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CRYSTAL KAUILANI ROSE, JENNIFER NOELANI  
GOODYEAR-KA'ŌPUA, MICHELLE M. KA'UHANE, ERIC K.  
YEAMAN and ELLIOT KAWAIHO'OLANA MILLS, as  
TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP  
DBA KAMEHAMEHA SCHOOLS and MARISSA HARMAN, IN  
HER PROFESSIONAL and OFFICIAL CAPACITY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DAISY MITCHELL; REBECCA  
MELENDEZ,

Plaintiffs,

vs.

KAMEHAMEHA SCHOOLS (BISHOP  
ESTATE); HAWAII COUNTY PLANNING,  
JEFF DARROW, IN HIS OFFICIAL  
CAPACITY AS DIRECTOR; MARISSA  
HARMAN, IN HER PROFESSIONAL  
& OFFICIAL CAPACITY; G70; KAWIKA  
MCKEAGUE, IN HIS OFFICIAL  
CAPACITY; JANE DOES 1-20; DOE  
CORPORATIONS 1-20; DOE ENTITIES 1-  
20; AND DOE GOVERNMENTAL UNITS 1-  
20;

Defendants.

CIVIL NO. 3CCV-25-0000438  
(ENVIRONMENTAL COURT ACTION)

**ANSWER OF DEFENDANTS**  
**TRUSTEES OF THE ESTATE OF**  
**BERNICE PAUAHI BISHOP DBA**  
**KAMEHAMEHA SCHOOLS AND**  
**MARISSA HARMAN, IN HER**  
**PROFESSIONAL & OFFICIAL**  
**CAPACITY TO FIRST AMENDED**  
PETITION FOR JUDICIAL REVIEW OF  
ENVIRONMENTAL IMPACT  
STATEMENT ACCEPTANCE, filed April  
8, 2026 [DKT. 16]; CERTIFICATE OF  
SERVICE

**ANSWER OF DEFENDANTS TRUSTEES OF THE ESTATE OF BERNICE PAUAAHI  
BISHOP DBA KAMEHAMEHA SCHOOLS AND MARISSA HARMAN, IN HER  
PROFESSIONAL & OFFICIAL CAPACITY, TO FIRST AMENDED PETITION FOR  
JUDICIAL REVIEW OF ENVIRONMENTAL IMPACT STATEMENT ACCEPTANCE,  
FILED APRIL 8, 2026 [DKT. 16]**

Defendants CRYSTAL KAUILANI ROSE, JENNIFER NOELANI GOODYEAR-  
KA'ŌPUA, MICHELLE M. KA'UHANE, ERIC K. YEAMAN, and ELLIOT  
KAWAIHO'OLANA MILLS, as Trustees of the Estate of Bernice Pauahi Bishop dba  
Kamehameha Schools ("**KS**"), and MARISSA HARMAN, IN HER PROFESSIONAL AND  
OFFICIAL CAPACITY ("**Harman**") (collectively "**Defendants**" or "**KS**"), through counsel,  
answers Plaintiffs Daisy Mitchell's ("**Mitchell**") and Rebecca Melendez's ("**Melendez**")  
(collectively, "**Plaintiffs**") *First Amended Petition For Judicial Review of Environmental Impact  
Statement Acceptance*, filed April 8, 2026 [Dkt. 16] ("**Complaint**"), as follows:

**FIRST DEFENSE**

1. The Complaint fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

2. Defendants deny the general preamble and allegations in the unnumbered paragraphs on pages 1-2 of the Complaint.
3. Defendants deny the "**Relief Requested**" allegations in the unnumbered paragraphs on pages 2-3 of the Complaint.
4. In response to the allegations of the Complaint in the "**Clarification of Intent**" section on page 3, Defendants are without sufficient knowledge or information so as to form a belief as to the truth or accuracy of the allegations about Plaintiffs' motive and intentions in pursuing the claims in the Complaint, so they deny said allegations until proven, but affirmatively respond that the referenced Final Environmental Impact Statement ("**FEIS**") is not unlawful and does not violate Haw. Rev. Stat. ("**HRS**") Chapter 343, known as the Hawai'i

Environmental Protection Act ("**HEPA**").

5. In response to the allegations in the "**Terminology Clarification Regarding Project Description**" on page 3 of the Complaint, Defendants respond that the Keauhou Bay Management Plan ("**KBMP**") relates to the project at Keauhou Bay, as described in the FEIS (the "**Project**"), speaks for itself as written in the original document form and therefore denies any other characterizations or alleged deficiencies implied or asserted in those paragraphs of the Complaint; and otherwise Plaintiffs' allegations are incomplete, vague, ambiguous, unclear and/or contain mixed law and fact allegations such that Defendants are without sufficient knowledge or information so as to form a belief as to the truth or accuracy of those allegations, and therefore Defendants deny said allegations.

6. In response to the allegations as stated in pages 3-4 concerning "**Parties and Standing**" related to "**Petitioner Daisy Mitchell, Pro Se**", Defendants are without sufficient knowledge or information so as to form a belief as to the truth or accuracy of the allegations therein about Mitchell's alleged background, so they deny said allegations. Defendants affirmatively deny that any alleged harm arises from the FEIS related to the KBMP, as alleged in the third paragraph of that section, and Mitchell has no standing or no actionable claim to assert a separate private right of action related to the Project environmental disclosures, FEIS and/or KBMP.

7. Defendants admit that KS is a named party to this action and that Kamehameha Schools is a dba trade name of the Trustees of the Estate of Bernice Pauahi Bishop, headquartered in Honolulu, Hawai'i, and that Defendant Marissa Harman ("**Harman**") is an employee of KS.

8. Defendants admit that the County of Hawai'i ("**County**") is a municipal

corporation organized under the laws of the State of Hawai‘i, that the Planning Department is an administrative department of the County, and that Defendant Jeff Darrow ("**Darrow**") is the Director of the County Planning Department.

9. Defendants admit that G70 is a trade name for Group 70 International, Inc., a Hawai‘i corporation headquartered in Honolulu, Hawai‘i, and that Defendant Kawika McKeague ("**McKeague**") is employed as its President.

10. In response to the allegations in the unnumbered paragraphs at pages 4-6 of the Complaint under the sections titled: "**II. CONSTITUTIONAL FRAMEWORK**"; "**A. Article XII, Section 7 - Traditional and Customary Rights**"; "**B. Article XI - Public Trust Doctrine**"; "**C. Heightened Scrutiny and Precautionary Obligation under *Waiahole Ditch* precedent**"; "**III. ARBITRARY AND CAPRICIOUS ACCEPTANCE OF THE FEIS**"; and "**IV. TRANSITION TO STATUTORY CLAIMS**", Defendants respond that the documents, citations and/or law referenced or cited therein speak for themselves as written in the original documents and cited law; Defendants deny any other characterizations or deficiencies implied or asserted in those paragraph allegations. Otherwise, or alternatively, the allegations are incomplete, vague, ambiguous, unclear and/or contain mixed law and fact allegations such that Defendants are without sufficient knowledge or information so as to form a belief as to the truth or accuracy of those mixed and commingled allegations, and therefore Defendants deny those allegations.

11. In response to the allegations as stated in pages 6-8 concerning "**2. Rebecca Melendez, Pro Se**" and her alleged "**STANDING AND AGGRIEVED PERSON STATUS (HRS §343-7)**", Defendants are without sufficient knowledge or information so as to form a belief as to the truth or accuracy of each of the allegations contained therein so they deny

said allegations. Defendants affirmatively deny the alleged harm from the FEIS related to the KBMP environmental disclosures. Melendez has no separate right or private cause of action outside the mandates of HRS § 343-7(c) to allege any deficiency with the FEIS. Melendez has no standing or actionable claim to assert a separate private right of action related to the Project environmental disclosures, FEIS and/or KBMP outside the confines of the FEIS sufficiency challenge requirements of HRS §343-7(c), which is limited to review of timely submitted and timely sued upon comments on the Draft EIS referenced in Melendez's initial Complaint, filed on October 22, 2025 [Dkt 1]. Any additional claims of alleged Project deficiencies (*e.g.*, Article XI, XII, *Ka Pa'akai* analysis, or alleged FEIS deficiency), as alleged in Melendez's amended Complaint filed on April 8, 2026 [Dkt. 16], almost 6 months after the initial complaint was filed [Dkt. 1], are not actionable and are untimely, being raised for the first time well beyond the 60-day statute of limitations set forth in HRS §343-7(c) to challenge an alleged deficiency in the FEIS; therefore, any new or amended claims by Melendez in the Complaint are untimely and should be stricken and dismissed.

12. In response to the allegations as stated in pages 8-16 concerning "**Respondents: HAWAII COUNTY PLANNING DEPARTMENT AND JEFF DARROW, PLANNING DIRECTOR**", which includes legal references to statutes, rules, regulations and case law that speak for themselves as written, so any other or alternate characterization in those pages is denied. In addition, the FEIS and KBMP referenced therein speak for themselves and Defendants deny the allegations of any deficiency or violation of the law by the County of Hawai'i and Darrow by performing their duties to review and accept the FEIS as a compliant HEPA environmental disclosure document. Defendants affirmatively deny the alleged harm from the FEIS related to the KBMP environmental disclosures. Melendez has no separate legal

right or cause of action outside HRS § 343-7(c), as a matter of law, to allege any deficiency with the FEIS or to invalidate the County's proper acceptance of the FEIS as a legally compliant environmental disclosure document. Melendez has no standing or actionable claim to assert a separate private right of action related to the Project environmental disclosures, FEIS and/or KBMP outside the confines of the FEIS sufficiency challenge under HEPA based on the claims made in Melendez's initial complaint, filed on October 22, 2025 [Dkt 1]. Any additional claims of alleged Project deficiency in her amended Complaint filed several months later in the amended Complaint dated April 8, 2026 [Dkt. 16], are not actionable or otherwise are untimely being raised for the first time well beyond the 60-day statute of limitations to assert any alleged FEIS deficiency claim under HRS § 343-7(c), and such new or amended claims should be stricken and dismissed.

13. In response to the allegations as stated in pages 16-28 concerning "**3. RESPONDENTS KAMEHAMEHA SCHOOLS AND MARISSA HARMAN-TRUST PURPOSE, FIDUCIARY DUTIES, AND AUTHORITY TO PROCEED**", the legal references to statutes, rules, regulations and case law speaks for themselves as written, so any other or alternate characterization in those pages is denied. In addition, factual provisions and historical content information in the FEIS and KBMP referenced therein speaks for itself. Defendants deny the allegations of any deficiency, deferral, failure to consult, or violation of the law by Defendants performing their duties to prepare and submit the FEIS. Defendants affirmatively deny any alleged harm to the trust from the FEIS and the KBMP for environmental disclosures required under HEPA. Melendez has no separate right or cause of action outside HRS § 343-7(c) to allege any deficiency with the FEIS. All of Melendez's timely submitted comments were included in the FEIS for the decision maker to review and consider. Plaintiffs

have no standing or actionable claim to assert a separate private right of action related to the Project environmental disclosures, FEIS and/or KBMP except under the mandates for review under HRS § 343-7(c). Defendants deny they submitted any materially incomplete or misleading disclosures or actions with respect to the FEIS or KBMP, as alleged. KS and Harman deny all alleged failures on Harman's part as stated on pages 22-28 of the Complaint. Plaintiffs have no standing or right to assert any claims as to the referenced Will or alleged title to the Project properties referenced in the FEIS. Any additional claims of alleged Project deficiencies in Melendez's amended Complaint filed on April 8, 2026 [Dkt. 16], or several months after the initial complaint [Dkt. 1], are not actionable or otherwise are untimely as violating the 60 day statute of limitation to assert any alleged FEIS deficiency claim under HRS § 343-7(c). Any new or amended claims should be stricken and dismissed. Plaintiffs have no cause of action, or standing, to allege a claim seeking to enjoin or remove Marissa Harman "from further participation in environmental review, planning coordination, or FEIS preparation for the Keauhou Bay Management Plan Project and any related agency proceedings arising from that Project" or to "prohibit Harman from serving in any capacity involving the preparation, coordination, or advancement of environmental review documents" as alleged on page 27 either as a private claim or otherwise.

14. In response to the allegations as stated in pages 28-38 of the Complaint titled: "**5. RESPONDENTS G70 AND KAWIKA MCKEAGUE - FEIS PREPARATION, COORDINATION AND SUBMISSION**", the legal references to statutes, rules, regulations and case law speak for themselves as written, so any other or alternate characterization in those pages is denied. In addition, factual provisions and historical content information in the FEIS referenced therein speak for themselves as written, and therefore denies any other

characterization or allegations referenced in the Complaint. Defendants deny the allegations of any deficiency, deferral, failure to consult, or violation of the law by G70 and Kawika McKeague (collectively, "G70") in performing their duties to prepare and submit the FEIS in accordance with HEPA and its implementing regulations, Hawai'i Administrative Rules ("HAR") Title 11, Chapter 200.1. Defendants deny that G70 ignored or deferred any required cultural assessment, traditional customary practices, or study, including any *Ka Pa'akai* analysis, as specifically stated and included in the FEIS. Defendants further deny any alleged inadequacy related to baseline review or discussion of impacts on marine species, environmental consequences, cumulative and long-term effects, and water quality. Following the filing of the Complaint [Dkt. 16], KS understands that an electronic version of the FEIS filed by G70 with the Office of Planning and Sustainable Development ("OPSD") Environmental Review Program ("ERP") was missing six (6) pages in Chapter 2 (the "Purpose and Need" chapter) which includes some subsections of Section 2.6 and Sections 2.7 and 2.8. The pages missing in the FEIS were included in the Draft EIS published in *The Environmental Notice* on June 23, 2024 and were available to the public for review and comment during the 45-day Draft EIS comment period. The County reviewed those pages both in its review of the Draft EIS and considered them in accepting the FEIS. There were no substantive changes to those six pages between the Draft EIS and FEIS. Following the County's review of the FEIS, due to a technical error in the conversion of the PDF of the FEIS for publication in *The Environmental Notice*, the online publication of the FEIS inadvertently did not include those six pages. Accordingly, this technical error does not affect the County of Hawai'i's proper acceptance of the FEIS. Furthermore, Melendez did not submit any specific comments about those pages in her Draft EIS comments to be actionable under HRS § 343-7(c).

15. With respect to all allegations referring to G70 and the FEIS, Defendants affirmatively deny any alleged harm to Plaintiffs arising from the preparation and submission of the FEIS by G70. The FEIS conforms to and is consistent with the obligations for an environmental disclosure document under HEPA, so Defendants deny any contrary allegations and claims. Melendez has no separate right or cause of action outside HRS § 343-7(c) to allege any deficiency with the FEIS. Only Melendez's timely submitted comments included in the FEIS that were timely pursued for consideration in her initial complaint [Dkt. 1] may be reviewed under HRS § 343-7(c). Plaintiffs have no standing or actionable claim to assert a separate private right of action related to the Project environmental disclosures, FEIS and/or KBMP. Plaintiffs have no cause of action, or standing, to allege a claim seeking to enjoin or remove Kawika McKeague "from his position as President of G70 based on abuse of authority" as alleged on pages 37-38 either as a private claim or otherwise.

16. In response to the allegations as stated in pages 38-41 of the Complaint titled: "**II. Summary of Unlawful Actions and Public Trust Violations, Including Implied**" and "**II.A. Violation of Public Trust Duties (Waiāhole Ditch)**", the legal references to statutes, rules, regulations and case law speaks for themselves as written, so any other or alternate characterization in the Complaint is denied. In addition, factual provisions and historical content information in the FEIS referenced therein speak for themselves as stated. Plaintiffs have no standing or private right of action to allege any violation of public trust, case law on water issues, or alleged Article XII, Section 7 claims under the Hawai'i Constitution, based on the FEIS, as such claims are subsumed and a part of the statutory framework for FEIS sufficiency review under HAR § 343-7(c), as confirmed by the Hawai'i Supreme Court in *Maui Lani Neighbors, Inc. v. State*, 156 Hawai'i 520, 525, 575 P.3d 610, 615 (2025) and *Punohu v. Sunn*, 66 Haw. 485,

666 P.2d 1133 (1983).

17. In response to the allegations as stated in pages 41-43 of the Complaint titled: "**11.B. Failure to Disclose Public Rights Arising from Longstanding Public Use, Public Thoroughfare Access, and Statutory Public Trail Classification (Gold Coast Neighborhood Ass'n v. State; HRS §264-1)**", the legal references to statutes, rules, regulations and case law that speak for themselves as written, so any other or alternate characterization in those pages is denied. In addition, factual provisions and historical content information in the FEIS referenced therein speaks for itself. Defendants have not stated and cannot maintain a separate cause of action under HRS § 264-1 for any statements made in the FEIS or by the act of the County in accepting the FEIS. Any timely submitted comments from Melendez related to the issues stated in this section were in fact addressed in the FEIS, so any separate private claim or cause of action is subject to dismissal under HRS § 343-7(c). The FEIS does not approve any permits or governmental action as alleged; it is simply an environmental disclosure document for use and consideration by other future decision makers. Defendants deny the FEIS is inadequate or inappropriate under HEPA based on any comments submitted by Melendez related to the allegations in this section.

18. In response to the allegations as stated in pages 44-46 of the Complaint titled: "**11.C. Violation of Article XII, Section 7 of the Hawai'i Constitution (Native Hawaiian Traditional and Customary Rights - PASH)**", the legal references to statutes, rules, regulations and case law that speaks for itself as written, so any other or alternate characterization in those pages is denied. In addition, factual provisions and historical content information in the FEIS and KBMP referenced therein speaks for itself. Any timely submitted comments related to the issues stated in this section were in fact addressed in the FEIS, so any

separate private claim or cause of action is subject to dismissal under HRS § 343-7(c). The FEIS does not by itself approve any permits or uses; the FEIS is simply a disclosure document.

Defendants deny the FEIS is inadequate or inappropriate based on any timely comments submitted by Melendez related to *PASH* or Native Hawaiian gathering rights, and no separate private cause of action arises out of the statements in the FEIS related to *PASH*, as the FEIS is an environmental disclosure document that does not approve, permit, or authorize any Project activities and does not otherwise restrict or inhibit any *PASH* rights.

19. In response to the allegations as stated in pages 46-48 of the Complaint titled: "**11.D. Failure to Perform Mandatory Ka Pa'akai Analysis (Procedural Violation of Article XII, Section 7 Duties)**", the legal references to statutes, rules, regulations and case law speaks for themselves as written, so any other or alternate characterization in those pages is denied. In addition, factual provisions and historical content information in the FEIS referenced therein speak for themselves. Any comments in timely submitted comments related to the issues stated in this section were in fact addressed in the FEIS, so any separate private claim or cause of action is subject to dismissal under HRS § 343-7(c), and otherwise, the FEIS does not create or restrict any actions as alleged as it is simply an environmental disclosure document that does not by itself approve any permits or regulate activities. Defendants deny the FEIS is inadequate or inappropriate based on any timely comments submitted by Melendez related to the allegations related to *Ka Pa'akai* information and cultural impact disclosures. No separate private cause of action arises in favor of Plaintiffs from statements in the FEIS related to *Ka Pa'akai* content and disclosures in the FEIS as an environmental disclosure document. The FEIS itself does not approve, permit or authorize any agency approvals of Project activities.

20. In response to the allegations as stated in pages 48-49 of the Complaint

titled: "**II.E. Application of Legal Violations to FEIS Defects at Keauhou Bay**", the legal references to statutes, rules, regulations and case law that speak for themselves as written, so any other or alternate characterization in those pages is denied. Any comments in timely submitted comments from Melendez related to the issues stated in this section were in fact addressed in the FEIS. No separate private claim or cause of action can be maintained and is subject to dismissal under HRS § 343-7(c). Defendants deny the FEIS is inadequate or inappropriate based on any timely submitted comments submitted by Melendez related to the allegations in this section of the Complaint alleging improper actions by individuals charged with preparing, submitting and/or approval of the FEIS as a HEPA-compliant environmental disclosure document. No separate private cause of action arising out of the statements in the FEIS is actionable by these Plaintiffs against any of the named party defendants.

21. In response to the allegations as stated in pages 49-52 of the Complaint titled: "**Violation Through Removal of Shoreline Canoe Storage and the Volleyball Court**" and "**Impact of Bungalow Resort Development on Fishing, Canoe Use, and Cultural Practices**", the legal references to statutes, rules, regulations and case law that speak for themselves as written, so any other or alternate characterization in those pages of the Complaint are denied. In addition, factual provisions and historical content information in the FEIS referenced therein speak for themselves. Any timely submitted comments from Melendez related to the issues stated in this section of the Complaint were in fact addressed in the FEIS. Any separate private claim or cause of action is subject to dismissal under HRS § 343-7(c). As an informational document, the FEIS itself does not approve any permits or uses. Defendants deny the FEIS is inadequate or inappropriate based on any comments timely submitted by Melendez related to the allegations in this section for the canoe club use/storage, volleyball

court, and alleged 150 unit bungalow impacts, as all such activities are fully disclosed in the FEIS. Any timely submitted comments from Melendez related to those issues were reproduced verbatim in the FEIS. Responses to any timely comments from Melendez on these issues were also included in the FEIS, so the obligations of inclusion and disclosure under HEPA were satisfied by Defendants. No separate private cause of action arises out of the statements in the FEIS related to the disclosures on these topics or can be stated because the FEIS, as an environmental disclosure document, does not approve, permit or authorize any Project activities and is solely governed by the HEPA sufficiency standards.

22. In response to the allegations as stated in pages 52-55 of the Complaint titled: "**11.G. Unresolved Royal Patent and Title Concerns Regarding Keauhou II**", the legal references to statutes, rules, regulations, and case law speak for themselves. Any other or alternate characterization in those pages of the Complaint is denied. In addition, factual provisions and historical content information in the FEIS referenced therein speak for themselves as written. Any timely submitted comments from Melendez related to the issues stated in this section of the Complaint were in fact addressed in the FEIS; therefore, any separate private claim or cause of action is subject to dismissal under HRS § 343-7(c). The FEIS, as an environmental disclosure document, is not required to prove title or land ownership. Defendants have no standing to assert any title issues in an FEIS action under HEPA and there are no comments submitted by Melendez related to the allegations in this section concerning title rights. Plaintiffs have no separate private cause of action arising out of any alleged claims regarding title to the Project property, and all required cultural information to support a *Ka Pa 'akai* analysis was included in the FEIS. No additional claims are actionable or can otherwise invalidate or restrict the acceptance of the FEIS by the County. The FEIS disclosure document does not approve,

permit, or authorize any Project.

23. In response to the allegations as stated in pages 59-60 of the Complaint titled: "**11.G.(l) Individual Responsibility for Unlawful Reliance on Unverified Title and Failure of Duty**", the legal references to statutes, rules, regulations, and case law speaks for themselves as written. Any other or alternate characterization in those pages is denied. In addition, factual provisions and historical content information referenced in the FEIS speak for themselves. Defendants deny the allegations of any disregard, or misleading actions by Darrow, Harman and McKeague, as alleged based on their duties to prepare, submit, and/or review the FEIS in accordance with HEPA and its implementing regulations at HAR Title 11, Chapter 200.1.

24. In response to the allegations as stated in pages 60-64 of the Complaint titled: "**11.H. Interference With Community, Cultural, and Beneficiary Rights Through Retaliatory and Biased Conduct**", the legal references to statutes, rules, regulations and case law speaks for themselves. Any other or alternate characterizations in those pages are denied. In addition, factual provisions and historical content information in the FEIS speak for themselves. Any timely submitted comments related to the issues stated in this section of the Complaint were in fact addressed in the FEIS; therefore, any separate private claim or cause of action is subject to dismissal under HRS § 343-7(c). The FEIS adequately discloses all impacts that are implicated in any timely submitted comments by Melendez and Defendants deny all allegations that the FEIS does not comply with the requirements of law, including HEPA. Defendants deny that Plaintiffs have any separate right or private cause of action to enjoin, halt, restrict, remove or invalidate the FEIS or to halt, delay or interfere with the Project described in the FEIS. Disclosures related to *Ka Pa 'akai*, consultation, and analysis of potential cultural impacts exist in

the FEIS. No separate private cause of action arises out of statements in the FEIS based on alleged cultural disclosure deficiencies. Mitchell's prior attempts to organize an event in the Project area do not give rise to any actionable claim directly against Defendants and otherwise has no basis for an actionable claim under HEPA. Furthermore, Mitchell did not comment on the Draft EIS as required by HEPA and therefore cannot maintain an action against Defendants under HRS § 343-7(c). Defendants deny all other allegations related to trust administration or fiduciary obligations stated in the Complaint.

25. In response to the allegations as stated in pages 64-66 of the Complaint titled: "**II.I. Material Misrepresentation and Unlawful Expansion of Project Scope (101 Units vs. 150 Units)**", the legal references to statutes, rules, regulations and case law speak for themselves as written. Any other or alternate characterization in those pages is denied. In addition, factual provisions and historical content information in the FEIS referenced therein speak for themselves. Any timely submitted comments from Melendez related to the issues stated in this section of the Complaint were in fact addressed in the FEIS; therefore, any separate private claim or cause of action is subject to dismissal under HRS § 343-7(c). The FEIS adequately discloses all impacts that are implicated in any timely submitted comments by Melendez and Defendants deny all allegations that the FEIS does not comply with the requirements of law, including HEPA. Defendants deny that Plaintiffs have any separate right or private cause of action to enjoin, halt, remove or invalidate the FEIS or to halt, delay or interfere with the Project described in the FEIS. Disclosures related to water impacts are included in the FEIS in accordance with HEPA. No separate private cause of action arises out of the statements in the FEIS related to the alleged water disclosures alleged in any of Melendez's comments or otherwise exists as a viable cause of action for these Plaintiffs. Mitchell has no standing to assert

an FEIS insufficiency claim since she failed to submit any comments on the Draft EIS as required for review under HRS § 343-7(c) and *Sensible Traffic Alternatives v. FTA*. 307 F.Supp.2d 1149, 1160 (D. Haw. 2004) ("[R]eview of the sufficiency of an EIS is limited to concerns that a person raised in his or her comments.") (citing to *Price v. Obayashi Hawaii Corp.*, 81 Hawai'i 171, 183, 914 P.2d 1364, 1376 (1996) ("our review of the EIS is limited to those concerns that Price listed in his comments to the draft EIS") (citing to HRS § 343-7(c)).

26. In response to the allegations as stated in pages 66-70 of the Complaint titled: "**II.I (1). Failure to Identify, Disclose and Analyze Endangered and Threatened Species and Critical Habitat (Public Trust Violation; Failure to Take a "Hard Look"; Ka Pa'akai Deferral)**", Defendants restate their prior answers to these subjects as set forth in the sections above and deny those allegations. The legal references to statutes, rules, regulations and case law speak for themselves as written. Any other or alternate characterization in those pages is denied. In addition, factual provisions and historical content information in the FEIS speak for themselves. Any timely submitted comments related to the issues stated in this section were in fact addressed in the FEIS. Any separate private claim or cause of action is subject to dismissal under HRS § 343-7(c) and otherwise, the FEIS does not create any conditions as alleged as it is simply an environmental disclosure document. The FEIS itself does not approve any permits, uses, or formal authorization for the KBMP. Defendants deny that the FEIS is inadequate, or any claims that the accepting authority failed the "hard look" standard, or improperly delegated *Ka Pa'akai* considerations. No separate private cause of action has been properly stated or exists by these Plaintiffs. No such claims can arise out of the statements in the FEIS, as an environmental disclosure document, which does not approve, permit, or authorize any Project activities. The specific topics alleged in this section of the Complaint were in fact disclosed and

addressed in the FEIS, and any challenge is limited to only those timely submitted comments that were timely sued upon by Melendez under HRS § 343-7(c).

27. In response to the allegations as stated in pages 70-76 of the Complaint titled: **"11.J. Failure to Analyze Existing Infrastructure and Resource Capacity Constraints Affecting Hawai'i Island (Cumulative Impacts; Public Trust; *Waiāhole* Ditch, 94 Hawai'i 97 (2000))"; "1. Existing baseline conditions trigger the State's "high duty of care"; "(a) Solid waste and landfill limitations"; "(b) Traffic safety and fatalities.", '(c) Power outages and grid instability"; "(d) Water conservation and supply stress."; "2. Under *Waiāhole*, Existing Conditions Require Careful Evaluation and Protection Under Applicable Law"; "3. Misallocation of the burden of proof"; "4. Rubber-stamping and failure of decision-makers to consider known constraints"; and "5. Legal consequence under *Waiāhole* and HRS §343-7(c)", Defendants restate their prior answers to these subjects as set forth in the sections above and deny those allegations. To the extent required by HEPA, the topics stated above are addressed in the FEIS so Defendants deny Plaintiffs' allegations that they are not adequately included in the FEIS under HEPA. The legal references to statutes, rules, regulations and case law speak for themselves as written, so any other or alternate characterizations in those pages are denied. In addition, factual provisions and historical content information in the FEIS referenced therein speak for themselves. Any timely submitted comments from Melendez related to the issues stated in this section of the Complaint were considered and addressed in the FEIS; so any separate private claim or cause of action is subject to dismissal under HRS § 343-7(c). The FEIS, as an environmental disclosure document about Project impacts from the KBMP, does not itself approve any permits or the Project. Defendants deny the FEIS is inadequate based on any comments timely submitted and pursued within the 60 day challenge**

period by Melendez related to allegations that the FEIS is deficient. No separate private cause of action has been properly stated, and no such claims can arise out of the statements in the FEIS. To the extent required by HEPA, the specific topics alleged in this section of the Complaint were addressed by the FEIS, and any challenge to the FEIS is limited to only those timely submitted comments that were timely sued upon by Melendez under HRS § 343-7(c).

28. In response to the allegations as stated in pages 76-82 of the Complaint titled: "**11.K. Failure to Accurately Acknowledge, Summarize, and Respond to Multiple Written Public Comments, Including Those of Petitioners and Expert Submissions**", Defendants restate their prior answers to these subjects as set forth in the sections above and restate the denials to those allegations. The topics stated above are addressed in the FEIS, so Defendants deny Plaintiffs' allegations that they are not adequately included under HEPA. The legal references to statutes, rules, regulations and case law that speak for themselves as written, so any other or alternate characterization is denied. In addition, factual provisions and historical content information in the FEIS speak for themselves. Any timely submitted comments by Melendez related to the issues stated in this section were reproduced verbatim and addressed in the FEIS. No separate private claim or cause of action, or untimely assertion of alleged FEIS deficiencies, can be maintained under HRS § 343-7(c). The FEIS does not approve permits or uses and Defendants otherwise deny the FEIS is inadequate. To the extent required by HEPA, the specific topics alleged in this section of the Complaint were in fact disclosed and any challenge is limited to only those timely submitted comments that were timely sued upon by Melendez under HRS § 343-7(c).

29. In response to the allegations as stated in pages 82-85 of the Complaint titled: "**11.L. Failure to Complete Required Cultural Analysis for Keauhou Bay as the**

**Birthplace of King Kamehameha III (Ka Pa‘akai Violation)**", Defendants restate their prior answers to these subjects as set forth in the sections above and deny those allegations. The legal references to statutes, rules, regulations and case law speak for themselves as written. Any other or alternate characterizations are denied. Factual provisions and historical content information in the FEIS referenced therein speak for themselves. Any timely submitted comments related to the issues stated in this section of the Complaint were in fact addressed in the FEIS. Any separate private claim or cause of action is subject to dismissal under HRS § 343-7(c). The FEIS does not approve any permits, uses or formal authorizations for the Project. Defendants deny the FEIS is inadequate. No separate private cause of action has been properly stated, and no such claims can arise out of the statements in the FEIS as an environmental disclosure document that does not approve, permit or authorize any Project activities. To the extent required by HEPA, the specific topics alleged in this section of the Complaint were in fact disclosed and any challenge is limited to only those timely submitted comments that were timely sued upon by Melendez under HRS § 343-7(c).

30. In response to the allegations as stated in pages 85-87 of the Complaint titled: "**11.M. Misrepresentation of Cultural Consultation Testimony and Absence of Support for Resort Development (Consultation Testimony - Lack of Support for Resort Development)**", Defendants restate their prior answers to these subjects as set forth in the sections above and deny those allegations. The legal references to statutes, rules, regulations and case law speak for themselves as written. Any other or alternate characterizations in those pages of the Complaint are denied. In addition, factual provisions and historical content information in the FEIS speak for themselves. Any timely submitted comments related to the issues stated in this section were in fact addressed in the FEIS. Any separate private claim or cause of action is

subject to dismissal under HRS § 343-7(c). The FEIS does not create any conditions as alleged as it is simply an environmental disclosure document and does not itself approve any permits, uses, or authorizations for the Project. Defendants deny the FEIS is inadequate under HEPA based on any alleged failure to address comments timely submitted and challenged pursuant to the statute of limitations set forth in HRS § 343-7(c) by Melendez related to the allegations in this section. Plaintiffs cannot pursue claims or causes of action on behalf of non-party third person commenters, or others allegedly aggrieved under HEPA. Defendants assert the FEIS satisfies and discloses all material and significant impacts as required by HEPA. No separate private cause of action has been properly stated by Plaintiffs. No separate claims can arise outside of HEPA from the statements in the FEIS, as an environmental disclosure document that does not approve, permit, or authorize the Project.

31. In response to the allegations as stated in pages 87-93 of the Complaint titled: "**11.N. Misrepresentation of Educational and Cultural Justification; Absence of an Educational or Cultural Center in the Proposed Action**" and its subsections, Defendants restate their prior answers to these subjects as set forth in the sections above and deny those allegations. The legal references to statutes, rules, regulations and case law speak for themselves as written. Any other or alternate characterizations in those pages of the Complaint are denied. In addition, factual provisions and historical content information in the FEIS speak for themselves. To the extent required by HEPA, any timely submitted comments related to the issues stated in this section were addressed in the FEIS. Any separate private claim or cause of action is subject to dismissal under HRS § 343-7(c). The FEIS itself does not approve any permits, uses or formal authorizations for the Project. Defendants deny the FEIS is inadequate pertaining to the proposed up to 150 units low-impact lodging, educational and cultural center,

and other elements of the Proposed Action as described in the FEIS. No separate private cause of action has been properly stated, and no such claims can arise out of the statements in the FEIS as an environmental disclosure document under HRS § 343-7(c) as the FEIS does not approve, permit, or authorize the Project. To the extent required by HEPA, the specific topics alleged in this section of the Complaint were in fact disclosed and any challenge is limited to only those timely submitted comments that were timely sued upon by Melendez within the 60 day challenge period under HRS § 343-7(c).

32. In response to the allegations as stated on pages 93-98 of the Complaint titled: "**11.P. Project-Specific Failure of Stewardship and Environmental Mismanagement at Keauhou Bay**", and its subsections, Defendants restate their prior answers to these subjects as set forth in the sections above and deny those allegations. The legal references to statutes, rules, regulations and case law speak for themselves as written. Any other or alternate characterizations in those pages of the Complaint are denied. In addition, factual provisions and historical content information in the FEIS speak for themselves. Plaintiffs state no actionable claim or cause of action under this part of the Complaint and have no standing to assert any claims related to the FEIS other than pursuant to the strict mandates for judicial review under HEPA. To the extent required by HEPA, any timely submitted comments from Melendez related to the issues stated in this section of the Complaint were in fact addressed in the FEIS. Any separate private claim or cause of action by these Plaintiffs is subject to dismissal under HRS § 343-7(c). The FEIS itself does not approve any permits, uses, or authorizations for the Project. Defendants deny the FEIS is inadequate under HEPA concerning disclosures for water, stormwater, and other referenced conditions. No separate private cause of action has been properly stated, and no such claims can arise out of the statements in the FEIS as an

environmental disclosure document that does not approve, permit, or authorize the Project. Any challenge to the FEIS is limited to only those timely submitted comments that were timely sued upon by Melendez under HRS § 343-7(c).

33. Defendants deny the allegations contained under each and every identified "COUNT" asserted on pages 98-102 of the Complaint and affirmatively states the Counts are not consistent with and fail to adequately state any claim under HEPA for alleged FEIS and HEPA deficiencies. None of the identified Counts properly allege or state a claim or actionable cause of action for either of the two Plaintiffs. Defendants restate and deny as applicable all referenced Counts for any specific fact allegations referenced in any of the preceding pages of the Complaint as previously responded to in this Answer.

34. Defendants deny each and every allegation and claim for relief as stated in the "PRAYER FOR RELIEF" section at pages 102-106 of the Complaint.

35. Defendants deny all other allegations of the Complaint not specifically responded to herein.

#### **ADDITIONAL AFFIRMATIVE DEFENSES**

36. The Court lacks jurisdiction over the subject matter of all or some of the claims in Plaintiffs' Complaint.

37. Plaintiffs' Complaint fails to present a justiciable controversy between Plaintiffs and Defendants.

38. Plaintiffs lack standing to assert some or all of the claims set forth in the Complaint.

39. Plaintiffs have alleged certain claims that are not prosecuted in the name of the real party in interest or cannot be maintained on behalf of non-party third persons.

40. Plaintiffs have failed to join indispensable parties under Rule 19 of the Hawai‘i Rules of Civil Procedure.

41. Plaintiffs are barred from maintaining certain claims in this action against Defendants based upon the applicable statute of limitations under HEPA.

42. Plaintiffs have not properly stated and cannot maintain a cause of action for injunctive and/or declaratory relief as alleged in the Complaint.

43. Plaintiffs are barred from maintaining claims in this action against Defendants by reason of Plaintiffs' failure to exhaust and satisfy administrative rules, regulations, and/ or remedies.

44. Plaintiffs have no private right of action and are otherwise barred from maintaining this action against Defendants because Plaintiffs have not satisfied or have failed to comply with the provisions of Chapter 343 of the Hawai‘i Revised Statutes, HAR Title 11, Chapter 200.1, and the Hawai‘i Constitution.

45. Plaintiffs have no private right of action and are otherwise unable to maintain an action against Defendants based on: Articles XI and XII, Section 7 of the Hawai‘i Constitution, a violation of the public trust doctrine, title claims, water use under *Waiāhole*, or cultural resources and practices disclosure and consultation obligations under *Ka Pa‘akai*, to enjoin or halt the Project.

46. Plaintiffs have no private right of action and are otherwise unable to maintain an action and satisfy any requirements to pursue claims and for a trust accounting against Defendants based on alleged violations of duty, fiduciary or otherwise, under the Will of Princess Bernice Pauahi Bishop and Chapter 554D of the Hawai‘i Revised Statutes, either as a beneficiary, private litigant, or in any capacity, and this venue is improper to pursue any such

claims.

47. Plaintiffs have no private right of action, are otherwise unable to maintain an action, or cannot satisfy any requirements to pursue claims against Defendants based on alleged violations of Haw. Rev. Stat. § 264-1 or any claim related to the Project area being use as a public trail or highway.

48. There is no privity of contract between Plaintiffs and Defendants.

49. Plaintiffs are barred from maintaining any contract, implied contract, or quasi-contract against Defendants based on a lack of consideration and the Statute of Frauds.

50. Plaintiffs are barred from maintaining this action against Defendants because Plaintiffs have failed to comply with the provisions of Haw. Rev. Stat. Chapter 343 and/or the legal requirements to maintain this action under the standards set forth in *Price v. Obayashi Hawaii Corp.*, 81 Hawai‘i 171, 914 P.2d 1364 (1996), as confirmed by *Kaupiko v. Bd. of Land and Natural Res.*, 154 Hawai‘i 456, 555 P.3d 143 (2024), and related case law.

51. Plaintiffs are barred from maintaining claims in this action against Defendants based upon the doctrines of res judicata, laches, waiver and/or estoppel.

52. The FEIS satisfies the content and procedural requirements of HRS Chapter 343 and its implementing regulations, HAR Title 11, Chapter 200.1.

53. Defendants expressly reserve all rights to assert any and all affirmative defenses, as well as any other matters constituting an avoidance under Rule 8(c) of the Hawai‘i Rules of Civil Procedure, and to seek leave to amend this Answer to assert additional defenses, claims, or counterclaims as may be warranted.

WHEREFORE: Defendants respectfully request that the Complaint be dismissed with prejudice and that Judgment be entered in favor of Defendants against Plaintiffs on all claims

and issues. Defendants also request recovery of all reasonable attorneys' fees and costs, as allowed by law, and for such other and further relief as is appropriate.

DATED: Honolulu, Hawai'i, May 11, 2026.

*/s/ John P. Manaut*

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PUANANIONAONA P. THOENE  
KATHERINE A. GARSON

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YEAMAN AND ELLIOT  
KAWAIHO'OLANA MILLS, AS TRUSTEES  
OF THE ESTATE OF BERNICE PAUHI  
BISHOP DBA KAMEHAMEHA SCHOOLS  
AND MARISSA HARMAN, IN HER  
PROFESSIONAL AND OFFICIAL  
CAPACITY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

DAISY MITCHELL;  
REBECCA MELENDEZ;

Plaintiffs,

vs.

KAMEHAMEHA SCHOOLS (BISHOP  
ESTATE); HAWAII COUNTY PLANNING,  
JEFF DARROW, IN HIS OFFICIAL  
CAPACITY AS DIRECTOR; MARISSA  
HARMAN, IN HER PROFESSIONAL  
& OFFICIAL CAPACITY; G70; KAWIKA  
MCKEAGUE, IN HIS OFFICIAL  
CAPACITY; JANE DOES 1-20; DOE  
CORPORATIONS 1-20; DOE ENTITIES 1-  
20; AND DOE GOVERNMENTAL UNITS 1-  
20;

Defendants.

CIVIL NO. 3CCV-25-0000438  
(ENVIRONMENTAL COURT ACTION)

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date, a true and correct copy of the foregoing was duly served upon the following parties via JEFS and/or by U.S. Mail to their last known address at, as indicated below:

Daisy Mitchell  
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*via U.S. Mail*

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DATED: Honolulu, Hawai'i, May 11, 2026

/s/ John P. Manaut  
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ERIC K. YEAMAN and ELLIOT K AWAIHO'OLANA  
MILLS, as TRUSTEES OF THE ESTATE OF BERNICE  
PAUHI BISHOP DBA KAMEHAMEHA SCHOOLS  
and MARISSA HARMAN, IN HER PROFESSIONAL  
AND OFFICIAL CAPACITY