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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

CHRISTINA RICE, derivatively on behalf of Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc. Plaintiff, v. CELESTE A. CONNORS, SCOTT W.H. SEU, THOMAS B. FARGO, YOKO OTANI, ELISIA K. FLORES, RICHARD J. DAHL, PEGGY Y. FOWLER, MICHAEL J. KENNEDY, MICAH A. KANE, KEITH P. RUSSELL, WILLIAM JAMES SCILACCI, JR., TIMOTHY E. JOHNS, JAMES A. AJELLO, SHELEE M. T. KIMURA, TAYNE S.Y. SEKIMURA, MARY E. KIPP, ALANA K. PAKKALA, TOBY B. TANIGUCHI, and DOES 1 through 50, inclusive,	Case No. ____________________ (Other Civil Action) **VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT FOR:** **1. BREACH OF FIDUCIARY DUTY,** **2. ABUSE OF CONTROL,** **3. CORPORATE WASTE, and** **4. UNJUST ENRICHMENT;** **DEMAND FOR JURY TRIAL; SUMMONS**

Defendants,

and

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

Nominal Defendants.

TABLE OF CONTENTS

I. INTRODUCTION 5

II. NATURE OF THE ACTION 6

III. JURISDICTION AND VENUE 10

IV. THE PARTIES..11

A. Plaintiff 11

B. Nominal Defendants 11

C. Officers and Directors of Hawaiian Electric Industries, Inc. 12

D. Officers and Directors of Hawaiian Electric Company, Inc. 14

E. Unnamed Participants 16

V. BACKGROUND 16

A. Hawaiian Electric is the Primary Energy Provider In Hawai'i.............................16

B. The Individual Defendants Are Responsible for Ensuring Hawaiian Electric Complies with Hawaii and Federal Regulations...17

VI. SUBSTANTIVE ALLEGATIONS 18

A. The Individual Defendants Knew They Were Vastly Underspending on Wildfire Safety Yet Failed to Take Necessary Action to Protect the Public Against Wildfires Caused by the Company's Aging and Dangerous Equipment 18

B. Hawaiian Electric Caused the Maui Fire 20

C. The Maui Fire Was a Foreseeable and Likely Outcome of Defendants' Conduct that Could Have Been Prevented...23

D. The Individual Defendants Knew Hawaiian Electric's Electrical Equipment Was Unsafe 27

E. Hawaiian Electric's Corporate Culture Puts Profits Over Safety 30

F. Hawaiian Electric is Required to Safely Design, Operate, and Maintain Its Electrical Systems and Surrounding Vegetation...31

G. Defendants Paid Themselves Millions of Dollars in Compensation Despite Doing Nothing to Improve Wildfire Safety 34

H. Defendants Caused Hawaiian Electric to Make Materially Misleading Statements About the Company's Safety Efforts and Risk Mitigation Controls 40

I. The Individual Defendants Breached Their Duties By Failing to Preserve Evidence After the Maui Fire 42

VII. DAMAGES 44

A. Defendants Have Inflicted Massive Damages Upon Hawaiian Electric 44

1. Share Price Decimated by Over 70% 45

2. $3.8 Billion In Liability Created 45

3. Hawaiian Electric's Credit Rating Slashed 46

4. Hawaiian Electric Has Been Forced to Cut Its Dividend 48

VIII. DEMAND FUTILITY ALLEGATIONS 48

IX. CAUSES OF ACTION 53

A. First Cause of Action: Breach of Fiduciary Duty 53

B. Second Cause of Action: Abuse of Control 53

C. Third Cause of Action: Corporate Waste 54

D. Unjust Enrichment 55

X. PRAYER FOR RELIEF 55

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

I. INTRODUCTION

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

have enriched themselves—and destroyed Lahaina.

II. NATURE OF THE ACTION

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

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

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

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

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

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

6. Between 2019 and 2022, ***Hawaiian Electric invested less than $245,000 on wildfire-specific projects on the island***, according to regulatory filings. The utility did not seek state approval to raise rates to pay for broad wildfire-safety improvements until 2022.[1] Instead of spending necessary funds to prevent fires caused by its equipment, Hawaiian Electric instead spent millions of dollars towards efforts to achieve a 100 percent renewable energy goal.

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

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

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

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

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[1] *See* "Hawaii Invests in Renewable Energy Rather Than Wildfire Prevention," Institute for Energy Research, Aug. 23, 2023.

- Shortly before 3 p.m., while the power remained off, our crew members saw a small fire about 75 yards away from Lahainaluna Road in the field near the Intermediate School. They immediately called 911 and reported that fire.

- By the time the Maui County Fire Department arrived back on the scene, it was not able to contain the Afternoon Fire and it spread out of control toward Lahaina.

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

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

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

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

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

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

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

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

III. JURISDICTION AND VENUE

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

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

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

IV. THE PARTIES

A. Plaintiff

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

B. Nominal Defendants

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39. *Individual Defendant Toby B. Taniguchi* ("Taniguchi") is and has been at all relevant times a director of the Hawaiian Electric Company and member of its Board's Audit and Risk Committee.

E. Unnamed Participants

40. Numerous individuals and entities participated actively during the course of and in furtherance of the wrongdoing described herein. The individuals and entities acted in concert by joint ventures and by acting as agents for principals, in order to advance the objectives of the scheme in order to benefit Defendants and themselves to the detriment of the Companies.

V. BACKGROUND

A. Hawaiian Electric is the Primary Energy Provider In Hawai'i

41. HAWAIIAN ELECTRIC is the largest provider of electricity and power in the State of Hawai'i and is the principal provider of such services in Maui.

42. As a utility, HAWAIIAN ELECTRIC is subject to extensive regulation and regulatory oversight from both the federal government and from the State of Hawai'i.

43. HAWAIIAN ELECTRIC is regulated by the PUC. "The Hawaii Public Utilities Commission (PUC) is a quasi-judicial regulatory state government agency. Its mission is to serve the public by ensuring essential utility services are delivered to consumers in a safe, reliable, economical, and environmentally sound manner. It does so through the oversight and approval of rates, resource planning and acquisition, and more."[2] Based on information and representations made to it by HAWAIIAN ELECTRIC, the PUC sets the fees or rates that it may charge to customers. Periodically, HAWAIIAN ELECTRIC presents to the PUC how much revenue it needs to provide safe and reliable utility service, which includes how much it will likely receive in revenue from its assets such as electric and gas distribution. The PUC adopts an expected revenue figure based on the information provided by HAWAIIAN ELECTRIC and sets reasonable rates that may be charged to HAWAIIAN ELECTRIC's customers.

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[2] *See* https://puc.hawaii.gov/faq/ , last visited Sept. 5, 2023.

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

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

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

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

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

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

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

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

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

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

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

VI. SUBSTANTIVE ALLEGATIONS

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

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

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

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

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

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

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

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

[5] *See* "Hawaii Invests in Renewable Energy Rather Than Wildfire Prevention," Institute for Energy Research, Aug. 23, 2023.

B. Hawaiian Electric Caused the Maui Fire

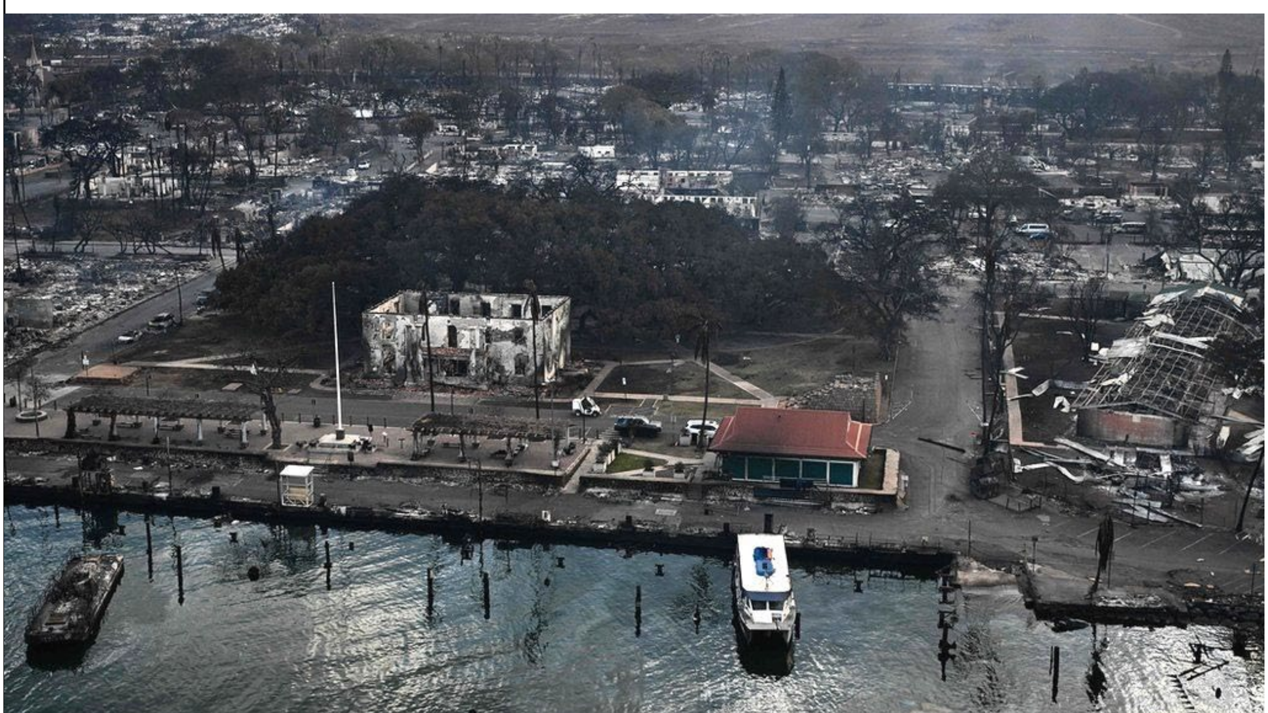
56. Hawaii Electric has admitted that its electrical equipment caused the Maui Fire. On August 27, 2023, the Company issued a press release which stated that "A fire at 6:30 a.m. (the "Morning Fire") [on August 8, 2023] appears to have been caused by power lines that fell in high winds."[6] The Company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

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

58. The Maui Fire was devastating, as the following photographs shows:

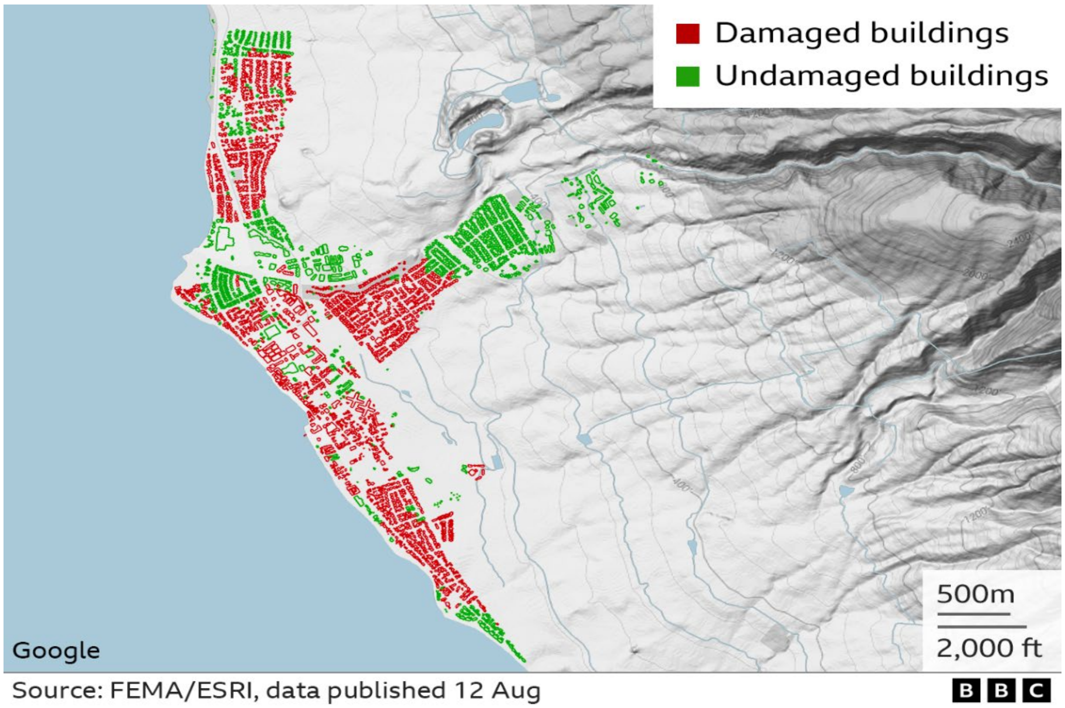
[6] *See* "Hawaiian Electric Provides Update on Lahaina Fires, Response," Aug. 27, 2023.


MAUI NOW.com
PC: DONOVAN FAYD (8.9.23)



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

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



C. The Maui Fire Was a Foreseeable and Likely Outcome of Defendants' Conduct that Could Have Been Prevented

1. <u>The Individual Defendants Knew Other Utilities Had Adopted Power Shutoff Systems to Protect Against Wildfires During High Wind Conditions But Failed to Adopt Such a System at Hawaiian Electric</u>

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

[7] *See* Jeff St. John, "California on Edge as PG&E's Power Outage Plan Goes Into Effect," Green Tech Media, Oct. 9, 2019.

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

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

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

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

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

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

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

68. On Tuesday, August 8, 2023, the day of the fire, winds continued to increase substantially. The NWS issued both a High Wind Warning and Red Flag Warning for portions of the Hawaiian Islands, including West Maui. Specifically, the NWS warned that: "High Wind: 30–

[8] *See* Dan Frosch & Jim Carlton, *Hawaii Officials Were Warned Years Ago that Maui's Lahaina Faced High Wildfire Risk*, WALL STREET JOURNAL, (Aug. 11. 2023), available at https://www.wsj.com/articles/hawaii-maui-fire-risks-plans-government-e883f3a3.

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

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

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

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

[9] *See* Ivan Penn, "Hawaiian Electric Was Warned of Its System's Fragility Before Wildfire," THE NEW YORK TIMES, Aug. 19, 2023.

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

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

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

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

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

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

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

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

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

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

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

Maui County Hazard Mitigation Plan Update

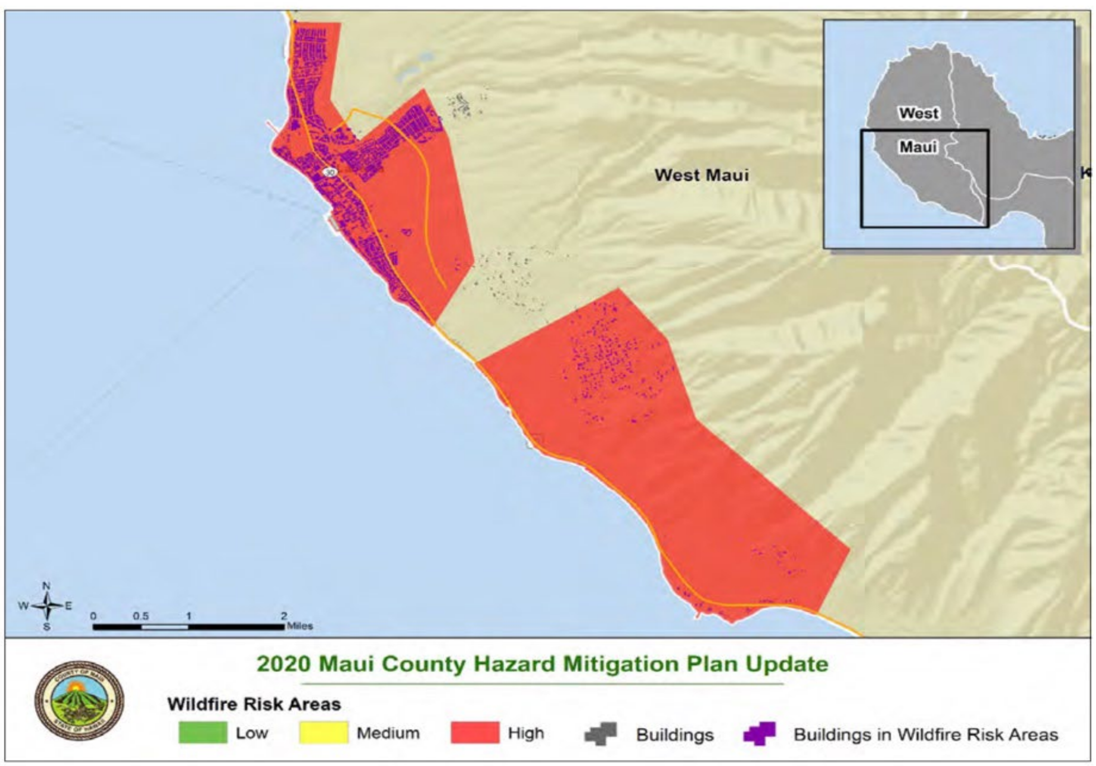

Figure 256. Buildings in Wildfire Risk Areas in Southern West Maui Community Planning Area.

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

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

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

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

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

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

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

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

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

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

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

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

E. Hawaiian Electric's Corporate Culture Puts Profits Over Safety

87. Rather than spend the money it obtains from customers for infrastructure maintenance and safety, the Individual Defendants have caused HAWAIIAN ELECTRIC to

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[11] *See* Application at p. 52.
[12] *See* Application at p. 53.

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

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

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

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

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

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

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

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

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

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

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[13] *See* Jennifer McDermott, "Bare Electrical Wires, Leaning Power Poles in West Maui Were Possible Cause of Fires," Maui News, Aug. 28, 2023.
[14] *Id.*
[15] *See* "High winds result in power outages to thousands in West Maui, Olinda-Pi'iholo," Maui Now, Aug. 8, 2023.

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

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

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

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

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

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

99. HAWAIIAN ELECTRIC filed a Proxy Statement in 2023 detailing the compensation of some of the defendants.

2022 SUMMARY COMPENSATION TABLE

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

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

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

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

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

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

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

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

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

106. Defendant Seu, CEO of Hawaiian Electric Industries, was rewarded in 2022 with outsized compensation that is ***32 times the median pay of the Company's employees***, as reflected in the following chart[16]:

CEO TO MEDIAN EMPLOYEE PAY RATIO

		PRESIDENT & CEO		MEDIAN EMPLOYEE
Salary	$	875,000	$	115,383
Overtime Pay		—		—
Stock Awards		1,830,874		—
Nonequity Incentive Plan Compensation		869,129		—
All Other Compensation		—		3,457
Change in Pension Value1		236,512		—
TOTAL	$	3,811,515	$	118,840

[16] Source: Company's 2023 Proxy Statement, at p. 61.

CEO Pay to Median Employee Pay Ratio	32:1

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

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

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

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

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

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

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

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

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

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

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

> OUR PROGRAMS ARE DESIGNED TO GUARD AGAINST EXCESSIVE RISK[17]

112. The 2023 Proxy also made the following misrepresentation:

> <u>Risk mitigation features of our programs</u>. Our compensation programs incorporate the following features to promote prudent decision-making and guard against excessive risk[18]

113. The 2023 Proxy also represented the following:

> **Board Oversight of Strategy and Risk Management**
>
> ***Effective management of risks and opportunities improves the sustainability***, ***well-being and resilience of our communities***, ***our state and our environment — and leads to sustained long-term value creation for our investors***.
>
> As a Board, we see ESG-related strategies and risks as having the same potential as other strategies and risks to impact long-term value creation. As a result, ***we deliberately composed our Board to ensure we have directors who have direct experience related to ESG topics***, ***including renewable energy***, ***climate change strategy and environmental management***.
>
> Our full Board reviews and provides input on our strategies and major risks and determines our risk appetite. This includes risks relating to safety, other human capital considerations and climate change.

114. Under a heading entitled "What We Don't Do," the 2023 Proxy also represented "No compensation programs that are reasonably likely to create material risk to the Company."[19]

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

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[17] *See* 2023 Proxy at p. 48.

[18] *Id.*

[19] *Id.* at p. 31.

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

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

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

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

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

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

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

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

[21] *Id.*

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

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

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

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

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

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

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

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

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

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

VII. DAMAGES

A. Defendants Have Inflicted Massive Damages Upon HAWAIIAN ELECTRIC

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

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

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[22] *Id.*

[23] *Id.*

1. Share Price Decimated by Over 70%

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

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

2. $3.8 Billion In Liability Created

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

3. HAWAIIAN ELECTRIC's Credit Rating Slashed

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

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

(a) What is your understanding of the sequence of events and actions on August 8, 2023, involving the Lahaina fire, including actions taken by Hawaiian Electric?

(b) Please describe all actions taken by Hawaiian Electric to address fire risks to the electric grid on Maui prior to August 8, 2023 (going back through 2013).

(c) Please describe all actions taken by Hawaiian Electric, Hawaii Public Utilities Commission, Hawai'i State Energy Office and any other applicable entities to mitigate invasive grasses and other vegetation on the island of Maui, in order to prevent or minimize fire risks.

(d) Please provide Hawaiian Electric spending on Maui for the past ten years, including, but not limited to, specific spending for utility infrastructure, for energy generation, to meet Hawaii's renewable energy mandates, and to address identified fire risks.

(e) What Hawaiian Electric actions regarding fire risks to the Maui electric grid are pending before the Hawaii Public Utilities Commission? What is the status of those actions?

(f) Has the Hawai'i State Energy Office been involved in grid modernization, hardening, and resilience efforts by Hawaiian Electric? If yes, please describe those efforts.

(g) In July 2021, the Maui County government assessed and issued a report on the growing threat of fire to the island. Did the report involve any recommendations regarding the electric grid? If yes, what is the status of implementing those recommendations?

(h) What orders has the Hawaii Public Utilities Commission issued, or actions taken, since 2018, to address fire risks to the electric grid on Maui?

(i) What actions did Hawaiian Electric take after the Maui fires on August 8, 2023, relating to the removal of any equipment, including but not limited to, damaged power lines and poles?

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

4. Hawaiian Electric Has Been Forced to Cut Its Dividend

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

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

VIII. DEMAND FUTILITY ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IX. CAUSES OF ACTION

A. First Cause of Action: Breach of Fiduciary Duty

(Against All Defendants)

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

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

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

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

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

B. Second Cause of Action: Abuse of Control

(Against All Defendants)

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

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

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

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

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

C. Third Cause of Action: Corporate Waste

(Against All Defendants)

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

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

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

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

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

D. Unjust Enrichment

(Against All Defendants)

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

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

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

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

X. PRAYER FOR RELIEF

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

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

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

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

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

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

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

DATED: Honolulu, Hawaii, September 8, 2023

Respectfully submitted,

TAMASHIRO SOGI & BONNER
A LAW CORPORATION

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Attorneys for Plaintiff
CHRISTINA RICE, derivatively on behalf of Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc.

VERIFICATION

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

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

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

Chris Rice

Christina Rice