. KUPAU: No. You can't sue an individual because yesterday, I believe it was yesterday, you had an op-ed by -- you mentioned Trustee Souza, who went and did an op-ed in *The Advertiser* and said that Ms. Ferreira was suspended. That's a false statement.

Now, if that was not authorized by the Office of Hawaiian Affairs or by the Board, then that exposes him to individual liability. That cannot get more on point than that.

THE COURT: That's not a whistleblower claim, Mr. Kupau.

MR. KUPAU: But it goes to defamation and conspiracy.

THE COURT: (Indiscernible) not suing Mr. Souza for defamation.

And again, my question -- I would ask you guys to listen to my question.

MR. KUPAU: I'm trying to my best.

THE COURT: And I was very clear. I was crystal clear and I'm repeatedly discussing, I said leave out the defamation, leave out the civil

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conspiracy.

What legal authority under the Whistleblower Protection Act and the Sunshine Law Acts allow you to sue someone individually? And leaving aside Summer Sylva for now.

MR. KUPAU: Okay. But see, in that part, you're actually not dealing with the facts in the case before you. You're asking me to carve out these different things and --

THE COURT: Mr. Kupau, I'm going to take your refusal to answer me as an acknowledgment that there is no legal authority.

And you've sued --

MR. KUPAU: Yes.

THE COURT: -- you have 14 -- 13 -- 14 claims. I have requests to dismiss each claim for different reasons. And I have to address each claim and each separate reason to dismiss. So I can't lump them all together. I can't lump them all and say, hey, just because you sued Mr. Kahele, or Chair Kahele, as an individual in the defamation case, just because you sued them all as individuals in the civil conspiracy case, that means you're entitled to sue them all individually and officially in the majority of the case in Counts 1 through 12. So we cannot just lump them all together.

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Each grounds that you have to sue them have separate bases.

MR. KUPAU: Yes.

THE COURT: So I'm asking again, what legal authority allows you to sue them individually, shortly, and officially?

MR. KUPAU: If you're asking for those specific statutes, then I would agree with you. But we're not dealing with just those in this particular case.

THE COURT: Okay. So you're saying that for those claims, Claims 1 through 12, you have no legal authority to sue the majority trustees individually?

MR. KUPAU: I would say as the -- as the statute as you had said it, then you would be correct, yes.

THE COURT: Okay. And would you also agree there's no legal authority to sue them officially?

MR. KUPAU: No, I disagree with -- you mean under those statutes or --

THE COURT: Under those statutes, yes.

MR. KUPAU: Then arguably, taking your position, then yes.

THE COURT: And aren't you basing Counts 1 through 6, under the Whistleblower Protection Act, that's your sole claims under 1 through 6, the

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whistleblower protection violations; correct?
MR. KUPAU: Without looking at it, I would take your representation to be true, yes.
THE COURT: And Counts 7 through 12 are the Sunshine Law violations; correct?
MR. KUPAU: Yes.
THE COURT: Okay.
MR. KUPAU: As far as I understand, yes.
THE COURT: Now, you raised in your opposition and I'm -- I asked Mr. Alston this, and this is what I'm curious about, is official capacity, they need to be present because they need to effectuate any orders and rules that I may hand down if I rule against them.
Can you flesh that out for me, please.
MR. KUPAU: I'm not sure I understand the question.
THE COURT: So you raised in your opposition that the trustees should remain in their official capacity because you need them in this case, if there's a ruling, they need to be the ones to effectuate that ruling. If you could flesh that out. If you have anything else you want to add to that argument.
MR. KUPAU: No, nothing more to add than what we have in the moving papers.
THE COURT: All right. (Indiscernible). I

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apologize for that, Mr. Kupau.
MR. KUPAU: Yeah, you did, but --
THE COURT: So go -- go forward.
MR. KUPAU: -- that's okay.
THE COURT: And again, let me just say before you go on --
MR. KUPAU: I'm not sure where I was.
THE COURT: I do appreciate everyone and their willingness to engage with me to answer my questions, to allow me to push back. I think it's the most effective way to get to decisions and to make sure everyone is fully heard and you guys get an idea of some thoughts that are in my mind.
So again, I do thank you, Mr. Kupau, for your willingness to engage.
MR. KUPAU: I'm not sure what -- we're sort of lumping in a whole bunch of motions in it at one time. I'm not sure --
THE COURT: I know. And we can separate them out if you need. Again, take what time you need.
MR. KUPAU: Okay. Well, I think I've addressed that part. Ms. Bronster will address other parts that touch upon --
THE COURT: So -- go ahead. Whatever your part, you can wrap up, yeah.

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MR. KUPAU: Okay. And then the other part I would have is we're not dealing with that now is the motion to compel.
THE COURT: We're going to leave that for the very, very end, yes.
And Mr. Kupau.
MR. KUPAU: Yes.
THE COURT: I do have some questions about SLAPP. I don't think you've argued why or how the SLAPP statute should not apply. You argued in your briefs, for sure. And your briefs were well-written and preserved your arguments there. But anything orally you want to add to the --
MR. KUPAU: I'll leave that to Ms. Bronster.
THE COURT: Okay. All right.
MS. BRONSTER: Your Honor, I'd first like to talk about the motion to strike. Mr. Alston simply wants the admissions that the four trustees have made to be stricken from the record. They simply don't want the truth to come out. We've seen that. You'll hear it later about the motion to compel. We have not been able to get even the complaint against Ms. Ferreira; has not been given to Ms. Ferreira.
THE COURT: So if I may pushback. Mr. Alston's taking the position that the four trustees should never

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have been party to this lawsuit to begin with; so therefore, how should they be allowed to file an answer. And indeed if I agree with that, say I agree with Mr. Alston that they should not be in this in their official capacity, how does that affect their ability to file an answer?
MS. BRONSTER: There was no ruling to that effect. And there are hundreds of cases out there where individuals are dismissed because they never should have been brought in. And maybe they're not brought -- maybe the motion to dismiss is not raised at the outset. Maybe it's not ruled on at the outset. I have never seen, and there was no authority that Mr. Alston has suggested, that when someone is dismissed from the case because they never should have been brought in, that their admissions or their pleadings are stricken from the record. It's completely baseless. He is trying to get it stricken because he doesn't like it. If you look at the motion to strike, it's remarkable. First, it says there's no authority because the majority didn't authorize them to file an answer when they were sued in their official capacity. There was nothing that says that when the majority votes, that an answer cannot be -- cannot be submitted. A lot of the arguments --
THE COURT: So does it matter that the four

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minority trustees were filing in their official capacity versus individual capacity?

MS. BRONSTER: No. Because they're not saying we speak for all of OHA. And I think that's what Mr. Mackey made clear in his pleadings. If you look at the answer, it doesn't say this is being filed on behalf of OHA as a whole. It does not say this is being filed on the majority. It says, I, in my official capacity, admit that Mr. Kahele defamed Stacy Ferreira; admit that she was the subject of retaliation because of her whistleblower but --

THE COURT: But when they're doing so in their official capacity, aren't they necessarily speaking for OHA --

MS. BRONSTER: No.

THE COURT: -- and speaking for -- on a matter they had met and voted on?

MS. BRONSTER: Not -- no. I mean, each -- if you have a situation where an official capacity suit is only against the entity, then you would never have official capacity pleadings ever. And you have them all the time.

I mean, one of the problems in arguing these motions is that Dentons has made assertions. And because they say them, they want you to follow without

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the law --

THE COURT: Well, I think --

MS. BRONSTER: -- the law that supports it.

THE COURT: I think --

MS. BRONSTER: And on the motion to strike --

THE COURT: Hold on, Ms. Bronster.

I think in this case, it's slightly different from a lot of cases because this case, we are compelled to strictly follow the statutory scheme that you are suing under. And 12 of the 14 counts have clear language that says it's the employer that is being sued. And in the Sunshine Law, it's the Board that is being sued.

And we have very clear case law as to civil rights actions which definitions are almost exactly the same, that employer does not mean agent, does not mean employee, does not mean supervisor. And in civil rights -- civil rights statute, the legislature clearly expressed their knowledge and ability to allow people to sue under civil rights actions individual employees. There's a subsection, I think three. The Whistleblower Protection Act does not include such a subsection. And so we're left with -- so when you say suits are brought in the official capacity all the time, yes, I see that all the time. But we are dealing with the Whistleblower

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Protection Act.

MS. BRONSTER: And, Your Honor, I'm not at this point arguing the motion to dismiss. What I'm arguing is the motion to strike.

THE COURT: Okay. Okay.

MS. BRONSTER: Because the impact of the motion to strike, if you agreed with what Dentons is saying, what Mr. Alston has said, is that if the prior pleadings on a motion to dismiss get wiped out off the record.

THE COURT: And what is the -- why are you so concerned? We established why Mr. Alston is so concerned.

But again, we're -- let's assume that I agree with Mr. Alston, that officially and individually, none of these trustees belong -- leaving out 13 and 14. But let's just say that I agree with that, then what is the legal basis for this answer to remain in the docket and why does Ms. Ferreira care so much to have this in if not to use it against the Office of Hawaiian Affairs?

MS. BRONSTER: We are not using it against the Office of Hawaiian Affairs that they have admitted anything. However, there are certain facts that the individual -- the four individuals have admitted to. That there was a meeting in which Mr. Kahele did something, that he defamed Stacy Ferreira.

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THE COURT: Won't all those facts come out at a trial, at contested case hearings?

MS. BRONSTER: But we're in --

THE COURT: I've kept it before me. Mr. Kupau said it's not going to the shadows of arbitration. So it's in the light of day. It's in a public courtroom. We have Mr. Lovell here from *Civil Beat*.

So won't all of this come out at some point?

MS. BRONSTER: We don't know that.

Now, Your Honor, had we been able to get disclosures, had we been able to get discovery, and all of those things were delayed and delayed and delayed so that they could make sure that nothing happened until the end of the contract, nothing happened until after the elections, we would be in a different situation. But we do not have a single sworn statement. And what we need is to be able to use this to establish the record. He's trying to make it go away. Your Honor, you can't ignore the fact that these were filed.

Now, you can later decide that they're not admissions against OHA. We'd agree with that. But they are admissions of individuals who were part of the case at the time. And when we depose them, we want -- or put them on the stand, we want to say that you agree that Stacy Ferreira was retaliated against; you agreed that

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the only reason that Kai Kahele brought up these complaints against Ms. Ferreira, which we still haven't gotten from Mr. Alston --

THE COURT: So how would striking the answer prevent you from making these arguments, prevent you from then asking these questions?

MS. BRONSTER: Well, where is the authority to strike it? Where is it -- he is --

THE COURT: Ms. Bronster, and --

MS. BRONSTER: He argues -- may I answer?

THE COURT: Sure. I'd like an answer to my answer first, though.

MS. BRONSTER: The suggestion by striking is that it doesn't exist. And if you look at what they're asking for in their motion, they're trying to say that it was -- that the answer was unauthorized because they weren't authorized to say anything that was inconsistent with what the majority said. They're trying to manipulate the truth. And by you saying you're right, I'm going to get rid of this, it suggests that the four trustees' truth cannot be used.

THE COURT: What prevented them from speaking out publicly or filing their own lawsuit against the Office of Hawaiian Affairs to raise these issues?

MS. BRONSTER: Well, quite frankly, we think

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they should. We think that they have a fiduciary duty to call into question and to call the majority, a gang of five, on their wrongs.

THE COURT: Wouldn't that be their adequate legal remedy then?

And again --

MS. BRONSTER: But that's not --

THE COURT: -- we want to -- we're framing this as if whatever decision I make today is silencing anyone. And I could not disagree more because there are many remedies for the four trustees. And certainly any decision today is not silencing them. It's just do they adequately belong in this lawsuit --

MS. BRONSTER: And that's --

THE COURT: -- I think is the fundamental question.

MS. BRONSTER: That again goes to the question of whether or not you're going to dismiss them individually. But what they're asking you to do is treat the answer as though it never existed. And I am absolutely certain that when the time comes, there'll be a motion in limine against using it because it's been stricken from the record, because it wasn't authorized. But it was authorized because those four trustees authorize their proper nonconflicted counsel to put

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those things into the record.

And that's why -- and that's why Stacy Ferreira has the right to argue very strenuously that those admissions, which help her case, should stay in the case. And that Mr. Alston should not be entitled in a conflicted way to tell the four trustees not to tell the truth.

THE COURT: So Ms. -- it seems to be the argument of Mr. Alston that this was a tactical strategic decision by the plaintiff to create the -- this exact situation, to create a situation in which the four trustees can file an answer that essentially admits. What is your response to that allegation?

MS. BRONSTER: Couldn't be farther from the truth. We had no idea that they were going to file this answer. We did say we wanted an answer. We had filed a complaint. We want -- they didn't respond. They said they were not joining in the response of Dentons. And in fact, Dentons withdrew from representing them.

And so the time came. They didn't file a motion to dismiss. We wanted an answer. But we did not know that they were going to admit all of these allegations. And when we sued them, we were informed by Mr. Alston that they were all in lockstep and that each and every one of them agreed. When I suggested that

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perhaps he didn't have full agreement just because noise that we had heard or articles we had written -- that we had read, he told me I was completely wrong. But we had -- so his suggestion that this was all intended to be this way is just not true.

We were representing Stacy Ferreira, who is retaliate against and removed and put on administrative leave because she reported Kai Kahele to the attorney general. And we did not know, as the four trustees later admitted, that that was exactly why he wrote a complaint that tried to get her set aside. And it was successful.

But we have not had the discovery. And for Mr. Alston to say that no one, not one of his former clients can speak the truth about what happened here unless he says so or unless the majority says so is simply not how OHA is supposed to work. And if I represented the four trustees, which I don't, sure, I would want to see them calling the majority on their wrongs. And HRS Section 10-16 specifically allows that. We've seen many, many cases in which individual trustees have sued. And we believe that the fiduciary duty that the OHA trustees have is not OHA as a Board. It is to the beneficiaries. And if you look at the statute, you look at the constitution, that fiduciary duty is to the

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Hawaiians and Native Hawaiians, not to the majority of the Board. And that's precisely what the motion to strike is attempting to do. It's attempting to silence the minority and not have them come forward with the breaches of fiduciary duty.

I don't know, maybe the four trustees will come forward and call the majority trustees on their breaches, which is what they should do. Years -- and which gets into the issue of whether or not Dentons and Paul Alston can represent the remaining trustees.

Years ago, in the Bishop Estate controversy, there was one trustee who was willing to stand up against the others, and that was Oz Stender. He did not file a separate complaint, but he did provide information to the attorney general's office. And each of the five trustees, because they had different views about what was a breach of fiduciary duty and what was right and what was wrong, there were five separate sets of counsel, as there may have to be here. But certainly there should be at least two sets of counsel because Mr. Alston and Dentons, under the rules of professional responsibility, cannot represent the five when he had previously represented all nine. And that is very clear by looking at the rules.

If a lawyer, who formerly represented a client

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in a matter, he shall not thereafter represent another person in the same matter where the interests are materially adverse to the former client. That's the rule.

In a criminal matter, when one lawyer represents two defendants and they end up being adverse, that lawyer can't pick and choose which client he wants to represent on a go-forward basis and say I'm withdrawing from A but I'll continue to represent B against A. That's not allowed under the rule. And it's not allowed under the rules in this case either.

And so the first question that you ask in any disqualification is: Did Alston Hunt, Paul Alston, represent the four individuals. And the answer is clearly yes. If he didn't, he wouldn't have put Dentons' name on the pleadings on behalf of all of them individually and officially. He never has shown us -- while he's talking about confidential executive session meetings and attorney-client communications, he has never shown us an engagement letter with all nine, nor has he shown us a written waiver of any potential conflict. And then when the conflict came up, he didn't get a waiver to allow him to continue this representation.

So was there a prior representation? Yes.

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Docket 144 shows the order allowing his withdrawal from representing them both individually and officially.

The second question: Is there a conflict? That, too, the answer is clearly yes. As you can see by filing motions, that they didn't agree to. But when you look at the motion to strike, it is absolutely clear that he's trying to strike what they wanted to put into the record. That is material because it goes to the very -- the very basis of what his prior representation was. If you don't do what I say and you don't follow what the majority says, I don't want you to say anything at all. That is adverse and it's materially adverse and it is adverse in the same case that he formerly represented him.

In addition to the motion to strike, the motion asks for an injunction against any filing. He asked for a motion to arbitrate when they were against it and didn't believe it was appropriate. And subsequently, there have been accusations that the four have violated the Sunshine Laws. Again, another adverse position that's being taken. Specifically, Mr. Adams of the same firm, got up at one of the OHA meetings and said the four trustees are violating the Sunshine Law. And it's throughout these pleadings.

So, Your Honor, you may think that it is -- it

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doesn't matter, if the individuals get out, whether Mr. Alston and his firm stay in. But it is absolutely crucial because you cannot simply ignore Rule 1.9. You cannot ignore the fact that it is not a lawyer's choice that when you have two clients who end up disagreeing, that you want to go with the one with the deep pockets who can continue to pay you. That's not how it works. You just can't continue unless they agree. And that's for Mr. Mackey to tell you.

So, Your Honor, I think that there an incredible amount of overreaching going on here to try and silence the truth. And I think striking the answer is not authorized by any of the statutes that Mr. Alston has cited. And quite frankly, the whole idea of allowing conflicted counsel to file a motion to strike his former client's filing shows how fundamentally flawed it is that the Dentons firm is continuing.

Your Honor, we believe that they should be disqualified. The motion to strike the answer should be denied and we should get on to get things out before you.

Thank you.

THE COURT: I do have to take a quick break. We have an 11 o'clock matter, a pretrial conference. I apologize to you folks. I know it takes some time to

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get you in and out. It should take five to ten minutes tops. We'll bring everybody back in. I still anticipate we're on track to finish before noon. Okay.

MR. ALSTON: Your Honor, are you going to be --

THE COURT: You can leave your things. I don't want to disrupt you folks too much. You guys have been here a long time, and I do apologize. That's going to be a very quick hearing. I don't want to keep them on deck for too much longer. So thank you for your guys' patience.

THE COURT CLERK: All rise. This court is in recess.

(A recess was taken.)

THE COURT CLERK: Counsel, are we ready to proceed?

MR. KUPAU: Yes.

THE COURT CLERK: Thank you so much.

All rise. This Court is reconvened.

In the gallery, please be seated.

THE COURT: Okay. So the record reflect -- can we -- are we on the record?

Okay. Record reflect the appearance of all counsel who were previously present.

Mr. Mackey, I believe it is your turn to address the issues raised in the three motions we're

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arguing.

MR. MAKEY: Thank you, Your Honor.

Your Honor, I think as Ms. Bronster was alluding to, if not making perfectly clear, the Richards versus Midkiff case at a minimum, and others as well, establish a clear avenue for trustees to act in a way that is in their official capacities in litigation but it's not on behalf of an entity, in this case OHA. If you read the quotes in Richards versus Midkiff indicate not only do cotrustees have an obligation -- a fiduciary obligation to correct breaches of trust by their cotrustees, but they can litigate to put a stop to that. And in doing so, they're acting in effect in a derivative capacity on behalf of the beneficiaries.

So what I would put to you is that when they do so, they act as trustees and what could only be described as in their official capacities. So the trustees in this case will have an ongoing interest in putting a stop to the ongoing whistleblower violation in this case that constitute a breach of trust by the majority trustees here.

And so I think going a little bit through the background of what's happened and what we've put in the record on this -- certainly on the motion to disqualify will help inform, I think, our position on each of the

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motions, which is that when Dentons came into this case, they had a deeply divided Board. This case being about a decision that was taken at the September 23rd, 2025 executive session meeting on the subject of whether or not to put Ms. Ferreira on administrative leave pending an investigation. An investigation was (video sound distorted) into a complaint that was brought by Chair Kahele himself against her.

And to understand that complaint, we have to back up a couple of months to June of 2025 and look at Ms. Ferreira's complaint that she made at that time against him, and importantly the fact that it included a claim of law violations, specifically the ethics code against Chair Kahele. She made that complaint initially to Board itself. When they didn't take prompt action on it, she forwarded that complaint on to the attorney general.

Under the Whistleblower Protection Act, the attorney general's office is clearly a public body. A report of a law violation to a public body is clearly protected activity under the whistleblower law.

So fast-forward again to the September 23rd meeting. The complaint that was under consideration made by Chair Kahele specifically cited as its most serious item of complaint or concern about

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Ms. Ferreira's actions, the fact that she had provided her complaint to the attorney general as a violation of OHA policy and her contract, for not informing the Board beforehand. Now, there is no basis for any employer requiring an employee to refrain from engaging in protected activity by reporting to the public body, and in this case a law enforcement agency, outside the employer. That's simply not a permissible restriction.

The complaint that Mr. Kahele filed against her was simply perfectly clearly whistleblowing. And the action that was proposed to put her on even paid at administrative leave was perfectly clearly, under Hawaii Supreme Court precedent, an adverse action that would be prohibited actionable retaliation under the whistleblower statute.

For some reason, even though there was employment -- labor and employment counsel available and present during the meeting to advise them, the trustees were not advised that this was a serious potential whistleblower claim likely to happen if they took this action. Ultimately, the Board voted to place her on leave, six to three. But the four trustees before you now recognize that this is a serious whistleblower violation initially and it's ongoing as she remains on leave.

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Understanding that background, that's the conflict that Dentons had when they took on this representation. They were supposed to engage in a consultation with the prospective clients and sus out that conflict and understand at the time that it was something they needed to seriously consider whether they would be capable of representing all of the defendants in this case in a common representation. I don't believe that ever should have been possible.

But if they thought it was at the time, the rules are very clear that what they were required to do was engage in that consultation. And I think Mr. Alston's declaration make perfectly clear that they didn't do that, not with sufficient depth or thoroughness. And if they did proceed, it could only be with the trustees' consent and it should be very clearly an affirmatively stated, not the kind of tacit assent that he seems to have accepted from them. And it must have been confirmed in writing, which there's no dispute that it never was.

So they had a clear serious conflict of interest from the outset of their representation. It was a bit of a zombie representation. It was just waiting to fail. It was kind of limping along. But, you know, it was dead from the outset effectively. It

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was an attorney-client relationship, but it wasn't one that was going to last.

And having undertaken that representation, under the rules, under the commentary to the rules of professional conduct, it's quite clear that if it failed, the expected outcome is that they would need to withdraw from the representation of all the clients.

Now, I don't think it matters in this case that they were initially represented both in official and individual capacities. But they were. And they still were at the time Dentons withdrew. I also don't think that the dismissal motion would moot the material adversity given the ability and the obligation of the four trustees here as cotrustees to take action, including legal action, to put a stop to the ongoing fiduciary breaches. Because that will be an ongoing interest of theirs, whether they do so in this litigation as a party, as an official-capacity party with their own counsel and they're able to do so. To me, that seems to be the most efficient and effective way for them to advocate to try to put a stop to this ongoing breach of trust.

But even if they're dismissed in this case in their official capacities, they have an ongoing legal obligation to do that, including to take legal action.

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And there will be ongoing material adversity if Dentons continues to represent the other defendants in this case. So it cannot be mooted. As appealing as that might seem as a resolution to this matter, the disqualification issue simply cannot be mooted by dismissing all of the defendants in this case.

The issues on which there are material adversity, which include not just the issues in the litigation itself as to whether to compel arbitration, whether to strike the answer. Those issues extend to the four trustees' rights to engage in filings in this case, which is something that Dentons effectively tries to take out of your hands. But it's for you to decide in this motion to strike today. And it won't necessarily be resolved finally by you, even if you were to grant the motion to strike or to -- you know, if you deny the motion to disqualify, if you denied or granted the motion to strike, that issue will remain because you're not yourself the final decider. They will have an ongoing issue and potentially contesting that on appeal.

So the disqualification is not something that can be mooted by a dismissal of all the defendants in their individual and/or official capacities here today. So we continue to submit that the disqualification must

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be granted, because what they've also failed to provide you is any authority in the law-governing lawyers that takes this official capacity argument, this argument that the four trustees are really only one with OHA, that they have no power to act outside of that, which is clearly not true if you look at the Richards case and other cases.

THE COURT: So the Midkiff case, though, is -- what you're referring to is the ability of a cotrustee to bring an action or a claim against a fellow cotrustee; correct?

MR. MAKEY: Indeed.

THE COURT: And to either compel certain actions or to enjoin them from committing a breach of trust; correct?

MR. MAKEY: Yes.

THE COURT: Midkiff doesn't contemplate the situation we have here in which your clients were brought in in their official capacity as defendants in a lawsuit.

MR. MAKEY: That was not at issue in Midkiff.

THE COURT: Okay.

MR. MAKEY: So agreed, it doesn't contemplate that, but that but nothing in it precludes that.

THE COURT: But nothing in Midkiff discusses

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the authority to bring whistleblower claims against individuals; correct?

MR. MAKEY: Correct.

THE COURT: And nothing in Midkiff discusses the authority to bring Sunshine Law violation claims against anyone other than the Board itself; correct?

MR. MAKEY: Correct.

THE COURT: Okay.

MR. MAKEY: Yeah. My only point being that, as they're named parties, as they have counsel, as these issues have come up, there is nothing that prohibits them, and I think Midkiff authorizes or makes available to them an opportunity to, on their own behalf, yet in their official capacities, take positions in the litigation which are intended to correct the breaches of trust of their cotrustees.

So I guess, you know, maybe now I could turn to the motion to strike.

THE COURT: Sure.

MR. MAKEY: Which I think it was perfectly appropriate for them to file, to acknowledge or to put out their position on these issues. And in doing so, they never say they're acting on behalf of OHA. They're very clear that they're saying, so only in their capacities -- on their own behalf in their official

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capacities. But it's for the purpose of correcting a breach of trust, for answering honestly in the record what they believe to be an accurate set of responses to the allegations of the complaint.

So there is nothing in their motion to strike, nothing in Rule 12F that authorizes striking the answer on any of the grounds. In their initial memorandum in support of that motion, they cited only immateriality, which clearly doesn't apply. The answer is quite material. Nor does it fall within any of the other categories that form a basis for Your Honor striking this answer. They also ask for permanent injunctive relief. They did so failing to even cite to you the very high standard.

THE COURT: And I'll tell you, Mr. Mackey, I'm not considering any ongoing injunctive relief.

MR. MAKEY: Thank you, Your Honor.

But I think they similarly fail to be clear about what basis under Rule 12F might actually apply to strike the answer.

THE COURT: So I think the reply purports to do that. I mean, they say under 12F that Docket 162 is immaterial, purporting to speak for OHA without authorization; and pertinent, containing admissions no party is authorized to make on one's behalf; and

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redundant, attempting to supplement OHA's authorized first filed response. And so those are some of the grounds that they cite to in the language in 12F.

MR. MAKEY: We dispute that it fits within any of those categories, first of all. And secondly, the striking is the appropriate remedy. They've been very clear they're not speaking on behalf of OHA. That can be cured with a curative order by Your Honor. And we've invited the Court to do that, to be very clear that it's not made on behalf of OHA. That's fine.

It's certainly not redundant because it's not purporting to speak on behalf of OHA. But that also can be cured, as can be the other ways they try to wedge this motion into the factors or the types of bases that you can consider striking this complaint.

THE COURT: What about the argument they raise about lack of authorization to do so, and how did these four trustees collectively come to an understanding to, No. 1, all four agree to hire you; and No. 2, to all four file a coordinated answer?

MR. MAKEY: Well, I mean "coordinated" itself is kind of a loaded term.

THE COURT: I'm saying this is sort of the argument they're making in their papers.

MR. MAKEY: And again, we turn to the problems

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of Dentons, and why we timed our joinder of this motion as we did, adversity just has been escalating to the point where they're engaged in -- and they don't dispute that they're supporting the complaints against our clients in work. So it's expanded outside of this litigation.

But also, in the course of advocating in this case, manufacturing what they perceive to be evidence of the four trustees' violation of the Sunshine Law in a way that I'm very hesitant to say anything about because it involves my attorney-client privileged communications with them.

THE COURT: Nobody asked you to get in -- but I just wanted you to have a chance to address it if you so desired since they did raise it.

MR. MAKEY: They have not provided you anything that constitutes admissible evidence of a violation. I don't like failing to address it more directly, but I don't feel comfortable doing so because of the fact it involves our attorney-client communications. So I would leave it with that. They have not met any sort of burden of demonstrating the Sunshine Law to compel striking this answer.

THE COURT: Okay.

MR. MAKEY: With respect to the motion to

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dismiss, we have, as you've noted, not taken a position beyond asking the -- however that's resolved, it not be something that diminished the remedies under law that may be available to plaintiff.

In pursuing their fiduciary duties, I know that they -- that in this case, that Alston's -- excuse me, Dentons, the majorities' arguments in this case, suggest that there's something just beyond the pail about admitting the facts and an answer to the extent that that's been done, and including liability. But in this case, the four trustees feel that it's necessary to do so, to put that out there and on the record. And that it's entirely consistent with their fiduciary duties and it's entirely consistent with advocating in their official capacities as trustees and it's appropriate for them to do so in this litigation. They're not acting on behalf of OHA. It doesn't require the authorization of OHA. It should not be received by the Court, jury, or anyone as acting on behalf of OHA.

I think that's all I have, unless you have questions for me.

THE COURT: No, no. You're great, Mr. Mackey. Appreciate you.

MR. MAKEY: Okay. Thank you.

THE COURT: I'll allow Mr. Alston a little

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chance, not to talk about the motion to dismiss so much, but the motion to disqualify and strike.

Mr. Alston.

MR. ALSTON: Yeah, thank you, Your Honor.

I will focus on that. I think it's important to consider actions, not words. On one hand, Ms. Bronster tells you, oh, that she didn't intend to create a tactical situation where it would be chaos on the defense side. On the other hand, Mr. Kupau admits that there was no legal basis for naming the individual trustees. So, you know, the actions triggered the chaos. And all we intend to do by the filings of the motion to strike and the filings that we've made is to trim this case down to what it always and only should have been from the beginning. And once you do that, then the so-called material adversity that Mr. Mackey is relying on involves nothing more than the political differences which need to be resolved at the Board table. Not legal differences. We're not -- they don't face liability here. They don't face any economic risk here. They don't face any legal consequences here.

The legal consequences are ones that are addressed -- addressed to and responded to only on behalf of OHA. And contrary to what he's saying, there is, in fact, in a letter that I've prepared -- I'm

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prepared to submit in camera -- that reflects at least Trustee Akina agreeing to the strategy that we've followed with filing the motion to dismiss.

I think once you narrow this down and you see that the filings they've made are, in fact, irrelevant and impertinent because they should not have been here from the day one, then what we've done is not adverse to their legal interests, which is what's triggered -- what triggers a requirement for withdrawal and what triggers material adversity.

But, you know, a reflection that any political differences they have with each other needs to be resolved at the Board table. And if they believe they have cause a file a lawsuit, you know, then perhaps they should do that, and perhaps that would trigger a new inquiry. But, you know, they haven't done it. They haven't threatened to do it. So let's focus on what we have now, which is no legal -- legally sufficient material adversity.

Related to that, the Akana case again speaks to this question of who can file what. And the Court said, Ms. Akana, as a single trustee, had no authority to file something in her official capacity. Well, whether it's one or whether it's four, the rules should be -- must be the same. A minority can't file something in their

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official capacity acting as they have.

THE COURT: Unless -- but you would agree that Midkiff allows them to file claims?

MR. ALSTON: I think the -- I think rule -- Chapter 10-point -- Chapter 10 controls what they can file and when they can file it; right?

THE COURT: For the Office of Hawaiian Affairs?

MR. ALSTON: What's that?

THE COURT: For the Office of Hawaiian Affairs?

MR. ALSTON: For the Office of Hawaiian Affairs. I don't think OHA -- I think the rules that cover private trusts are not the same that cover OHA where the legislature has specifically spelled out who can do what against whom and when.

And with respect to actions by beneficiaries or others, there's nothing that would allow that here, where the differences seem to result from, as I said, political differences to arbitrate, don't arbitrate. That's the political difference.

Now, Mr. Mackey would have you believe that the whistleblower claim is a slam dunk claim because the minority says it is. Well, the Crosby case teaches -- and that's the Supreme Court decision from 76 Hawaii -- teaches that someone who is a whistleblower doesn't get immunity from consequences of their actions simply by

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the fact that they've run to blow the whistle on something or somebody. What Crosby directs is that an adverse action against a whistleblower stands if it would have occurred regardless of the alleged or the purported whistleblowing.

And here, with respect to the decision of the five and the complaint that was made, there is nothing on this record to suggest that the complaint to the AG was the only thing or the thing that actually motivated the majority. And if they can't prove that the majority was motivated by the whistleblower claim, and that nothing would have happened --

THE COURT: Mr. Alston, I don't mean to interrupt you but I do have a question.

MR. ALSTON: Yes, sir.

THE COURT: Is what is the objection to having sort of a curative order stating that this answer -- even if I do dismiss them completely -- this answer does not speak for the Office of Hawaiian Affairs, does not speak for the other trustees, and, you know, some further curative instructions?

MR. ALSTON: In lieu of striking?

THE COURT: In lieu of striking, yes.

MR. ALSTON: If you strike it, it still exists in the public arena. And the minority trustees can go

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to the mountaintop and shout about it. They can write in the newspaper and talk about it. They can do anything. You know, they can go on TV and talk about it. Nobody's trying to stifle their ability to talk about it. Nobody's trying to stifle their ability to take that position outside the context of this litigation, where, as Mr. Kupau admits, they shouldn't have been named in the first place.

So what we're left with, if there's a curative order and knowing that you would manage the process of the litigation going forward, I think that would probably be okay in lieu of completely striking it from the record. But I think striking it from the record doesn't strike it from public's awareness or public's consciousness, so you end up perhaps in the same place. In any event, what's important is to limit the parties who can stand before the Court to the ones that belong here. That's Ms. Ferreira and OHA as an entity, not -- not the rest.

THE COURT: Okay.

MR. ALSTON: Thank you.

THE COURT: Thank you.

MR. ALSTON: And, you know, with respect to the -- with respect to the disposed conflict, as I said, and as the materials I can provide in camera would

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reflect, we have been perfectly consistent in the approach to the defense and in soliciting input from the trustees about that. And I think the Franco case teaches that when insurance counsel, like we are, come in, they're permitted to act until there's an affirmative statement of rejection. And that's what happened. When the statement of rejection came forward, we stepped aside and Mr. Mackey came in and launched the four trustees off in a course that we had nothing to do with. We didn't -- we've been meticulous and scrupulous about complying with the Sunshine Law.

The advice from the Office of Information Practices, which we didn't solicit, which OHA solicited, explains that four trustees cannot act together; they cannot sequentially to take concerted action. So Mr. Mackey says there's no evidence about that. I would submit the evidence is they're continuing concerted action.

When I've appeared before you, it's been based on the advice and directions obtained, you know, at properly noticed meetings in executive session. He can't say the same. That creates a problem.

THE COURT: All right. Thank you, Mr. Alston.

MR. ALSTON: Thank you.

THE COURT: All right. I'm prepared to rule.

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All right. So I'm going to address the -- and we still have the motion to compel. I have not forgotten about that. I'm going to address the motion to dismiss first. And let's pull that up.

Okay. So first, I want to take up the issue pertaining to official and individual named defendants. And as far as Counts 1 through 12, I think it's clear. And to the extent there's any confusion is that neither the whistleblower protection statute nor the Sunshine Law statutes allow anyone to sue an individual in their individual capacity. To the extent there's any confusion, to the extent that that is unclear in the filings. Because I know between the initial complaint and the amended complaint, there were changes and variations. I want to make that clear.

So I'm going to grant the motion to dismiss, first of all, to those referenced in Counts 1 through 12 in their individual capacities.

And as far as Counts 1 through 12 of official capacity, I'm going to grant the motion to dismiss as to all named defendants in their official capacity, including the four minority trustees and the five majority trustees in their official capacity.

Again, when pressed, plaintiff's counsel could not cite to any legal authority to -- that allows or

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authorizes bringing whistleblower protection violation allegations against fellow employees, against supervisors, whether it's in their individual or official capacity; unable to cite any legal authority to name anyone other than a board member in the Sunshine Law violation claims.

And as it pertains to Summer Sylva, I think the fundamental difference in this case and the matter that I referenced to involving the defender counsel and the Office of the Public Defender and Jon Ikenaga, who was the newly chosen head public defender of the State of Hawaii, is Ms. Sylva's capacity as the interim CEO, which will expire in October. And therefore, I'm going to grant the motion as it pertains to Summer Sylva as well, whether it's in her individual or official capacity.

Again, if you look at the case law, certainly the statutes are clear; discusses employer. I do think there is a marked difference between the whistleblower protection statute and the statute involving civil rights violations. Civil rights violations, the definitions between employer are the same. We don't have a specific Hawaii Supreme Court case determining whether the same definitions in Lawlis relating to civil rights violations applies. But certainly, the federal

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courts have weighed in. And the District Court of the State of Hawaii -- the District of Hawaii has felt that, should the Hawaii Supreme Court take up the issue of whether the same definitions that apply in the Civil Rights Violations Act apply in the Whistleblower Protections Act, they feel that it would remain the same. And so do I. I think the authority is overwhelming. And it wouldn't make any sense to have different definitions between what is an employer. And that an employer does not include an agent. The employer does not include a fellow employee. The employer does not include a supervisor.

And also of note, the civil rights violation statute, in the framework there, does allow -- specifically allows under one subsection, I believe subsection 3, to allow people alleging violations of civil rights to bring direct lawsuits against fellow employees under certain conditions. That is absent in the whistleblower protection statute. I think that is of note. And certainly the legislature understands the ability to allow people claiming whistleblower protection violations to assert those if they intended to against individuals.

And I do believe that suing someone in their official capacity under these statutes is akin to suing

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the organization. And the true party of interest in this case is the Office of Hawaiian Affairs. And I think this will simplify matters. There's no -- again, it's completely without basis to bring in the trustees in their official or individual capacity.

And so for that reason I'm going to grant the motion to dismiss as to all named trustees, all nine, whether it's in their official or official (sic) capacities.

Now that brings me to the defamation claim. And sorry, let me bring up separate notes on that. Okay. So in this, I think the defining legal authority to consider the defamation claim, it's not so much qualified immunity, because I think that is not dispositive and not appropriate for a motion to dismiss. Whether someone has qualified immunity, whether there's malice, those are suitable for evidentiary issues.

But what does apply and what is of import is the SLAPP lawsuit and HPEPA. And in that, on a special motion to dismiss, I must consider the pleadings, the motion papers, replies, and responses, and any evidence that could be considered on summary judgment. That's pursuant to HRS 634G-5.

I am then instructed that I must dismiss with prejudice, if the moving party establishes that HPEPA

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applies, the responding party fails to establish an exemption, and the responding party fails to establish a prima facie case as to each essential element of the challenge cause of action. And that's in 634G-6.

I think July 2nd of this year, the ICA came out -- again, the law is slowly forming on the statute. The statute was just amended a couple years back. We're only now seeing the results of the amended statute and the appellate work that is coming out. But I think the Hallums v. Alston case, which Mr. Alston should know very well, is very instructive on how to analyze SLAPP suits and the use of the SLAPP statute. And that is CAAP-24-306, a Hawaii Court of Appeals case dated July 2nd, 2026, in which the ICA applied the three-step framework and held that the SLAPP subsections are alternative and not cumulative. And that once the Movant shows applicability, the burden shifts to the plaintiff to establish an exemption and prima facie liability.

The ICA also noted -- and this is especially notable -- is that the SLAPP statute is not satisfied by ordinary notice pleading alone. That once the statute applies, the responding party must produce evidence that, if believed, would satisfy each essential element of the challenge claim. The speech is not a matter of

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public concern when it relates to a matter of political, social, or other concern of the community or subject of legitimate news interest. And that language comes from the RCA Trade Center Inc. v. Hu case. It's a June 23rd, 2026 case issued from the ICA as well.

So the first decision I must make as to the applicability of the statute is: Was it timely?

The first amended complaint was filed on April 21st, 2026. The defendants filed the present motion on May 29, 2026. The filing was within the 60-day period contemplated by the SLAPP statute.

The next prong of the analysis is: Have the defendants established that the SLAPP statute applies to the defamation claim?

Count 13 is the plaintiff's defamation claim against Trustee Kahele in his individual capacity. And I think it's of note that the plaintiffs made a strategic decision to sue Mr. Kahele as an individual, not as an official board member. And they have control over the filing of their complaint. They have control over the filing of the amended complaint. They have control over what capacity they choose to bring people into court.

The motion seeks a dismissal of that count under the SLAPP statute and argues the alleged

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statements were made during a duly convened Board executive session concerning oversight of OHA CEO and governance of OHA. There's also allegations in the first amended complaint that deal with a press release or some sort of notice submitted to the public. Those alleged statements therefore do fall within communications in a governmental proceeding. They also fall under the communications on an issue under consideration in a governmental proceeding. They also concern the governance of OHA, which is a public corporation and a separate entity independent of the executive branch. And furthermore, communications concerning the governance and oversight of the public entity qualify as communications on a matter of public concern.

While the defendants, under the Hallums analysis were not required to satisfy every subsection. Because the subsections are alternative, I do find that the defendants in this case have satisfied the applicability of the SLAPP statute.

So now that moves on to the next prong. And the next prong is: Have the plaintiffs established that the statute does not apply?

The burden clearly now shifts to the plaintiff to establish an exemption under 634G-2B. The opposition

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raises in their moving papers that it's inapplicable because 634G-2B excludes actions against government employees purporting to act in an official capacity. But in this case, the plaintiffs chose to sue Mr. Kahele as an individual, not as an official Board. And therefore, it is also clear then that the exemption under 634G-2B does not apply.

The question is: Does that control -- does the decision to sue him individually control even over the actions that they are alleging? And in this case, I'd say it does. It was their choice to sue him as an individual. There's an individual capacity tort claim against him and not as a claim against the Office of Hawaiian Affairs or against Mr. Kahele in his individual capacity.

The plaintiff argues sovereign immunity in their responses does not apply because she seeks to hold Kahele personally liable for his own tortious conduct. So the plaintiff cannot therefore then rely on an individual capacity theory to avoid any sovereign immunity, while at the same time relying on an official capacity characterization to invoke HRS 634G-2B1. That is inappropriate, and therefore I find that they have failed to prove that there's an exception in 634G-2.

The final prong is, because the plaintiffs have

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not established an exemption, they are now required to establish a prima facie case as to each essential element of defamation. This is also under 634G-6.

Again, the Hallums case is very illustrative on how the ICA at least is analyzing the SLAPP statute. The plaintiff's opposition does not make the evidentiary showing that the SLAPP statute requires. Instead, the plaintiff argues that Hawaii's notice pleadings standard governs; that she has no obligation to prove anything at the pleading stage. And that it is enough that she alleged publication and harm in the first amended complaint. But that is not the standard delineated under the SLAPP statute under 634G-5, 634G-6, and certainly not under the Hallums v. Alston case.

As in Hallums v. Alston, the plaintiff's opposition relies on allegations and argument not on evidence that, if believed, would satisfy each essential element of the challenged claim.

The plaintiff points to the first amended complaints allegations the publication occurred outside executive session and that she suffered harm. But she does not identify via declaration, via any kind of e-mail, via any kind of document that could be considered on a summary judgment level establishing the specific alleged defamatory statement, more importantly

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the falsity of any statement, any evidence of an unprivileged publication to a third party, any evidence of reputational harm, any evidence of actual malice.

Certainly, the plaintiffs have indicated, if shown an ability to attach declarations, when they attached declarations of Ms. Ferreira, in attempting to rebut the issues surrounding the motion to compel arbitration, there was none that was admitted into opposing the SLAPP statute challenge.

And so I will be dismissing the Count 13 defamation claim against Mr. Kahele in his individual capacity with prejudice under the SLAPP statute. To the extent that I need to, I'm denying the other reasons set forth by the defendants for the dismissal.

Then that turns to the civil conspiracy claims. And essentially, because all of the named defendants have been dismissed, whether in their official or individual capacities, there can be no conspiracy. There are no defendants there.

Again, the statutory authority that allows the Office of Hawaiian Affairs to be sued is still under any provision allowed by law.

And then we look at the Whistleblower Protection Act statutes, we look at the Sunshine Law statutes, none of them allow -- again it's worth

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repeating -- lawsuits to be brought against individuals; and therefore, there can be no civil conspiracy.

And so the motion to dismiss as to the civil conspiracy claim in Count 14 is also granted with prejudice.

I think that covers all of the motions to dismiss. So I think my understanding of what remains is the Office of Hawaiian Affairs and Ms. Ferreira.

Now, to the extent that -- to the next issues. To the -- let me pull up my notes on this issue. Apologies.

Dealing with the motion to disqualify counsel, I think given the nature of my rulings and my belief and my understanding the law never allowed the filing of these complaints against the four individual trustees or the majority trustees to begin with. And also, what went unmentioned today is -- and it's not Hawaii law -- but disqualification is a drastic measure, drastic remedy, and Courts are instructed to scrutinize such motions because they can be used tactically. And that's a Ninth Circuit case. Several of Ninth Circuit cases: Reading International Inc. versus Malulani Group Limited; In Re: County of Los Angeles. And that's the lens that I have to look at that.

And again, removing a party's choice of counsel

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is a drastic remedy and is not one I'm going to make in this case. I'm going to deny the motion to disqualify the Dentons law firm, again, in large part for the reasons stated that the four trustees should never have been brought into this lawsuit to begin with. There is no legal adversity in this case.

I think Mr. Alston sort of hit it in the head is, yes, there is adversity and there may be some conflict down the road in future litigation. But as it pertains to this lawsuit, as of today there is no legal adversity between the Dentons law firm and the four minority trustees, who are dismissed from this case and who should never have been brought in this case.

And while I'm not making any finding that there's any tactical reasons for filing suit against the four trustees, I do have to be mindful of the effects that the nature of this lawsuit would have and the effects of the choice of counsel of the Office of Hawaiian Affairs, which is different than other groups of trustees. They met. They voted. The majority agreed to hire the Dentons law firm, and that is the choice of counsel for the Office of Hawaiian Affairs. Had the four trustees been sued in their individual capacity, I think we'd be in a very different situation. The first amended complaint made it clear they're not

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here individually. They're here in their official capacity. And so I'm going to deny the motion to disqualify also for the reasons stated by Mr. Alston.

Now, that brings me to the motion to strike. I think the cleaner way to -- I'm torn. I could go either way. I believe the cleaner way to proceed is to strike this answer. And I do so not -- I do not believe that'll in any way silence the trustees. And certainly the answer will exist. Certainly they're going to be witnesses in this case, I would imagine. They will be deposed. They will have every opportunity to express their views as to what the going on behind the scenes. And I will have every opportunity to hear them, to weigh all sides' credibility, and to make decisions that I have to make. And so no one will be silenced. And nor will I allow anyone to be silenced.

I do think that the issues raised as the basis for filing the answer can and may be brought in a separate lawsuit. Parties mentioned the Midkiff case. But Midkiff doesn't stand for trustees, especially OHA trustees, filing their own legal filings when the Board itself did not authorize it when they -- in doing so in their official capacity. So I'm going to deny that as well.

Mr. Alston, please prepare those orders.

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MR. ALSTON: We will, Your Honor.
THE COURT: As far as the motion to compel, I think the primary issue I have is that upon the filing of the motion to dismiss, everything is required to be stayed, including discovery. No matter how much we may not want to, that is the statutory framework. That is the choice when you bring defamation claims, it necessarily invites a SLAPP challenge. And SLAPP motions to dismiss bring with it stays.
So I'm going to deny the motion to compel without prejudice. I think it was premature at the time -- and Mr. Kupau, Ms. Bronster, I'm not saying if this continues, I'm not going to entertain the arguments raised by you folks. And I'm not going to assign any attorney's fees as far as filing of the motion to compel, anything of the sort.
I would anticipate that the Dentons law firm will cooperate with all of the requests made by the Bronster law firm, by Ms. Ferreira and her counsel, now that the issues have been clarified and we know going forward.
Now, again, that leaves aside any issues regarding appeal. And certainly, if there are continued issues, I would invite them to file a motion. I have also expressed to you folks before if there are -- if it

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appears to me that the parties cannot cooperate and they cannot meaningfully meet and confer because of fundamental issues between them, we will appoint a discovery master, which does cost money. So I think it behooves all of you to work together.
I take seriously the need to meet and confer before you involve the Court in discovery matters. So I encourage you all to do so. The reasons behind the motion to compel, I think have been resolved. I denied arbitration.
I think somebody -- and Mr. Kupau, I see you hesitating.
A lot of the answers in the refusal to answer is because they believed this belonged in arbitration. They believed the arbitrator would resolve these discovery issues. I have now said, no, that is not the case. I will handle these issues or a discovery master will handle these issues.
And secondarily, discovery was stayed, anyway. Discovery was stayed upon their filing of their special motion to dismiss. That has now been resolved. Discovery can now be re-conducted.
Mr. Alston, I would anticipate you folks cooperate.
MR. ALSTON: We will recognize our discovery

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obligations and meet and confer with them and move it forward expeditiously and professionally.
THE COURT: So I will -- will you please prepare that order as well?
MR. ALSTON: We will, Your Honor.
THE COURT: I think that covers all the motions before me.
We have continued the motion for contempt of court. And to the extent that I need to, the joinders will be denied. If you could include that --
MR. ALSTON: We will include that.
THE COURT: -- in the orders as well, Mr. Alston.
I do want to thank -- look, it's 12:30. We started at nine o'clock. We had to take a break. Everyone maintained their patience, their level of professionalism throughout. It's a long hearing. I do want to thank everybody. The attorneys are all some of the best in the business.
Yes, Mr. Kupau?
MR. KUPAU: We still have one more matter. The scheduling conference.
THE COURT: Yes.
MR. KUPAU: When are we going to make this thing goes to trial?

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THE COURT: Yeah, yeah. I have that right here. Thank you very much.
Mr. Comer, I saw you were the one who -- my staff had told me, don't forget, don't forget. So thank you very much, Mr. Comber.
We'll get to that in a second. But let me thank all the attorneys. It is a pleasure and a privilege to be a judge when you have the high-level quality of attorneys working on all sides. It makes me be a better judge. And I think it makes all -- this is what the system should be, so I want to thank everybody for that.
Now let's move on to the scheduling conference. All right. This is a jury waived trial; correct?
MR. ALSTON: I don't believe the pleadings were done, Your Honor. So I'm not sure -- I'm not sure that the deadline to ask for a jury has come. But I think for today, we can set it as a jury waived trial.
THE COURT: Okay. Ms. Bronster, is that your understanding?
MS. BRONSTER: Yes, Your Honor.
THE COURT: (Indiscernible) and certainly the Sunshine Law claims would be handled by myself. So it's a bench trial.
No one's requesting expedited; correct?

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MR. ALSTON: That's correct, Your Honor.
THE COURT: How long do we anticipate this trial to last?
MS. BRONSTER: We think it'll probably take two weeks, Your Honor.
THE COURT: So about (indiscernible) trial days is that fair.
MS. BRONSTER: Yes, Your Honor.
MR. ALSTON: I agree with that, Your Honor.
THE COURT: All right. If you want your own trial week where there's no one set, we're looking at 2028, unfortunately. If you don't mind being backup and taking the chance that some of these trials set ahead of you will fall off, which they often do, we can set you in fall of 2027. But I'll leave that to your preference. And I know Mr. Alston's going to decide.
MR. ALSTON: I think, Your Honor, we need to have our own trial week because unfortunately the -- I can't even coordinate with my clients without a sunshine-noticed meeting. And so as we get into trial preparation and so forth, it'll be really difficult if we don't have a firm date to work with.
MS. BRONSTER: Your Honor, we would object to that. As I mentioned earlier, this has been delayed and delayed and delayed. We need to get to trial. And so

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many of the cases do settle that we'd like to have a trial set promptly.
THE COURT: How about October 25th?
MR. ALSTON: Which year, Your Honor?
THE COURT: 2027. We have a trial scheduled ahead of you. It's a later in time filed. It's a 2026 case. I can make you folk guys prime. That way, everyone has a sense of certainty.
MS. BRONSTER: Yes, Your Honor, that works for us.
THE COURT: Mr. Alston.
MR. ALSTON: I'm sorry, October?
THE COURT: 25th, 2027.
MR. ALSTON: Thank you. That works perfect.
THE COURT: October 25th, 2027 will be the trial week. As far as deadlines, it'll be pursuant to rule -- I do prefer on expert reports, if there are any, to do 150, 120, 90 versus the standard. That avoids any conflict with the discovery cutoff of 60 days.
We cannot serve as your settlement conference judge because I will be tasked with making the decisions and findings in this case. And we will refer to this to Judge Kimura. Well, can't serve it to Judge Kimura because Ms. Bronster made the wise decision to hire Mr. Comber, who was an excellent law clerk for Judge

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Kimura.
So we will find a settlement conference partner judge to refer this to.
And as far as mediation, I'm going to order mediation.
Do you want to be heard on that, Ms. Bronster?
MS. BRONSTER: Yes, Your Honor. We had previously discussed mediation. And when we did so, I was told by Mr. Alston that we would be provided with both Mr. Kahele's complaint and the investigative report that was completed. When we ultimately were offered a -- the conditions on giving us those, we were told that we were not allowed to show them to our client. It was attorney's eyes only. We could not possibly agree to that condition.
So when I first spoke to him I said, we'd be happy to mediate but we needed the information. And he told me you'll get it. And then when I ultimately heard from their side, it was you'll get it but you can't even show it to your client. I cannot, consistent with the rules of professional responsibility, settle a case for my client without letting the client know what is going on.
So we would only ask that if the Court does order mediation, that we be allowed to have the

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information that we're entitled to. And I would point out that there is a statute on point that says if we request it outside of litigation, 92F-21, it says if we ask for the personnel file, as a government employee, we're entitled to it.
We have asked for it again and again and again and still haven't gotten it from OHA. So you know, the idea that we would be ordered to go to mediation when we still don't have it and the discovery issues are being pushed down the line, we would just request that if there is an order to mediation, that we be ordered immediately receive the documents that we were entitled to a year ago.
THE COURT: So what I'm going to do is order the mediation. But the mediation deadline won't be for some time. It's going to be you guys are to engage in mediation no later than May 3rd, 2027. And engaged, my definition of "engaged" means you guys have selected a mediator and you selected a mediation date. Not that you've conducted mediation. Not that it's concluded. Just that you've laid the foundation and the ground work to have it done.
MR. ALSTON: Fine, Your Honor.
THE COURT: We'll see.
MS. BRONSTER: Can we have the documents?

THE COURT: Ms. Bronster, I'm not going to make any discovery rulings today. It's not before me. I've denied the motion to compel. We have time to litigate that issue if it should arise. My hope is now that there's been clarity, whether this is going to arbitration or not, that some of these discovery issues may disappear and may go away. If they don't, then we will revisit these issues well in advance of any mediation deadline. And if you feel there are violations of statutes and discovery rules, we will revisit these issues via motion. Okay?

But right now, just a scheduling conference. And I'm going to order it by May 3rd. So I think that covers everything else.

MR. ALSTON: It does, Your Honor. Thank you.

THE COURT: Okay. Electronic signature for this order?

MR. ALSTON: Yes, Your Honor.

MS. BRONSTER: Yes, Your Honor.

THE COURT: Again, I want to thank everybody. Thank you very much.

And we will see you all soon if there's anything I can do.

MR. ALSTON: We'll be in touch.

THE COURT: I'm a big believer in status

conferences. I'd rather have the feel of the case, of the pulse of the case, than be blindsided down the road. If you guys need a status to discuss something, we can do it via Zoom very easily. Do not hesitate. Okay?

Thank you, everyone.

MS. BRONSTER: Thank you, Your Honor.

MR. ALSTON: If we need a status conference, Your Honor, can we with the consent of the other counsel reach out to your clerk to schedule something?

THE COURT: Absolutely. Just request status, most likely via Zoom.

MR. ALSTON: Fine.

THE COURT: Thank you.

MR. ALSTON: Thank you.

THE COURT CLERK: All rise. This court is in recess.

(Recorded proceedings concluded at 12:38 p.m.)

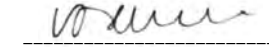
C E R T I F I C A T E

I, ADRIANNE IGE KURASAKI, CSR, in and for the State of Hawaii, do hereby certify:

That the digitally recorded proceedings were taken down in machine shorthand by me and were thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the digitally recorded proceedings had in the foregoing matter;

I further certify that I am not counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption.

This 135-page transcript was subscribed and sworn to before me this April 5th, 2026.



Adrianne Ige Kurasaki, RPR, CSR 388
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August 6, 2026

VIA EMAIL ONLY

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Re:	Named Insured:	Office of Hawaiian Affairs
	Policy No.:	EON M00613873 011
	Claim No.:	KY26K2287010
	Insurer:	Illinois Union Insurance Company
	Subject:	*Stacy K. Ferreira v. Office of Hawaiian Affairs, et al*.

Dear Trustees William Keli'i Akina, Carmen Hulu Lindsey, Luana Alapa, and Kalei Akaka:

Clyde & Co has been retained by Illinois Union Insurance Company ("Illinois Union") in connection with the above referenced claim and is issuing this letter on Illinois Union's behalf in order to provide each of you ("you" or collectively the "Minority Trustees") with its supplemental coverage position concerning significant issues presented by the Answer you filed on June 26, 2026, in response to the First Amended Complaint in the action captioned *Stacy K. Ferreira v. Office of Hawaiian Affairs, et al*., Civil Case No. 1CCV-25-0001822, Circuit Court of the First Circuit for State of Hawaii (the "Ferreira Action").

This correspondence incorporates by reference Illinois Union's letters concerning coverage for the Claim under the above referenced Policy (the "Policy") sent to you on or about November 19, 2025 and March 4, 2026. Illinois Union reserves all rights with respect to the Claim under the Policy, at equity and at law, regardless of whether such rights are expressly identified in this letter.

COVERAGE AND SUPPLEMENTAL RESERVATION OF RIGHTS

Section II, Defense of the Policy provides, in relevant part, as follows:

> A. …**The Insured shall not admit or assume liability or settle or negotiate to settle any Claim or incur any Claims Expenses without the prior written consent of the Insurer**,

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Atlanta, Boston, Chicago, Dallas, Denver, Indiana, Las Vegas, Los Angeles, Miami, New Jersey, New York, Orange County, Phoenix, San Francisco, Seattle and Washington D.C.
Clyde & Co US LLP is affiliated with Clyde & Co LLP, a limited liability partnership registered in England and Wales.

and the Insurer shall make such investigation and defense of a covered Claim as it deems necessary.

* * *

D. The Insureds shall cooperate with the Insurer, and provide to the Insurer all information and assistance which the Insurer reasonably requests including but not limited to attending hearings, depositions and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any Claim covered by this Policy. **The Insureds shall do nothing that may prejudice the Insurer's position**…

(Emphasis added.)

On April 21, 2026, Stacy Ferreira ("Plaintiff") filed the operative First Amended Complaint ("FAC") in the Ferreira Action against you, the Office of Hawaiian Affairs, and the other members of the Board of Trustees of OHA (together, "Defendants").

On June 26, 2026, you filed a single Answer to the FAC (the "Answer"). The Answer was filed on behalf of the Minority Trustees in each of your respective official capacities as members of the Board of Trustees of OHA (the "Board") because each of you were sued solely in that capacity. In the Answer, you made numerous admissions of liability and or admitted facts detrimental to your defense against the claims asserted by Plaintiff, which are summarized, in part, as follows:

- You admitted the September 23, 2025 executive session, in which the Board voted in to place Plaintiff on paid leave and appoint Sylva as interim administrator, was not held in conformance with the Hawaii Sunshine Law. (Answer, ¶ 5.)

- You admitted violations of Hawaii Whistleblowers' Protection Act ("HWPA"), including that Defendants engaged in unlawful retaliatory practices, that Plaintiff's reporting was a substantial or motivating factor in the adverse employment action, and that Defendants' actions violated HWPA. (Answer, ¶¶ 31, 33, 36–38, and 41.)

- You admitted that Defendant Kahele made false and defamatory statements with actual malice and that Plaintiff suffered special harm. (Answer, ¶¶ 60–62.)

- You affirmatively supported Plaintiff's demands for (i) voiding the September 23, 2025 executive-session decisions, (ii) unredacted production of executive-session minutes, and (iii) full or maximum remedies against OHA. (Answer, ¶¶ 43–50, 52–56, 58–59, 62, and 64.)

- You seek to waive OHA's attorney-client privilege in order to support disclosure of executive-session minutes and disclosure of privileged information. (Answer, ¶ 43, 46, 49, 52, 55, and 58.)

- You alleged a coordinated effort by certain trustees to retaliate against Plaintiff, and the admission of liability in the form of express support for Plaintiff's entitlement to "full damages" for Plaintiff's claim of conspiracy. (Answer, ¶¶ 63–64.)

Prior to filing the Answer, neither you nor your counsel advised Illinois Union that you would be admitting liability for virtually all of Plaintiff's claims asserted against you and OHA, despite the fact that the Policy plainly requires *prior written consent* ahead of any such admissions. Indeed, your counsel, Mr. Mackey, acknowledged during a conference call that he *intentionally* did not advise Illinois Union that you planned to file the Answer.

Please be advised that Illinois Union believes that the filing of the Answer containing these wholesale admissions of liability constitutes a substantial and material breach of each of your obligations not to admit or assume liability or settle or negotiate to settle any Claim without the prior written consent of Illinois Union. It is beyond dispute that the Answer has caused substantial prejudice to Illinois Union's ability to defend you in the Ferreira Action as you have *admitted liability* and undercut the defense of OHA and every Trustee through the statements and admissions contained in the Answer. Indeed, you have admitted that Plaintiff is entitled to "full" or "maximum" damages from OHA.

Under Hawaii law, a breach of the cooperation clause which results in substantial prejudice supports the denial of coverage under the Policy, including both the duty to defend and the duty to indemnify. Accordingly, we write to advise you that Illinois Union believes you have materially breached the policy causing it substantial prejudice and providing a basis for the denial of coverage under the Policy including withdrawal from your ongoing defense and denial of any indemnity.

Illinois Union reserves all rights available to it in light of your breach of the Policy's obligations set forth in Section II, Defense of the Policy, including the right to withdraw your defense and to deny any indemnity obligation under the Policy. Illinois Union also reserves the right to refuse to pay for and/or to seek recoupment of any and all defense costs paid on your behalf for your defense related to preparing and filing the Answer and also to refuse to pay any further defense costs after you filed the Answer.

CONCLUSION

This letter addresses only those Policy provisions that appear pertinent at this time in light of the facts currently known and available to us, without accepting or implying that the allegations have any factual or legal merit. Illinois Union reserves the right to review all coverage issues and not merely those raised by any additional information or evidence. By limiting Policy references to those cited, Illinois

Union does not waive any other Policy provisions. If you have any additional information that you believe may have bearing upon our analysis of coverage in this matter, please advise us immediately.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Susan Koehler Sullivan

SKS:JMC:klr

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FIRST CIRCUIT
1CCV-25-0001822
02-OCT-2026
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Dkt. 285 ORDG

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI`I

STACY KEALOHALANI FERREIRA,

Plaintiff,

vs.

OFFICE OF HAWAIIAN AFFAIRS; KAIALI`I KAHELE, Individually and in His Official Capacity; KEONI SOUZA, Individually and in His Official Capacity; DAN AHUNA, Individually and in His Official Capacity; KALEI AKAKA, in Her Official Capacity; KELI`I AKINA, in His Official Capacity; LUANA ALAPA, in Her Official Capacity; BRICKWOOD GALUTERIA, Individually and in His Official Capacity; CARMEN HULU LINDSEY, in Her Official Capacity; JOHN D. WAIHE`E IV, Individually and in His Official Capacity; SUMMER L.H. SYLVA, in Her Individual Capacity; JOHN DOES 1-10; JANE DOES 1-10; DOE AGENCIES 1-10,

Defendants.

CIVIL NO. 1CCV-25-0001822 SRN
(Other Civil Action)

ORDER GRANTING [206] DEFENDANT OFFICE OF HAWAIIAN AFFAIRS' *AMENDED* MOTION TO STRIKE THE FOUR TRUSTEES' ANSWER [DKT. 162] AS UNAUTHORIZED AND NON-BINDING ON OHA

Hearing:
DATE: August 6, 2026
TIME: 9:00 a.m.
JUDGE: Honorable Steven R. Nichols

Trial: October 25, 2027
Judge: Honorable Steven R. Nichols

ORDER GRANTING [206] DEFENDANT OFFICE OF HAWAIIAN AFFAIRS' *AMENDED* MOTION TO STRIKE THE FOUR TRUSTEES' ANSWER [DKT. 162] AS UNAUTHORIZED AND NON-BINDING ON OHA

Defendant Office of Hawaiian Affairs' *Amended* Motion to Strike the Four Trustees' Answer [Dkt. 162] (the "Answer") as Unauthorized and Non-Binding on OHA ("Motion"), filed on July 15, 2026 (Dkt. 206), came on for hearing before the Honorable Steven R. Nichols on August 6, 2026. Paul Alston, Esq. and Janna Wehilani Ahu, Esq. appeared on behalf of Defendants OFFICE OF HAWAIIAN AFFAIRS, KAIALI`I KAHELE, KEONI SOUZA, DAN AHUNA, BRICKWOOD GALUTERIA, JOHN D. WAIHE`E IV, individually and in their official capacities, and SUMMER L.H. SYLVA, in her individual capacity. Lanson K. Kupau, Esq., Margery S. Bronster, Esq., and Daniel J. Comer, Esq. appeared on behalf of Plaintiff STACY KEALOHALANI FERREIRA. John S. Mackey, Esq. appeared on behalf of CARMEN HULU LINDSEY, KALEI AKAKA, KELI`I AKINA, and LUANA ALAPA, each in their official capacities.

The Court has considered the briefing submitted by the parties, the record of the case, and the arguments of counsel. For the reasons stated on the record and for good cause, the Motion is GRANTED. The Answer will be deemed a nullity.

DATED: Honolulu, Hawai`i, October 2, 2026.

/s/ Steven R. Nichols

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

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KELLY A. HIGA BROWN
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Attorney for Defendants
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KELIʻI AKINA, LUANA ALAPA, Each in
Their Official Capacities

NOTICE OF ELECTRONIC FILING

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FIRST CIRCUIT
1CCV-25-0001822
02-OCT-2026
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Dkt. 286 NEF

An electronic filing was submitted in Case Number 1CCV-25-0001822. You may review the filing through the Judiciary Electronic Filing System. Please monitor your email for future notifications.

Case ID:	1CCV-25-0001822
Title:	STACY KEALOHALANI FERREIRA v. OFFICE OF HAWAIIAN AFFAIRS KAIALII KAHELE, Individually and in His Official Capacity KEONI SOUZA, Individually and in His Official Capacity DAN AHUNA, Individually and in His Official Capacity KALEI AKAKA, Individually and in Her Official Capacity KELII AKINA, Individually and in His Official Capacity LUANA ALAPA, Individually and in Her Official Capacity BRICKWOOD GALUTERIA, Individually and in His Official Capacity CARMEN HULU LINDSEY, Individually and in Her Official Capacity JOHN D. WAIHEE IV, Individually and in His Official Capacity SUMMER L.H. SYLVA, Individually and in Her Official Capacity JOHN DOES 1-10 JANE DOES 1-10 DOE AGENCIES 1-10
Filing Date / Time:	FRIDAY, OCTOBER 2, 2026 01:13:15 PM
Filing Parties:	Paul Alston Wendy Hanakahi Claire Black Janna Ahu Joseph Adams
Case Type:	Circuit Court Civil
Lead Document(s):	
Supporting Document(s):	285-Order Granted
Document Name:	285-[SIGNING DKT 273] ORDER GRANTING [206] DEFENDANT OFFICE OF HAWAIIAN AFFAIRS' AMENDED MOTION TO STRIKE THE FOUR TRUSTEES' ANSWER [DKT. 162] AS UNAUTHORIZED AND NON-BINDING ON OHA

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

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