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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

'OHANA KIMOKEO,

Plaintiff,

vs.

STATE OF HAWAI'I; BRIAN ACASON; and
JOHN DOES 1-10, JANE DOES 1-10, and
DOE PARTNERSHIPS, CORPORATIONS,
TRUSTS, GOVERNMENTAL UNITS OR
OTHER ENTITIES 1-20 ("DOE
DEFENDANTS"),

Defendants.

CIVIL NO. _____
(Environmental Court)

COMPLAINT; SUMMONS

COMPLAINT

The State of Hawai'i, through its State Historic Preservation Division ("SHPD") of the Department of Land and Natural Resources ("DLNR"), and landowner Brian Acason ("Defendant Acason") have violated statutory and administrative regulations intended to prioritize the protection of culturally sacred and significant historic sites, including Native Hawaiian burial sites. As a result, Native Hawaiian burial sites have been desecrated and continue to be threatened with unnecessary disturbance. Plaintiff 'Ohana Kimokeo files this lawsuit to enforce Hawai'i's historic

preservation laws, to ensure that the proper process is followed, and to protect iwi kūpuna from further desecration.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the claims asserted in this action pursuant to Hawai‘i Revised Statutes (“HRS”) §§ 6E-13(b), 604A-2, 603-21.5, 603-21.9, 607-25, 632-1, and Article XII § 7 of the Constitution of the State of Hawai‘i.

2. Venue in this circuit is appropriate pursuant to HRS § 603-36(5).

PARTIES

3. Plaintiff ‘Ohana Kimokeo is a family of Native Hawaiian descent residing on the island of Maui that engages in the Native Hawaiian traditional and customary practice of mālama iwi kūpuna—the caring for and protection of ancestral remains—in the ahupua‘a of Paunau. ‘Ohana Kimokeo family representatives Foster Among (“Among”) and Brenda Arcangel are recognized lineal descendants of iwi kūpuna located on properties within the ahupua‘a of Paunau, including iwi kūpuna registered by SHPD in 2018 on the Paeohi Property described below.

4. Defendant State of Hawai‘i, through SHPD and DLNR, is charged with the implementation and enforcement of HRS Chapter 6E. SHPD’s principal office is located at 1151 Punchbowl Street, Honolulu, Hawai‘i 96813.

5. Defendant Brian Acaon (“Defendant Acaon”) is a private citizen and landowner of property on Maui in the ahupua‘a of Paunau. He is the owner of vacant real property located at Paeohi Street, Lahaina, Maui, identified as Tax Map Key (“TMK”) No. 4-5-023-069 (the “Paeohi Property”), and has authorized activities that desecrated historic sites and iwi kūpuna located thereon.

6. Defendants John Does 1–10, Jane Does 1–10, and Doe Partnerships, Corporations, Trusts, Governmental Units or Other Entities 1–20 (“Doe Defendants”) are persons or entities who may be liable to ‘Ohana Kimokeo or who may have an interest in the matters pending herein, whose identities and capacities are presently unknown to Plaintiff. ‘Ohana Kimokeo will identify such Doe Defendants when their names and capacities are ascertained. Plaintiff is informed and believes that some of these Doe Defendants are, and at all relevant times were, responsible in some manner for the acts and/or omissions alleged herein.

FACTUAL ALLEGATIONS

PLAINTIFF ‘OHANA KIMOKEO

7. Plaintiff ‘Ohana Kimokeo is a family of descendants of the aboriginal people who, prior to 1778, occupied and exercised sovereignty over the area that now comprises the State of Hawai‘i.

8. ‘Ohana Kimokeo’s ancestors lived and died in the ahupua‘a of Paunau on the island of Maui.

9. ‘Ohana Kimokeo holds religious and spiritual beliefs and engages in traditional and customary practices that originate in, and are interpreted from, Native Hawaiian culture and community.

10. A central tenet of those practices is the obligation to ensure that iwi kūpuna—Native Hawaiian burial sites and human remains—receive proper care and respect.

11. Caring for and protecting iwi kūpuna is a traditional and customary practice of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778.

12. During the Māhele, ancestors of ‘Ohana Kimokeo were awarded property in the ahupua‘a of Paunau through Land Commission Award (“LCA”) No. 312:3. Since the Māhele,

‘Ohana Kimokeo has continuously cared for and protected iwi kūpuna located throughout the lands originally comprising LCA No. 312:3.

THE PAEOHI PROPERTY

13. When West Maui sugar company Pioneer Mill Co. began to develop the area known as Mill Camp in the early 1900s, land from LCA No. 312:3 was subdivided into separate TMK parcels. Some of these lots were developed; others remained vacant.

14. Members of ‘Ohana Kimokeo continue to own property derived from LCA No. 312:3, located at 430 Aki Street and now identified as TMK No. 4-5-024-001.

15. In 2011, Pioneer Mill Co. filed quiet title actions to establish ownership of two, separate but adjacent parcels also derived from LCA No. 312:3 – 441 Aki Street, Lahaina, Maui, identified as TMK No. 4-5-023-062 (the “Aki Property”), and property now identified as TMK No. 4-5-023-069 (the “Paeohi Property”). The Paeohi Property lot was vacant, with portions overgrown with vegetation.

16. ‘Ohana Kimokeo has oral history of numerous family burial sites on the Aki Property and the Paeohi Property. This oral history includes the account of a kūpuna who witnessed one of the interments as a small child and, as an adult, showed the location of that interment to his mo‘opuna (grandchild), ‘Ohana Kimokeo family representative Foster Among.

17. This oral history is corroborated by physical evidence, including pōhaku (large stones) and ‘ili‘ili (pebbles) used as burial markers in accordance with Native Hawaiian tradition, and coconut trees planted as burial markers in accordance with family tradition.

18. In 2013, in response to the quiet title action on the Paeohi Property, Among submitted a burial site registration form to SHPD to register ‘Ohana Kimokeo iwi kūpuna on the

Paeohi Property (the “2013 Burial Sites”). The SHPD registration form required a description of the burials and their specific locations.

19. Among’s registration form identified a cluster of burial sites on the Paeohi Property. Due to extensive overgrown vegetation and restricted access to portions of the property, Among was unable to identify the precise location of all burial sites described in ‘Ohana Kimokeo’s oral history.

20. In 2014, Pioneer Mill Co. put the Paeohi Property up for auction.

21. The first auction winner was unaware of the presence of burials on the property prior to bidding.

22. After being informed of Among’s burial registration form, the first winner chose to forfeit his deposit and rescind his bid.

23. To avoid a recurrence of this situation, when the Paeohi Property was put up for auction a second time, the auctioneers informed all prospective bidders of the burial registration form.

24. Defendant Acason won the second auction and purchased the Paeohi Property with knowledge of the 2013 Burial Sites.

25. When Among met Defendant Acason in 2014, he informed Acason that, according to ‘Ohana Kimokeo’s oral history, there were additional burial sites on the Paeohi Property beyond those identified in the registration form.

26. In 2018, while following up with SHPD regarding ‘Ohana Kimokeo’s iwi kūpuna, Among discovered that SHPD had never formally completed the registration of the 2013 Burial Sites.

27. Upon this discovery, Ampong implored SHPD to follow through with his 2013 Burial Site registration request.

28. In response, SHPD surveyed the Paeohi Property, confirmed the location of the 2013 Burial Sites, and issued State Inventory of Historic Places (“SIHP”) No. 50-50-03-0825. The registration identified over a dozen iwi kūpuna located primarily in the center of the Paeohi Property.

29. Since issuance of SIHP No. 50-50-03-0825, ‘Ohana Kimokeo has continuously engaged in the practice of mālama iwi of those kūpuna.

THE 2023 LAHAINA WILDFIRE EXPOSES THE LOCATION OF OTHER ‘OHANA KIMOKEO BURIALS

30. On August 8, 2023, a catastrophic wildfire devastated Lahaina and the surrounding area, including the Paeohi Property.

31. On August 10, 2023, the President of the United States approved a major disaster declaration for the wildfires, deploying the Federal Emergency Management Agency (“FEMA”) and the United States Army Corps of Engineers (“USACE”) to Maui to assist with recovery efforts.

32. In June 2024, FEMA-contracted archaeologists conducted an Archaeological Inventory Survey (“AIS”) on the Paeohi Property as part of a federal undertaking related to fire debris removal.

33. Because the wildfire had burned away vegetation and overgrowth on the Paeohi Property, additional archaeological features and burial sites described in ‘Ohana Kimokeo’s oral history were exposed. The FEMA archaeologists and ‘Ohana Kimokeo identified these additional sites throughout the makai half of the Paeohi Property, less than 75 feet from the 2013 Burial Sites (the “2023 Burial Sites”).

34. The FEMA archaeologists, in consultation with ‘Ohana Kimokeo, photographed, documented, and marked all archaeological features of the 2023 Burial Sites by placing blue flags next to each feature.

35. Given the number of burial sites on the Paeohi Property and their proximity to one another, the sites appeared to constitute a concentration of burials or a burial complex, rather than merely discrete and separate archaeological features.

36. In July or August 2024, an Environmental Chemical Corporation (“ECC”) crew arrived at the Paeohi Property to clear debris. A site visit party—including the ECC supervisor, the on-site archaeological monitor, USACE archaeologists, Among, and Defendant Aason—walked the property together. The archaeologists identified and explained each historic feature and burial site to the entire group, including Defendant Aason, and explicitly identified the locations of the 2023 Burial Sites.

37. Federal government personnel specifically advised Defendant Aason that, to protect the historic features and burial sites on the makai half of the property, government debris removal would be conducted by hand rather than by machine, and that any ground-altering activity undertaken by Aason was subject to the same restrictions.

38. In August 2024, USACE completed its debris removal by hand.

39. That same month, Among submitted a burial site registration form to SHPD to register the 2023 Burial Sites and requested that SHPD amend SIHP No. 50-50-03-0825 to include the 2023 Burial Sites, so that all iwi kūpuna on the Paeohi Property would be documented under a single SIHP number. Among received verbal confirmation that his submission had been received.

40. In November 2024, Ampong submitted an additional burial registration form to register a burial site on the Aki Property, again requesting that SHPD amend SIHP No. 50-50-03-0825 to consolidate all sites under one registration number.

41. Also in November 2024, SHPD emailed Ampong to confirm registration of the burial sites on the Aki Property. The email made no mention of the 2023 Burial Sites on the Paeohi Property.

42. As of the filing of this Complaint, Ampong has received no formal response, correspondence, or decision from SHPD regarding his August 2024 registration request for the 2023 Burial Sites on the Paeohi Property.

**DEFENDANT ACASON AUTHORIZES THE UNLAWFUL DISTURBANCE OF
HISTORIC SITES, INCLUDING NATIVE HAWAIIAN BURIALS**

43. Following the completion of USACE debris removal, Defendant Acason hired Chops Handywork LLC to clear the Paeohi Property using a machine excavator.

44. Brendan Pelzer (“Pelzer”) is the registered agent for Chops Handywork LLC.

45. Defendant Acason did not obtain a permit or approval from the County of Maui before commencing any clearing or ground-disturbance activity on the Paeohi Property.

46. Defendant Acason did not obtain approval from SHPD to excavate, alter, or disturb any burial sites on the property.

47. Defendant Acason told Pelzer to avoid the 2013 Burial Sites but did not inform Pelzer of the locations of the 2023 Burial Sites. Nor did Defendant Acason monitor Pelzer’s work to ensure the 2023 Burial Sites would not be disturbed.

48. On January 3, 2025, Pelzer used a machine excavator to clear the makai side of the Paeohi Property, thereby desecrating the 2023 Burial Sites and other archaeological features

previously identified and documented by FEMA-contracted archaeologists (the “2025 Desecration”).

49. On January 4, 2025, ‘Ohana Kimokeo family member Michael Arcangel (“Arcangel”) discovered that the Paeohi Property had been disturbed. Upon entering the property, Arcangel observed heavy machinery tire tracks across sensitive areas and a pile consisting of numerous pōhaku, other archaeological features used to mark the presence of iwi kūpuna, and blue flags.

50. Arcangel questioned Defendant Acason about the 2025 Desecration and filed a report with the Maui Police Department. Among separately contacted DLNR to report the 2025 Desecration.

51. On information and belief, approximately 90% of the 2023 Burial Sites on the Paeohi Property were damaged or destroyed by the 2025 Desecration.

INVESTIGATION INTO DISTURBANCE OF HISTORIC SITES AND NATIVE HAWAIIAN BURIALS AT THE PAEOHI PROPERTY

52. On January 11, 2025, DLNR deployed a Division of Conservation and Resources Enforcement (“DOCARE”) officer to investigate the 2025 Desecration.

53. The DOCARE officer interviewed Arcangel, Among, Defendant Acason, Pelzer, SHPD specialists, and FEMA-contracted archaeologists.

54. As a result of the investigation, the DOCARE officer concluded that Defendant Acason, acting through Pelzer, had desecrated iwi kūpuna in violation of HRS § 711-1107, HRS § 6E-10(a), and HRS § 6E-11.

55. The DOCARE officer submitted the investigative report to SHPD on May 29, 2025, for review and final disposition.

56. SHPD took no action in response to the DOCARE report.

57. In March 2025, Among filed an ombudsman complaint against SHPD for failing to act on his August 2024 request to register the 2023 Burial Sites and for failing to address the 2025 Desecration.

58. In May 2025, Among requested a hearing before the Maui Lāna‘i Island Burial Council (“MLIBC”) to seek guidance and recommendations under HRS Chapter 6E regarding the 2025 Desecration.

59. The MLIBC is an advisory body established under HRS § 6E-43.5 to make recommendations to SHPD regarding the appropriate management, treatment, and protection of previously identified iwi kūpuna. Under HRS § 6E-43.5, before the MLIBC can make such recommendations, SHPD must first determine that a site constitutes “previously identified burials” and assign it an SIHP number.

60. On July 2, 2025, the MLIBC agendized the “Kimokeo ‘Ohana Burial Site” matter. At the meeting, ‘Ohana Kimokeo described the 2025 Desecration and SHPD’s failure to respond and requested assistance in holding Defendant Aason accountable and protecting the remaining iwi kūpuna. The MLIBC discussed conducting a site visit to the Paeohi Property to better assess the situation.

61. On July 7, 2025, Plaintiff ‘Ohana Kimokeo sent a letter to the Board of Land and Natural Resources (“BLNR”) notifying the Board of the 2025 Desecration and requesting relief pursuant to HRS § 6E-11.

62. On August 25, 2025, three MLIBC councilmembers and two SHPD burial site specialists visited the Paeohi Property with ‘Ohana Kimokeo. ‘Ohana Kimokeo showed the councilmembers the areas where the excavator had operated and the pile Pelzer had created consisting of burial markers, other remnants of the 2023 Burial Sites, and blue flags.

63. At the August 27, 2025 MLIBC meeting, an SHPD representative reported that the DOCARE investigative report was under review and that SHPD planned to present it to the BLNR. As of the filing of this Complaint, SHPD has not issued any final decision on the DOCARE report, has not imposed any administrative penalties on Defendant Acason for his violations of HRS § 6E-11, and the matter has not been presented to the BLNR.

DEFENDANT ACASON CONTINUES TO AUTHORIZE ONGOING GROUND-ALTERING ACTIVITIES AT THE PAEOHI PROPERTY

64. On February 14, 2026, Arcangel observed Defendant Acason’s neighbors planting several five-foot-tall papaya trees on the Paeohi Property in the same location as the 2023 Burial Sites. The neighbors used shovels to dig holes for the trees and drove metal stakes into the ground as supports for fencing to prop plants, further disturbing iwi kūpuna located thereon (the “2026 Desecration”).

65. The neighbors stated that Defendant Acason had given them permission to plant trees on the Paeohi Property.

66. Arcangel informed the neighbors that they should not be planting anything due to the presence of burials.

67. Arcangel filed a police report, and ‘Ohana Kimokeo family member Michele Ho‘opi‘i filed a report with DOCARE regarding the 2026 Desecration.

IWI KŪPUNA REMAIN AT RISK DUE TO CONTINUED INACTION BY SHPD

68. Since the 2025 Desecration, Defendant Acason has been accumulating building materials on the Paeohi Property.

69. Since the 2026 Desecration resulted in papaya trees being planted at the location of the 2023 Burial Sites, those trees must now be expertly removed with guidance from an archaeologist. This removal will cause further disturbance, but it is necessary to prevent the

greater harm their continued growth would cause. As of the filing of this Complaint, Defendant Acason has not obtained authorization from SHPD or the MLIBC to relocate or disturb any burial sites on the Paeohi Property.

70. Plaintiff ‘Ohana Kimokeo has made repeated, good-faith efforts to engage with SHPD through proper administrative channels, including: submitting a burial registration form in August 2024; reporting the 2025 Desecration to DLNR; filing an ombudsman complaint against SHPD in March 2025; requesting MLIBC guidance in May 2025; writing to the BLNR in July 2025; and reporting the 2026 Desecration to DOCARE.

71. Despite these persistent efforts, SHPD has failed to take any meaningful action to protect the iwi kūpuna on the Paeohi Property, and iwi kūpuna continue to be disturbed.

COUNT I

BREACH OF FIDUCIARY DUTY (Against Defendant SHPD)

72. Plaintiff hereby realleges and incorporates by reference all preceding allegations.

73. Under HRS Chapter 6E, SHPD is entrusted with administering a comprehensive historic preservation program that emphasizes the preservation and protection of iwi kūpuna and recognizes their cultural and historical significance.

74. Specifically, “at any site . . . where human skeletal remains . . . are known to be buried and appear to be over fifty years old, the remains and their associated burial goods **shall not be moved without the department’s approval.**” HRS § 6E-43(a) (emphasis added). Further, “[a]ll burial sites are significant and shall be preserved in place until compliance with this section is met.” HRS § 6E-43(b).

75. By virtue of its statutory mandate and the trust relationship it holds with Native Hawaiians as stewards of culturally significant burial sites, SHPD owes a fiduciary duty to

Plaintiff ‘Ohana Kimokeo to ensure the preservation and protection of iwi kūpuna in accordance with HRS Chapter 6E.

76. SHPD breached this duty by:

a. Failing to formally register the 2023 Burial Sites, despite receiving Ampong’s registration application in August 2024 and having knowledge of the sites through the FEMA AIS;

b. Failing to take any action upon receiving the DOCARE investigative report documenting the 2025 Desecration; and

c. Allowing the 2025 and 2026 Desecrations to go unaddressed, thereby failing to fulfill its statutory obligation to protect these culturally significant sites for the benefit of Native Hawaiians.

77. As a direct and proximate result of SHPD’s breach, Plaintiff ‘Ohana Kimokeo has suffered and continues to suffer irreparable harm, including the physical destruction of burial sites, the associated spiritual and mental harm recognized in *Kaleikini v. Yoshioka*, 128 Haw. 53, 69, 283 P.3d 60, 76 (2012), and the ongoing inability to restore and protect the desecrated iwi kūpuna.

COUNT II

FAILURE TO FOLLOW ADMINISTRATIVE RULES AND PROCEDURES RELATED TO BURIAL SITES (Against Defendant SHPD)

78. Plaintiff hereby realleges and incorporates by reference all preceding allegations.

79. Hawai‘i Administrative Rules (“HAR”) § 13-300-31(b) provides: “Burial sites discovered during archaeological inventory survey that appear to be over fifty years old shall be

classified as previously identified for which the council or department, whichever is applicable, shall determine appropriate treatment.”

80. The 2023 Burial Sites were identified by FEMA-contracted archaeologists in an AIS conducted in June 2024, and ‘Ohana Kimokeo’s oral history confirms that the 2023 Burial Sites are over fifty years old.

81. HAR §13-300-2 defines “previously identified” as “burial sites containing human skeletal remains and any burial goods **identified during archaeological inventory survey** and data recovery of possible burial sites, **or known through oral or written testimony.**” (emphasis added).

82. Accordingly, SHPD was required under HAR § 13-300-31(b) to classify the 2023 Burial Sites as “previously identified” and to determine appropriate treatment, which would in turn have enabled the MLIBC to develop a burial treatment and protection plan for the Paeohi Property.

83. Despite receiving Ampong’s August 2024 registration application, SHPD failed to take any formal administrative action to register the 2023 Burial Sites, classify them as “previously identified,” or initiate any determination of appropriate treatment.

84. SHPD’s failure to comply with HAR § 13-300-31(b) left the 2023 Burial Sites without formal legal protection, directly contributing to the 2025 and 2026 Desecrations and the continued vulnerability of ‘Ohana Kimokeo’s iwi kūpuna.

85. As a direct and proximate result of SHPD’s failure to follow its own administrative rules, Plaintiff ‘Ohana Kimokeo has suffered and continues to suffer irreparable harm, including physical destruction of burial sites, the spiritual and mental harm recognized in *Kaleikini v.*

Yoshioka, 128 Haw. 53, 69, 283 P.3d 60, 76 (2012), and the inability to protect and care for iwi kūpuna.

COUNT III

FAILURE TO PROTECT NATIVE HAWAIIAN RIGHTS IN VIOLATION OF ARTICLE XII SECTION 7 OF HAWAI‘I CONSTITUTION (Against Defendant SHPD)

86. Plaintiff hereby realleges and incorporates by reference all preceding allegations.

87. Article XII, Section 7 of the Hawai‘i Constitution mandates that “[t]he State shall protect all rights customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778.”

88. Mālama iwi kūpuna—the traditional and customary practice of caring for and protecting ancestral remains and burial sites—was firmly established and practiced in the Native Hawaiian community prior to 1778 and prior to November 25, 1892.

89. Plaintiff ‘Ohana Kimokeo’s practice of mālama iwi kūpuna encompasses the care and protection of burial sites located on the Paeohi Property, and constitutes a right protected under Article XII, Section 7.

90. SHPD violated Article XII, Section 7 by:

a. Failing to register the 2023 Burial Sites despite Ampong’s August 2024 application, thereby depriving Plaintiff of the statutory protections that would have followed formal registration; and

b. Failing to impose penalties on Defendant Acason following the DOCARE officer’s finding that Acason desecrated known burial sites in violation of HRS §§ 711-1107, 6E-10(a), and 6E-11, thereby condoning the desecration and failing to deter further harm.

91. SHPD’s failures directly caused the desecration and continued vulnerability of ‘Ohana Kimokeo’s iwi kūpuna and have substantially impaired Plaintiff’s ability to exercise its constitutionally protected right of mālama iwi kūpuna.

92. As a direct and proximate result of SHPD’s violations, Plaintiff ‘Ohana Kimokeo has suffered and continues to suffer irreparable harm, including physical destruction of burial sites, the spiritual and mental harm recognized in *Kaleikini v. Yoshioka*, 128 Haw. 53, 69, 283 P.3d 60, 76 (2012), and the inability to continue exercising its traditional and customary right of mālama iwi kūpuna.

COUNT IV

DESECRATION UNDER HRS 6E-11 (Against Defendant Acaon)

93. Plaintiff hereby realleges and incorporates by reference all preceding allegations.

94. HRS § 6E-11(b) provides that “it shall be a civil and administrative violation for any person to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site, or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, to knowingly fail to re-inter human remains discovered on the lands in a reasonable period of time as determined by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.”

95. Under HRS § 6E-2, a “burial site” means “any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods are interred, and its immediate surrounding archaeological context.”

96. Defendant Acaon had actual knowledge of the 2023 Burial Sites: he personally walked the Paeohi Property in July or August 2024 with ‘Ohana Kimokeo members and FEMA

archaeologists who identified and documented each burial site and specifically noted the 2023 Burial Sites to him.

97. Defendant Aason had no permission from SHPD to alter, disturb, or destroy any burial sites on the Paeohi Property.

98. Despite this knowledge and the absence of any authorization, Defendant Aason hired Pelzer to clear the makai side of the Paeohi Property using a machine excavator—the very method FEMA personnel had expressly told Aason was prohibited due to the presence of sensitive burial sites.

99. On January 3, 2025, Pelzer used the machine excavator at Defendant Aason’s direction and thereby injured, altered, and destroyed the 2023 Burial Sites and their archaeological context (the “2025 Desecration”).

100. On or about February 14, 2026, Defendant Aason gave permission to neighbors to plant papaya trees on the Paeohi Property. In the same area as the 2023 Burial Sites, the neighbors dug holes with shovels and drove metal stakes into the ground for fencing to prop plants, further injuring, altering, and destroying burial sites and their archaeological context (the “2026 Desecration”).

101. Through the 2025 Desecration and the 2026 Desecration, Defendant Aason knowingly caused the excavation, injury, alteration, and destruction of burial sites and iwi kūpuna on the Paeohi Property in violation of HRS § 6E-11(b).

102. As a direct and proximate result of Defendant Aason’s conduct, Plaintiff ‘Ohana Kimokeo has suffered irreparable harm including physical destruction of burial sites and the spiritual and mental harm recognized in *Kaleikini v. Yoshioka*, 128 Haw. 53, 69, 283 P.3d 60, 76 (2012).

COUNT V

NEGLIGENCE

(Against Defenadant Aason)

103. Plaintiff hereby realleges and incorporates by reference all preceding allegations.

104. HRS § 6E-1 declares that “[t]he historic and cultural heritage of the State is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage.” Consistent with this declaration and the specific protections afforded to burial sites under HRS Chapter 6E, Defendant Aason owed a duty of care to refrain from any ground-disturbing activity on the Paeohi Property that would disturb or destroy the 2013 and 2023 Burial Sites known to exist thereon.

105. Defendant Aason was on notice of the 2013 Burial Sites at the time he purchased the Paeohi Property from Pioneer Mill Co. He received further, specific notice of the 2023 Burial Sites in July or August 2024 when FEMA archaeologists identified and mapped each burial site in his presence during the post-wildfire debris removal site visit. At that time, federal personnel expressly informed Defendant Aason that machine excavation on the property was prohibited to protect the burial sites, and that this restriction applied equally to any ground-disturbing work he might undertake.

106. Defendant Aason breached his duty of care by:

a. Directing Pelzer to use machine excavation on the makai side of the Paeohi Property without informing Pelzer of the location of the 2023 Burial Sites, without providing Pelzer adequate instructions to avoid them, and without monitoring Pelzer’s work to ensure their protection; and

b. Granting permission to his neighbors to plant at the location of the 2023 Burial Sites, involving the digging of holes for trees and the driving of metal stakes into the ground for garden fencing, without obtaining authorization from SHPD.

107. Both of these acts contravened the statutory protections afforded to burial sites under HRS Chapter 6E and constituted a failure to exercise reasonable care given Defendant Acason’s actual, specific knowledge of the burial sites.

108. As a direct and proximate result of Defendant Acason’s negligent conduct, Plaintiff ‘Ohana Kimokeo has suffered irreparable harm, including physical destruction of the burial sites and the spiritual and mental harm recognized in *Kaleikini v. Yoshioka*, 128 Haw. 53, 69, 283 P.3d 60, 76 (2012), for which Plaintiff is entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ‘Ohana Kimokeo respectfully requests that this Court:

Declaratory Relief:

A. Declare that Defendant State of Hawai‘i, through SHPD, breached its fiduciary duty to Plaintiff by failing to formally register the 2023 Burial Sites following Ampong’s August 2024 application and by failing to take any action on the DOCARE report documenting the 2025 Desecration.

B. Declare that Defendant State of Hawai‘i, through SHPD, violated HAR § 13-300-31(b) by failing to classify the 2023 Burial Sites as “previously identified” iwi kūpuna and to determine appropriate treatment following their identification in the June 2024 AIS.

C. Declare that Defendant State of Hawai‘i, through SHPD, violated Article XII, Section 7 of the Hawai‘i Constitution by failing to protect ‘Ohana Kimokeo’s traditional and customary right of mālama iwi kūpuna through its failure to register the 2023 Burial Sites and its

failure to impose penalties on Defendant Acason following the documented desecration of known burial sites.

D. Declare that Defendant Acason violated HRS § 6E-11 by knowingly causing the excavation, injury, alteration, and destruction of the 2023 Burial Sites through the 2025 Desecration and the 2026 Desecration.

Injunctive Relief:

E. Order Defendant State of Hawai‘i, through SHPD, to issue a final written disposition on the DOCARE investigative report, including a determination of whether to impose administrative penalties on Defendant Acason pursuant to HRS § 6E-11.5;

F. Order Defendant State of Hawai‘i, through SHPD, to complete the formal registration of the SIHP No. 50-50-03-0825 amendment to include the 2023 Burial Sites on the Paeohi Property and, following registration, to work with the MLIBC to develop a burial treatment and protection plan for all iwi kūpuna on the Paeohi Property;

G. Enjoin Defendant Acason from conducting any construction, earthmoving, grubbing, grading, excavation, soil compaction, concrete pouring, utility installation, tree planting, or any other ground-disturbing or ground-altering activity on the Paeohi Property, TMK No. 4-5-023-069, until the historic preservation review process required by HRS Chapter 6E and its implementing administrative rules has been completed and SHPD has issued written authorization for any such activity;

Additional Relief:

H. Impose a civil penalty on Defendant Acason pursuant to HRS § 6E-11.5 for each violation of HRS § 6E-11;

I. Award damages against Defendant Acason in an amount to be proven at trial;

J. Award Plaintiff ‘Ohana Kimokeo its reasonable attorneys’ fees and costs pursuant to HRS § 607-25 and any other applicable provision; and

K. Grant such other and further relief as the Court deems just and proper.

DATED: Honolulu, Hawaii, March 2, 2026.

/s/ Kirsha K.M. Durante
KIRSHA K.M. DURANTE
DEVON HAIA
Attorneys for Plaintiff
‘OHANA KIMOKEO

STATE OF HAWAI'I CIRCUIT COURT OF THE SECOND <input checked="" type="checkbox"/> CIRCUIT		SUMMONS TO ANSWER CIVIL COMPLAINT	
CASE NUMBER		PLAINTIFF'S NAME & ADDRESS, TEL. NO. Kirsha K.M. Durante 8144 Devon Haia 11817 Native Hawaiian Legal Corporation 1164 Bishop Street, Suite 1205 Honolulu, Hawai'i 96813 Telephone: (808) 521-2302	
PLAINTIFF 'OHANA KIMOKEO			
DEFENDANT(S) STATE OF HAWAI'I, BRIAN ACASON; and JOHN DOES 1-10, JANE DOES 1-10, and DOE PARTNERSHIPS, CORPORATIONS, TRUSTS, GOVERNMENTAL UNITS OR OTHER ENTITIES 1-20 ("DOE DEFENDANTS")			
TO THE ABOVE-NAMED DEFENDANT(S) <p>You are hereby summoned and required to file with the court and serve upon</p> <p>Kirsha K.M. Durante, Esq./Devon Haia, Esq. Native Hawaiian Legal Corporation 1164 Bishop Street, Suite 1205 Honolulu, Hawai'i 96813</p> <hr/> plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. <p>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</p> <p>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>			
DATE ISSUED <u>March 2, 2026</u>		Effective Date of 03-Jul-2023 signed by: /s/M. Ferreira Clerk, 2nd Circuit, State of Hawai'i The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kookua at: http://www.courts.state.hi.us	
		If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation: Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: adarequest@courts.hawaii.gov . The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.	

